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ON GOVERNANCE COMMENTARY

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Holding Difference: Indigenous Peoples, Local Communities, and the Future of Article 8(j) of the Convention on Biological Diversity

This commentary is organized into two parts. Part I distills five considerations for negotiators developing the modus operandi of the permanent Subsidiary Body on Article 8(j) (SB8J) of the Convention on Biological Diversity (CBD). Part II sets out the institutional history and reasoning from which those considerations follow.

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What Follows from Recognizing Difference?

The distinct rights and political status of Indigenous Peoples must be recognized. The institutional history of Article 8(j) of the CBD also shows that recognition of difference can coexist with shared political organizing and cooperation with local communities.

Over more than two decades of engagement with the Convention, Indigenous Peoples and local communities have built relationships, practices of constituency organizing, institutional knowledge, and a shared political space through which differently situated constituencies have worked together without requiring their rights or political identities to become the same.

The permanent Subsidiary Body on Article 8(j) and Other Provisions (Subsidiary Body, or SB8J) inherits this experience. As it develops arrangements for participation, seats, selection criteria, and representative roles, an important question is how new procedures can recognize differentiated rights while building on the constituency responsibility, relationships, and political cooperation that have developed around Article 8(j).

Holding difference, therefore, means creating institutional arrangements that preserve meaningful distinctions while sustaining the political space in which differently situated constituencies can organize and cooperate.

Part I. Five Considerations for Building the Article 8(j) Modus Operandi

The five considerations set out principles grounded in that history and identify questions for institutional design. Together, they ask how the permanent Subsidiary Body can build on Article 8(j)'s accumulated institutional experience while recognizing the differences that matter.

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1. Build from Article 8(j)'s History of Constituency Organizing

The permanent Subsidiary Body inherits more than formal procedures: it inherits an Article 8(j) practice in which Indigenous Peoples and local communities have held substantial responsibility for organizing their participation.

2. The International Indigenous Forum on Biodiversity (IIFB) Provides a Shared Political Caucus for Working Across Difference

The value of this shared space does not depend on perfect agreement. It gives Indigenous Peoples and local-community participants a place to work through differences, identify common priorities, and act together where they choose. It also provides political space for Indigenous Peoples from countries where their official recognition by the state remains contested or is absent from formal law. These relationships, regional practices, and forms of coordination are part of the institutional experience inherited by the permanent Subsidiary Body and can inform how participation develops.

3. Distinct Indigenous Rights Can Coexist with Shared Political Organizing

The distinct collective rights of Indigenous Peoples are recognized within the wider body of international law and human rights standards, including rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Those rights remain relevant in CBD processes in which Indigenous Peoples and local communities organize and negotiate together; shared political organizing does not make the rights or legal status of the groups involved identical. Equally, distinct legal status does not negate protections that the Convention accords to both.

That distinction does not dictate one institutional model. It leaves open a design question: how might differentiated rights be recognized while enabling effective participation and political cooperation within the permanent Subsidiary Body? The same attention to specificity is needed for local communities. The Convention's concern is substantive, not just geographic. Local communities have a particular place within Article 8(j), even though their legal status and rights are not thereby made equivalent to those of Indigenous Peoples.

4. Selection Rules Should Build from Established Practices of Constituency Choice

Procedures for representation can serve important purposes, including transparency and accountability. But the political act of choosing a representative is not the same as the administrative steps through which that person enters the work of the Subsidiary Body. For Indigenous Peoples, representative choice has a clear rights basis: Article 18 of UNDRIP recognizes participation through representatives chosen by Indigenous Peoples themselves in accordance with their own procedures.

The design question is how Party leadership of the intergovernmental body can coexist with constituency responsibility for choosing representatives. Clearer procedures should build from, rather than inadvertently displace, the substantial responsibility that Indigenous Peoples and local communities have exercised in organizing their participation.

Selection arrangements should not presume that recognition of differentiated rights requires separate or parallel political constituencies. They should accommodate different forms of constituency organization and representative choice.

The practical question is whether the resulting arrangements support representative participation without creating avoidable disputes over eligibility, recognition, or who may speak for a constituency.

5. Regional Histories of Recognition Can Affect How Institutional Arrangements Operate

The relationship between Indigenous Peoples and national political and legal systems varies considerably across regions. In Southeast Asia and other parts of the world, peoples may participate internationally as Indigenous Peoples while being recognized domestically through different constitutional, legal, or customary categories.

These differences concern systems of recognition, not the historical existence of the peoples, institutions, and political relationships themselves.

For the permanent Subsidiary Body, this means that the same selection arrangement may operate differently across regions. Processes that rely heavily on national recognition, registration, or Party determination may have different effects where states use different legal or administrative categories.

Part II. Institutional History and the Argument Behind the Five Considerations

The establishment of a permanent Subsidiary Body on Article 8(j) under the CBD creates an opportunity to consider how more than two decades of participation, constituency organizing, and institutional learning from the former Working Group might inform a permanent architecture.

The permanent Subsidiary Body inherits substantial institutional experience developed through Article 8(j). Indigenous Peoples and local communities have built relationships, practices of constituency organizing, and forms of political coordination alongside the procedures developed by the Convention. Shared negotiating language, differentiated rights, and constituency organizing have developed alongside one another, while the IIFB has provided a political caucus through which Indigenous Peoples and local communities have organized their engagement with the Convention.

The argument that follows begins from what this history has made possible. CBD practice shows that differentiated rights can coexist with shared political participation. The question for the permanent body is how new institutional arrangements can build on that experience while clarifying participation, representative roles, and the respective responsibilities of constituencies, Parties, and the Bureau. The analysis therefore focuses on the effects of different arrangements rather than assuming one model in advance.

Constituency Organizing and the Political Space of the IIFB: Considerations 1 and 2

The political history surrounding Article 8(j) predates the establishment of its Working Group. The IIFB was formed at COP3 in Buenos Aires in 1996 as a political caucus and convening space for engagement with the CBD. Its development and the early institutional history of Article 8(j) became closely intertwined: Article 8(j) and traditional knowledge were central to IIFB organizing, while the IIFB became an increasingly established part of participation around the Working Group and the wider Convention.

Through the IIFB and its regional processes, participants have coordinated negotiating positions, identified representatives for specific institutional roles, and organized interventions across CBD meetings. Repeated participation has also built relationships, negotiating practice, and institutional memory. These functions have not required the rights, legal status, or political identities of Indigenous Peoples and local communities to be treated as identical.

The value of the IIFB is not that it removes disagreement. It provides a space in which Indigenous Peoples and local community participants can work through differences, identify common advocacy priorities, and coordinate where they choose. It also provides political space for Indigenous Peoples from countries where official recognition by the state remains contested or absent from formal law. Local-community participation has developed within this shared history, while Indigenous organizing played a central role in establishing and sustaining the political presence around Article 8(j).

The institutional foundations for constituency organizing are particularly clear in the establishment of the Working Group itself. At COP4 in 1998, Parties encouraged Indigenous and local communities to participate and "to identify the process to select their participants," taking into account available funds, geographical balance, and the effective functioning of the Working Group (Decision IV/9, para. 5). Paragraph 5 is cited here as historical evidence concerning participant selection in the Working Group, rather than as a current rule assigning selection authority over every representative office.

The same decision asked Parties, according to their capabilities, to facilitate representation and provide financial and logistical support for the active participation of Indigenous and local communities. The decision therefore envisaged roles for both Parties and communities, while locating the identification of the participant-selection process with indigenous and local communities themselves.

At COP5 in 2000, Decision V/16 endorsed the Programme of Work on Article 8(j), emphasized full and effective participation and expressly recognized the role played by the IIFB since COP3. Parties and Governments were invited to support IIFB participation in advising the COP on implementation of Article 8(j) and related provisions.

Regional and constituency practices subsequently developed within this institutional space, including processes for identifying participants and Friends of the Bureau. These practices have evolved over time, shaped by participation, available capacity, continuity, institutional memory, and changing circumstances. Their history forms part of the institutional experience now available to the permanent Subsidiary Body.

This experience also points to a way of understanding the relationship between distinction and cooperation. As Jannie Lasimbang puts it, "We seek distinction without division, self-determination without isolation, and solidarity without requiring uniformity." Her formulation captures the institutional possibility at the centre of Article 8(j): recognizing the distinct rights and political status of Indigenous Peoples need not require separate political spaces, while cooperation with local communities need not collapse those differences.

Shared Language and Differentiated Rights: Consideration 3

Article 8(j) refers to "indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity". Over subsequent decades, Indigenous Peoples and local communities have appeared together throughout CBD negotiations on traditional knowledge, conservation, sustainable use, benefit-sharing, and participation. Their appearance together within the Convention has not made their legal status identical. At the same time, distinct legal status does not imply mutually exclusive protections: Decision V/16 expressly affirms the full and effective participation of both Indigenous Peoples and local communities. Indigenous Peoples hold distinct collective rights within the wider body of international law, while the CBD has developed its own terminology and practices for addressing Indigenous Peoples and local communities within the Convention.

The CBD's negotiating history illustrates how shared political terminology can be adopted without changing the Convention's legal meaning. At COP12 in 2014, Parties decided to use the terminology "indigenous peoples and local communities" in future decisions and secondary documents. They expressly provided that this would not affect the legal

meaning of Article 8(j) and related provisions or imply any change in the rights or obligations of Parties under the Convention. Decision XII/12, section F also addressed whether the changed terminology could constitute subsequent agreement or subsequent practice for specified purposes of treaty interpretation.

The decision followed consideration of informal advice from the United Nations Office of Legal Affairs on the legal implications of changing the terminology used in COP decisions. The advice was expressly presented as non-definitive (UNEP/CBD/COP/12/5/Add.1, para. 8). The resulting decision preserves the Convention's existing legal meaning; it does not itself establish the distinct rights or legal status of Indigenous Peoples and local communities. The distinct rights of Indigenous Peoples relevant to representation have a separate basis within the wider body of international human rights law and standards, including rights affirmed in Article 18 of UNDRIP.

Recent human-rights guidance reflects a similar distinction. In her 2026 report on nature conservation and cultural rights, the Special Rapporteur notes that peasants, people of African descent, fisherfolk, pastoralists, and other communities are "often gathered under the banner of 'local communities,'" while separately emphasizing the specific protection granted under international law to minorities and Indigenous Peoples (Xanthaki 2026, paras. 47, 51). The report therefore illustrates how shared conservation terminology can encompass differently situated groups without rendering their legal status or rights identical.

For the permanent Subsidiary Body, these legal sources and institutional practices support the coexistence of legal differentiation and political cooperation. Recognizing the distinct collective rights of Indigenous Peoples may have implications for governance arrangements, but it does not by itself dictate separate political channels. The question is what different arrangements would do and which purposes they would serve.

The distinct rights and status of Indigenous Peoples provide an important starting point. A further institutional question concerns how decisions about participation and representation are made as arrangements become more formal.

Selection Rules, Representative Legitimacy, and Institutional Roles: Consideration 4

Procedures for representation serve multiple institutional purposes. But criteria do not apply themselves. Any arrangement that defines who participates must also determine how those criteria are interpreted and which actors carry out different parts of the process.

A first distinction is between representative choice and institutional administration. For Indigenous Peoples, Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples recognizes the right to participate in decision-making through representatives chosen by themselves in accordance with their own procedures. Article 8(j) has a related, though not legally identical, institutional history for the shared constituency: Decision IV/9 encouraged Indigenous and local communities to identify the process for selecting their participants, while Parties were asked to facilitate and support participation.

Decision 16/5 draws on an existing institutional architecture while requiring further choices about its design. It requires consideration of the full recognition of the body's operations as Party-led processes, alongside full and effective participation and the criteria and process for selecting Friends of the Bureau representatives from the seven sociocultural regions, including the roles of Parties and the Bureau. It also applies, mutatis mutandis, SBSTTA's consolidated modus operandi and the established procedures and practices of the former Working Group on an interim basis. These provisions place Party leadership and constituency participation within the same design task (Decision 16/5, paras. 3–4).

Party leadership of the intergovernmental body can coexist with constituency responsibility for choosing representatives. A constituency may select its nominee, while the COP or Bureau performs the formal election, invitation or confirmation required for the particular role. The procedures should make clear who chooses the representative, who confirms their institutional role and who administers participation. They should also clarify whether endorsement, registration or other requirements give external actors power to reject or override a constituency's choice. Clarifying Party and Bureau roles should therefore preserve the distinction between administering participation and determining who may speak on a constituency's behalf.

The current modus-operandi text shows why this distinction matters. For the Indigenous Peoples and local communities co-chair, Recommendation 1/2 retains bracketed alternatives: nominations through their own governance structures, representatives and organizations, or formulations involving Party endorsement and official or national registration. For Friends of the Bureau, it separately retains an option for selection procedures and structures determined by each sociocultural region (CBD/SB8J/REC/1/2). None of these options is yet agreed. They would, however, locate representative choice and institutional confirmation differently.

Recognition of differentiated rights and contributions does not, by itself, determine how political constituencies should be organized or represented. Article 8(j) has accommodated Indigenous Peoples and local communities within a shared political space without prescribing separate representative structures. As the Subsidiary Body develops more formal procedures, the question is how those arrangements can recognize differences in rights, histories and forms of organization without predetermining constituency boundaries or displacing established practices of representative choice.

The question arises differently for local communities. Article 8(j) does not use "local communities" as a synonym for everyone living in a place; it refers to Indigenous and local communities "embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity." Decision 14/13 also records that the Convention does not define "indigenous peoples and local communities." The legal basis is therefore not identical to that of Indigenous Peoples, but local communities nonetheless have a substantive institutional place within Article 8(j).

Decision XI/14, section B, paras. 17–21 addresses local-community participation; para. 19 specifically takes note of characteristics developed by the Expert Group Meeting of Local Communities Representatives as potentially useful advice in identifying local communities within the mandate of the Convention. This guidance coexists with the absence of a formal definition.

Neither the treaty formulation nor the voluntary glossary provides a ready-made administrative test for deciding who may participate as a local community representative. That absence does not itself determine where representative legitimacy should be assessed. It instead makes the institutional question more visible: criteria may operate through constituency processes, through external institutions, or through combinations of roles, with different consequences for who is recognized as a representative.

The regional variation described below is therefore directly relevant to selection design. Procedures that depend heavily on a particular form of national recognition, registration, or official status may operate differently across the seven sociocultural regions. A workable modus operandi needs to accommodate that institutional diversity without creating avoidable uncertainty over eligibility, representation or participation.

Southeast Asia and the Politics of Recognition: Consideration 5

The relationship between Indigenous Peoples and national political and legal systems varies considerably across regions. In Southeast Asia and elsewhere, peoples may participate internationally as Indigenous Peoples while being recognized domestically through different constitutional, legal or customary categories. They may understand themselves through their own names, institutions, territories, kinship relations, adat, and political histories, while states may use different terminology or contest the applicability of the international category "Indigenous Peoples."

Malaysia contains several of these complexities within a single federation. No single term in the Federal Constitution corresponds to the international category "Indigenous Peoples." Instead, constitutional provisions, state laws, and government practice use different terms for Indigenous Peoples in Peninsular Malaysia, Sabah, and Sarawak, each with its own legal, historical, and political lineage. Beneath these categories, Indigenous Peoples have long understood themselves through their own names, communities, customary institutions, territories, kinship relations, and adat.

The late Dr Patau Rubis, a physician and senior public-health official, Bidayuh political leader, Native Customary Rights advocate and Pinyigar from Sarawak, captured something of this history when he said, "We knew who we were before we called ourselves Orang Asal [Indigenous Peoples]." These differences concern systems of recognition, not the historical existence of the peoples, institutions, and political relationships themselves.

For Article 8(j), the institutional implication concerns participation. Indigenous Peoples and local communities encounter different systems of legal recognition and administrative classification across countries and regions. The same selection arrangement may therefore have different effects across the seven sociocultural regions, particularly where it relies heavily on national recognition, registration or official status. Regional and constituency processes form part of the institutional experience through which these differences have been navigated.

Holding Difference

The permanent Subsidiary Body can build on regional and constituency experience while addressing questions of breadth of participation, continuity, and capacity. Shared participation does not by itself establish that every constituency has had adequate voice or influence. Preserving the value of the IIFB therefore includes examining how existing arrangements accommodate new participation and address barriers to effective voice. The practical task is to draw on accumulated experience while refining procedures in response to regional circumstances and the demands of representative participation.

Not every form of difference raises the same institutional question. Indigenous Peoples and local communities have a specific legal, political, and institutional history within Article 8(j); women and youth are cross-cutting groups within both. Strengthening the participation of women and youth therefore does not necessarily require treating all four as parallel constituencies or assigning them identical representative

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On Positionality

This commentary draws not only on the formal decisions and institutional history of the Convention, but also on the participation of June Rubis, Lucy Mulenkei, Jennifer Tauli-Corpuz, and Jannie Lasimbang in CBD and IIFB processes across different periods and roles, collectively spanning many years of Article 8(j) engagement.

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These reflections do not purport to represent an official position of the IIFB, any of its constituent organizations, or AICHR. Any interpretations or errors remain those of the authors.

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