

Negotiating Diversity

A Field Guide to the Convention on Biological Diversity

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CONTENTS

Acknowledgements	2
About the Author	2
INTRODUCTION	5
<i>Box 1: A Summary of the Rights of Indigenous Peoples within International Law</i>	8
SECTION I	14
THE DIMENSIONS OF DIVERSITY	14
WHAT IS BIODIVERSITY?.....	14
WHAT DO WE KNOW ABOUT BIODIVERSITY?	15
CULTURAL DIVERSITY AND THE CONSERVATION OF BIODIVERSITY	16
<i>Mapping Cultural Diversity and Biodiversity</i>	17
<i>A Diversity of Knowledge</i> :.....	18
<i>Biodiversity and the Loss of Cultural Diversity</i> :	19
<i>Beyond Traditional Knowledge?</i>	22
SECTION II	24
INDIGENOUS PEOPLES, LOCAL COMMUNITIES AND THE CONVENTION ON BIODIVERSITY	24
THE CONVENTION ON BIOLOGICAL DIVERSITY:	24
INSTITUTIONS OF THE CONVENTION:	25
<i>The Conference of Parties (COP)</i>	25
<i>Extraordinary Meetings of the Conference of Parties (EM)</i>	25
<i>Inter-Sessional Meetings on the Operations of the Convention (ISOC)</i>	25
<i>The Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA)</i>	25
<i>The Secretariat</i>	26
<i>The Financial Mechanism</i>	26
<i>The Clearing House Mechanism (CHM)</i>	26
<i>Subsidiary Organs</i>	27
SUBSIDIARY AGREEMENTS:	28
RELATIONS WITH OTHER INTERNATIONAL CONVENTIONS AND AGREEMENTS:	28
RELATED PROCESSES:	29
ORGANISATION OF THE WORK OF THE CONVENTION:	30
<i>Thematic Work Programmes</i>	30
<i>Cross-cutting Work Programmes</i>	30
INDIGENOUS PEOPLES AND LOCAL COMMUNITIES IN THE ARTICLES OF THE CONVENTION:	31
The Preamble:.....	31
Article 8(j): Traditional Knowledge (In-situ conservation).....	32
Article 10: Sustainable Use.....	32
Article 15: Access to Genetic Resources.....	32
Article 16: Access to and Transfer of Technology.....	33
Article 17: Exchange of Information.....	33
Article 18: Technical and Scientific Cooperation.....	33
Article 19: Handling of Biotechnology and Distribution of its Benefits	34
<i>The Dilemmas Confronting Indigenous Peoples and Local Communities</i> :.....	34
<i>Indigenous Peoples and Local Communities Participation in Convention processes</i> :.....	35
<i>The International Indigenous Forum on Biodiversity (IIFB)</i> :	36
<i>Progress Since COP5</i>	42
SECTION III	44

FROM POLICY TO IMPLEMENTATION?.....	44
INTRODUCTION.....	44
THE NATIONAL LEVEL:	45
<i>National Focal Points</i>	46
<i>National Reporting</i>	49
<i>Indigenous Peoples and Local Community Experts</i>	49
<i>Participation in Official Delegations</i>	50
THE REGIONAL LEVEL	51
<i>The Role of Research</i>	51
<i>Proposing Initiatives</i>	52
<i>Strengthening Cooperation</i>	52
THE INTERNATIONAL LEVEL.....	54
<i>A Shift in Focus?</i>	54
<i>Financial Mechanism</i>	55
<i>Preparation</i>	56
<i>Specialisation</i>	56
<i>Continuity</i>	58
<i>The Question of Experts</i>	59
<i>Coordination</i>	64
<i>The Problem of Coherence</i>	65
CONCLUSION	67
SECTION IV.....	68
EXECUTIVE SUMMARY OF COP5 DECISIONS.....	68

Introduction

The Convention on Biological Diversity (CBD) is one of the series of international agreements which emerged from the 1992 World Conference on Environment and Development (“Earth Summit”) held in Rio de Janeiro. These conventions and agreements include:

- Agenda 21 concerned with Sustainable Development
- The United Nations Framework Convention on Climate Change
- The Statement of Principles on Forests
- The United Nations Convention to Combat Desertification¹

Since the original “Earth Summit” ten years ago, it has become increasingly clear that the Convention on Biological Diversity lies at the centre of the conventions and agreements which emerged from Rio. The Convention on Biological Diversity stands alone among international environmental agreements in touching upon every element of the fabric of life upon this planet. Its success or failure will be critical to all our futures.

In particular, the conservation of biodiversity is of concern to three key groups of peoples and communities whom this guide is designed to serve:

- The estimated 300 to 600 million indigenous people around the world whose livelihoods, languages, cultures and identities are inextricably bound up with the diversity of plant, animal and other species that are located within their territories².
- Up-to 1.4 billion members of local communities around the world, including many who identify themselves as belonging to indigenous peoples, who are classified as ‘resource poor farmers’ and depend upon biodiversity for their livelihoods and welfare³.
- A less certain number of indigenous peoples and local communities who depend upon marine and freshwater resources for their livelihoods and welfare.

These diverse indigenous peoples and local communities are central to the conservation of biodiversity because:

- Indigenous peoples territories coincide with the areas of highest biological diversity in the world.⁴
- Indigenous peoples and local communities are directly affected by colonisation, logging, mining, industrial agriculture, pollution, and other manifestations of western

¹ The creation of the Convention to Combat Desertification emerged as a recommendation from the UNCED and was opened for signature in 1994 before entering into force in 1996.

² Data from the ILO and the Working Group on Indigenous Populations (see UNEP/CBD/WG8J/2/5).

³ Data from the Food and Agriculture Organisation cited in UNEP/CBD/WG8J/2/5

⁴ See WWF/Terralingua (2000) *Indigenous and Traditional Peoples of the World and Ecoregion Conservation: An Integrated Approach to Conserving the World’s Biological and Cultural Diversity*. Gland: WWF International.

style development which are responsible for the destruction of the biodiversity upon which we all ultimately depend.

As such, indigenous peoples and local communities bear the brunt of the destruction of biodiversity in terms of the loss of their livelihoods, resources, lands and territories. The loss of human cultural diversity that inevitably accompanies this, lies in the form of destruction of languages, institutions, knowledge, identities, beliefs and distinctive visions of the world. All too often, the destruction of biodiversity is also marked by serious violations of human rights and condemnation to a life of poverty.

However, for many indigenous peoples and local communities, the western concept of biodiversity is likely to be an unfamiliar one, and the provisions and negotiations which surround the Convention may appear remote from their everyday concerns. In practice, nothing could be further from the truth. The debates taking place under the Convention on Biological Diversity have profound implications for indigenous peoples and members of local communities.

The 1980s and the 1990s were characterised by growing scientific and international public awareness of the consequences of the accelerating destruction of the diversity of life on this planet for the future well being of humanity. This growing concern was accompanied by increased recognition that indigenous peoples and local communities possess detailed knowledge of their local environments and have developed environmental management practices which may offer the key to the conservation and sustainable use of biodiversity. As such, formerly marginalised indigenous peoples and local communities, who had classically been regarded as ‘backwards’ and as ‘obstacles’ to development, are increasingly seen as providing solutions to the complex problem of creating and maintaining a sustainable relationship with nature and our global environment.

This recognition is encapsulated in a variety of articles within the Convention, notably Article 8(j) and its ‘related provisions’ concerned with the role of ‘traditional’ knowledge in the conservation of biodiversity, sustainable use, and access to genetic resources and benefit sharing.

In practice, the debates surrounding what are called “indigenous and local communities embodying traditional lifestyles” under the Convention have focused upon three issues:

- Documenting and disseminating traditional knowledge of the environment.
- Legitimising the exploitation of this knowledge for the development of commercially viable products.
- Establishing access and benefit sharing arrangements to ensure that developing countries and knowledge holders receive an equitable share of any benefits that may arise from the commercial exploitation of the genetic resources derived from traditional knowledge.

As this suggests, to date the debates taking place on the Convention have focused on the issue of ‘traditional knowledge’ of biodiversity and, in particular, the potential opportunities that this knowledge provides for economic and commercial exploitation of biodiversity.

However, while ‘traditional knowledge’ is widely recognised as being central to the conservation and sustainable use of biodiversity, in the period between 1992 and the year 2000 indigenous peoples and local communities were largely either excluded from the debates under the Convention or relegated to the category of observers in the deliberations of governments.

Efforts to secure participation in the debates under the Convention have been led by indigenous peoples organisations from around the world and a diverse array of non-governmental organisations with a variety of agendas.

The focus of this guide will be upon the work of the indigenous peoples organisations making up the International Indigenous Forum on Biodiversity which has become a leading force in opening the Convention to the participation of indigenous peoples, local communities and wider civil society.

In the period between 1994 and the year 2000, indigenous delegates who make up the International Indigenous Forum on Biodiversity focused their attention on:

- Arguing for recognition of the right of indigenous peoples and local communities to participate in the debates taking place under the Convention; and
- Establishing the preconditions for the fair and equitable participation of indigenous peoples in the implementation of the Convention.

In the course of these debates indigenous peoples delegates from around the world have argued that the fundamental preconditions for their participation in the implementation of the Convention must be four-fold:

- Recognition that indigenous peoples are “rights-holders” under international law. Their existence as *peoples* and their rights to self-determination, their territories, languages, prior informed consent and to control over their own knowledge, as set down in existing and emerging international instruments, must be recognised(Box 1)⁵.
- The need to focus on the conservation of biodiversity rather than the commercial exploitation of biodiversity.
- The need to focus on providing indigenous peoples and local communities with information *about* the Convention as a basis for their full and effective participation.
- The creation of mechanisms for the full and effective participation of indigenous peoples and local communities from the local to the international level in all activities associated with the Convention.

⁵ The terms “rights-holders” was developed during the sixth meeting of the International Indigenous Forum on Biodiversity to differentiate indigenous peoples from inclusion in the general term “stakeholders”, which has historically dominated the language of the Convention.

Box 1: A Summary of the Rights of Indigenous Peoples within International Law⁶

The rights of indigenous peoples are recognised under a variety of existing and emerging United Nations and Inter-American human rights instruments and procedures. These include:

- The International Covenants on Human Rights (1966).
- The Convention on the Elimination of All Forms of Racial Discrimination (1965).
- International Labour Organisation Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (1989).
- The Convention on the Rights of the Child (1989).
- The United Nations Draft Declaration on the Rights of Indigenous Peoples

In the Inter-American system, the primary instruments are:

- The American Declaration on the Rights and Duties of Man (1948).
- The American Convention on Human Rights (1969).

The Rights established in these instruments and procedures include:

- The right of indigenous peoples to self-identification as indigenous peoples
- The right to self-determination, representation and full participation in decision-making
- The right to ownership, possession and use of lands and resources historically occupied and used by indigenous peoples
- The right to cultural integrity
- The right to equal protection before the law and prohibition of racial discrimination
- The right to autonomy, self-government and self-development
- The right to health and a healthy environment.
- The rights to their languages, culture and respect for their religious belief systems
- The rights of indigenous children to their culture, lands, resources and to participation in decision-making which concerns them
- The right to prior informed consent on all matters that may affect indigenous peoples
- The right to control their own economic, social and cultural development.
- The right to determine “their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use...” (Convention 169).

⁶ Source: McKay, F (2000) ‘The Rights of Indigenous Peoples in International Law: A Briefing Paper for the Department of International Development’. Forest Peoples Programme.

The Conference of Parties to the Convention on Biological Diversity, which is composed of governments from around the world, is the supreme decision-making body of the Convention. After many years of struggle, indigenous delegates made important breakthroughs in securing recognition of the rights of indigenous peoples and local communities to participate in the work of the Convention during the Fifth Conference of the Parties (COP5), held in Nairobi, Kenya between the 15th and the 26th of May 2000.

The decisions taken during COP5 stretch far beyond the issue of traditional knowledge which has dominated existing debates. It now seems possible to argue that we may be potentially witnessing the progressive *democratisation* of the Convention with respect to the participation of indigenous peoples, local communities and wider civil society. As such, the majority of this guide will focus on the decisions taken at COP5 as a foundation for future assessments of progress.

The importance of these decisions can be seen when we consider the following brief summary of the outcomes of COP5 of concern to indigenous peoples and local communities.

- Recognition of the importance of the participation of indigenous peoples and local communities from the local to the international level in a wide variety of CBD work programmes.
- Recognition of the special roles of women from indigenous and local communities in the conservation of biodiversity.
- Recognition of the International Indigenous Forum on Biodiversity as an advisory body to the COP.
- That “traditional knowledge should be valued, given the same respect and considered as useful and necessary as other forms of knowledge.”⁷
- Promotion of the nomination of members of indigenous peoples and local communities to the international roster of experts.
- Promotion of the inclusion of indigenous and local community delegates within official delegations to CBD processes.
- The continuation of the Working Group on Article 8(j) and related provisions concerning traditional knowledge.
- The creation of a Working Group on Access and Benefit Sharing which initially recognised the importance of the participation of indigenous peoples and local communities, and the principle of their prior informed consent on mutually agreed terms to any potential use of their knowledge.

As this brief summary suggests, the decisions taken by COP5 provide important opportunities for indigenous peoples and local communities to secure their participation and recognition of their rights in the debates taking place under the Convention. As we will see, in the wake of COP5, indigenous peoples organisations, with growing support

⁷ See Decision V/16 (Annex: para.2)

from a number of Parties and the Secretariat of the CBD, have sought to consolidate these important developments. However, these developments also present a series of important

challenges for indigenous peoples and members of local communities around the world:

- Much remains to be done in terms of gaining recognition that indigenous peoples are “rights-holders” under international law rather than mere “stakeholders” as they are presently classified under the Convention. That is, the rights of indigenous peoples to, *inter alia*, recognition of their existence and rights as *peoples*, self-determination, prior informed consent, ownership of their lands and territories and to determine their own forms of development. These rights have “crystallised” under international law within a concrete body of existing and emerging international human rights instruments, agreements, and the binding decisions of international human rights bodies⁸.
- The emphasis within many of the Convention’s decisions remains firmly placed on documenting and disseminating traditional knowledge rather than the conservation or protection of traditional knowledge. In particular, the Parties appear determined to press forward with legitimising the commodification and commercial exploitation of traditional knowledge of genetic resources rather than protecting this knowledge as a foundation for pursuing the sustainable use and conservation of biodiversity.
- The development of the Convention has been marked by the creation of an ever-increasing number of work programmes, working groups, expert panels, expert groups, workshops and seminars and by the establishment of liaison groups with other Biodiversity related agreements and institutions. This also presents difficult challenges for indigenous peoples and local communities with respect to securing funding, establishing an effective division of labour, and continuity in participation in Convention debates.
- The Convention has been criticised for a tendency to generate text rather than action⁹. This is reflected in the fact that decision-making within the Convention is driven by texts. Anyone seeking to participate within the debates surrounding the CBD is confronted by large volumes of documents which address complex global issues using specialised language. Mastering these documents is a major challenge for everyone, including governments, who participate within the debates under the CBD.

The purpose of this field guide is to assist indigenous peoples and local communities with addressing the third and fourth of these challenges as the basis for contributing to securing respect for the rights of indigenous peoples and the full and effective participation of indigenous peoples and local communities throughout the work of the Convention.

⁸ See, Forest Peoples Programme (2001) ‘The Convention on Biological Diversity, State Sovereignty and Indigenous Peoples’ Rights’. Legal Briefing 1, November 2001. Moreton-in-Marsh: Fern and Forest Peoples Programme.

⁹ Hyvarinen, J (2001) ‘Strengthening the Convention on Biological Diversity’. Briefing Paper. Royal Society for the Protection of Birds.

This will be an experimental process and the field guide represents a work in progress. The aim of the present guide is three-fold:

- To introduce indigenous delegates and members of local communities who are new to the work of the Convention to biodiversity issues, the institutions of the Convention, the articles of the Convention, and the work of the International Indigenous Forum on Biodiversity.
- To analyse and explore the challenges and opportunities for engagement with the Convention represented by recent COP decisions as the basis for stimulating further discussion among indigenous peoples and local community organisations.
- To present an executive summary of each of the substantive decisions taken by the Fifth Conference of Parties (COP5) as the basis for further analysis and progress.

During COP5 the Parties took a total of twenty-nine decisions. Of these, twenty-six are either directly relevant or contain points of interest to indigenous peoples and local communities. The decisions taken by COP5 cover a total of 138 pages and generally consist of a series of introductory paragraphs and an annex, which taken together, make up the decision¹⁰.

Some of these decisions are of common interest to indigenous peoples and local communities around the world, notably:

- The Cartagena Protocol on Biosafety (Decision V/1)
- The Ecosystem Approach (Decision V/6)
- Identification, monitoring, assessment and indicators (Decision V/7)
- Alien Species (Decisions V/8)
- The Global Taxonomy Initiative (Decision V/9)
- Global Strategy for Plant Conservation (Decision V/10)
- Financing for biodiversity (Decisions V/11, V/12, V/13, V/22)
- The Clearing House Mechanism (Decision V/14)
- Incentive Measures (Decision (V/15)
- Article 8 (j) and related provisions concerned with traditional knowledge (Decision V/16)
- Education and Public Awareness (Decision V/17)
- Impact Assessment, Liability and Redress (Decision V/18)
- National Reporting (Decision V/19)
- Operations of the Convention (Decision V/20)
- Cooperation (Decision V/21)
- Sustainable Use (Decision V/24)

¹⁰ For a brief overview of the decisions taken at each COP see International Institute for Sustainable Development (2000) 'Earth Negotiations Bulletin', Vol. 9, No. 160, May. The regularly updated Earth Negotiations Bulletin can be accessed online at <http://www.iisd.ca/>. For discussion of the themes addressed at each COP see 'The History of the Biodiversity Convention', in Lovera, S (lead author) (2001) *Forests and the Convention on Biological Diversity*. Global Forest Coalition.

- Tourism (Decision V/25)
- Access and Benefit Sharing (Decision V/26)

Other decisions taken by COP5 are more likely to concern indigenous peoples and local communities with a special interest in particular issues. These are:

- Inland Water Ecosystems (Decision V/2)
- Marine and Coastal Biodiversity (Decision V/3)
- Forest Biological Diversity (Decision V/4)¹¹
- Agricultural Biodiversity (Decision V/5)
- Dryland and Semi-arid lands (Decision V/23)

In approaching these decisions it is important to bear in mind that decisions in one area of the Convention are also frequently relevant to other areas of the Convention. This is particularly true in the case of so-called *cross cutting issues* such as Article 8(j) and related provisions concerned with traditional knowledge. At the same time, it is also important to bear in mind that different areas of the Convention are under continuous development.

As such it is important to gain a balanced view of the decisions taken under the Convention and the problems and opportunities these decisions provide for indigenous peoples and local communities. In order to achieve this, the guide is divided into four sections:

- Section One provides a basic introduction to the topic of biodiversity and the importance of indigenous peoples and local communities in the conservation of biodiversity.
- Section Two provides a basic introduction to the Convention, its institutions, processes, articles of the Convention of concern to indigenous peoples and local communities, and to the work of the International Indigenous Forum on Biodiversity.
- Section Three is concerned with providing an analysis of the challenges and opportunities represented by the decisions taken at COP5 in the development of strategies for engagement with the Convention from the local to the international level.
- Section Four provides a brief Executive Summary of each of the 26 substantive decisions taken at COP5 as a basis for further analysis of existing and future decisions.

The field guide represents a work in progress and future versions of this field guide will be updated to include; the outcomes of COP6, thematic chapters on individual issues of concern to indigenous peoples and local communities, and resources for indigenous peoples and local community organisations seeking to engage with the work of the Convention.

¹¹ See, Lovera, S (lead author) (2001) *Forests and the Convention on Biological Diversity*. Global Forest Coalition.

It is hoped that this guide will contribute to the next and vital step necessary to secure the meaningful participation of indigenous peoples, local communities and civil society within the implementation of the Convention. That is, the translation of the provisions of the Convention into a form that is readily intelligible by the peoples and communities in whose hands the future conservation of the world's biodiversity ultimately rests.

Section I

The Dimensions of Diversity

What is Biodiversity?

For many indigenous peoples and local communities, the western scientific concept of biodiversity may initially appear alien and many indigenous and local languages may not possess an equivalent term to the western concept of biodiversity¹².

In fact, the term biodiversity describes the diversity of all life on this planet ranging from the genes that make up the smallest organism in the deep oceans to the diversity of plant and animal life and the ecosystems sustaining them. We are also part of this diversity and depend upon the maintenance of biodiversity for our survival and well-being. Indeed, as we will see, the “cultural diversity” represented by indigenous peoples and local communities around the world is increasingly seen as a central element of global biodiversity. In short, as one well known biologist has remarked, biodiversity “... is, in one sense, everything”¹³. As such, the concept of biodiversity is all-encompassing, and expresses the ultimate interconnectedness of all life upon this planet.

The origins of the concept of biodiversity in the western world can be traced back to the 1970s and the 1980s, when western scientists progressively began to gather more and more detailed information about the alarming acceleration of tropical deforestation around the world. Tropical forests contain the richest diversity of life upon this planet and, along with coral reefs, are the most important storehouses of biodiversity in the world. In response to the dramatic pace of destruction of the world's tropical forests, western scientists began the process of trying to predict what this meant in terms of the loss of the diversity of life. These efforts were then extended to other ecosystems such as coral reefs, wetlands, and deserts. This led to a growing conviction that the accelerating loss of the diversity of life would have serious consequences for the future of humanity. Furthermore, once lost this diversity cannot be recovered.

In response to this growing sense of crisis, in September of 1986, a National Forum on BioDiversity was held in Washington, in which over 60 leading biologists, scientists, members of development agencies and others participated. It was during this meeting that the concept of “BioDiversity”, or “biodiversity” as it is now more commonly known, was born¹⁴.

¹² Posey, D (ed.) (1999) *Cultural and Spiritual Values of Biodiversity*. London: Intermediate Technology Publications.

¹³ See Wilson, E. O (1997) ‘Introduction’, in Reaka-Kudla, M *et al* (1997) *Biodiversity II*. Washington D.C: Joseph Henry Press.

¹⁴ See Wilson, E. O. and Peter, F. (eds.) (1988), *Biodiversity*. Washington D.C.: National Academy Press.

This was followed in 1987 by the creation of an Ad Hoc Working Group of Experts on Biological Diversity by the United Nations Environment Programme (UNEP) to consider how the threats represented by the loss of global biodiversity might be addressed, and trends in the loss of biodiversity reversed¹⁵. This initiative culminated in the creation of the legally binding United Nations Convention on Biological Diversity which was opened for signature during the 1992 “Earth Summit” in Rio de Janeiro.

What do we know about biodiversity?

The answer to this question is surprisingly little. More accurately *western scientists* know surprisingly little about biodiversity. Indeed, as one noted commentator on biodiversity has remarked, the western world invests more in the exploration of distant planets than it does on the exploration of the diversity of life on this planet¹⁶.

This is reflected in the fact that western science does not even possess a clear idea of how many species there are in the world. Thus, estimates for the diversity of species presently range from 10 to 100 million species, and any given figure on numbers of species is likely to be contested¹⁷. The figure of 12.5 million species may ultimately prove more realistic¹⁸. However, as of 1997 only 1.7 million species had been described by western scientists. This demonstrates just how poor western knowledge of biodiversity truly is. Over the last 230 years, western scientists have described new species at the rate of between 6,000 to 8,000 per year¹⁹. This has recently increased to approximately 15,000 species per year²⁰. Assuming that an estimate of a total of 14 million species is reasonable, and subtracting the 1.7 million species that are thought to have been described, this means that at the present rate of progress it will take western taxonomists somewhere in the region of 820 years to describe the diversity of life on this planet²¹.

This extremely crude estimate serves to reveal the poverty of western scientific knowledge of global biodiversity. This is further reinforced by the sobering fact that with the exception of birds, large mammals, and other species of particular interest to human beings, we know virtually nothing about the majority of the 1.7 million species that have

Biodiversity II. Washington D.C: Joseph Henry Press.

¹⁷ See Lovejoy, T. (1997) ‘Biodiversity: What Is It?’, in Reaka-Kudla, M *et al* (1997) *Biodiversity II*. Washington D.C: Joseph Henry Press.

¹⁸ Stork, N. (1997) ‘Measuring Global Biodiversity and its Decline’, in Reaka-Kudla, M *et al* (1997) *Biodiversity II*. Washington D.C: Joseph Henry Press. page 65

¹⁹ Stork 1997: 44

²⁰ See Stork 1997: 44. Calculations of overall rates of description for species appears to be similarly fraught with uncertainty and may vary considerably. See for example Erwin (same volume) on beetles for a detailed example.

²¹ Lovejoy 1997: 7, Erwin 1997: 27, Stork 1997: 45. The overall figure of 12.5 million species is adopted by Stork (1997) and is commonly cited. The figure of 14,000,000 species used here is derived from the 2001 *Global Biodiversity Outlook* published by the Secretariat of the Convention on Biological Diversity and UNEP. It should be noted that the authors of the Global Biodiversity Outlook emphasise that “the overall estimated total figure may be highly inaccurate” (SCBD – UNEP 2001: 61, Notes).

been described by western taxonomists, beyond their names and the places they were collected²².

While this situation is improving, and is marked by an increasing understanding of the ecology of tropical forests, there are still enormous gaps in western scientific knowledge of global biodiversity and the ecological processes that shape our world. Furthermore, we do know that global biodiversity is being lost at an alarming rate. Indeed, global biodiversity is being lost at such a rate that it is quite conceivable that many species will become extinct before they can be collected and described by western taxonomists²³.

Estimates of the status and trends in the conservation and loss of biodiversity vary considerably and it is important to recognise that any given figures on issues such as deforestation and the extinction of species are likely to be contested. What is beyond doubt is that the destruction of biodiversity in the form of tropical deforestation and other ecosystems around the world poses a serious threat to the future well being of humanity.

As this makes clear, at the heart of the issue of the conservation of biodiversity is knowledge; knowledge of the diversity of species, their ecology, behaviour and of management practices which might enable humankind to establish and maintain a sustainable relationship with the environment upon which we all ultimately depend for our welfare. It is here that indigenous peoples and local communities have a vital role to play.

Cultural Diversity and the Conservation of Biodiversity

Debates surrounding biodiversity have classically focused on analysis of biodiversity on the genetic, species and ecosystem level. However, within the context of growing awareness of the limited knowledge of biodiversity within western science, and the pressing need to ensure the conservation of biodiversity, attention has increasingly turned to the role that the knowledge of indigenous peoples and local communities might play in the conservation of biodiversity.

As we will see, to date, debates taking place under the Convention on Biodiversity have been marked by an emphasis upon the importance of disseminating *technical* aspects of traditional knowledge about plants, animals and other species.

However, the complexities of the issues surrounding traditional knowledge, or more accurately, knowledges, are also encouraging a wider perspective in which indigenous peoples, scientists, linguists and others are increasingly exploring the role of human “cultural diversity” in the conservation of biodiversity and the long term survival of humanity²⁴.

As we have seen above, biodiversity encompasses all biological life forms on this planet. We, as human beings, are also part of this diversity, yet the remarkable feature of the human species is its uniformity in purely biological terms. This is revealed when we

²² Stork 1997: 45

²³ See Stork 1997: 60 for discussion and data tables. The IUCN ‘Red List’ of Threatened Species can be consulted on-line at <http://www.redlist.org/>

²⁴ A pioneer of this emerging debate was the late, and widely respected, Dr. Andrew Gray. See Gray, A (1999) ‘Indigenous Peoples, their Environments and Territories’, in Posey, D (ed.) (1999) *Cultural and Spiritual Values of Biodiversity*. London: Intermediate Technology Publications.

consider that the human genome, the map of all human genes, contains an estimated 30,000 to 35,000 genes and in genetic terms every single person on this planet possesses 99.99% of the same genes²⁵. As such, human beings are remarkably similar. This has led to increasing recognition that in *purely biological terms*, the concept of race appears to be meaningless.

Working from the opposite direction, linguists have established that the richness of human diversity lies on the cultural level. They have established that there are approximately 6,000 spoken human languages²⁶. Of these between 4,000 and 5,000 are estimated to be spoken by indigenous peoples. That is, indigenous peoples speak somewhere between 67% to 83% of the world's languages²⁷.

Linguistic diversity is the best indicator available for measuring human cultural diversity. Seen from this perspective, it becomes clear that the estimated 300 to 600 million indigenous people around the world represent the majority of human cultural diversity represented by the diversity of human languages, institutions, laws, cosmovisions, cultural identities and values²⁸.

Mapping Cultural Diversity and Biodiversity

The significance of the cultural diversity represented by indigenous peoples for the conservation of biodiversity begins to become clear when we consider the results of recent efforts to map the relationship between human linguistic diversity and biodiversity.

In 2000, the international conservation organisation WWF and the specialist linguistic organisation Terralingua published a large-scale map and analysis of the relationship between cultural diversity and biodiversity.

The basis of the analysis was the relationship between ethnolinguistic diversity and global ecological regions (ecoregions). Put simply, an ecoregion is a large scale and environmentally distinctive area such as boreal forests/taiga, tundra, mangroves, flooded grasslands and savannahs etc²⁹. A total of 895 ecoregions have so far been identified, of which the WWF estimates 238 (referred to as the Global 200) are of outstanding

²⁵ Source: 'Genome 'treasure trove'' BBC News, Sunday, 11 February, 2001, located at <http://news.bbc.co.uk/1/hi/sci/tech/1164839.stm>. For more in depth consideration of the implications of genetics research see: Nature <http://www.nature.com/nature/> and Science <http://www.science.com>. For indigenous peoples perspectives on the new genetics, a series of useful primers and valuable list-serv, see the Indigenous Peoples Council on Biocolonialism website at <http://www.ipcb.org/>. It should be noted that mapping the human genome carried out by the Human Genome Project raised serious ethical and human rights issues, notably with respect to a failure to seek the prior informed consent of indigenous peoples to the mapping of their DNA and subsequent efforts to commodify human genes through the application of Intellectual Property Rights instruments, notably patents.

²⁶ See WWF/Terralingua (2000) *Indigenous and Traditional Peoples of the World and Ecoregion Conservation: An Integrated Approach to Conserving the World's Biological and Cultural Diversity*. Gland: WWF International.

²⁷ WWF/Terralingua 2000: 9. For detailed discussion on linguistic diversity see Maffi, L (1999) 'Language and the Environment', in Posey, D (ed.) (1999) *Cultural and Spiritual Values of Biodiversity*. London: Intermediate Technology Publications.

²⁸ See Maffi 1999: 24 for discussion.

²⁹ WWF defines an ecoregion as "a relatively large unit of land or water containing a geographically distinct assemblage of species, natural conditions, and environmental conditions". See also, Olson, D and Dinerstein, E (1998) 'The Global 200: A Representation Approach to Conserving the Earth's most Biologically Valuable Ecoregions' *Conservation Biology*, Volume 12, No 3, June, 502-515.

international importance³⁰. In approaching the complex task of mapping the relationship between cultural diversity and biodiversity, the ongoing study prioritised the 238 ecoregions of outstanding importance.

The results of this work were startling. The study found that out of a total of 6,867 ethnolinguistic groups, 4,635 are located in ecoregions of outstanding international importance³¹. Furthermore, some 2,900 of these ethnolinguistic groups (representing some 42% of the worlds ethnolinguistic groups) are located in tropical forest and mangrove ecoregions.

The importance of this ambitious and ongoing research is that it represents the first large-scale study of the relationship between cultural diversity and biodiversity. The startling results of this study conclusively demonstrate what indigenous peoples have long argued. That is, that there is an inextricable link between indigenous peoples and the conservation of biodiversity. Put quite simply, the lands and territories of indigenous peoples fall both within the areas of the highest biodiversity in the world and areas of outstanding environmental importance such as the tropical forests, arctic tundra, mangroves and other areas.

A Diversity of Knowledge:

The WWF-Terralingua study also supports the ever-expanding body of detailed research conducted by ethno-botanists and others, which demonstrates that indigenous peoples and local communities around the world possess detailed and sophisticated knowledge of the plants, animal and other species located within their lands and territories. In marked contrast to the limitations of western taxonomy, indigenous peoples and local communities possess detailed knowledge of the behaviour and ecology of the species within their lands and territories³².

This knowledge lies at the foundation of indigenous peoples management practices which contribute to, and in many cases significantly enhance, the maintenance and conservation of biodiversity.

As indigenous peoples have consistently argued, this knowledge and the management systems developed by indigenous peoples, cannot be separated from their lands, territories, institutions, laws, cosmovisions, and identities as peoples³³.

Western scientific knowledge of the environment is based on a strictly utilitarian approach, where elements in the environment have been reduced to objects which can be

³⁰ WWF-Terralingua 2000: 19. See also Olson and Dinerstein 1998.

³¹ WWF-Terralingua 2000: 22

³² There is an enormous literature on this subject of which the following are a very limited selection. See Berlin (1992) *Ethnobiological Classification: Principles of Categorization of Plants and Animals in Traditional Societies*. Princeton, New Jersey: Princeton University Press. See also, Redford, K and Padoch, C (eds.) (1992) *Conservation of Neotropical Forests: Working from Traditional Use*. New York: Columbia University Press. Posey, D and Dutfield, G (1997) *Indigenous Peoples and Sustainability: Cases and Actions*. Utrecht: IUCN and International Books. Ellen, R (et al) (2000) *Indigenous Environmental Knowledge and its Transformations*. Amsterdam: Harwood academic publishers. Anderson, A (ed.) (1990) *Alternatives to Deforestation: Steps Towards Sustainable Use of the Amazon Rain Forest*. New York: Columbia University Press.

³³ For a selection of indigenous peoples statements on these issues see Appendix 1 'Declarations of the Indigenous Peoples' Organizations', in Posey, D (ed.) (1999) *Cultural and Spiritual Values of Biodiversity*. London: Intermediate Technology Publications.

manipulated with impunity to serve human purposes³⁴. In contrast, indigenous peoples have consistently argued that nature cannot be reduced to a mere assemblage of biological objects. The recent collection of papers assembled for the Global Biodiversity Assessment entitled *Cultural and Spiritual Values of Biodiversity* eloquently demonstrates that indigenous peoples from around the world generally approach nature on the basis of concepts of *relatedness* to the natural world³⁵. This stands in marked contrast to the vision of the world which informs western science which is predicated on the radical separation of humanity from nature³⁶. As a result, policy-makers find it particularly difficult to accommodate and understand indigenous peoples perspectives on appropriate relations with the natural world.

Biodiversity and the Loss of Cultural Diversity:

The results of the WWF-Terralingua research on the relationship between linguistic diversity and biodiversity are important because they allow us to measure the relationship between the loss of cultural diversity and the loss of biological diversity.

It is here that we must briefly turn to the issue of population levels. It is estimated that indigenous people world-wide number between 300 to 600 million people. However, it is important to highlight that the fundamental criteria for identification of indigenous peoples set out within existing and emerging international instruments is *self-identification*³⁷.

As such, any attempt to calculate numbers of indigenous people are limited by the availability of data on those who identify themselves as belonging to a particular indigenous people. Accurate and detailed data will not become available until such time that governments recognise the right of their citizens to *choose* how they identify themselves, and provide the opportunity to affirm their cultural identities within national census. For this reason, linguists and others presently rely on the term ethnolinguistic group.

As we have seen, indigenous peoples are estimated to speak between 4,000 and 5,000 of the world's 6,000 languages. Indigenous peoples populations are known to range in size between small numbers of surviving individuals to many millions. However, existing ethnolinguistic research suggests approximately half of all spoken languages are spoken by communities of 10,000 speakers or less³⁸. Based on the total of 6,703 languages within the world's largest catalogue of languages, the *Ethnologue* catalogue, this suggests approximately 2,234 languages are spoken by communities of less than

³⁴ See Oldham, P (1998) 'Cosmologia, Shamanismo y Practica Medicinal entre los Wothïha (Piaroa)', in Chiappino, J. and Ales, C (eds.) *Del Microscopio a la Maraca*. Caracas: ExLibris.

³⁵ This volume is a rich source of information and readers are directed to the papers collated in Chapter 4 of this volume entitled 'Voices of the Earth'.

³⁶ For a useful introduction to western concepts of the environment see Pepper, D (1996) *Modern Environmentalism: An Introduction*. London: Routledge.

³⁷ Article 1 of the International Labour Organisation's Convention 169 on Indigenous and Tribal Peoples in Independent Countries reads "Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply" (see WWF-Terralingua 2000:3, footnote 1. This provision has been increasingly incorporated into other international and national instruments.

³⁸ The data presented here should be regarded as indicative and the reader's attention is drawn to the discussion by Maffi (1999).

10,000 speakers³⁹. Furthermore, it is estimated that half of these 2,234 languages (some 1,117) are spoken by communities of 1,000 speakers or less.

The significance of this is that approximately fifty-per cent of the world's languages are spoken by ethnolinguistic groups, predominantly represented by indigenous peoples, whose languages are threatened by a combination of pressures. These pressures include:

- Policies and laws directed towards the assimilation of indigenous peoples and the imposition of dominant languages and cultural values upon indigenous peoples.
- The marginalisation and fragmentation that accompanies formal and informal western style development which deprives indigenous peoples of their livelihoods, lands and territories.

These trends towards the simplification of human linguistic diversity and cultural uniformity, represented by what Vandana Shiva has termed 'monocultures of the mind', are vividly brought home by the available data on languages under threat⁴⁰. It has been put at a conservative estimate that some 420 of the 6,703 languages in the *Ethnologue* catalogue are nearly extinct (moribund). Others estimate that 705 languages may be nearly extinct, while in other cases it is projected that "as many as 90% of the world's languages may become extinct or moribund in the course of the next century"⁴¹. More recently, in 2002, UNESCO estimated that at least 3,000 languages are "endangered, seriously endangered or dying in many parts of the world"⁴².

In considering the relationship between the loss of biodiversity and the loss of cultural diversity, the implications of these figures are dramatic. As WWF-Terralingua highlight, extinction rates for species are accelerating compared with normal rates. It might, for example, be expected that some 50% of seed plant species will become extinct over the next 3,000 years⁴³. However, in the case of linguistic diversity it is possible that we may be confronted by the extinction, or near extinction, of up-to 90% of the world's languages in the course of 100 years. As such, it appears that the loss of linguistic diversity is outstripping the loss of biodiversity.

It is useful to move beyond the level of dense technical information to consider the wider implications of this loss. Specifically, the analysis of global biodiversity encourages us think on the species level and to take the bold step of considering the implications of policies and actions for the survival of the diversity of species on this planet.

~~Zed books and Third World Network.~~

⁴¹ See Maffi 1999: 24 for sources of data presented here and discussion.

⁴² UNESCO Press Release No.2002-07. See Wurm, S (2001) Atlas of the World's Languages in Danger of Disappearing. Second Edition. UNESCO Publishing.

⁴³ WWF-Terralingua 2000: 13

We have seen above that in genetic and biological terms (and contrary to appearances and entrenched preconceptions) the diverse peoples who make up the human species are remarkably uniform in biological terms⁴⁴. Seen from this perspective, the success of the human species has depended not on dramatic genetic adaptations to diverse environments which might result over time in ‘varieties’ and sub-species. It is the *mental* capacity to adapt to these environments, with varying degrees of success, that makes possible a relationship with these environments that is sustainable over the long-term.

The strength of the human species and its ability to survive over the long term may depend on the maintenance of cultural diversity and the experience, knowledge, options and possibilities for innovation that this diversity provides in maintaining a sustainable relationship with the environment and confronting new challenges as they appear. It is equally clear that the loss of cultural diversity marked by the disappearance of languages, collectively deprives humanity of what will often be unique experience and unique knowledge. In reality, the loss of these languages represents a very real human tragedy for many millions of indigenous people around the world. This must never be forgotten. However, this is also a tragedy on a wider level, because the loss of each distinctive culture represents the *collective* loss for humankind of possible options and possible opportunities for innovation in responding to collective challenges.

The human capacity to recognise these challenges as they appear is reflected in the very existence of international environmental agreements such as the Convention on Biological Diversity. These international environmental agreements are, to varying degrees, designed to be flexible and to allow the international community to react in accordance with new experiences and new developments. In the case of the Convention on Biological Diversity this possibility is provided for in Article 23.4(i) of the Convention, which specifies that the Conference of Parties will:

“Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation.”⁴⁵

In the context of growing awareness that cultural diversity is central to the conservation of biodiversity, this Article of the Convention provides an important opportunity for the Convention to improve its effectiveness in light of emerging knowledge and evidence. Central to this process will be recognition of the existence and rights of indigenous peoples.

Nevertheless, the obstacles to progress in this area remain significant. This can be seen when we consider the logic that informs existing approaches to the issues of traditional knowledge and indigenous peoples and local communities under the Convention.

⁴⁴ It may of course strike the reader that this is a statement of the obvious. However, it is important to recall the legacy of neo-Darwinian and racist attitudes which informed, and continue to inform, policies directed towards the destruction or assimilation of indigenous peoples.

⁴⁵ The existence of this ‘forgotten article’ and its implications for the development of the Convention was first raised in Hyvarinen, J (2001) ‘Strengthening the Convention on Biological Diversity’. Briefing Paper. Royal Society for the Protection of Birds.

Beyond Traditional Knowledge?

As we will see in more detail in later sections, to date the work of the Convention with respect to traditional knowledge has prioritised one issue. That is, documenting and disseminating traditional knowledge of the environment.

This insistent drive to document and disseminate traditional knowledge of the environment is informed by a brutal and ruthless logic. The basic elements of this logic are as follows:

- Parties recognise that traditional knowledge of biodiversity possessed by indigenous peoples and local communities is being lost at an unknown but possibly rapid rate⁴⁶.
- Parties recognise that this knowledge is vital for future innovations in a wide variety of commercial areas and for the conservation and sustainable use of biodiversity.
- Parties recognise that many governments refuse to comply with their existing and emerging obligations and commitments under international law with respect to the rights of indigenous peoples. If properly implemented, meeting these obligations would reverse the loss of this knowledge and contribute to the conservation and sustainable use of biodiversity. Since Parties refuse to meet their obligations, the loss of traditional knowledge is inevitable.
- *Certain* Parties to the Convention conclude that priority should be given to documenting the *technical* aspects of traditional knowledge as soon as possible. Once documented, concerns surrounding the rights of indigenous peoples and local communities, and the spiritual and other values of biodiversity will simply *cease to be relevant* to the work of the Convention⁴⁷. On this basis, large-scale projects such as the *Global Taxonomy Initiative* are actively promoted by the Parties⁴⁸.

At the heart of this logic, and the race to document and disseminate traditional knowledge, is a refusal. It is a refusal to recognise that complying with international human rights obligations and commitments that recognise the rights of indigenous peoples would actually *enhance* the capacity of governments and the Convention to address the threats to global biodiversity by providing a clear foundation for the conservation and maintenance of human cultural diversity.

In reality, this refusal is rooted in a series of misconceptions and misunderstandings regarding the rights of indigenous peoples and the aspirations of indigenous peoples. The principal area of misunderstanding is the perceived threat that recognition of the existence and internationally established rights of indigenous peoples represents for national sovereignty and the integrity of nation-state systems. This perception represents a *misunderstanding* of the meaning of national sovereignty within the context of international legal frameworks and customary international law constituting binding undertakings, and a *misinterpretation* of the significance of legal

⁴⁶ See UNEP/CBD/COP/6/7.

⁴⁷ The precedent for this is found in the history of the development of western taxonomy in Europe. See Ellen, R and Harris, H (1999) 'Embeddedness of indigenous environmental knowledge', in Posey, D (ed.) (1999) *Cultural and Spiritual Values of Biodiversity*. London: Intermediate Technology Publications.

⁴⁸ See SBSTTA Recommendation II/2 and COP5 Decision V/9.

concepts such as self-determination under international law concerning the rights of indigenous peoples⁴⁹.

As a result of these misguided concerns, the debates under the Convention have so far taken place under the ambiguous construction of ‘indigenous and local communities embodying traditional lifestyles’ and full recognition of indigenous peoples and the importance of cultural diversity remains some way off. However, it is important to recognise that there is hope for the future. In marked contrast with other international Conventions and agreements, notably the United Nations Framework Convention on Climate Change and its Kyoto Protocol, and the new United Nations Forum on Forests, the Convention on Biological Diversity has often proved to be remarkably innovative and flexible⁵⁰.

Until a more mature view prevails which recognises the internationally established rights of indigenous peoples as rights-holders, progress in the achievement of the main objectives of the Convention, the conservation and sustainable use of biodiversity, will remain slow. Projects such as the Global Taxonomy Initiative may ultimately prove to offer nothing more than a false hope. As we have seen above, indigenous peoples and local communities are *central* to the conservation of biodiversity. Far from being an issue of isolated concern to indigenous peoples and local communities, the loss of human cultural diversity concerns us all.

⁴⁹ See, Forest Peoples Programme (2001) ‘The Convention on Biological Diversity, State Sovereignty and Indigenous Peoples’ Rights’ Legal Briefing 1, November 2001. Moreton-in-Marsh: Fern and Forest Peoples Programme. See Falk, R (1997) ‘The Right of Self-Determination under International Law: The Coherence of Doctrine versus the Incoherence of Experience,’ in Danspeckgruber, W and Watts, A, (eds) (1997) *Self-Determination and Self-Administration: A Sourcebook*. Boulder: Lynne Rienner. See also, Warren, K (1998) *Indigenous Movements and their Critics: Pan-Maya Activism in Guatemala*. Princeton: Princeton University Press.

⁵⁰ An illustration of this is that references to cultural diversity and indigenous peoples are beginning to appear within the text of COP decisions. In addition, the recent ‘Outline of the Composite Report on the Status and Trends Regarding the Knowledge, Innovations and Practices of Indigenous and Local Communities’ prepared by the Secretariat contains very promising developments in this area (see UNEP/CBD/WG8J/2/5 and UNEP/CBD/COP/6/7)

Section II

Indigenous Peoples, Local Communities and the Convention on Biodiversity

The Convention on Biological Diversity⁵¹:

The Convention on Biological Diversity was opened for signature at the 1992 United Nations World Conference on Environment and Development or “Earth Summit”. As of January 2002, there were a total of 182 Governments, and the European Union, who make up the “Parties” to the Convention⁵².

The Convention itself consists of 42 Articles and two Annexes. Article 1 sets out the Objectives of the Convention as follows:

“The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.” (SCBD 2001: 4)

As this makes clear the Convention is in fact concerned with three objectives:

- The conservation of biodiversity.
- The sustainable use of biodiversity.
- The exploitation of genetic resources and the fair and equitable sharing of benefits arising from the exploitation of these resources.

By far the most difficult, and controversial, of these objectives is the third objective with which the issue of traditional knowledge is inextricably bound up (see below).

⁵¹ The best source of detailed information on the Convention and its operations is provided in the 2001 *Handbook of the Convention on Biological Diversity* prepared by the Secretariat of the Convention on Biological Diversity. The majority of the information in this section is drawn from this extremely useful resource. The Handbook is also available online in individual chapters at <http://www.biodiv.org>.

⁵² For a full list of Parties see <http://www.biodiv.org/world/parties.asp>. The various procedures for becoming a Party to the Convention are set out in Articles 33 to 36 of the Convention.

Institutions of the Convention:

In seeking to ensure the development and implementation of the Convention, the Convention has established a number of institutions with which indigenous peoples and local communities seeking to participate in CBD processes must inevitably engage. These are:

- ***The Conference of Parties (COP)***

The Conference of Parties (COP) is the maximum decision-making body of the Convention and consists of governments and European Union who form the “Parties” to the Convention. The COP now meets every two years and if necessary may meet in extraordinary session. The COP may be attended by governments, such as the United States, who are not a party to the Convention and other interested organisations including indigenous peoples and local community organisations in the capacity of observers.

- ***Extraordinary Meetings of the Conference of Parties (EM)***

The COP is empowered to hold extraordinary meetings of the Parties. The first of these was staged to develop a Protocol on Biosafety in Cartagena, Colombia in February of 1999. This was suspended when agreement was not reached on the text, and resumed in Montreal, Canada, in January 2000 where the text of the Protocol was agreed.

- ***Inter-Sessional Meetings on the Operations of the Convention (ISOC)***

During COP4 it did not prove possible to take decisions on all issues relating to the organisation of the work, or “operations”, of the Convention. On this basis, the COP decided to convene an inter-sessional meeting on the operations of the convention to consider outstanding issues, and recommended the development of a strategic plan for the Convention to COP5. Such meetings may, from time to time, be held in the future when the COP is unable to reach decisions.

- ***The Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA)***

The role of SBSTTA is to provide the COP with “... advice and recommendations on scientific, technical and technological aspects of the implementation of the Convention. Specific functions of SBSTTA include: providing scientific and technical assessments of the status of biological diversity; preparing scientific and technical assessments of the measures taken to implement the Convention; identifying innovative, efficient and state of the art technologies and know how, and advising on how to promote their development; providing advice on scientific programmes and international cooperation in research and development; and generally responding to scientific, technical and technological and methodological questions asked by the COP.”(SCBD 2000: xxvii)

SBSTTA generally meets once a year and the members of SBSTTA are drawn from the government nominated international roster of experts. Governments which are not Party to the Convention and other interested organisations, including indigenous peoples and local community organisations, may attend the meetings of SBSTTA in the capacity of observers.

- ***The Secretariat***

The Secretariat of the CBD presently consists of fifty-five staff under the leadership of the Executive Secretary, and is based in Montreal, Canada. The Secretariat is primarily responsible for preparing and servicing the meetings of the CBD and coordination with other international bodies.

An indigenous focal point on Traditional Knowledge has been appointed to the Secretariat whose details will be found in Section VI.

The Secretariat is the first point of contact for indigenous peoples and local communities seeking to participate within CBD processes. It produces regular “notifications” regarding up-coming events, which are to be located at <http://www.biodiv.org>.

- ***The Financial Mechanism***

The majority of the world’s biodiversity is located within developing countries. In recognition of this, the Convention established what is called ‘the financial mechanism’ in order to provide financial resources to developing countries for the implementation of the Convention (SCBD 2001: xxi).

The Convention established that the Global Environmental Facility (GEF), which is led by the World Bank, would serve as the interim financial mechanism (SCBD 2001: xxi). This role seems likely to continue into the future. As of 1998 the total allocation to the GEF stood at US\$2.75 billion. This amount may significantly increase during the forthcoming “Third Replenishment” of GEF funds.

It is important to note that the GEF is a controversial institution from the perspective of many developing or Southern countries, indigenous peoples and partner organisations. However, it has recently taken some steps towards establishing dialogue with indigenous peoples organisations.

- ***The Clearing House Mechanism (CHM)***

The Clearing House Mechanism (CHM) is the rather arcane title employed by the Convention to describe the mechanism for the exchange of information on biodiversity related issues and the promotion of technical and scientific cooperation. In reality, the Clearing House Mechanism consists of a series of internet sites established by governments and other organisations around the world which are linked to the central Convention website located at <http://www.biodiv.org>. In the past, the website was difficult to navigate. The exclusively electronic nature of the CHM deprives the vast majority of indigenous peoples and local communities from access to information on the Convention and its processes. However, indigenous peoples are making a number of

independent efforts to establish indigenous controlled internet based networks for sharing information, such as the Indigenous Biodiversity Information Network (IBIN).

- *Subsidiary Organs*

The Convention is empowered to establish a variety of subsidiary organs. These include:

- *Ad Hoc Open Ended Working Groups* made up of experts and others nominated by governments. The term “Ad Hoc” refers to the fact that such Working Groups are established as and when needed and that they are not intended to be permanent. The term “Open Ended” signifies that they will be allowed to continue until such time that the COP believes that they have completed their work or their usefulness has otherwise ended.

To date three Working Groups have been established on Biosafety, Article 8(j) and related provisions, and most recently in 2000, on Access and Benefit Sharing. Working Groups report directly to the COP. Non-Parties, such as the USA, and other interested organisations, including indigenous peoples and local community organisations, are allowed to participate as observers. In the case of the Working Group on Article 8(j) and related provisions, indigenous peoples representatives have served as co-chairs of the Working Group, have been provided with space to intervene in debates and have participated in the Bureau of the Working Group.

- *Panels of Experts.* The COP may from time to time create panels of experts drawn from government nominated members of the international roster of experts. To date, a panel of experts has been created on Access and Benefit-Sharing which reports directly to the COP. Non-Parties and other interested organisations, including indigenous peoples and local community organisations, are allowed to participate in the meetings of panels of experts as observers. In the case of the Panel of Experts on Access and Benefit-Sharing a small number of indigenous delegates nominated by governments have participated in the two meetings of the panel that have been held to date.
- *Ad Hoc Technical Expert Groups.* The Conference of Parties or SBSTTA may also establish Ad Hoc Technical Expert Groups in order to push forward with progress in particular areas. To date, technical expert groups have been established for forest biological diversity, marine and coastal protected areas, dryland and associated ecosystems, and a joint CBD-UNESCO consultative panel on education and public awareness. More recently, in 2002 an Expert Group has been established on biological diversity and climate change. Participants within Ad Hoc Technical Expert Groups are drawn from the international roster of experts and are small in size. Technical Expert Groups report to SBSTTA unless otherwise determined.

It is important to note that during COP5 the COP recognised the importance of improving the range and quality of advice available to the Parties and the inclusion of indigenous peoples and local communities delegates under Decision V/20. The Convention is now increasingly seeking to incorporate indigenous and local community delegates in all of its work. For example, an indigenous specialist was included in the Technical Expert Group on Forest Biodiversity established by COP5. While the size of the group was initially criticised, this was ultimately a positive experience. Furthermore, rule 12 (f) of the Modus Operandi of SBSTTA establishes that reports of Ad Hoc Technical Expert Groups "...should, as a general rule be submitted for peer review"⁵³. In April of 2001 the CBD opened the draft report of the technical expert group on forests to review through its website at <http://www.biodiv.org>. This provided an important opportunity to contribute to strengthening the report prior to consideration by SBSTTA7.

Subsidiary Agreements:

- *Protocols.* A protocol is a legally binding supplementary agreement which addresses a specific area of a Convention. In the case of the CBD the potential creation of protocols is provided for under Article 28. Thus, COP2 established an Ad Hoc Open Ended Working Group to develop a draft Protocol on Biosafety which, following two sessions of an Extraordinary Meeting of the Conference of Parties (EM-1), was opened for signature at COP5. The Protocol is open both to parties and non-parties to the Convention, and constitutes a legally binding international instrument in its own right.

The Extraordinary meeting also established an *Intergovernmental Committee for the Cartagena Protocol on Biosafety* which exists to facilitate the first meeting of the Parties to the protocol at which point it will be dissolved. As this suggests, Protocols are independent and legally binding processes with their own dynamics. They are linked into the framework of a wider international agreement such as the Convention on Biodiversity.

The possibility to promote the creation of Protocols under the Convention, for example, on forest biodiversity or sustainable use, has yet to be fully explored by indigenous peoples organisations and partner organisations.

Relations with other International Conventions and Agreements:

The Convention on Biological Diversity is increasingly establishing collaborative work programmes and collaborative arrangements with related Conventions and

⁵³ See Secretariat of the Convention on Biological Diversity (2001) *Handbook of the Convention on Biological Diversity*. Secretariat of the Convention on Biological Diversity. London: Earthscan. Page 71.

agreements (i.e. the Ramsar Convention on Wetlands). While precise procedures for the establishment of mechanisms for collaboration are difficult to identify, they appear to

involve combinations of the following steps and activities:

- Application for observer status on the part of the Secretariat under the related process.
- Communications between respective Secretariats
- The development of Memoranda of Cooperation between the Secretariats
- Joint Bureau meetings (composed of selected governments)
- The creation of Liaison Groups between related Conventions and agreements
- The realisation of joint expert groups
- The realisation of joint workshops
- The formulation of joint programmes of work

To give brief examples, in the case of the CBD and the Ramsar Convention on Wetlands, following the establishment of a Memoranda of Cooperation, COP3 recommended the creation of a joint work programme which is now led by the Ramsar Convention. More recently in the case of the United Nations Framework Convention on Climate Change SBSTTA6 recommended the establishment of a liaison group which has led to the creation of an expert group. In the case of the CBD and the United Nations Forum on Forests (UNFF), this has taken the form of the realisation of a joint workshop. In the case of the CBD and the United Nations Permanent Forum on Indigenous Issues, an *Inter-Agency Support Group* for the Permanent Forum (including the Secretariat of the CBD and related environmental Conventions and agreements) has apparently been proposed.

The establishment of these collaborative arrangements represents an important trend in efforts on the part of the CBD to harmonise its work with related Conventions and agreements which present important opportunities and challenges for indigenous peoples and local communities⁵⁴.

Related Processes:

The development and implementation of the Convention is complemented by a large number of related processes. These mainly take the form of workshops, seminars, meetings and conferences, which may feed into formal discussions and decision-making⁵⁵.

In particular, it is important to emphasise that one of the marked features of the Convention is that it is driven by science and research. This is reflected in the regular calls to governments and organisations to provide case studies and other information to inform decisions. This provides important opportunities for indigenous peoples and local

⁵⁴ For a full list see page xxiii of the Handbook of the Convention

⁵⁵ Details of Official CBD meetings can be located under the 'Meetings' section of the CBD website at <http://www.biodiv.org/>.

communities to express their concerns and contribute to the work of the CBD. As we will see, in a context in which indigenous peoples organisations, non-governmental partner organisations and academic institutions are generating research relevant to the CBD, insufficient attention has been paid to ensuring that such research is adequately targeted as concrete inputs into CBD debates.

Organisation of the Work of the Convention:

The Work of the Convention was initially set out in what was called the medium-term programme of work (1995-1997), which set out the agenda for addressing particular issues (SCBD 2001:xxiii). The programme was reviewed by COP4, which developed a work programme for the period from COP5 to COP7 (Decision IV/16, Annex II). During the Inter-sessional meeting on the Operations of the Convention (ISOC) in 1999 the development of a strategic plan for the Convention covering the period between 2002 to 2010 was recommended and subsequently approved by COP5 (Decision V/20). The strategic plan is now being prepared in a series of workshops and will go forward for discussion at COP6 in 2002 (see UNEP/CBD/COP/6/5).

The existing programme of work and the development of the strategic plan are complemented by specific programmes of work in what are called “thematic areas” and “cross-cutting issues”

- ***Thematic Work Programmes***

- Inland water biological diversity (Decision V/2)
- Marine and coastal biological diversity (Decision V/3)
- Forest biological diversity (Decision V/4)
- Agricultural biological diversity. (Decision V/5)
- Dryland and Semi-Arid biodiversity (Decision V/23)
- Migratory Species (under development, SBSTTA VI/8)

- ***Cross-cutting Work Programmes***

Cross-cutting issues are those issues that span the Convention and are found within Articles 6 to 20 of the Convention. These include “... biosafety; access to genetic resources; traditional knowledge, innovations and practices (Article 8(j)); intellectual property rights; indicators; taxonomy; public education and awareness; incentives; and alien species” (SCBD 2001: xxiv).

Work programmes have now been established in three cross-cutting areas:

- Alien Species (Decision V/8)
- Article 8(j) and related provisions (Decision V/16)
- Incentive measures (Decision V/15)

Additional programmes of work are now under development for consideration by COP6 in 2002. These include:

- The Global Taxonomy Initiative (Decision V/9)
- Education and Public Awareness (Decision V/17)

It is likely that in future the CBD will also develop a series of other work programmes. The participation of indigenous peoples and local communities in the development of these work programmes will be vital to ensure that their rights and needs are reflected within the contents of any new work programmes.

Indigenous Peoples and Local Communities in the Articles of the Convention:

One of the central problems surrounding the conservation and sustainable use of biodiversity is the relative poverty of western scientific knowledge surrounding life-forms and ecological processes. Enhancing western scientific knowledge of biodiversity, and in particular of genetic resources, is also of critical concern to governments and the biotechnology industry seeking to develop new forms of agricultural, medical, industrial and other products, such as cosmetics. The importance of the economic dimensions of biodiversity is reflected in the fact that the world-wide market for such products is roughly estimated at between US\$500-800 billion per year⁵⁶.

Furthermore, innovations in the development of new agricultural, medicinal and other products have long been critically dependent upon traditional knowledge in order to identify potentially useful species and genetic resources for commercial development⁵⁷.

The Convention recognises the roles of indigenous peoples and local communities in the conservation, sustainable use and commercial exploitation of biodiversity in the Preamble to the Convention and a series of Articles which are commonly referred to as “Article 8(j) and related provisions”.

- *The Preamble:*

“*Recognizing* the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components,

Recognizing also the vital role that women play in the conservation and sustainable use of biological diversity and affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation.”

⁵⁶ See ten Kate, K and Laird, S (1999) *The Commercial Use of Biodiversity: Access to Genetic Resources and Benefit Sharing*. London: Earthscan.

⁵⁷ See for example, Juma, C (1989) *The Gene Hunters: Biotechnology and the Scramble for Seeds*. London: Zed. and Caufield, C (1985) *In the Rainforest*. London: Heinemann.

- *Article 8(j): Traditional Knowledge (In-situ conservation)*

Article 8(j) of the Convention is concerned with the role of knowledge within *in situ* conservation and reads as follows:

“Each Contracting Party shall, as far as possible and as appropriate:

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.”

Further reference to indigenous and local communities and to their traditional knowledge, innovations and practices are made within a series of articles referred to as “related provisions”, and “closely linked” articles concerned with sustainable use, access to genetic resources, technology transfers, information, scientific cooperation and biosafety. Articles 10 (c), 17 (2) and 18 (4) are formally classed as related provisions within the Handbook of the Convention and Articles 15, 16, 17(2), 18(4) and 19 are described as “closely linked”.

- *Article 10: Sustainable Use*

Article 10 (c) of the Convention is concerned with the issue of sustainable use and read as follows:

“Each Contracting Party, shall, as far as possible and as appropriate:

(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.”⁵⁸

- *Article 15: Access to Genetic Resources*

Article 15 recognises state sovereignty over natural resources and that “authority to determine access to genetic resources rests with the national government and is subject to national legislation” (Art. 15 (1)). The Article also sets out that each Party will “facilitate access to genetic resources for environmentally sound uses” and not impose restrictions which are counter to the objectives of the Convention (Art. 15 (2)). The

⁵⁸ Article 10(d) is also of relevance to indigenous peoples and local communities and specifies that Parties will “Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced.”

Article then establishes that access to genetic resources should “be on mutually agreed terms”, and “shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party” (Art. 15 (4) and 15 (5)).

Article 15 (7) establishes that:

“Each contracting Party shall take legislative, administrative or policy measures, as appropriate, and in accordance with Articles 16 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21 with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources. Such sharing shall be upon mutually agreed terms.”

- *Article 16: Access to and Transfer of Technology*

Article 16 of the Convention is concerned with promoting access to and transfer of technology, including biotechnology, that is relevant to the conservation and sustainable use of biodiversity with due consideration for intellectual property rights.

- *Article 17: Exchange of Information*

Article 17 is concerned with promoting the exchange of information and specifies in 17 (2) that:

“Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.”

- *Article 18: Technical and Scientific Cooperation*

Article 18 is concerned with technical and scientific cooperation and specifies in 18(4) that:

“The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of this Convention. For this purpose, the Contracting Parties shall also promote collaboration in the training of personnel and exchange of experts.”

- *Article 19: Handling of Biotechnology and Distribution of its Benefits*

Article 19 addresses the issue of the handling of biotechnology and the distribution of its benefits. This article promotes the participation of developing countries in biotechnological research and measures to promote priority access to the results and benefits of the research by developing countries providing genetic material. Article 19 also proposes the establishment of what became the Biosafety Protocol to govern the safe transfer and use of Living Modified Organisms and details of the use, safety regulations and potential adverse impacts of such organisms (see Decision V/1).

The Dilemmas Confronting Indigenous Peoples and Local Communities:

It is in considering the implications of these Articles of the Convention that the dilemmas confronting indigenous peoples and local communities begin to emerge. Indigenous peoples are critically concerned with the conservation and sustainable use of the biodiversity within their lands and territories upon which their livelihoods depend, and in which their cosmovisions and cultural identities are embedded. Similarly, members of many local communities are critically concerned with the maintenance of the resource base upon which their livelihoods depend. As such, indigenous peoples and local communities may be willing to share and promote their knowledge of the conservation and sustainable use of the local environments within their lands and territories.

However, the Convention is also vitally concerned with the *commercial exploitation of biodiversity*. For many Parties, the importance of the provisions of the Convention rests in the need to provide *economic incentives* for the conservation and sustainable use of biodiversity in developing countries as a viable alternative to existing development policies, which result in the destruction of biodiversity.

The perceived role of indigenous peoples and local communities within this process is as *knowledge providers*. That is providers of *technical knowledge* about the uses of individual species, which may become, or provide the foundation for, commercially viable products in the fields of agriculture, medicine, industry, cosmetics and other sectors.

The exploitation of indigenous or traditional knowledge of biodiversity in the pursuit of new commercial products has an extremely long history and has been central to the emergence of the modern world economy⁵⁹. More recently, in the 20th Century the development of the biotechnology industry (based on the identification and manipulation of the properties of genetic resources embedded within biological organisms) has led to increased attention to traditional knowledge in providing a *short-cut* to the identification of potentially useful genetic materials.

While it is important to recognise that *not all* developments in the fields of agriculture, medicine, industry, cosmetics and other areas are derived from traditional

⁵⁹ See for example Crosby, A. (1972) *The Columbian Exchange: Biological and cultural consequences of 1492*. Greenwood Press. See also Crosby, A. (1991) 'The biological consequences of 1492', North American Congress on Latin America XXV: 2:5-13, Sept 1991. Juma, C (1989) *The Gene Hunters: Biotechnology and the Scramble for Seeds*. London: Zed. Bray, W. (1993) 'Crop Plants and Cannibals: Early European Impressions of the New World', in Bray, W. (ed.) *The Meeting of Two Worlds*. Proceedings of the British Academy, 81. London.

knowledge, many such developments are rooted in information gained through research on the traditional uses of biodiversity⁶⁰.

It is here that the essence of the dilemma confronting indigenous peoples and local communities is revealed:

- The exploitation of traditional knowledge in the pursuit of the development of new products generally takes place without the knowledge and consent of indigenous peoples or local communities.
- Indigenous peoples and local communities rarely receive a share of any benefits, which may derive from the commercial exploitation of their knowledge.
- Western legal systems focus exclusively on the protection of individual rights over knowledge whereas indigenous peoples repeatedly emphasise that their rights over their knowledge are fundamentally collective in nature.
- The exploitation of traditional knowledge of biodiversity for commercial purposes represents the commodification of knowledge. That is, it reduces knowledge to a mere resource that can be bought and sold on the market place like any other commodity. Indigenous peoples have repeatedly emphasised that their knowledge of the biodiversity within and beyond their lands and territories is inextricably bound up with their cosmologies, philosophies, institutions, identities and languages and cannot be reduced to a mere commodity to be traded on the market place. Indigenous peoples have therefore expressed concerns surrounding whether their knowledge should be shared at all.

As a consequence, we can see that indigenous peoples and local communities are caught between:

- A desire to contribute to wider efforts for the conservation of biodiversity; and
- A desire to protect their knowledge from commodification and commercial exploitation without their prior informed consent or a share of the benefits deriving from the exploitation of their knowledge and resources.

Indigenous Peoples and Local Communities Participation in Convention processes:

Participation within the Convention on Biological Diversity has been primarily led by indigenous peoples organisations. In contrast, the participation of local communities has been somewhat more ambiguous and appears to be represented by the activities of NGO's, participation of local community organisations in the Global Biodiversity Forum and the promotion of Farmers Rights under the programme of work on agricultural biodiversity. The remainder of this work will therefore refer almost exclusively to indigenous peoples participation but will also be of direct relevance to local communities.

The first stage in the efforts of indigenous peoples from around the world to engage with the Convention involved a long and often frustrating process of attempting to persuade Parties of their right to participate in debates under the Convention as the basis for further progress.

This process can truly be said to have begun during the Second Conference of Parties to the Convention in Jakarta, Indonesia in 1994, which was marked by the first significant participation of indigenous peoples delegates. This was followed in 1996 by the formation of a unified indigenous caucus in the form of the First International Indigenous Forum on Biodiversity during COP3 in Buenos Aires, Argentina. During the debates on Article 8(j) within COP3 the Forum argued that the most effective vehicle for the participation of indigenous peoples within the Convention would be through the establishment of an Open-Ended Working Group on Article 8(j) and related provisions. This was rejected by COP3. However, the Parties did agree to the realisation of a workshop on Article 8(j) prior to COP4, which was held in Madrid in November 1997.

The Madrid Workshop was characterised by the participation of over 300 indigenous delegates from around the world and the development of a list of 200 issues to be considered by the COP which were incorporated into what became a draft programme of work for a proposed *Ad Hoc Intersessional Open-Ended Working Group on Article 8 (j) and associated provisions* (see UNEP/CBD/TKBD/1/3). This proposal was unanimously adopted by the participants within the Workshop and was approved at COP4 in Bratislava, Slovak Republic in May 1998 (decision IV/9).

The first meeting of the Ad Hoc Working Group on Article 8(j) and associated provisions took place in Seville, Spain in March of 2000. The principle purpose of this meeting was to establish agreement on a programme of work for Article 8(j) and associated provisions for approval by COP5 held in Nairobi, Kenya in May 2000 (see UNEP/CBD/COP/5/5)

The International Indigenous Forum on Biodiversity (IIFB):

“ The IIFB is open to all indigenous representatives who participate in meetings related to the implementation of the CBD in order to debate ideas, discuss strategies, and define positions for the official meetings. The IIFB does not possess members, as such, and nor is it an institution or organisation. All who desire to can participate and constitute the IIFB.”⁶¹

As this statement makes clear, the International Indigenous Forum on Biodiversity is open to all indigenous peoples delegates from around the world. The Forum is not an institution or organisation but instead is perhaps best conceived as a *mechanism* created by indigenous peoples delegates themselves to establish and articulate positions in negotiations with governments under the Convention.

The fundamental principle that informs the work of the Forum is the need to establish consensus between indigenous peoples delegates from around the world as the basis for entering into detailed negotiations.

~~possibilities for implementation~~. Briefing paper prepared by the Andes and Southern Cone. Spanish original.

At the time of writing, the Forum had held six meetings and its participants were preparing for the seventh meeting of the Forum. In practice the Forum is an ongoing process with a growing prominence within the negotiations taking place under the Convention. During COP5 the Forum was recognised as an advisory body to the Convention under Decision V/16 on Article 8(j), which cuts across all work under the Convention⁶².

In this section we will focus on the work of the Fifth International Indigenous Forum on Biodiversity in Nairobi during COP5.

An estimated total of fifty-one indigenous delegates from Africa, Asia, Europe, Russia, South America, Central America, the USA, Canada, Australia and New Zealand were able to travel to Nairobi in order to form the Fifth International Indigenous Forum on Biodiversity. In addition, COP5 was also marked by an increase in the numbers of indigenous delegates within official delegations, notably in the case of Canada, Brazil, Namibia, New Zealand, the Solomon Islands, and the non-party USA delegation, who made an important contribution to the work of the Forum.

As with experiences at previous COP meetings, the Forum struggled to find space to meet and to gain access to the computer, printing, translation and other facilities that play a vital role in the effective operations of the Forum. However, COP5 was marked by an increasing level of support for the logistical needs of the Forum on the part of the Secretariat of the Convention reflecting the growing openness of the Parties to the participation of indigenous delegates and the Forum within debates under the CBD.

As we have seen earlier, the Fifth Conference of Parties engaged in decision-making in a total of twenty-six areas that are either of direct relevance or otherwise concern indigenous peoples and local communities. The success of the Forum in participating in these debates was based on a *division of labour* in five areas.

- The nomination of male and female co-chairs to coordinate the Forum and negotiate with the Secretariat and session Chairs on facilities and procedures.
- The nomination of participants to read opening and closing statements and other interventions made during the COP.
- The nomination of a drafting team to work on statements and position papers.
- The nomination of focal points to track thematic debates, intervene as necessary, and report on progress.
- The creation of focal points for regional lobbying with the European Union, GRULAC (Latin America and Caribbean), JUSCANZ (Japan, United States, Canada, Australia and New Zealand), and the Africa grouping.

The immediate priority of the Forum was the elaboration of a consensus position paper on the priorities and textual modifications needed within the proposed programme of work on Article 8(j) and related provisions, which emerged from the Working Group in Seville.

This proved to be a difficult process which reflected a number of issues that will be briefly highlighted here:

⁶² The Global Biodiversity Forum has a somewhat similar status under Decision V/21 paragraph 12 relating to cooperation.

- **Lack of Funding**

The Fifth Conference of Parties followed on rapidly from the realisation of the first meeting of the Ad Hoc Open Ended Working Group on Article 8(j) and related provisions in March 2000. As a result indigenous peoples organisations and the network of support organisations struggled to mobilise the resources necessary to ensure the participation of indigenous delegates from around the world for the critical issue of the continuation of the Working Group on Article 8(j) and the adoption of the work programme agreed in Seville. Arrangements surrounding the funding for indigenous delegates participation within Convention processes remain *ad hoc* and demonstrate a clear need for an adequate and stable funding mechanism.

- **Lack of preparation**

Many of the difficulties experienced by the Forum can be attributed to a lack of adequate preparation time and is linked to the insecurity of funding. This problem also occurred during the Working Group meeting in Seville. The need for adequate preparation time for indigenous delegations was subsequently highlighted in the draft decision concerning Article 8(j) and associated provisions that emerged from the Working Group. In particular, during COP5 and in subsequent meetings a clear need was identified to prioritise the preparation of briefing papers in thematic areas based on analysis of the official documents as inputs into the work of the Forum.

- **Different regions may possess different priorities**

In particular, some delegates placed the formulation of guidelines on legal elements and access and benefit sharing higher on the priority list within the programme of work than other delegates.

- **Different regions may approach issues in different ways**

In many respects the apparent differences between regions actually reflected differences in approach to the issues. Thus, some delegations tended to focus on issues of fundamental principle (i.e. in relation to access and benefit sharing) while others tended to focus on obtaining immediate protection for indigenous knowledge by prioritising the formulation of guidelines for legal instruments and access and benefit sharing arrangements.

- **Inadequacies in translation of official documents**

The Spanish and French translations of official CBD documents *differed significantly* in meaning from the English translations. The most glaring example of this was in connection with the new task on women introduced into the Article 8(j) work programme by the Forum in Seville. Thus, in English one component of the task

read "To build on" indigenous womens' traditional knowledge, while in Spanish this read "To exploit" indigenous womens' traditional knowledge.

As a consequence, a significant amount of time was lost in misunderstandings resulting from poor translation within official documents. Once the scale of this problem became clear, more rapid progress was made.

- **A lack of translation facilities**

Problems were also experienced with the translation within the Forum which produced significant misunderstandings in the quest for consensus. While this reflects the fact that it is very difficult to provide accurate translation in a meeting of over 30 people in the absence of simultaneous translation equipment, it also clearly highlighted the need for professional translation services.

This problem was partially resolved when the CBD provided a room with a simultaneous translation booth. However, the Forum established that in future there is a clear need to secure professional translators and translation facilities for Spanish, French and Russian speakers.

Ultimately, consensus was achieved within the Forum on the priorities and the textual changes that would be proposed in connection with the programme of work on Article 8 (j) and associated provisions.

A four-page document was then prepared which was distributed to governments and NGOs⁶³. The content of the document highlighted the need to focus on:

- The protection of traditional knowledge rather than commercial exploitation of this knowledge.
- The right of indigenous peoples to control over their knowledge and the need to obtain indigenous peoples prior informed consent on mutually agreed terms to any potential use of such knowledge⁶⁴.
- The need to recognise the relationship between indigenous knowledge and territory.
- Recognition of the special role of indigenous women within the conservation of biodiversity.
- The need for the full and effective participation of indigenous peoples and local communities throughout the activities of the Convention.
- The need for the full and effective participation of indigenous peoples and local communities in monitoring and evaluation of implementation.

⁶³ For a detailed and very useful discussion of this document and work at COP5 see, Scott, J (2001) 'Indigenous Peoples and the Convention on Biological Diversity: A report that examines Indigenous Rights to Cultural Heritage, Intellectual Property and Traditional Knowledge.' Aboriginal and Torres Straits Islanders Commission.

⁶⁴ For discussion of free, prior informed consent see, Carino, J (2001) 'Notes on Indigenous Peoples' Self-Determination and Free, Prior Informed Consent in the Development Process'. Presentation to the MacArthur Consortium Summer Institute on Human Rights, University of Wisconsin - Madison, June 21-24, 2001.

One of the most striking features of the Forum's work was the strong pressure from governments for the Forum to produce a document on Article 8(j) and related provisions to inform their positions during the plenary and contact group debates. Indigenous delegates were pleasantly surprised when a significant number of government delegations simply adopted the position expressed by the Forum as their own position during the plenary debate⁶⁵.

This growing openness was further marked by the fact that members of the Forum were provided with considerable time to deliver statements within the plenary discussion and at the 'contact group' stage of debates on Article 8(j) and related provisions⁶⁶. In a marked departure with customary procedure at the contact group stage, where discussions are held exclusively in English, the indigenous Forum was allowed to use simultaneous translation equipment for non-English speaking delegates.

At the conclusion of the debates on Article 8(j) and associated provisions the contribution and status of the International Indigenous Forum on Biodiversity as an advisory body to the COP was recognised in the following paragraphs of decision V/16:

“Recognizing the role that the International Indigenous Forum on Biodiversity has played since the third meeting of the Conference of the Parties in addressing the Conference of Parties on the implementation of Article 8(j) and related provisions”

“Invites Parties and Governments to support the participation of the International Indigenous Forum on Biodiversity, as well as relevant organizations representing indigenous and local communities, in *advising* the Conference of Parties on the implementation of Article 8(j) and related provisions.” (my emphasis).

Recognition of the advisory status of the International Indigenous Forum on Biodiversity represents a very significant triumph for indigenous peoples. In recognition of this achievement at the closure of COP5 the Forum met to consider how coordination and preparation might be improved in order to ensure the effective participation of indigenous peoples in CBD processes on the international level.

In the course of these deliberations the Forum decided:

- That the International Indigenous Forum would be open to all indigenous peoples and their organisations.

⁶⁵ The term “position” is used within international policy debates to describe the standpoint or argument adopted by governments in negotiations on a particular issue, i.e. forest biodiversity, traditional knowledge. Positions advance, retreat, are modified and abandoned in the course of the ebb and flow of the negotiations based on the general principle that a consensus decision should be achieved between the Parties at the conclusion of the debate. The Indigenous Forum develops positions on specific issues under debate as the basis for influencing (with luck and skill) the position of the governments and the final decision that emerges from the debate. Experience demonstrates that the positions adopted by the Forum are increasingly respected and taken seriously by the Parties but are not necessarily reflected in the final decisions taken by the Parties.

⁶⁶ ‘Contact Groups’ consist of groups of governments with a known interest in the issue under debate. Specific Parties may be invited to join in the contact group by the Chairperson. Contact Groups differ from Sub-Working Groups in that Parties are partially selected by the Chairperson and translation facilities are not provided.

- That the official languages of the Forum would be English, French, Spanish and Russian.
- To create an open-ended and gender balanced International Coordinating Committee based on an initial thirteen regional focal-points with responsibility for:
 - Developing draft position papers for discussion in accordance with the work programme.
 - Development of guidelines/terms of reference on the functioning of the Forum.
 - Elaborating rules of procedure on the basis of the guidelines/terms of procedure
 - Drafting and finalizing the agenda for Forum meetings.
 - Establishing links and disseminating its work through the international communications committee.
 - Developing criteria for participation in international meetings of the CBD.
 - Providing input into the selection of members of the indigenous liaison group with the Secretariat.
 - Establishing and maintaining links with the members of the CBD Secretariat liaison group to be appointed by the regions.
 - Establishing parallel workshops and forums within CBD processes.

The Forum then established an International Communications Committee with responsibility for:

- Developing funding proposals.
- Addressing logistics for the Open-ended Working Group on 8j, the Working Group on Access and Benefit Sharing, SBSTTA, COP6, etc.
- Creating an Archive of COP V documents.
- Establishing the Indigenous Biodiversity Information Network (IBIN).
- Establishing communications links with organizations.
- Organising a workshop on Biodiversity in Geneva during the UN Working Group on Indigenous Populations.
- Development of the Terms of Reference and responsibilities of the Secretariat of the Forum.
- Reporting at the Working Group meetings and Conference of Parties.
- Establishing a database of indigenous peoples organisations.

At the conclusion of COP5, the focal points for the open-ended International Coordinating Committee were identified based on a regional division as follows:

1. North America:
2. Meso America:
3. Amazon:
4. Andean/Southern Cone:
5. Francophone Africa:
6. Anglophone Africa:
7. Europe:
8. Pacific/Maritime Asia:
9. Bahasa (Indonesia/Malaysia):
10. South East Asia:
11. South Asia:
12. Australia:
13. Circumpolar:

Progress Since COP5

Since COP5, the Forum has taken on increasing prominence in the work of the Convention on Biological Diversity on a number of levels. This reflects a growing openness on the part of both the Parties and the Secretariat to engage with indigenous peoples. This is principally manifest on four main levels:

- *Participation in Expert Groups and Panels of Experts.* The promotion of the participation of indigenous delegates within the Panel of Experts on Access and Benefit Sharing, the Technical Expert Group on Forest Biological Diversity, the CBD-UNESCO Working Group of Experts on Education and Public Awareness, and the new Technical Expert Group on Forest Biological Diversity and Climate Change. Progress in this area has also been marked by the increasing number of calls for the nomination of indigenous experts from the Secretariat in a wide variety of Convention processes
- *Participation in SBSTTA meetings.* At SBSTTA 6 in February 2001 indigenous delegates intervened on a wide variety of issues reflected in the report from SBSTTA6 and the growing number of references to the participation of indigenous and local communities within the recommendations emerging from SBSTTA. At SBSTTA7, in November of 2001, the small number of indigenous delegates present chose not to intervene under the name of the Forum. However, significant interventions were made as part of a collaboration with NGOs to influence the new programme of work on forest biodiversity.
- *Participation in Working Groups.* The Working Group on Access and Benefit Sharing held in Bonn, Germany in 2001 was marked by the realisation of the sixth meeting of the International Indigenous Forum on Biodiversity. During the Working Group

meeting, the Indigenous Forum was allowed to read out an opening position statement, a review of progress, and a closing statement in the plenary sessions⁶⁷. The Chairpersons of the Sub-Working Groups and contact groups also demonstrated a significant openness to interventions from the Forum which builds on the progress made since the Working Group on Article 8(j) in Seville and COP5. While welcome, it is nevertheless important to note that a request for co-chairmanship was turned down for the Working Group on Access and Benefit Sharing⁶⁸.

- *Liaison Group*. At least one meeting of the indigenous liaison group has taken place since COP5. At COP5 the Forum established that the Forum itself would nominate the members of this liaison group. However, to date this has not taken place and potential participants have been selected directly by the Secretariat of the Convention.

As this makes clear, the Convention is demonstrating an increasing openness to the participation of indigenous peoples delegates on a wide variety of levels.

The future development of indigenous peoples and local community participation within the debates on the Convention will increasingly depend upon the success of mechanisms such as the International Indigenous Forum on Biodiversity.

In the case of the International Indigenous Forum on Biodiversity, the future work and development of the Forum is entirely for indigenous peoples and delegates from their organisations to decide. For example, during the sixth meeting of the Forum in Bonn in October 2001, the decisions taken by the Forum at COP5 were reaffirmed and recommendations were developed to be put forward to the seventh meeting of the Forum in Montreal in February 2002, in preparation for the Second Meeting of the Working Group on Article 8(j) and related provisions.

In this regard it is important to emphasise that the Forum itself is a *process*. It is a process that is entirely guided and led by indigenous delegates from around the world, who come together to secure respect for the internationally established rights of indigenous peoples and contribute to the conservation of biodiversity.

This is a process that presents many challenges and many opportunities. The purpose of the next section is to highlight some of the challenges and opportunities presented by the decisions that emerged from COP5 as a contribution to discussion among indigenous peoples organisations and local communities engaged in the debates under the Convention.

Section III

From Policy to Implementation?

Introduction

Negotiations under international Conventions frequently take place in international conference centres and apparently exotic locations. When confronted by the apparent glamour of these settings, it is perhaps easy to be seduced into believing that this is where the most important contributions to the promotion of the rights of indigenous peoples and local communities can be made.

However, it rapidly becomes clear that the reality of international negotiations is *text*. These texts are literally displayed on large screens within conference meeting rooms. The pace of negotiations is marked by the often painfully slow progress of the secretary's computer cursor across the screen as the text is modified. As a result, anyone wishing to influence decisions under the Convention must immediately engage with a large number of complex texts in which phrases such as, "as appropriate" and "subject to national legislation" are frequently in evidence. Parties to the Convention have also insisted on using the phrase "indigenous and local communities" and have invented phrases such as "full and effective involvement" and "prior informed involvement" in an effort to avoid compliance with their existing obligations and commitments under international law recognising indigenous peoples as *peoples*, their rights to full and effective *participation*, and to prior informed *consent* in all areas that concern them⁶⁹.

In fact the key criticism that has been levelled against the Convention on Biological Diversity is that its work has been dominated by a tendency to generate text rather than action⁷⁰. This tendency was recognised at COP5 which was entitled '*From Policy to Implementation*'. As such, a full eight years after the Convention was opened for signature, the Parties to the Convention have expressed a desire to shift away from debates on the policy level and towards the practice of implementation.

For indigenous peoples and local communities this shift towards implementation presents both challenges and opportunities. In particular, the International Indigenous Forum on Biodiversity has consistently and vigorously argued that the fundamental *precondition* for the full and effective participation of indigenous peoples in the *implementation* of the Convention is recognition of the existence and rights of indigenous peoples as set out in existing and emerging international instruments and agreements⁷¹. This struggle is likely to continue for the foreseeable future.

⁶⁹ For discussion on [free](#), prior informed consent see, Carino, J (2001) 'Notes on Indigenous Peoples' Self-Determination and Free, Prior Informed Consent in the Development Process'. Presentation to the MacArthur Consortium Summer Institute on Human Rights, University of Wisconsin - Madison, June 21-24, 2001.

⁷⁰ See Hyvarinen, J (2001) 'Strengthening the Convention on Biological Diversity'. Briefing Paper. Royal Society for the Protection of Birds. In fact, the Parties themselves have recognised this problem and called for a reduction in the number and length of texts presented for negotiation under decision V/20. To date there is little evidence that this call has been heeded.

⁷¹ See for example 'Statement of the International Indigenous Forum on Biodiversity' (IIFB/CBD/WG-ABS/1/Opening Statement and Recommendations/Final), 22nd of October 2001, Bonn, Germany.

However, existing decisions provide important potential opportunities through which indigenous peoples and local communities may seek to secure respect for their rights and contribute to the conservation of biodiversity. In seeking to identify these opportunities it is first necessary to consider two main challenges.

- The diversity and complexity of the decisions of the Convention which are relevant to indigenous peoples and local communities.
- The diversity of indigenous peoples, local communities, their environments, the social, political and economic contexts within which they live, and the varying capacities and resources of their institutions and organisations.

We are thus confronted by the fact that opportunities that may appear both realistic, feasible and desirable from the perspective of indigenous peoples and local communities in one context, may appear unrealistic, impractical or undesirable in another. It is also important to emphasise that it is entirely a matter for indigenous peoples and local communities to decide whether, and in what form, they wish to engage with the work of the Convention. As a result, the purpose of this section is *not* to offer prescriptions but to highlight possible opportunities for engagement with the Convention to stimulate further discussion.

In considering the elements that might make up a strategy of engagement with the Convention on Biodiversity it is important to recall that the Convention on Biological Diversity is a legally binding instrument and its decisions are also binding. As such, and with due respect for phrases such as ‘subject to national legislation’ or ‘as appropriate’, Parties are obliged to comply with decisions under the Convention. Close attention to the decisions taken during COP5 provides important potential opportunities for indigenous peoples and local communities to pursue respect for their rights and secure participation in the conservation of biodiversity from the local to the international level.

The National Level:

The key to the conservation of biodiversity is to be found on the local and the national level. That is, in the development of policies and practical action directed towards the conservation of biodiversity, sustainable use, and the removal of perverse incentives and activities which destroy the biodiversity upon which indigenous peoples and local communities depend.

As we have seen, indigenous peoples and local communities have a vital role to play in the conservation and sustainable use of biodiversity by virtue of the fact that their lands and territories are located in the areas of highest biodiversity in the world and areas of outstanding environmental importance.

In seeking to develop strategies for engagement with the Convention from the local to the national level it is useful to note three main points.

- The Convention is increasingly calling for the creation of local level forums and committees in thematic areas.

- The Convention is seeking to apply what is called the *ecosystem approach* to all its work. The rationale for the Guiding Principles of the ecosystem approach explicitly state that the rights of indigenous peoples and local communities should be recognized and that cultural diversity is central to ecosystem management. The ecosystem approach also calls for the decentralisation of management to the lowest appropriate level (decision V/6).
- The decisions of the Convention call for the participation of indigenous peoples and local communities in the formulation of policies, strategies and action plans in thematic areas and the development and implementation of *national biodiversity strategies and action plans*⁷².

The important point here is that scattered throughout the various decisions taken under the Convention, and in particular the decisions that emerged from COP5, are elements through which a strategy and framework for engagement with governments from the local to the national level might be constructed.

A key problem in constructing and putting into operation such a framework is identifying with *whom* the creation of such a framework should be discussed. It is here that the problem of information becomes critical. This is a problem that also confronts governments.

In response to the problem of coordinating and reporting on action across 182 Parties the Convention has increasingly focused its attention upon encouraging Parties and other governments to nominate *national focal points* and *thematic focal points* (i.e. on Access and Benefit Sharing).

National Focal Points

To date a total of 233 national focal points have been nominated by Parties and non-Party observer governments such as the USA⁷³. The focal points range between identified individuals, including ministers, ambassadors and government officials, to named government institutions. Lists of focal points can be accessed and downloaded through the Convention website by country, region and, in some cases, theme⁷⁴. In the majority of cases it appears that national focal points are drawn from the Ministry of the Environment or its equivalent.

It has recently become clear that in reality there is considerable uncertainty about the actual role of national focal points with respect to the implementation of decisions. These roles will require clarification. In particular, for our purposes, the extent to which national focal points will prove transparent to indigenous peoples, local communities and civil society is unclear. Nevertheless, the existence of national focal points provides an important opportunity for engagement with the Convention and to pursue dialogue in

⁷² See Article 6 of the Convention which states that Parties will “ (a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, *inter alia*, the measures set out in this Convention relevant to the Contracting Party concerned; and (b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.”

⁷³ CBD (2001) ‘National Focal Points by Country Groups’. 6th of November 2001, Doc: nfp-cbd-grp.pdf.

⁷⁴ See <http://www.biodiversity.org>

developing strategies to ensure the participation of indigenous peoples and local communities in the work of the Convention on the national level.

In preparing for discussions with national focal points familiarity with the existing decisions of the Convention and their relevance will be a powerful potential tool. The following key questions may therefore prove useful in preparing for such discussions:

- What plans are in place for the establishment of local forums involving indigenous peoples and local communities under the decision on agricultural biodiversity (decision V/5)?
- What plans are in place for the establishment of environmental impact assessment committees involving indigenous peoples and local communities under the decision on impact assessment, liability and redress, and to secure their participation in the review of such assessments (decision V/18 para 1(d) and also V/16 task 9)?
- What plans are in place to implement the 12 principles of the *ecosystem approach* which in the rationale to the first principle specifies that “Indigenous peoples and other local communities living on the land are important stakeholders and their rights and interests should be recognized. Both cultural and biological diversity are central components of the ecosystem approach, and management should take this into account”(original wording) and, in principle 2, that “management should be decentralised to the lowest appropriate level” (decision V/6)?
- What plans are in place for the full and effective participation of indigenous peoples and local communities in the formulation of national strategies in thematic areas, national policies in thematic areas, and wider national biodiversity strategies and action plans (i.e. decisions V2/V3/V4/V5/V23/V24/V25)?
- What steps have been taken to create mechanisms to secure the full and effective participation of women under the programme of work on Article 8(j) and the full participation of women throughout the work of the Convention in accordance with the preamble to the Convention (decision V/16, task 4 and preamble to the Convention).
- What measures are in place for the participation of indigenous peoples and local communities within the preparation of national reports (decision V/19, para. 6)?
- What provisions exist for indigenous peoples participation in reviewing and submitting comments on case studies to be presented to the Convention in a wide variety of areas (i.e. decision V/4/V5/V7/V15/V18/V23/V24)?
- How will the incorporation of indigenous peoples and local community experts within nominations to the roster of experts under the CBD, with due attention to gender balance and range of disciplines, be achieved (decision V/20, para 25 and 31)?
- What provisions exist for the inclusion of indigenous peoples and local community delegates within official delegations within CBD processes? How will such delegates be selected? What role will indigenous peoples and local community organisations play in this process and what will be the terms of reference for their participation within official delegations (see decision V/16)?

In some cases indigenous peoples organisations and local community organisations may be pleasantly surprised by the openness of focal points to contributions and proposals. Indeed, it seems likely that a significant number of focal points will be

struggling to make progress in meeting the obligations set out under the Convention and its decisions. This will provide important opportunities to:

- Present the results of projects and the roles of indigenous peoples and local communities in the conservation of biodiversity. For example, a significant number of indigenous peoples organisations are engaged in innovative mapping and land demarcation projects. These increasingly include the development of local environmental management plans. In other cases, indigenous peoples organisations and local community organisations are actively creating various categories of locally managed protected areas. These, and other, experiences have an important and as yet largely unrecognised role to play in the implementation of the Convention.
- Present the results of case studies identifying problem areas and examples of good practice.
- Prepare concrete proposals for enhancing communications and the dissemination of information to indigenous peoples and local communities about the work of the Convention and action on the national level in accordance with the programme of work on Article 8(j) (decision V/16)
- Prepare concrete proposals for indigenous peoples and local community participation from the local to the national level as a basis for discussion and negotiation.

In other cases indigenous peoples and local communities may encounter difficulties in communicating with national focal points unfamiliar with the realities of biodiversity conservation, or with limited knowledge of participation and rights issues. In still others, indigenous peoples and local communities may encounter hostility born of elitist attitudes or institutionalised racism within public ministries. In such circumstances, either no action will be taken to secure the participation of indigenous peoples and local communities from the local to the national level, or government will seek to select those who they believe will be compliant with their wishes to provide a veneer of legitimacy to their 'consultations' with 'stakeholders'. This suggests a possible need to:

- Directly initiate forums to which government representatives and others may be invited and thus set the terms and conditions of their participation.
- Create parallel and independent forums through which to establish positions in discussions in official processes and as a mechanism for reporting upon the deficiencies of such processes at higher levels.

On the national level, it may be useful to consider:

- Nominating *national* or *thematic focal points* to serve as the focus for liaison with official focal points and the dissemination of information on CBD processes to indigenous peoples and local community organisations on the sub-national and local level.
- Promoting the creation of *national biodiversity forums* in order to debate national biodiversity strategies with government or, in the case of an exclusionary approach on

the part of government, to establish parallel processes to monitor and report on CBD processes as they relate to indigenous peoples and local communities at a higher level.

- Promoting the realisation of consultation meetings with members of official delegations on a regular basis prior to relevant CBD meetings.

National Reporting

Under the terms of the Convention each Party is required to submit regular national reports. During COP5, under decision V/19, it was decided that these reports would be submitted every two years. For our purposes, it is important to note that the COP within paragraph 6 of this decision also:

“*Recommends* that Parties prepare their national reports through a consultative process involving all stakeholders, as appropriate, or by drawing upon information developed through other consultative processes.”

This recommendation provides a potentially important opportunity for indigenous peoples and local communities to participate in the formulation of national reports. However, as the appearance of the phrase “as appropriate” suggests, indigenous peoples and local communities may be excluded from the consultations surrounding national reporting, or their views may not be adequately reflected in national reports. This suggests a need to consider:

- Preparing parallel reports highlighting concerns which may be submitted directly to the CBD through independent indigenous and NGO networks and the Clearing House Mechanism and be employed in regional and international level discussions.
- Submitting case studies and recommendations for consideration within CBD processes as a platform for gaining respect for the rights, needs and roles of indigenous peoples and local communities in the conservation of biodiversity.

Indigenous Peoples and Local Community Experts

With respect to *expertise*, the International Indigenous Forum on Biodiversity has long argued for the need for the CBD to recognise the existence of expertise with respect to CBD processes among indigenous peoples and local communities. During COP5 this was finally recognised in decision V/20, paragraph 31, which:

“*Encourages* Parties, other Governments and relevant bodies when nominating their experts for inclusion in the roster to consider:

- (a) Gender balance
- (b) Involvement of indigenous people and members of local communities
- (c) Range of relevant disciplines and expertise, including, inter alia, biological, legal, social and economic sciences, and traditional knowledge.”

This decision is of particular importance because it provides the basis for the increased participation of indigenous and local community experts and professionals throughout the work of the Convention including, national level discussions, international workshops, expert groups, expert panels, and SBSTTA.

Building on these advances this suggests the need to consider:

- Encouraging governments to support the participation of experts and professionals identified by indigenous peoples and local community organisations within national level debates on the implementation of the Convention.
- Adopting an *ecosystem approach* to the identification of indigenous peoples and local community experts and professionals that recognises the diversity of environments within the home country⁷⁵.
- Promoting recognition of the variety of expertise possessed by indigenous peoples and local communities
- Considering the establishment of a national roster of experts in thematic areas based on consultations between indigenous peoples and local community organisations.

This issue will also be considered further below in relation to the emerging issue of the selection process for indigenous peoples and local community experts on the regional and international levels.

Participation in Official Delegations

With respect to the participation of *indigenous and local community delegates* within official delegations, paragraph 16 of decision V/16 on Article 8(j) and related provisions:

“*Invites Parties and Governments to increase the participation of representatives of indigenous and local community organizations in official delegations to meetings held under the Convention on Biological Diversity.*”

In connection with the participation of indigenous delegates within official delegations it is important to note that indigenous delegates who formed part of government delegations played a very important role during the debates at COP5. However, the nomination of indigenous delegates as participants in official delegations raises important questions regarding:

- The role of representative indigenous peoples organisations in the nomination of such delegates; and

⁷⁵ The idea of the adoption of an ecosystem approach to engagement with biodiversity and environmental processes was first raised by Joji Carino of the Tebtebba Foundation during the sixth meeting of the International Indigenous Forum on Biodiversity. It should be noted that the term ‘ecosystem approach’ as used here refers to a methodology for *participation*. Its potential relationship with the ecosystem approach as defined under the Convention requires further discussion (see decision V/6).

- The danger that such delegates may be used to legitimise positions which are contrary to the rights and aspirations of indigenous peoples.

As in the case of indigenous and local community experts this strongly suggests the need for internal discussions within indigenous peoples organisations in order to:

- Clarify the selection procedures, roles, responsibilities and accountability of indigenous delegates within official delegations.

In summary, the circumstances and options available to indigenous peoples and local communities for engagement in national debates on the CBD are likely to vary significantly. However, COP5 decisions provide indigenous peoples and local communities with potentially important tools for securing recognition of their rights, needs, and roles within the conservation of biodiversity from the local to the national level. In a context in which governments may seek to limit indigenous peoples and local community participation to narrow discussions of intellectual property rights instruments and access and benefit sharing issues, it is *vitaly important* to note that:

- The decisions taken at COP5 on the participation of indigenous peoples and local communities range far beyond narrow debates on intellectual property rights and access and benefit sharing to encompass *all* aspects of the work of the Convention.

The Regional Level

CBD decisions, most notably with respect to the programmes of work, call for the realisation of workshops, meetings and conferences in a wide variety of areas on the subregional and regional level. These events are frequently oriented around country based case studies and reports from Parties, international organisations, NGOs and indigenous peoples organisations.

The Role of Research

These events provide important opportunities for indigenous peoples and local communities to represent their views and present the results of their own research in the form of case studies and reports. In particular, the CBD is predominantly a science and research based policy process. An increasing number of indigenous peoples organisations and indigenous research institutes are carrying out high quality research which is directly relevant to the work of the Convention. This research is also frequently conducted in collaboration with NGO partner organisations. However, to date, it appears that the opportunities that this presents to inform and influence CBD decisions are not being adequately taken up (see below).

Proposing Initiatives

Indigenous peoples organisations are increasingly taking the initiative in proposing regional and international meetings in partnership with governments and international Conventions. Examples of such initiatives include:

- The 1996 ‘International Meeting of Indigenous and other Forest Peoples on the Management, Conservation and Sustainable Development of All Types of Forests’ in Leticia, Colombia which formed an intersessional meeting of the Intergovernmental Panel on Forests (IPF). The recommendations of the meeting were subsequently included in the recommendations of IPF4 (now United Nations Forum on Forests).
- The 1997 Madrid Workshop under the CBD which led to the creation of the Working Group on Article 8(j)
- The joint 1999 NGO/Indigenous Peoples initiative on the Underlying Causes of Deforestation under the Intergovernmental Forum on Forests (now United Nations Forum on Forests).

These initiatives, as in the case of the Leticia meeting, may be sponsored by interested Parties as formal intersessional meetings. In others international donors may sponsor independent indigenous peoples and local community events. Thus, on the regional level it may be appropriate to:

- Propose, and seek support for, workshops on thematic issues of concern to indigenous peoples and local communities as the basis for formulating recommendations to the CBD.
- Develop case studies identifying best practice and ensure that these case studies are targeted towards regional and international debates taking place under the Convention

Strengthening Cooperation

In addition to proposing and participating within regional workshops and developing case studies there is also a need to consider:

- Strengthening cooperation and networking between indigenous peoples organisations on the regional level.
- Putting forward concrete project proposals for strengthening communications between indigenous peoples on the regional level, and the dissemination of information about the work of the Convention to indigenous peoples, in accordance with the programme of work on Article 8(j) and related provisions (decision V/16).
- Exploring collaborative links and mutual understanding with local community organisations and NGOs.

In this regard it is worth noting that the International Alliance of Indigenous - Tribal Peoples of the Tropical Forests has established a variety of regional networks.

When combined with other networks within the regions, and the focal points within the International Coordinating Committee of the Forum, the existence of these organisations, networks and focal points may provide a powerful tool for enhancing cooperation and coordination among indigenous peoples. Similar networks exist for local community organisations and NGOs.

It is also important to note that *indigenous peoples within the same and different regions may possess different priorities*. In some case indigenous peoples are struggling to gain recognition of their existence and of their basic rights. In others there may be a significant body of national level legislation in the form of constitutional recognition and treaties which to varying degrees provide for formal recognition of the existence and rights of indigenous peoples. In some countries indigenous peoples may not be permitted to form their own organisations and may therefore be forced to operate as NGOs, local community organisations or other organisational forms. Consultation between indigenous peoples organisations on a regional level may prove to be extremely useful in generating understanding of the different legal and other contexts within which indigenous peoples within a region are located and establishing common priorities and positions.

These consultations may be particularly important in enhancing the engagement of indigenous peoples and local communities with the Convention, and ensuring that indigenous peoples and local community delegates who operate within international level processes are well prepared when entering into policy debates with the Parties.

In this regard, as with the national level, consideration may also be given to the adoption of an *ecosystem approach* to engagement with regional level processes. Thus, some issues, such as sustainable use, traditional knowledge, or education and public awareness may be of common interest. However, the majority of the world's regions are ecologically diverse encompassing, for example, drylands, forests, wetlands and other ecosystems which are the basis for thematic work programmes under the Convention.

Recognition of this diversity, and the diversity of *expertise* among indigenous peoples and local community organisations, could potentially provide an important tool for sharing experiences and establishing an effective *international division of labour*. Such an approach could potentially be central to the ability of indigenous peoples and local communities to address the problem of the ever increasing diversity of policy processes which concern them.

The International Level

Recognition of the International Indigenous Forum on Biodiversity as an advisory body under the Convention during COP5 represents a major triumph for indigenous peoples. In seeking to appreciate the significance of this breakthrough under Decision V/16 on Article 8(j) and related provisions, it is important to recall that Article 8(j) and its related provisions are *cross-cutting* themes which span the entire Convention. As such the work of the Forum and its advice is relevant to the work of the entire Convention. This is reflected in the growing calls from the Secretariat for the nomination of indigenous and local community experts and to the growing openness of the Parties to interventions from the Forum in CBD processes.

A Shift in Focus?

These developments also imply an important shift in emphasis in the work of the Forum and indigenous peoples and local community participants in CBD processes. As we have seen above, initially the work of the Forum focused on demanding recognition of the right of indigenous peoples and local communities to participate in the debates taking place under the Convention from the local to the international level. As rights-holders indigenous peoples have argued that the fundamental precondition for participation in implementation of the Convention is recognition and respect for their rights. Much remains to be done in this vital area. However, the available evidence suggests that the first of these battles, the battle for the right to participate, has in many respects been won. The emphasis will now logically shift to the *practice* of participation in order to secure recognition of indigenous peoples rights as the *precondition* for the participation of indigenous peoples in the implementation of the Convention.

This shift in emphasis is also likely to present a series of important challenges on two main levels:

- The continued credibility of the Forum over the longer term is likely to depend upon the quality of the *recommendations* which the Forum as an *advisory body* to the Parties is able to put forward. This implies the need for adequate preparation and also for a coordinated approach to interventions from the Forum and its participants in CBD processes
- The ever widening provisions of the Convention which recognise and encourage the participation of indigenous peoples and local communities presents a very significant challenge for the future. Specifically, indigenous peoples and local communities are now confronted by increasing invitations to participate in a wide variety of processes under the Convention including, *inter alia*:
 - Liaison Groups
 - Coordinating Mechanisms
 - Workshops
 - Expert Groups

- Panels of Experts
- Working Groups
- SBSTTA
- The Conference of Parties

In seeking to find practical solutions to these challenges the following issues may deserve further discussion.

Financial Mechanism

One of the key challenges confronting the International Indigenous Forum on Biodiversity is the absence of some form of financial mechanism through which to ensure the participation of indigenous delegates in CBD processes

To date, indigenous participants who have participated in Forum processes have either been self-funded or have secured support, frequently at the last minute, through the network of indigenous and non-indigenous organisations that seeks to guarantee the continued work of the Forum through requests to governments. Similarly, administrative arrangements for the functioning of the Forum, notably office facilities for the Forum secretariat, meeting rooms and, critically, translation facilities are also essential requirements for the full functioning of the Forum. Experience demonstrates that this is an extremely time consuming process which cannot keep pace with the ever widening opportunities for the participation of indigenous delegates within the processes of the Convention.

This suggests that:

- There is a clear need to establish a financial mechanism through which to guarantee the full and effective participation of indigenous peoples within the Convention and, possibly, related processes.

Useful examples of potential models for such mechanisms are provided by indigenous peoples experiences in the United Nations Human Rights processes. These experiences, and any lessons learned, could be applied in the development of proposals for the establishment of some form of financial mechanism for the Convention and possibly related processes.

It is for indigenous peoples delegates themselves to determine the most appropriate financial mechanism(s) for securing participation within the Convention. However, it is clear that:

- The potential of the Forum as an advisory body and the work of indigenous delegates throughout wider Convention processes will not be fully realised until such time that appropriate financial arrangements are in place.

Preparation

A key factor in the future work of the Forum as an advisory body under the Convention will be preparation. As we have seen, the Convention is large and it is complex. Furthermore, the work of the Convention is driven by a large number of texts. Thus, COP5 took decisions in 26 major areas each of which was accompanied by a main negotiating text and by background information (INF) documents. Preparing positions and contributions in each of these areas was a very considerable challenge. In the context of the ever-expanding number of Convention meetings in which indigenous peoples and local community delegates are invited to participate, this is likely to become an even greater challenge in future.

The issue of preparation suggests:

- A need to consider the creation of an *international division of labour* in which one or more indigenous and non-indigenous specialists take responsibility for leading the development of briefing papers on individual subjects as the basis for preparing draft position-papers (pre-drafts).

The potential adoption of an *ecosystem approach* and the identification of indigenous specialists in thematic areas could play an important role in *servicing* the Forum and indigenous participants with preparatory materials as the basis for defining positions. In addition, it is worth noting that NGOs and partner organisations frequently prepare materials which may be of value and relevance to the Forum. Where appropriate, these materials may contribute to developing mutually supporting positions. A useful example of such experiences has been the collaboration between indigenous peoples organisations and NGOs under the Global Forest Coalition, which includes participants in the Forum, in influencing the development of the new programme of work on forest biodiversity in 2001.⁷⁶

Specialisation

The demands of participation also suggest the need to consider the possibility of growing specialisation among participants within the Forum in engaging with Convention processes. At COP5 the work of the Forum was effectively divided between small teams who took the leading role in ensuring that the Forum was represented in debates on issues such as forests, tourism, agriculture, impact assessment, the ecosystem approach, education etc. This *division of labour* was the major factor behind the progress made in a wide variety of areas within COP5 decisions.

This suggests that :

- There may be a growing need for specialisation in the future in which indigenous delegates assume responsibility, and form teams, to prepare positions for discussion by the Forum and then take the lead in interventions within the thematic debates.

⁷⁶ See Lovera, S (lead author) (2001) *Forests and the Convention on Biological Diversity: A Dossier of Relevant Articles and Decisions Prepared by the Global Biodiversity Forum*. Global Biodiversity Forum.

The potential adoption of an *ecosystem approach* raised earlier, and recognition of the different disciplines and skills of Forum participants, could play an important role here. For example, indigenous delegates and specialists in drylands might logically take the lead in work on the drylands programme, indigenous delegates and specialists on forests might take the lead on the forest programme etc. In the case of the sensitive issues surrounding intellectual property rights instruments and access and benefit sharing, the skills of the legal specialists within the Forum would be a clear asset. Finally, to give one last example, it should also be noted that there is also very significant expertise in the field of education among regular Forum participants. This has made a significant input into the development of the new programme of work on education and public awareness that will be considered at COP6.

In practice, this is precisely how governments function within large and complex meetings and there is an unspoken understanding that the Forum functions in a similar way. Nevertheless, the issue of the need for specialisation is raised here for further possible discussion for three reasons:

- Forum participants and a number of friendly governments have commented that Forum members are sometimes absent from important discussions, such as contact groups, as a result of a tendency toward over-concentration of forces in debates on other themes. In practice, this reduces the options for influencing decisions at key moments.
- In formal negotiations opportunities for interventions in debates are limited. Therefore, all participants from the Forum who are present at a session are unlikely to be allowed the space to intervene by the Chairperson for the session. Government delegations generally intervene through one lead negotiator and are supported in preparing interventions by other members of the delegation. This system of one, or maybe two, main spokespersons in a negotiating session is well understood by governments and prevents confusion in setting out positions.

The Forum itself regularly adopts a similar approach. Having achieved a consensus on a particular position, that position is then put forward and negotiated by one or two nominated Forum delegates in the sessions. The delegates who lead the interventions are supported by other Forum members in drafting additional interventions based on the consensus position. Experience suggests that this is when the Forum is at its most effective. Refining this approach may be worth further discussion. In particular, as this helps to make clear, two or three delegates from the Forum can make as much difference to the debate as the presence of ten or twenty in an individual session. We might therefore conclude that in perhaps the majority of cases, the *quality* of participation is as important as the *quantity* of participation.

- Indigenous peoples and local communities are confronted by an ever-increasing number of policy processes which, to varying degrees, recognise their right to participate. Many indigenous participants in the Forum also participate in one or more of these 'related processes'. This provides an important pool of experience to the Forum through which to navigate negotiations on a particular issue under the CBD and to use gains to influence related processes.

Continuity

An important emerging challenge under the Convention and related processes is the problem of continuity in participation. This issue is linked both to funding and the issue of specialisation.

For those who are new to the negotiations which take place under the Convention it is tempting to try and gain an overview of the issues under discussion through attendance at sessions on different themes. This is entirely logical. At first, participation within Convention debates can be deeply confusing.

However, one of the lessons that has emerged from the work of the Forum is the importance of continuity of participation both within a particular event and in following up that event. In particular, there is a significant danger that:

- Gains made at one event will be lost in the future if there is no continuity and consistency in participation to secure implementation of these gains and make further advances.

It is worth noting here that governments' generally recognise this need for consistency in participation. A significant number of government delegates follow a particular issue under the Convention for a number of years. This provides important opportunities for indigenous and local community delegates to get to know, and attempt to develop mutual understanding, with some of the government delegates.

In other cases government delegates may be completely new to the process. The Forum's experience with the Working Group on Access and Benefit Sharing amply demonstrated that:

- Many government delegates may in fact be unfamiliar with existing decisions under the Convention which relate to the rights of indigenous peoples and local communities.

This can result in significant problems when governments reopen debates on issues that have already been decided, or make recommendations that contradict existing decisions. In the case of the Working Group on Access and Benefit Sharing, a number of Forum participants who had consistently participated in Convention processes were able to highlight existing decisions and point out potential contradictions to the Parties. Nevertheless, the Forum also experienced problems with continuity because indigenous lawyers who specialise in issues surrounding Access and Benefit Sharing were not able to participate.

We have seen in the discussion of the *ecosystem approach* that one way to address this problem over the longer term may be for increased specialisation. Experience demonstrates that those indigenous delegates who have participated in Convention debates over a period of many years have a vital role to play in assisting delegates who are new to the process. That is, with the analysis and discussion of texts, drafting interventions, how to intervene, when to intervene, approaching chairpersons and lobbying official delegations. This suggests that the formation of *teams* consisting of experienced delegates and those who are new, or relatively new, to the process, could

provide a way of generating expertise and creating a pool of delegates who can maintain continuity in participation over time.

Finally, it is also important to recall that Convention meetings are made up of human beings. The positions adopted by government delegates are frequently distasteful and conflict with the rights of indigenous peoples. However, it is worth recognising that many government delegates welcome discussions with indigenous delegates from their home countries and elsewhere. Experience demonstrates that these contacts have an important role to play in generating mutual understanding and support for the rights of indigenous peoples and local communities.

The Question of Experts

One of the main issues that emerges from the discussion of the need for specialisation and continuity of participation over time is the question of *expertise*. In fact the issue of *experts* can be a rather sensitive matter. The foundation of this sensitivity appears to be a fear that experts, be they indigenous or non-indigenous, will seek to assume a superior status and to impose their opinions at the expense of discussion and respect for wider consensus.

In considering this difficulty it may be worth recalling that the ever-increasing range of issues addressed under the Convention suggests that there is an increasing need for specialisation in engagement with the Convention and for specialist knowledge and experience. The scale of the Convention is such that, as this guide perhaps amply illustrates, *no-one* can be an expert on the whole Convention. It is perhaps more appropriate to think in terms of recognising that a number of people are *specialists* in particular areas and all participants have a diversity of skills, knowledge and experience that can be brought to bear in promoting respect for the rights of indigenous peoples and local communities.

The diversity of the International Indigenous Forum on Biodiversity can in fact be seen as its strength. The Forum brings together experienced grass-roots activists, activists with experience in a variety of different processes, indigenous professionals who are pursuing academic or related careers, and finally, elders from a variety of different countries who play an important role in the work of the Forum and in maintaining morale when negotiations are going badly.

The issue of diversity is raised here for possible discussion as a prelude to consideration of one of the most significant advances made by the Forum during COP5. That is, the promotion of the inclusion of experts from indigenous peoples and local communities in the work of the Convention.

The International Indigenous Forum on Biodiversity has long argued for the need for the Convention to recognise the expertise of indigenous peoples and local communities. During COP5 this was recognised in two important decisions.

- Under decision V/16 on Article 8(j) and related provisions, Principle 2 of the General Principles for the programme of work specifies that, “Traditional knowledge should be valued, given the same respect and considered as useful and necessary as other forms of knowledge.”

- Under decision V/20 on the Operations of the Convention paragraph 25 “*Recognizes* that there is a need to improve the quality of the scientific, technical and technological advice provided to the Conference of the Parties, and to undertake sound scientific and technical assessments, including in-depth assessments of the state of knowledge on issues critical for the implementation of the Convention”
- Elsewhere in decision V/20 paragraph 31. “*Encourages* Parties, other Governments and relevant bodies when nominating their experts for inclusion in the roster to consider:
 - (a) Gender balance;
 - (b) Involvement of indigenous people and members of local communities;
 - (c) Range of relevant disciplines and expertise, including, inter alia, biological, legal, social and economic sciences, and traditional knowledge;”

In considering the provisions of these decisions it is worth noting that this represents a very significant triumph for indigenous peoples and local communities.

Unlike many other international environmental agreements the Convention on Biodiversity is strongly driven by science and research. Thus, the majority of the experts who presently appear within the rosters of experts are either scientists or lawyers⁷⁷.

Western science has classically refused to recognise the status of traditional knowledge and to take such knowledge seriously. It is now recognised that this dismissive attitude is seriously misplaced. It is a mark of the, at times ground-breaking, nature of this Convention that traditional knowledge is now recognised as having equal status with western scientific knowledge.

Experience since COP5 demonstrates that this is an issue that the Secretariat and the Parties are taking seriously and it is here that a number of difficulties that require discussion begin to emerge.

In the past, when seeking the participation of an indigenous expert, the Secretariat of the Convention has adopted the approach of directly selecting an expert based on contacts made during previous meetings. The key problem that the Forum has highlighted with this approach is not so much the quality of the expertise that may be provided, but *transparency* in the selection of experts.

In considering this issue it is worth noting that this appears to be a problem that confronts the Convention in general and is recognised by the Parties. For example, in paragraph 21 of decision V/20 the COP decided that SBSTTA could establish technical expert groups. However, the decision also specified that in selecting experts SBSTTA “shall seek ways to ensure transparency in the choice of experts....”

Perhaps in recognition of this issue, and ongoing complaints from indigenous delegates and NGO’s, in the year 2001 following SBSTTA7, the Secretariat of the Convention increasingly attempted to consult with participants in the Forum and the

⁷⁷ In fact a review of the roster of experts reveals that many of those included in the roster do not choose to register their area of speciality. This suggests that they are ‘experts’ in the ambiguous area of ‘policy matters’.

International Communications Committee regarding the selection of indigenous and local community experts. In the process a number of problems have emerged.

The Forum has consistently argued that indigenous peoples should nominate the experts for inclusion in technical expert groups, panels of experts, SBSTTA etc. However, no *mechanism* or *procedure* has been agreed by the Forum through which such nominations might take place in a transparent manner.

The nature of this problem is reflected in informal comments to Forum participants in SBSTTA7 from the Secretariat to their requests for a consultation process in the selection of experts. In response to these requests the Secretariat informally responded that two problems had emerged:

- A lack of a timely response to calls for nominations from the Secretariat
- Frequent problems of last minute cancellations by indigenous delegates.

On this basis the Secretariat made its own nominations in order to secure participation.

However, following SBSTTA7 the Secretariat has increasingly contacted the communications committee with calls for nominations for experts to participate in a variety of meetings, notably on Climate Change, forest biodiversity and the UNFF, marine and coastal biodiversity, agricultural biodiversity, and sustainable use. This more open approach has been welcome but has revealed a number of problems.

- Organisations within the communications committee rarely receive more than two weeks, or in some cases, a few days notice for nominations.
- Requests for nominations are not presented as formal notifications and at times it is unclear to what meeting the request from the Secretariat refers.
- It is unclear to whom the call for nominations should be sent; to the International Coordinating Committee, the entire Forum communications list, or to individuals who are known to possess expertise in a particular area?
- It is unclear who should make the final decision on the name(s) to be put forward for the specific meeting.

As this makes clear, this has placed the organisations serving on the communications committee in a difficult and rather unpleasant position. In particular, it is extremely difficult to ensure a transparent and open process with only a few days notice. In response to this the working procedure that has been developed to ensure at least a degree of transparency has been:

- To send out the call to organisations who participate within the International Coordinating Committee of the Forum with a request for nominations in the specific area.
- To request more than one nomination to address the apparent problem of late cancellations.
- To present a list of delegates based on nominations received. Given that the Secretariat generally requests the names of one, or two, candidates, the lists are

divided between *principle* candidates and *alternate* candidates in order to address the apparent problem of late cancellations.

In some cases this working procedure has functioned reasonably well. However, the organisations within the communications committee are now receiving an increasing number of *multiple* requests for nominations from the Secretariat at very short notice. In these circumstances it is difficult to consult and ensure any degree of transparency. Furthermore, it has become clear that the nomination process represents an enormous amount of time and effort for which no financial or staff support exists. This work may properly be a function of the CBD Secretariat.

During informal communications with the Secretariat on this issue. The following issues have also emerged.

- The Secretariat understood that at COP5 the Forum decided that it would establish its own roster of experts based on regional lists. In fact the Forum only decided that it would nominate the members of the *liaison group* with the Secretariat. This has not yet taken place.
- The Secretariat has stated that the majority of the meetings are held purely in English and is therefore requesting English speakers. This therefore excludes non-English speaking delegates who are a vital part of the Forum.
- The Secretariat is requesting nominations for delegates who are knowledgeable about the theme and will actively participate.

In formal correspondence with the Secretariat, the International Alliance has stated that securing a transparent nomination process for indigenous and local community experts should be seen as part of a process of engagement. This process has revealed a number of difficulties that may require discussion between the Forum, the Secretariat, and possibly the Parties.

In considering this issue a number of points stand out for discussion:

- It is vital that indigenous and local community delegates participate in the various workshops, expert groups, panels of experts etc. as a basis for securing respect for the rights of indigenous peoples and local communities and to improve the *range and quality of advice* available to the Parties in reaching decisions at higher levels.
- Delegates should be indigenous or local community delegates who possess knowledge and experience of the particular issue under discussion.
- A range of regions should be represented wherever possible and relative to the theme. This suggests the possible need for an *ecosystem approach*.
- Different languages must be represented and respected.
- The process for the selection of indigenous and local community experts should be *transparent* in accordance with the position of the Forum and trends in existing COP decisions.

A key challenge will be how to create a transparent, efficient and cost-effective solution for the nomination of experts. The following options are offered for discussion:

- A roster of experts is established for indigenous peoples. A separate roster of experts is established for local communities and NGOs to prevent confusion.
- In the case of the indigenous peoples roster of experts, criteria similar to those developed by the regions for the Permanent Forum are adopted as the basis for nominations and submissions to the roster. To assist this discussion the following draft criteria may be worthy of consideration.

‘Indigenous peoples organisations nominate specialists for inclusion in the indigenous peoples roster of experts on the following basis:

- Specialists must be indigenous.
- Specialists are nominated by their organisations
- Specialists are listed by organisation, country and region
- Specialists must possess some familiarity with CBD processes which will be listed in the submission to the roster (i.e. national, regional, international level)
- Specialists may possess formal or informal training and experience. Lack of formal educational qualifications should *not* be grounds to exclude specialists.
- An *ecosystem approach* is adopted which sets out the area of speciality i.e. forests, drylands, marine and coastal biodiversity, inland waters etc.
- Other areas of expertise, i.e. education, law, human rights, traditional knowledge etc are listed as a basis for selection for cross-cutting themes.
- Experience in other biodiversity related processes (i.e. Climate Change, UNFF, CSD, WIPO, WTO etc.) are listed in the roster.
- The principle of gender balance is respected in submissions to the roster and in selecting specialists.
- The principle of regional balance and linguistic balance is respected.’

These draft criteria may provide a useful basis for discussion of the establishment of a roster of indigenous peoples experts. A series of other questions may also be worthy of discussion.

- Should the Secretariat be responsible for setting up the framework for the roster on the CBD website in a similar way to the existing rosters? Would this reduce the work and costs to the Forum and comply with the desire to avoid turning the Forum into an institution?
- Should the Secretariat send out formal notifications through the communications committee and others to ensure transparency and avoid an exclusionary approach?

- Should indigenous specialists who participate in expert meetings be formally requested to submit brief reports to the Forum through the communications committee in order to ensure transparency and information flow?
- Should the functioning of the roster periodically be reviewed by indigenous specialists and a report submitted to the Forum and the Parties at the Working Group on Article 8(j) on its status and functioning?

It is for indigenous delegates themselves to decide what process and form the selection of indigenous specialists should take for participation in the work of the CBD. In closing this discussion one final point is worth considering.

- COP decisions that promote the participation of indigenous and local communities stretch far beyond narrow issues of intellectual property rights instruments and access and benefit sharing and extend into all areas of the Convention. Any effort to restrict the participation of indigenous specialists should be resisted on the basis of the diversity of recent COP decisions that promote the participation of indigenous peoples and local communities.

Coordination

The Forum has established an open-ended International Coordination Committee made up entirely of indigenous delegates based on regional focal points to enhance cooperation and coordination. This has also been accompanied by the creation of an open ended Communications Committee which consists of indigenous organisations and non-indigenous support organisations.

It is important to emphasise once again that the Forum is a process and that the development of the Forum is entirely a matter for indigenous peoples to decide. Thus, at the sixth meeting of the Forum in 2001 the structure of the Forum was reviewed. It was decided that the open-ended International Coordinating Committee would be maintained, but that a smaller Steering Group would be created to facilitate preparations for meetings and other issues that may appear. Further development of the Forum will be discussed at the seventh meeting of the Forum in early 2002 prior to the Working Group on Article 8 (j) and related provisions.

With respect to communications, strong efforts have been made to maintain and strengthen communications with indigenous peoples organisations around the world on biodiversity and related issues. It appears that this has been a positive and remarkably consistent process.

However, there is room for much further work on the national, regional and international level in strengthening communications. In this respect the work programme on Article 8(j) may present a major opportunity for indigenous peoples organisations to develop proposals to strengthen communications from the local to the international level that should not be missed. Such projects could make a major contribution to strengthening communications on the Biodiversity Convention and the ever increasing number of biodiversity related processes to which we now turn.

*The Problem of Coherence*⁷⁸

The Convention on Biological Diversity touches on every aspect of the fabric of life on this planet. As a result it is becoming increasingly clear that the Biodiversity Convention lies at the core of the Conventions and agreements that emerged from the 1992 Earth Summit.

The problem that this produces, both for governments and for indigenous peoples and local communities, is one of coherence in positions, decision-making, policy, and action relative to other related processes. There is a significant danger that decisions made by Parties under the Convention may conflict with, or contradict, decisions under a large number of international processes. In response to this the Biodiversity Convention is increasingly promoting collaborative relationships, joint work programmes and the harmonisation of reporting with a range of other international processes and institutions.

Among these we might mention:

- The Ramsar Convention on Wetlands (Ramsar)
- The Convention to Combat Desertification (UNCCCD)
- The Framework Convention on Climate Change and its Kyoto Protocol (UNFCCC)
- The United Nations Forum on Forests (UNFF)⁷⁹
- The Convention on Migratory Species (UNCMS)
- The Convention on Trade in Endangered Species of Wild Flora and Fauna (CITES)
- The International Undertaking on Plant Genetic Resources under the Food and Agriculture Organisation (FAO).
- The Commission on Sustainable Development (CSD)
- The United Nations Economic, Social and Cultural Organisation (UNESCO)
- The United Nations Convention Trade and Development (UNCTAD)
- The World Bank and the Global Environmental Facility (GEF)
- The World Trade Organisation (WTO) through the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS)
- The World Intellectual Property Rights Organisation (WIPO)
- The Office of the United Nations High Commissioner for Human Rights (emerging)
- The United Nations Permanent Forum on Indigenous Issues (emerging)

The importance of this expanding list is that the relationship between the Biodiversity Convention and these related processes and institutions presents important challenges and opportunities for indigenous peoples in advancing respect for their rights.

⁷⁸ For an excellent overview on indigenous peoples and environmental agreements see, Carino, J (2001) 'Indigenous Peoples and Global Environmental Negotiations' (ms). See also, International Alliance of Indigenous - Tribal Peoples of the Tropical Forests and European Alliance with Indigenous Peoples (1997) 'Indigenous Peoples Participation in Global Environmental Negotiations', Indigenous Peoples Participation in Sustainable Development No. 2, September.

⁷⁹ See Griffiths, T (2001) 'Consolidating the Gains: Indigenous Peoples' Rights and Forest Policy Making at the United Nations.' Forest Peoples Programme Briefing. Moreton-in Marsh: Forest Peoples Programme. See also, Lovera, S (2001) 'A Tale of Two Cities: A Discussion Paper on the Relationship between the Convention on Biodiversity and the UN Forum on Forests'. Sobrevivencia/Friends of the Earth - Paraguay.

For example, a number of these processes and institutions have adopted policies or guidelines towards indigenous peoples and local communities. In some cases these are strong while in others they are extremely weak. In other cases there is a strong emphasis on the participation of indigenous peoples and local communities, while in others efforts are being made to block or severely limit such participation (i.e. UNFF and UNFCCC).

Progress made under one process, such as the CBD, can be used to try and make progress under other processes such as the Climate Change Convention or the UNFF. On a similar basis, the efforts of the Forum to involve the Office of the United Nations High Commissioner for Human Rights and 'related bodies' may assist indigenous peoples delegates and local communities with strengthening recognition of their rights and counterbalancing the influence of institutions such as WIPO.

Many indigenous delegates possess experience in working within these related processes in order to advance respect for the rights of indigenous peoples. This provides an important opportunity to exploit these synergies and to support the work of indigenous forums, caucuses and delegations in related processes. This suggests that:

- There is an increasing need for coordination between the International Indigenous Forum on Biodiversity and indigenous peoples organisations, forums and caucuses involved in other international processes in order to ensure that the gains in recognition of the rights of indigenous peoples and their concerns are appropriately incorporated within the growing number of processes in which indigenous peoples are now involved.

Finally, in July of 2000 indigenous peoples made a major advance in securing recognition of their rights with the decision of the United Nations Economic and Social Council (ECOSOC) to create the United Nations Permanent Forum on Indigenous Issues. Eight indigenous experts have now been nominated to the Forum, primarily drawn from regional consultation processes, and the first meeting of the Permanent Forum will take place in May 2002.

The indigenous experts who have been nominated to the Permanent Forum will face many challenges. However, it is important to note that a number of the indigenous experts have been active participants in the International Indigenous Forum on Biodiversity for a number of years.

Furthermore, it is becoming clear that the Secretariat of the CBD will form part of an *Inter-Agency Support Group* to the Permanent Forum in assisting the Forum with meeting its wide-ranging mandate. Two issues emerge here for further discussion:

- What opportunities might exist for establishing some form of reporting relationship between the International Indigenous Forum on Biodiversity and the Permanent Forum in order to report on progress and problem areas?
- How might the existence of the Permanent Forum contribute to strengthening respect for the rights of indigenous peoples under the Convention and improving the overall effectiveness of the Convention?

Conclusion

The purpose of this section has been to identify challenges and opportunities that indigenous peoples and local communities may wish to discuss in developing strategies and frameworks for engagement with the Convention on Biological Diversity. As we have seen, these opportunities are considerable and provide an important set of possible options to pursue respect for the rights of indigenous peoples and local communities under the Convention from the local to the international level. Nevertheless, it is equally clear that very considerable challenges remain in securing respect for the rights of indigenous peoples and local communities under the Convention. Until such time that the Convention recognises the existence of indigenous peoples as peoples and the rights of indigenous peoples as set out under international law, its promise is likely to remain unfulfilled.

Section IV

Executive Summary of COP5 Decisions

The following executive summaries of the substantive decisions taken during COP5 of concern to indigenous peoples and local communities are designed to be read in conjunction with the decisions of the Convention set out in ‘*From Policy to Implementation: Decisions from the Fifth Meeting of the Conference of the Parties to the Convention on Biological Diversity*’ (SCBD: 2000)⁸⁰

The aim in providing these summaries is to allow indigenous peoples and local communities to obtain snap-shots of areas of interest arising within COP5 decisions. Given the importance of language within the documents of the CBD readers are advised to consult the more detailed thematic reviews provided in section V in areas of specialist interest.

The decisions are presented in accordance with the numerical system (i.e. V/1) adopted by the COP rather than in their order of priority to indigenous peoples and local communities. Where relevant, updates are provided along with the details of documents to be considered at COP6.

- Decision V/1. The opening for signature of the *Cartagena Protocol on Biosafety* concerning the assessment and regulation of the risk associated with trade in genetically manipulated Living Modified Organisms (LMOs) was a major feature of COP5. This decision sets out the work plan for the Intergovernmental Committee on Biosafety and includes a call for the Executive Secretary to the Convention to invite all stakeholders to contribute to the strengthening of capacity on biosafety. However, no mechanism for such participation is mentioned within the decision. The status of the Protocol will be considered at COP6 (see UNEP/CBD/COP/6/8)
- Decision V/2. Under *Inland Water Ecosystems* a joint programme of work was adopted with the Ramsar Convention which has formulated guidelines on “indigenous people”. The decision also calls for a review of the Report of the World Commission on Dams by SBSTTA for COP6 which will be of particular interest to indigenous peoples affected by dam projects and specialists working on this issue. Progress in the implementation of the joint programme of work will be considered at COP6 (see UNEP/CBD/COP/6/11)
- Decision V/3. The decision on *Marine and Coastal Biodiversity* promotes the creation of stakeholder partnerships. It recognised the relevance of the joint programme of work under Inland Water Ecosystems with the Ramsar Convention which has formulated guidelines on “indigenous people” for the programme of work on Marine and Coastal Biodiversity (see also decision V/2). Progress in the

implementation of the programme of work will be considered at COP6 (see UNEP/CBD/COP/6/11)

- Decision V/4. The decision on *Forest Biological Diversity* created an ad hoc technical expert group including expertise in traditional knowledge. It prioritised progress in the implementation of the programme of work on forest biological diversity within the work of SBSTTA for COP6 where forest biological diversity will be the main agenda item. The decision placed a strong emphasis on; the participation of indigenous and local communities, the importance of wood and non-wood products, and the need for the participation of indigenous and local communities in the assessment of status and trends in forest conservation and sustainable use. The decision also called for indigenous and local communities and non-governmental organizations to provide relevant information on the implementation of the work programme through case-studies and national reports. Forest Biodiversity was also considered at SBSTTA6 in February 2001. Between February and November 2001 the Technical Expert Group on Forest Biodiversity developed a new programme of work on forest biodiversity which was considered at SBSTTA7. The recommendation for the new programme of work will now go forward to COP6. Indigenous participation within the expert group and collaboration between a wide variety of indigenous peoples organisations and NGOs throughout 2001 had a major impact on the contents of the new draft work programme. The new work programme will now be considered at COP6 (see UNEP/CBD/COP/6/4).
- Decision V/5. The decision on *Agricultural Biodiversity* included the application of the precautionary principle⁸¹ to genetic use restriction technologies (GURTS) and called for a formal report on the impacts of such technologies upon indigenous peoples and local communities based on direct consultation with indigenous peoples and local community organisations. The decision also called for
 - an assessment of indigenous knowledge of agricultural biodiversity.
 - case studies on indigenous and local management practices.
 - the creation of stakeholder forums for farmers and indigenous and local communities
 - the participation of indigenous peoples and local communities in formulating national plans and strategies.

Progress in the implementation of the programme of work will be considered at COP6 (see UNEP/CBD/COP/6/11).

⁸¹ The precautionary principle as set out in the 1992 *United Nations Declaration on Environment and Development* states that: “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”.

- Decision V/6. The decision on the *Ecosystem Approach* which permeates the Convention adopted 12 Guiding Principles for the Ecosystem Approach. The rationale to the first principle includes recognition that “Indigenous peoples and other local communities living on the land are important stakeholders and their rights and interests should be recognized. Both cultural and biological diversity are central components of the ecosystem approach, and management should take this into account” (original wording). Principle 2 specifies that “management should be decentralised to the lowest appropriate level” (decision V/6). The Ecosystem Approach represents an important potential tool for indigenous peoples and local communities seeking to emphasise their rights, the importance of local level management and participation in decision-making. The Ecosystem Approach is a cross-cutting issue under the Convention and therefore applies to all provisions of the Convention. Progress on implementation will be reported at COP6 (see UNEP/CBD/COP/6/12).
- Decision V/7. The decision on *Identification, monitoring, assessment and indicators* incorporated the ecosystem approach, which includes reference to indigenous peoples rights, into the development of indicators, and promoted case-studies from “relevant organizations” to be discussed in regional workshops. Indigenous peoples and local community organisations may wish to contact the Secretariat with respect to the case studies and workshops in this important area. A report on progress will be considered at COP6 (see UNEP/CBD/COP/6/12 and UNEP/CBD/COP/6/4).
- Decision V/8. The decision on *Alien Species* introduced interim guiding principles which emphasise the need for a strong precautionary approach and the minimisation of risk, the need for public awareness, the use of safe and socially, culturally and ethically acceptable eradication techniques, and the need for community support based on comprehensive consultation (see note 2). Advocacy of a strong precautionary approach under this decision presents important potential opportunities for indigenous peoples and local communities affected by Alien Species in a wide variety of areas. Alien Species will also be considered at COP6 (see UNEP/CBD/6/18 and UNEP/CBD/COP/6/3).
- Decision V/9. The decision on the *Global Taxonomy Initiative* is concerned with overcoming the critical lack of knowledge concerning global biodiversity through the promotion of the training of taxonomists on the national level to document biodiversity. The decision created a coordination mechanism of ten people and selected organizations to develop a programme of work and convene regional meetings of scientists, managers and policy makers. While the role of traditional knowledge was recognised at COP4, and Task 13 of the second phase of the programme of work on Article 8(j) is concerned with guidelines on this issue, no mention is made of the implications of the Initiative for indigenous peoples in the COP5 decision. A draft programme of work on the Initiative was subsequently adopted by SBSTTA6 in Recommendation SBSTTA VI/6 which contains reference to indigenous and local communities and merits close attention. The draft programme of

work will now go forward to COP6 (see UNEP/CBD/COP/6/4 and UNEP/CBD/6/12).

- Decision V/10. The decision on the *Global Strategy for Plant Conservation* highlighted that “as many as two thirds of the world’s plant species may be in danger of extinction in nature” during the 21st Century and establishes that SBSTTA will form recommendations in liaison with the FAO and the UNESCO Man and the Biosphere Programme for consideration at COP6. Consideration may need to be given to the potential implications of such a strategy for indigenous peoples and the roles that indigenous peoples might play in global plant conservation. Progress on this issue will be considered at COP6 (see UNEP/CBD/COP/6/4 and UNEP/CBD/COP/6/12)
- Decision V/11. The decision on *Additional Financial Resources* called for the development of a database of biodiversity related funding information through the Clearing House Mechanism and for institutions and NGOs to nominate focal points to liaise with the Executive Secretary to the Convention. This may be of interest to indigenous peoples organisations and non-governmental organisations seeking funding for their initiatives or wishing to submit information on funding initiatives. Progress will be reported at COP6 and contains one brief reference to indigenous peoples and local communities (see UNEP/CBD/COP/6/14).
- Decision V/12. The decision on the *Second Review of the Financial Mechanism* called for stakeholders to submit their views on the financial mechanism (the GEF) using a questionnaire to be developed by an evaluator as the basis for a report to be submitted to COP6. The report of the independent evaluator will now be considered at COP6 and contains a number of significant references to traditional knowledge and support for indigenous peoples and local communities (see UNEP/CBD/COP/6/13/Add.1).
- Decision V/13. The decision on *Guidance to the Global Environmental Facility* set out the priority areas for GEF funding and emphasised that poverty alleviation is the main concern of developing countries. The decision identified, agricultural biodiversity, dry and sub-humid lands, forest biodiversity, coral bleaching, the consultative process for second national reports, participation in the clearing house mechanism, projects for access and benefit sharing, priority activities under the programme of work on Article 8(j), public awareness and education, and inland water biological diversity, as priority areas for financial support. Indigenous peoples organisations may wish to contact the GEF to investigate progress in these areas and propose initiatives (see also UNEP/CBD/COP/6/13, UNEP/CBD/COP/6/13/Add.1, UNEP/CBD/COP/6/16/Add.1).

- Decision V/14. The decision on the *Clearing House Mechanism* called for the creation of an informal advisory committee to carry out a review of the CHM for COP6. The decision also called for the creation of national directories of scientific institutions and experts, the designation of national focal points to establish links with NGOs, the creation of national, subregional and regional thematic focal points. The decision classifies information providers as primary partners and allows custodianship to remain with the providers of information. The decision called for regional workshops for capacity-building, training and awareness and identification of best practice, formats and protocols for the exchange of information, as well as the promotion of non-internet based tools for the implementation of the Convention. Indigenous peoples have consistently argued that the problem with the CHM rests in the emphasis that is placed upon indigenous peoples providing information to the CBD rather than the CBD providing information on CBD processes to indigenous peoples as the basis for their meaningful participation. Indigenous peoples and local community organisations may therefore wish to explore progress with respect to the informal advisory committee, the review of the CHM, and regional workshops. The Clearing House Mechanism will also be considered at COP6 (see UNEP/CBD/COP/6/13)
- Decision V/15. The decision on *Incentive Measures* called for case studies on positive incentive measures and the identification and mitigation of perverse incentive measures. The decision notes the incentive measures in the Inland Water Ecosystems joint programme of work with the Ramsar Convention and urges exploration of the ways that incentives under the Kyoto Protocol can support the objectives of the CBD. Indigenous peoples and local community organisations may wish to contribute to identifying what the CBD calls “perverse incentive” measures and to propose positive incentive measures for the conservation of biodiversity upon their lands and territories. Incentive measures will be considered at COP6 (see UNEP/CBD/COP/6/12)
- Decision V/16. The decision on *Article 8(j) and related provisions* established the continuation of the *Ad Hoc Working Group on Article 8(j) and related provisions* and the adoption of a programme of work focusing on indigenous peoples participation. The decision recognised the principle of prior informed consent, the role of indigenous women, the advisory status of the International Indigenous Forum on Biodiversity and promotes the inclusion of indigenous delegates within official delegations. The report of the Second Meeting of the Ad Hoc Working Group on Article 8(j) in February 2002 will be submitted to COP6 (see UNEP/CBD/COP/6/7 for the report of the second meeting and also UNEP/CBD/COP/6/12).

- Decision V/17. The decision on *Education and Public Awareness* promotes the development of outreach activities of the Secretariat to raise awareness of biological diversity amongst all sectors of society including indigenous and local communities. The COP established a CBD-UNESCO Consultative Working Group on Experts on Biological Diversity, Education and Public Awareness which included indigenous peoples delegates and NGO participants. The draft programme of work developed by the Working Group of Experts will now be considered at COP6. This provides important opportunities for indigenous peoples and local communities to highlight issues such as the role of inter-cultural bilingual education programmes in the conservation of biodiversity (see UNEP/CBD/COP/6/13/ADD2).
- Decision V/18. The decision on *Impact Assessment, Liability and Redress* established the importance of the involvement of all stakeholders including indigenous and local communities in a participatory approach to all stages of the assessment process and the creation of appropriate mechanisms, such as committees, to secure participation. The decision then called for the collaboration of indigenous and local communities in SBSTTA's efforts to develop guidelines to incorporate biodiversity issues into legislation and processes concerned with strategic environmental assessments and calls for case studies. Drawing on this decision indigenous peoples organisations may wish to explore the creation of local environmental impact assessment committees to review the environmental impacts of proposed developments on their territories. Draft guidelines on cultural, environmental and social impact assessments will also be considered at the second meeting of the Ad Hoc Working Group on Article 8(j) and related provisions. Care will therefore be needed to ensure that progress made under Article 8(j) is reflected in the work under impact assessment at COP6 which will consider separate draft guidelines on impact assessment (see UNEP/CBD/COP/6/4). COP6 will also consider a separate report on Liability and Redress (see UNEP/CBD/COP/6/12/ADD1).
- Decision V/19. The decision on *National Reporting* adopted an agreed format for the reports and specified that the next national report was due by the 15th of May 2001 and from that point onwards at alternate COP meetings. The decision emphasises that national reports are to be prepared through a consultative process involving all stakeholders or information generated through a consultative process. The decision also decided to streamline and *harmonise* national reporting in collaboration with other biodiversity-related conventions and review progress at COP6. The decision invited parties to develop detailed thematic reports in one or more area including, Alien Species, Benefit Sharing, Forest Ecosystems.

Indigenous peoples organisations and support organisations may therefore wish to contact their relevant national focal points to identify what, if any, arrangements are in place for the consultation process upon which national reporting will be based, and to propose thematic areas for reports. National focal points can be located via <http://www.biodiv.org> or through the Ministry of the Environment (or equivalent). The Convention has also recently introduced a sophisticated online National Report Analyser that can be accessed through the CBD website under national reports.

National reports will be considered under Mechanisms for Implementation at COP6 (see UNEP/CBD/COP/6/13) and under Cooperation which includes proposals regarding the harmonisation of national reports with related processes (UNEP/CBD/COP/6/15).

- Decision V/20. The decision on the *Operations of the Convention* established that the COP will hold ordinary meetings every two years, encourages transparency in decision making, and calls for the development of a strategic plan and operational goals for the period 2002 to 2010 to be considered by COP6. The decision empowers SBSTTA to create ad hoc technical expert groups, calls for an improvement in the quality of scientific advice and decides to unify decisions on financial guidance. For indigenous peoples the most significant element of this decision is that paragraph 31 calls upon Parties to consider the involvement of indigenous and local communities, gender balance and a range of disciplines including traditional knowledge in the nomination of experts for inclusion within the roster of experts to the CBD.
- Decision V/21. Under the decision on *Cooperation* the CBD promoted; the strengthening of cooperation with the UNFCCC and Kyoto Protocol on issues including dry and sub-humid lands, forest biological diversity, coral reefs and incentive measures. The decision emphasised the need to push forward with the joint programme of work with the Ramsar Convention, where indigenous peoples have made significant advances, and proposes the incorporation of migratory species within the CBD work programme through collaboration with the Convention on Migratory Species. The decision proposed collaboration with the International Biodiversity Observation Year of Biodiversity and with the Millennium Ecosystem Assessment. The decision also recognised, and encouraged support for, the Global Biodiversity Forum in which indigenous peoples are important participants.

In considering this decision it is important to recognise that the CBD is increasingly building relationships with other international conventions such as the UNFCCC, CITES on endangered species, the United Nations Forum on Forests, and the Convention to Combat Desertification. This suggests that there will be a growing need for enhanced coordination between indigenous peoples and local community organisations with expertise in different international processes in order to ensure that the experience and gains made in one area can be brought to bear within related processes.

The issue of cooperation, including harmonisation of the implementation of international environmental agreements, reporting and relations with other Conventions will be considered at COP6 (see UNEP/CBD/COP/6/15).

- Decision V/22. The decision concerning the ***Budget of the programme of work for the biennium 2001-2002*** establishes a budget for regional workshops and meetings of the advisory committee of the Clearing House Mechanism, workshops concerning sustainable use and tourism, a meeting of the Panel of Experts on Access and Benefit Sharing in 2001 (US\$105,000), a meeting of the new Working Group on Access and Benefit Sharing in 2002 and of the Working Group on Article 8(j) (US\$480,700) in 2002. The draft budget for consideration by COP6 is available in document UNEP/CBD/COP/6/16/Add.1.
- Decision V/23. The decision on ***Dryland and Semi-arid Lands*** adopted a programme of work focusing on the identification of best management practices including indigenous knowledge, supporting local resource management and institution building, recognition of inter-community management, creating or strengthening institutions for land tenure and conflict resolution, combating poverty, equitable benefit sharing, case studies and collaboration with the Convention to Combat Desertification. This work programme will be of significant interest to indigenous peoples within dry and sub-humid lands. Progress in the implementation of the programme of work and relations with the Convention to Combat Desertification will be considered at COP6 (see UNEP/CBD/COP/6/11 and UNEP/CBD/COP/6/15).
- Decision V/24. The decision on ***Sustainable Use*** recognises the need to develop mechanisms to involve indigenous and local communities and to ensure that indigenous and local communities benefit from sustainable use. The decision calls for case studies and lessons learned with respect to sustainable use drawing on the experience of indigenous and local communities. During the year 2001 and 2002 a series of regional workshops were held on sustainable use. The expected outcomes of these workshops are a series of practical principles/guidelines on sustainable use for consideration by COP6 (see UNEP/CBD/COP/6/4). The issue of sustainable use is of vital concern to indigenous peoples and local communities but has so far been dominated by discussions of tourism. Sustainable use is an *objective* of the Convention and this is a key area in which progress needs to be made.
- Decision V/25. The decision on ***Biological Diversity and Tourism*** recognises the need for the full and effective participation of indigenous and local communities, their involvement in formulating strategies and plans, the role of traditional knowledge under 8(j), the role of indigenous and local communities in management and monitoring and assessment including cultural and spiritual aspects. The Annex to the decision contains a detailed assessment of the positive and negative aspects of tourism which recognises the negative impacts of tourism upon indigenous peoples lands, livelihoods, cultural practices and sacred sites. The decision calls for a series of workshops on sustainable use and tourism which will be of particular interest to indigenous peoples and local community organisations. In 2001 sustainable tourism was considered by SBSTTA7 and draft guidelines will be submitted to SBSTTA prior to COP7 (see UNEP/CBD/COP/6/4).

- Decision V/26. This decision established a new *Ad Hoc Working Group on Access and Benefit Sharing* and emphasised the need for the full and effective participation of indigenous peoples. The decision recognised the principle of Prior Informed Consent and established that the Expert Panel on Access and Benefit Sharing will continue its work. The first meeting of the Working Group took place in Bonn, Germany, in October 2001 during which the sixth meeting of the International Indigenous Forum on Biodiversity was convened. The Working Group developed draft guidelines (known as ‘Bonn Guidelines’) on Access and Benefit Sharing which will be considered at the second meeting of the Working Group on Article 8(j) and related provisions and by COP6. The Working Group also considered the issues of capacity-building and the role of intellectual property rights instruments. This is an important and sensitive area which will be considered in detail at COP6 (see UNEP/CBD/COP/6/6 and UNEP/CBD/COP/6/19)