



**Ways for Indigenous Peoples' groups to advance adaptation concerns
and solutions through international fora**

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EXECUTIVE SUMMARY

The paper focuses on the UN Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol. It also addresses the UN Convention on Biological Diversity (CBD), the World Intellectual Property Organization (WIPO) and the UNESCO World Heritage Convention.

For each agreement (in the case of WIPO, organisation), the paper provides: a summary overview; a brief description of the operational structure; a section on climate change, adaptation and Indigenous Peoples in the context of the agreement or organisation; a section on the formal rules for observer status; a section on avenues for input; and a section on strategic considerations.

The paper highlights opportunities for engagement by Indigenous Peoples, and also challenges, noting that preparations for the Copenhagen Climate Summit in December 2009 will involve intense preparations.

1. INTRODUCTION

All over the world Indigenous Peoples are affected by the impacts of climate change. They often live close to the land and depend on its physical resources and richness for their livelihoods and well-being. Their environments are increasingly threatened by, for example, desertification, sea level rise, extreme weather events, and changes in wildlife health, migration patterns and abundance. At the same time, there is evidence that some current attempts to tackle climate change may also have disastrous effects on indigenous groups and communities.

At the seventh session of the UN Permanent Forum on Indigenous Issues delegates raised violations of Indigenous Peoples' human, social, economic and environmental rights related to climate change adaptation and mitigation measures. Indigenous Peoples have been forced off their lands by Clean Development Mechanism (CDM) and biofuel projects, whilst their access to forests is threatened by projects on Reducing Emissions from Deforestation and Degradation (REDD).¹ The Permanent Forum recommended that strategies for mitigation and adaptation should be holistic, taking into account not only the ecological dimensions of climate change, but also social impacts, human rights, equity and environmental justice.²

The UN Declaration on the Rights of Indigenous Peoples adopted by the UN General Assembly on 13 September 2007 emphasises the role of the UN and nation states in promoting and protecting the rights of Indigenous Peoples. The Declaration is a powerful policy document, whose political significance and long term implications cannot be understated. According to the Declaration, states are to consult with the Indigenous Peoples concerned in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources.³

Indigenous Peoples have the right not to be subjected to forced assimilation or destruction of their culture. States shall provide effective mechanisms to prevent and offer redress for any actions that have the effect of depriving Indigenous Peoples of their integrity as distinct peoples, their cultural values or ethnic identities, as well as any action that has the effect of dispossessing them of their lands, territories or resources.⁴

However, the overarching strategies and measures to combat climate change and address its impacts are mainly negotiated between national governments. Although there is much that Indigenous Peoples can contribute to the development of law and policy on climate change adaptation, they are excluded from decision-making processes that directly affect their communities. In 2008 the Permanent Forum on Indigenous Issues, at its seventh session, recommended that the UN Framework Convention on Climate Change (UNFCCC) and relevant parties develop mechanisms for Indigenous Peoples' participation in the international dialogue on climate change, particularly the negotiations for the next Kyoto Protocol commitment period.⁵

¹ Economic and Social Council, Department of Public Information, 7th Session of the Permanent Forum on Indigenous Issues 3rd and 4th Meetings on 22 April 2008, *Indigenous Peoples must be included in global negotiations aimed at combating climate change*, HR/4946 available at www.un.org/News/Press/docs/2008/hr4946.doc.htm

² Report on the seventh session (21 April-2 May 2008) of United Nations Permanent Forum on Indigenous Issues, Economic and Social Council, Official Records, 2008, Supplement No. 23, para.6.

³ United Nations Declaration on the Rights of Indigenous Peoples (UN Doc. A/RES/61/295).

⁴ Ibid., Art 8.

⁵ See report of the seventh session, n.2 above.

A formal mechanism that allows civil society organisations a limited degree of participation in international negotiations is to grant them **observer status**. The purpose of the observer status is usually to enable organisations to follow discussions in their area of interest and expertise. Without the right to vote, they are allowed to attend meetings and make oral interventions. To be accepted as observers, non-governmental organisations (NGOs) have to conform to specific criteria and undergo a formal accreditation process. Criteria and processes vary significantly between the different international organisations and negotiation processes.

International negotiations also rely heavily on reports, studies and other documents prepared by an administrative body (usually *the secretariat*), experts or participating parties. During the drafting process there often is a stage when observer organisation and other groups are requested to comment and to contribute their knowledge and experience. Other opportunities to make **written submissions** can be surveys, the collection of case studies and examples of good practice, or public consultations.

In addition, there is an array of **informal ways** to influence international negotiation processes and decision-makers. This includes lobbying of delegates, holding side events and dissemination of materials. Groups which aim to influence outcomes might circulate proposed draft decisions and agreements or provide training and assistance to delegates. By increasing public awareness of the negotiation process through media and other ways of communication to the public at large they also increase its transparency.

2 THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC) AND ITS KYOTO PROTOCOL

2.1 Summary overview

The 1992 UN Framework Convention on Climate Change (UNFCCC) encourages developed countries to return emissions of greenhouse gases to 1990 levels. The Kyoto Protocol sets binding targets for developed countries to reduce their greenhouse gas emissions by around 5.2 % against 1990 levels over the first 'commitment period' 2008-2012.⁶ The US, a major greenhouse gas emitter, has not ratified the Kyoto Protocol, but is a party to the UNFCCC.⁷

Current negotiations are focusing on reaching agreement, in December 2009 in Copenhagen, Denmark, on new targets for developed countries after the current commitment period under the Kyoto Protocol runs out in 2012 and agreement on enhanced cooperation for parties under the UNFCCC.

The UNFCCC and the Kyoto Protocol do not specifically address the concerns of Indigenous Peoples, but they are the most important international agreements on climate change and adaptation and there are opportunities to influence them.

The UNFCCC, which recognises that developed countries bear a historical responsibility for climate change, requires all parties to prepare inventories of greenhouse gas emissions and to put in place national programmes for mitigation, and to take measures to facilitate adaptation.⁸ Developed countries are to provide financial assistance and technology to developing countries.

The Kyoto Protocol, which has been in force since 2005, focuses on domestic action, but its market-based 'flexible mechanisms' play an important role. Emissions trading⁹ allows countries with commitments to trade their 'assigned amount units' (AAUs) and other units, such as emissions reduction units (ERUs) derived from Joint Implementation projects¹⁰.

The Clean Development Mechanism (CDM)¹¹ allows parties to implement emissions-reduction projects in developing countries and to obtain certified emission reductions (CERs), which count towards reduction targets under the Kyoto Protocol. CDM projects are meant to contribute to sustainable development and to be 'additional', i.e. go beyond what would have happened anyway, without the project. However, the CDM has been criticised as a loophole in the Kyoto Protocol, which allows developed countries to buy reductions from developing countries, which do not have emissions reduction targets. The CDM is overseen by the CDM Executive Board. Designated National Authorities (DNAs) approve projects. There are concerns about the CDM's

⁶ Kyoto Protocol, Art. 3.

⁷ The objective of the UNFCCC, and also its Kyoto Protocol, is to achieve: '.....stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner', Art.2.

⁸ UNFCCC, Arts. 4.1 (a) and (b).

⁹ Kyoto Protocol, Art.17.

¹⁰ Ibid., Art.6.

¹¹ Ibid, Art.12.

institutional structure and rules.¹² Many NGOs and indigenous groups have been critical of projects allowed under the CDM, in particular tree plantations.¹³ At the time of writing, there are concerns about the approval process for the Chan 75 hydroelectric project in La Amistad Biosphere Reserve in Bocas del Toro, Panama, and the project's impacts on the indigenous Ngobe community.¹⁴

Adaptation issues are considered under section 2.3 on 'Climate change, adaptation and Indigenous Peoples'.

2.2 Operational structure

The Conference of the Parties (COP) is the decision-making body of the UNFCCC. It also serves as the meeting of the Parties (CMP) to the Kyoto Protocol. The UNFCCC Secretariat, which deals with administrative matters, is based in Bonn, Germany.

The COP and the CMP have subsidiary bodies and working groups, which include:

The Subsidiary Body for Scientific and Technological Advice (SBSTA). SBSTA provides the COP with information and advice on scientific and technological matters.¹⁵ It performs the same functions for the Kyoto Protocol.

The Subsidiary Body for Implementation (SBI). SBI assists the COP in the assessment and review of the effective implementation of the UNFCCC.¹⁶ It performs the same functions for the Kyoto Protocol.

The Ad hoc Working Group on further commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) is focusing on the following issues:

- Analysis of means to reach Annex I emissions reduction targets and identification of ways to enhance their effectiveness and contribution to sustainable development. This includes:
 - Emissions trading and the project-based mechanisms
 - LULUCF (land-use, land-use change and forestry)
 - Greenhouse gases, sectors and source categories
 - Possible approaches targeting sectoral emissions
- Consideration of relevant methodological issues¹⁷

The Ad hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) is focusing on:

- A shared vision for long-term cooperative action
- Enhanced national/international action on mitigation of climate change
- Enhanced action on adaptation
- Enhanced action on technology development and transfer to support action on mitigation and adaptation

¹² See for example CAN CDM Position Paper for COP13/COPMOP 3, Bali 2007, CAN International, available at <http://www.climatenetwork.org/climate-change-basics/by-meeting/cop-13-bali-december-2007/071207CANDCDMPositionPaperFinal.pdf>

¹³ See www.sinkswatch.org regarding the Plantar Project in Brazil.

¹⁴ See for example Bank Information Center at <http://www.bicusa.org/en/Article.3861.aspx>

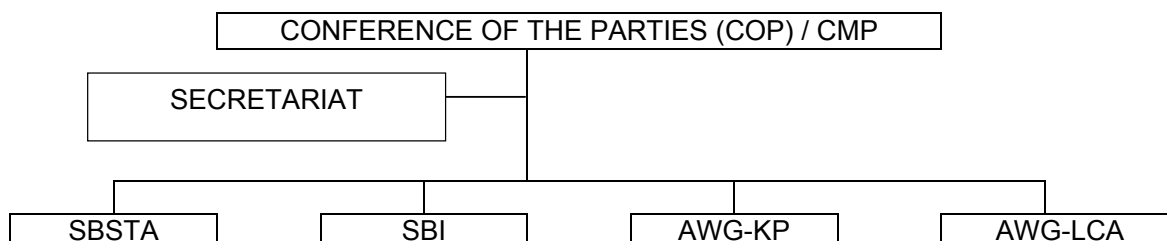
¹⁵ UNFCCC, Art.9.

¹⁶ UNFCCC, Art. 10.

¹⁷ Provisional Agenda and Annotations, Note by the Executive Secretary, Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP), Sixth session, 21–27 August 2008, Accra, Ghana and 1-12 December 2008, Poznan, Poland, (UN Doc. FCCC/KP/AWG/2008/4 30 June 2008).

- Enhanced action on the provision of financial resources and investment to support action on mitigation and adaptation and technology cooperation¹⁸

The table below provides an overview of the structure:



Workshops to deepen understanding of certain issues will take place in the preparations for Copenhagen. For example, in connection with the AWG-LCA meeting in Accra, Ghana (21-27 August 2008), a workshop on Reducing Emissions from Deforestation and Degradation (REDD) will take place.¹⁹

These bodies will prepare decisions to be taken at the Fifteenth Session of the Conference of the Parties/Fifth Meeting of the Parties (COP 15/CMP 5), which will take place in Copenhagen from 30 November -11 December 2009. An important event will be COP 14/CMP 4, which meets in Poznan, Poland from 1-12 December 2008. An up-to-date calendar of events can be found at the UNFCCC website www.unfccc.int.

Further information about the UNFCCC and Kyoto Protocol can be found at the UNFCCC Secretariat website www.unfccc.int or for example at the Climate Action Network website www.climatenetwork.org, or www.climate-l.org, run by the International Institute for Sustainable Development.

2.3 Climate change, adaptation and Indigenous Peoples

Key issues in the UNFCCC negotiations include: whether targets should be put in place for some developing countries; financing; the second review of protocol under Art.9; marine and aviation emissions, currently outside the international climate regime; land-use, land-use change and forestry (LULUCF), where new rules need to be put in place for the second commitment period; and adaptation.

According to Article 4.8 of the UNFCCC, parties are to give full consideration to actions needed to meet the specific needs and concerns of developing country parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures. This includes actions related to funding, insurance and technology transfer. Article 4.9 directs parties to take full account of the specific needs and special situations of Least Developed Countries (LDCs) in their actions regarding funding and

¹⁸ Provisional Agenda and Annotations, Note by the Executive Secretary, Ad Hoc Working Group on Long-Term Cooperative Action under the Convention (AWGLCA), Third session, 21-27 August 2008, Accra, Ghana (UN Doc. FCCC/AWGLCA/2008/9 21 July 2008).

¹⁹ UNFCCC workshop on 'Policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries', Accra, Ghana, August 2008.

transfer of technology. National Adaptation Programmes of Action (NAPAs) are a mechanism under the UNFCCC to identify priority adaptation activities in LDCs.

According to Article 4.5, developed countries are to promote and finance transfer and access to environmentally sound technologies.²⁰ At sessions of the AWG-LCA in March/April (Bonn), June (Bangkok) and August (Accra) 2008, several delegations (e.g. India, Brazil and Sri Lanka) underlined the importance of traditional knowledge. They emphasised that in order to avoid the dumping of obsolete technologies no longer used in developed countries, technology transfer had to focus on technologies that could be harmonised with the traditional knowledge and practices of developing countries. A workshop will take place, during the next AWG-LCA session, on 'cooperation on research and development of current, new and innovative technology, including win-win solutions'.

Parties generally agree that the need for financial resources clearly exceeds the funds currently available under the UNFCCC and Kyoto Protocol, but there is a wide range of opinions on how to raise additional funds. Developed countries, such as the US and the EU Member States, usually highlight the importance of private sector investment and market mechanisms, while most developing countries underline the need for additional public funding from developed countries.

According to Article 4.4 of the UNFCCC, developed countries are to assist developing countries that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects. Three funds relevant to adaptation have been established under the UNFCCC and the Kyoto Protocol: the Special Climate Change Fund, the Least Developed Countries (LDC) Fund and the Adaptation Fund.²¹

The **Adaptation Fund** is particularly interesting, as it is funded by a 2 % share of the proceeds of the CDM. Developing country parties that are particularly vulnerable to the adverse effects of climate change are eligible for funding. The Adaptation Fund will fund concrete country-driven adaptation projects. There are tensions between the Adaptation Fund Board and the Global Environment Facility (GEF), which provides the Secretariat on an interim basis, which reflect tensions between developed and developing countries regarding 'ownership' of the Adaptation Fund.

According to Article 2.3 of the Kyoto Protocol developed countries are to implement policies and measures in a way that minimises adverse effects on other parties, especially those mentioned in Articles 4.8 and 4.9. Article 3.14 of the Kyoto Protocol directs developed countries to achieve their emissions targets in a way that minimises adverse social, environmental and economic impacts on developing countries.²²

The **Nairobi Work Programme on impacts, vulnerability and adaptation to climate change** aims to assist parties to improve their understanding and assessment of impacts, vulnerability and adaptation, and to make informed decisions about practical adaptation actions. It has nine main work areas:

1. Methods and tools
2. Data and observations
3. Climate modelling, scenarios and downscaling

²⁰ Art. 4.5, UNFCCC.

²¹ For further information, see the adaptation pages at the UNFCCC website at

<http://unfccc.int/adaptation/items/4159.php>

²² See text of Kyoto Protocol, available at www.unfccc.int for the full text of these articles.

4. Climate related risks and extreme events
5. Socio-economic information
6. Adaptation planning and practices
7. Research
8. Technologies for adaptation
9. Economic diversification

A second phase of work programme activities was recently agreed at SBSTA 28 in June 2008.²³ The Nairobi Work Programme is meant to be implemented by parties, intergovernmental organisation, NGOs, communities and other stakeholders. The adaptation pages of the UNFCCC website list ways in which stakeholders can contribute to the Nairobi Work Programme. For example, organisations are invited to make 'action pledges', which are a public commitment to work towards Nairobi Work Programme objectives. To participate in the process, organisations are encouraged to email the UNFCCC Secretariat at nwp@unfccc.int and to nominate a Nairobi Work Programme focal point.²⁴

Upcoming UNFCCC events will include several opportunities of potential relevance to Indigenous Peoples. Several technical SBSTA **workshops** are planned:

- A workshop on increasing economic resilience and reducing reliance on vulnerable economic sectors; and a workshop on integrating practices, tools and systems for climate risk assessment, management and disaster risk reduction strategies into national policies and programmes (both to be held before SBSTA 30 in May/June 2009);
- A workshop on advancing integration of various approaches to adaptation planning, including local and community-based adaptation (Before SBSTA 31, which will be held in connection with COP15/CMP 5); and
- A workshop on costs and benefits of adaptation options; and a workshop on how regional centres and networks can collaborate (to be held before SBSTA 32 post-COP15/CMP5).²⁵

A workshop will take place during AWG-LCA in December 2008 on risk management and risk reduction strategies, including risk sharing and transfer mechanisms such as insurance.

SBSTA 29, which meets in December 2008, is to consider the possible need for a **group of experts** to be established under the Nairobi Work Programme on impacts, vulnerability and adaptation to climate change.²⁶

An important opportunity is an **assessment of implementation of Article 4.8** on adaptation and the impact of response measures and related decisions 5/CP.7 and 1.CP10, which will take place at COP 14/CMP 4 in Poznan, Poland, in December 2008. SBI has encouraged organisations, institutions, experts and communities to involve themselves in implementation of Article 4.8 related activities.²⁷

²³ See Report of the Subsidiary Body for Scientific and Technological Advice on its twenty-eighth session, held in Bonn from 4-13 June 2008 (UN Doc. FCCC/SBSTA/2008/06 24 July 2008).

²⁴ The adaptation pages at the UNFCCC website provide further information about the Nairobi Work Programme and related activities, n. 17 above.

²⁵ N.19 above.

²⁶ Ibid.

²⁷ Report of the Subsidiary Body for Implementation on its twenty-eighth session, held in Bonn from 4-13 June 2008, Advance Version (UN Doc. FCCC/SBI/2008/8 11 July 2008), paras. 36-38.

Another potentially important future opportunity is a planned informal meeting of representatives from parties, organisations and experts, to be held before SBSTA 33 to consider the outcomes of Nairobi Work Programme activities. This will take place after COP15/CMP5 in Copenhagen.

As regards Kyoto Protocol Articles 2.3 and 3.14, there has been limited progress due to procedural disagreements, but a compromise was reached at SBSTA and SBI28 in Bonn in June 2008 to consider both issues in a joint contact group (subsidiary negotiating group) in the future.

The possibility of including '**Reducing Emissions from Deforestation and Degradation (REDD)**' in the climate regime has drawn strong interest from a wide range of countries since Papua New Guinea and Costa Rica, supported by a group of other countries, proposed this at COP11/CMP.1 in 2005.²⁸ The issue is currently being considered in SBSTA and the AWG-LCA, with an expectation that it will become part of a deal to be agreed at COP15/CMP in Copenhagen.

An agreement on REDD could address the estimated approx. 20 % of annual global greenhouse gas emissions from tropical deforestation and could generate a considerable amount of funding for developing countries, including potentially, funding for forest-dependent communities. Many see REDD as an important opportunity to strengthen forest conservation and sustainable use.²⁹ There is strong political momentum behind the REDD proposal.

However, inclusion of REDD in the climate regime brings with it considerable challenges, such as technical difficulties related to monitoring and verification and the risk of 'leakage' or displacement, i.e. deforestation curtailed in one area moving to another area. Even with national baselines, which avoid some of the problems associated with a project-based approach, there is a risk of international leakage. Weak forest governance is an enormous challenge. Most importantly, the proposed inclusion of REDD has raised great concerns among indigenous groups.

A preambular paragraph to Decision 2/CP.13 on this issue from COP 13 in Bali recognises that in addressing emissions reductions from deforestation, the needs of local and indigenous communities should be addressed. REDD could bring financial and other benefits to indigenous communities. However, REDD risks reinforcing a top-down approach to forest management and encouraging encroachment on indigenous lands and territories and human rights violations. The UN Declaration on the Rights of Indigenous Peoples is of direct relevance to the REDD debate. For example, the development of REDD schemes risks creating further pressures on the principle of free, prior and informed consent.

'...the current framework for REDD is not supported by most indigenous peoples.....According to the right to self-determination and the principle of free, prior and informed consent, indigenous peoples must not be excluded, and should be centrally involved and benefit from forest policies and programs at all levels'.³⁰

²⁸ More information about the initiative can be found at www.rainforestcoalition.org

²⁹ See for example Message of the Executive Secretary, Dr. Ahmed Djoghlaif, on the occasion of the Technical Workshop on Protected Areas in the Amazon, 14-16 July 2008, Colombia, at <http://www.cbd.int/doc/speech/2008/sp-2008-07-14-pa-en.pdf>

³⁰ Statement by Victoria Tauli-Corpuz, Chair UNPFII, 23 May 2008, Ninth Conference of the Parties to the Convention on Biological Diversity, Bonn, Germany.

The World Bank has positioned itself as a main player on REDD, with the launch of the Forest Carbon Partnership Facility (FCPF) to support REDD activities. Critics have questioned this in light of the World Bank's role in funding projects that have increased deforestation.³¹

The World Bank's own consultations with Indigenous Peoples have noted several areas of concern, such as the risk of governments promoting forest conservation without respecting traditional land rights, and the risk of indigenous communities being excluded from allocation of financial benefits derived from REDD. The consultations have also identified a need for information and training to enable Indigenous Peoples to participate in the complicated debates about REDD.³²

2.4 Observer Status

Non-governmental organisations (NGOs), including Indigenous Peoples' organisations, can obtain formal observer status with the UNFCCC.³³ More than 750 NGOs are currently admitted as observers.

Although their access to the negotiations is limited to that of observers, Indigenous Peoples play an active role at UNFCCC sessions, frequently drawing media attention. They coordinate strategies, make statements on agenda items and issue Declarations.³⁴

Observers may participate in the proceedings in matters of direct concern to them, unless a third of the parties present object, but they have no right to vote. Observers can participate in Conferences of the Parties (COPs), Meetings of the Parties (CMPs) and subsidiary body meetings. At open-ended contact groups (groups convened during negotiating sessions to deal with a specific issue) NGOs may be invited as observers unless one third of parties present at the setting up of the group object.³⁵ NGOs frequently make oral statements to the COP and subsidiary bodies. NGOs are divided into five loose constituencies, which have a focal point for contacts with the Secretariat and which sometimes make joint statements. Indigenous Peoples Organisations form one constituency.

To apply for observer status, NGOs need to send the documents below to the UNFCCC Secretariat:

- Letter of application from the organisation
- Copies of official documents showing the mandate, scope and governing structure of the organisation, such as the charter/statutes/constitution/by-laws or articles of association
- Evidence of the non-profit and/or tax-exempt status of the organisation
- Information on the activities undertaken by the organisation that show its competence in matters relating to the UNFCCC

³¹ See 'The Forest Carbon Partnership Facility: Facilitating the weakening of indigenous peoples' rights to lands and resources', Briefing by the Forest Peoples Programme (FPP), February 2008.

³² Further information via <http://carbonfinance.org>

³³ UNFCCC, Art. 7.6 and Draft Rules of Procedure.

³⁴ See for example the Lyon Declaration (September 2000), the Hague Declaration (November 2000), the Bonn Declaration (July 2001), and the Milan Declaration (November 2003); *See also* Update from Bali – Indigenous Peoples Participation in COP 13, available from <http://www.international-alliance.org/bali-update.html>.

³⁵ COP Decision 18/CP.4.

- A recent annual report, including financial statement and information on funding sources
- Information on the affiliation of the organisation with other NGOs or institutions involved in climate change activities
- Brochures, newsletters and other publications relating to the Convention process
- Completed form with contact information and designated contact point for official communication with the secretariat.

The information should be sent by post to the UNFCCC Secretariat at:

Climate Change Secretariat (UNFCCC)
 P.O. Box 260124
 D-53153 Bonn
 Germany
 Tel: +49 228 815 1000
 Fax: +49 228 815 1999
 Email: secretariat@unfccc.int

Note that deadlines for applying for observer status are several months prior to sessions. Detailed information regarding the application process, code of conduct, deadlines and other matters related to observer status is available at the civil society page on the UNFCCC website
http://unfccc.int/parties_and_observers/ngo/items/3667.php.

2.5 Avenues for input

Several avenues of input in the negotiations exist. One is participation in **technical workshops**. For example, representatives of organisations, communities and experts are to be invited to the Nairobi Work Programme workshops listed above in 2.3. Usually, notifications regarding workshops are circulated to the civil society constituencies, which put forward names of participants. Participation is limited and varies depending on the nature of the workshop and the total number of participants. As mentioned, SBSTA 29 will consider the possible need for an expert group on adaptation; if such a group is established, representatives of indigenous groups could seek to be nominated as experts. The mandate for the expert group, to be agreed if and when it is established, will set the parameters for participation.

In 2007, SBSTA 26 invited regional and international climate change **research** programmes and organisations to regularly inform the SBSTA of developments regarding research activities relevant to the UNFCCC.³⁶ In June 2008, SBSTA 28 expressed its appreciation for information submitted and agreed that further dialogues between parties and organisations on these issues should continue, and invited further information.

Written submissions offer one avenue for input. NGOs may provide written submissions on any agenda item or topic where submissions have been invited from parties, but the NGO submissions will not be issued as official documents. Instead, they are posted on the UNFCCC website. Further details regarding this can be found on the civil society web page on the UNFCCC website.

³⁶ Report of the Subsidiary Body for Scientific and Technological Advice on its twenty-sixth session, held at Bonn from 7-18 May 2007 (UN Doc. FCCC/SBSTA/2007/4 22 June 2007), para.47.

In addition, the possibility of participating on national delegations offers a formal route for input (as do national level activities, such as assisting governments to prepare their submissions to the UNFCCC – which can be done both formally and informally).

2.6 Strategic considerations

The UNFCCC negotiations can be difficult to access, especially in comparison with the Convention on Biological Diversity (CBD), which is considered next. Small countries often struggle to have a say in the UNFCCC negotiations, as do other countries with limited negotiating capacity. However, in addition to being the most relevant agreements when it comes to adaptation, the UNFCCC and Kyoto Protocol carry significantly more political weight than the CBD. Even small steps in the UNFCCC may be of greater value than big steps in the CBD.

- Different Indigenous Peoples' groups have different priorities, but also many shared concerns, such as greater participation in UNFCCC processes. **Consulting with parties** and, where possible, creating a group of parties willing to introduce and support specific proposals is often very effective. For example, Bolivia has been mentioned as a country that might be willing to play a leadership role in taking forward indigenous concerns. As the host country of COP15/CMP5, Denmark can be expected to take a leading role, within the European Union (EU) and on the wider stage, so an early approach may be valuable.
- A combination of **formal and informal inputs** is likely to be helpful in terms of strategy. For example submitting information on important agenda items; asking parties to introduce proposals; and making full use of media opportunities. Early preparation will be crucial; country positions are often agreed months in advance of meetings, meaning that they are much more difficult to influence once agreed. The pace of the climate negotiations will speed up and with an already over-crowded agenda, government representatives will have limited scope to take up new issues.
- The climate change negotiations are very complex, with many different issues and negotiating strands, which absorb the attention of government delegates, NGOs and the media. It is important to raise the profile of Indigenous Peoples' concerns and to build a strong case, in particular through **case studies and evidence** about the impacts of climate change, adaptation and mitigation measures.³⁷ Defining a few, clear messages and proposals is likely to be helpful in light of the information overload which is part of the UNFCCC and Kyoto Protocol process. Being prepared to repeat these proposals and messages again and again is important for the same reason - often, good ideas simply get lost in the overload.
- Wide **dissemination** of indigenous peoples' research, case studies and papers is important. Email distribution lists, if used in a targeted manner, can be a very effective tool. For example, email lists maintained by the IISD Reporting Services, such as the 'Climate-L' list, reach a large and relevant audience (see www.iisd.ca).
- The **Nairobi Work Programme** is a useful entry point, which offers a relatively easy way to engage and to share Indigenous Peoples' knowledge and experience, for example through the Action Pledges, which are listed on the UNFCCC website.
- The seventh session of the **UN Permanent Forum on Indigenous Issues** (21

³⁷

For example, the Indigenous Peoples Climate Change Assessment, see <http://www.unutki.org/>

April-2 May 2008, New York) appointed special rapporteurs to prepare a report on models and best practices of mitigation and adaptation measures undertaken by Indigenous Peoples, and a draft declaration of action on climate change and Indigenous Peoples, which could include a road map towards Copenhagen in 2009. The Permanent Forum recommended that the UNFCCC develop mechanisms for Indigenous Peoples' participation in all aspects of international dialogue on climate change, including by establishing a working group on local adaptation measures and traditional knowledge of Indigenous Peoples.³⁸ Other proposals include those of the **International Alliance (IIPFCC)** at COP 13 in Bali: the creation of an Expert Group on Climate Change and Indigenous Peoples and the creation of a voluntary fund, such as the one that exists under the Convention on Biological Diversity (CBD).³⁹ The recommendations of the UN Permanent Forum on Indigenous Issues are a strong basis to build on, as the Permanent Forum is an official UN body. A UNFCCC working group on local adaptation measures and traditional knowledge of Indigenous Peoples - or an Indigenous Peoples working group with a wider mandate - would be an important step forward. Opportunities to build on proposals such as these could include the technical workshop to be held before SBSTA 31 (December 2009) on advancing integration of various approaches to adaptation planning, including local and community-based adaptation, but a better option would be to gain support for a proposal prior to that.

- The establishment of a **Voluntary Fund** for the participation of Indigenous Peoples would not only facilitate participation, but would also represent recognition by the parties of the special situation of Indigenous Peoples. Funds under the Convention on Biological Diversity (CBD) and World Intellectual Property Organization (WIPO) provide models (see parts 3 and 4, below), which could be replicated in the UNFCCC context. A Fund could also go **beyond participation** to support other activities.
- In addition to the official UNFCCC sessions (an up-to-date meetings calendar is available at www.unfccc.int), events that offer opportunities to advance Indigenous Peoples concerns in the lead-up to the Copenhagen Climate Summit include:
 - An Ad hoc Technical Expert Group (AHTEG) on Climate Change and Biodiversity, to be held under the Convention on Biological Diversity (CBD), from 17-21 November 2008 in London, England. Invitations to nominate experts are being circulated at the time of writing. The event is particularly relevant as it takes place just prior to COP 14/CMP4 in Poland.
 - An international scientific congress on 'Climate change, Global Risks, Challenges and Decisions', from 10-12 March 2009, Copenhagen, Denmark. The congress will aim to synthesise existing and emerging scientific knowledge necessary to make intelligent societal decisions about adaptation and mitigation. The congress output will be made available to COP15/CMP 5 in December 2009.
 - The Indigenous Peoples Global Summit on Climate Change, Anchorage, Alaska, 20-24 April 2009.⁴⁰

³⁸ These will be considered at the eighth session of the Permanent Forum. See report of the seventh session, n. 5 above.

³⁹ See International Alliance Bali update, n.26 above.

⁴⁰ For further information see <http://www.iccalaska.org>

3 THE CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

3.1 Summary Overview

The Convention on Biological Diversity (CBD) is the 'sister convention' of the UNFCCC. Both were opened for signature at the UN Conference on Environment and Development in Rio de Janeiro, Brazil, in 1992. The CBD's objectives are conservation of biodiversity, sustainable use, and fair and equitable sharing of benefits.⁴¹

The CBD recognises the dependence of indigenous and local communities on biological resources, and the desirability of equitable sharing of benefits of the use of traditional knowledge.⁴² The CBD terminology 'indigenous and local communities' is used in several places in this section.⁴³

In contrast with the UNFCCC, indigenous and local communities have a special status with the CBD. However, the CBD is the weaker treaty. Many of its provisions are of a very general nature compared with the UNFCCC, often qualified by words such as 'as appropriate', which gives parties considerable leeway in deciding what to do. Loss of species and ecosystems also receive less political attention than climate change. Despite this, the CBD provides opportunities to advance the concerns of Indigenous Peoples.

The key provision of relevance to Indigenous Peoples in the CBD is Article 8(j) According to this, Parties shall, as far as possible and as appropriate, and subject to their 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;'

Related provisions address the customary use of biological resources in accordance with traditional cultural practices,⁴⁴ information exchange⁴⁵ and cooperation in the development and use of technologies.⁴⁶

The CBD's work is based on seven thematic work programmes, for example marine and coastal biodiversity, forest biodiversity, and mountain biodiversity; and 17 cross-cutting issues, which include: access to genetic resources and benefit-sharing (ABS);

⁴¹ *'... 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 genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding'* UN Convention on Biological Diversity, Art. 1.

⁴² *'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'* CBD, Preamble, para 12.

⁴³ CBD, Art.8(j).

⁴⁴ CBD, Art. 10 (c).

⁴⁵ CBD, Art. 17.2.

⁴⁶ CBD, Art. 18.4.

climate change and biodiversity; impact assessment; protected areas; and traditional knowledge, innovations and practices, i.e. Art. 8(j).⁴⁷

National Biodiversity Strategies and Action Plans (NBSAPs) are the main mechanism for implementing the CBD. Development and implementation of NBSAPs and the related national reporting offer opportunities for national-level involvement for indigenous and local communities.⁴⁸

The current CBD negotiations are focused on **the year 2010**. The Strategic Plan which guides the CBD's work has the target to achieve a significant reduction in the current rate of biodiversity loss by 2010.⁴⁹ In addition, negotiations on an international regime on access and benefit-sharing under the CBD have 2010 as a deadline. Access to genetic resource and related benefit-sharing is a high priority for indigenous and local communities engaged with the CBD.

Indigenous and local communities do not have decision-making powers under the CBD, but they play a very visible and often influential role at CBD meetings, including through the International Indigenous Forum on Biodiversity (www.iifb.net). Further information about the CBD, including its Cartagena Protocol on Biosafety, is available at www.cbd.int or for example www.cbdalliance.org.

3.2 Operational structure

The Conference of the Parties (COP) is the decision-making body of the CBD.⁵⁰ The CBD has a **Subsidiary Body for Scientific, Technical and Technological Advice (SBSTTA)**, which advises the COP on implementation of the CBD, including scientific and technical questions.⁵¹ The CBD also has the following working groups:

- The Ad hoc Open-ended Working Group on Access and Benefit-sharing;
- The Ad hoc Open-ended Working Group on Protected Areas;
- The Ad hoc Open-ended Working Group on Review of Implementation of the Convention; and
- The Ad hoc Open-ended Working Group on Article 8(j) and related provisions, considered below.

The Ninth Session of the Conference of the Parties (COP9) took place in May 2008 in Bonn, Germany. COP 10, which will take place in October 2010 in Nagoya, Aichi Prefecture, Japan, coincides with the target year for reducing the rate of biodiversity loss and for concluding negotiations on the international regime on access and benefit-sharing. It will be a high profile meeting for the CBD. Up-to-date Information on other upcoming meetings is available at <http://www.cbd.int/meetings/>.

The Seventh Conference of the Parties (COP7) gave the **Ad Hoc Open-ended Working Group on Access and Benefit-sharing**, in collaboration with the Ad hoc Open-ended Working Group on Article 8(j) (see below) the mandate to '*... elaborate and negotiate an international regime on access to genetic resources and benefit-sharing ...*'⁵². What the nature of the 'international regime' will be is yet to be decided in

⁴⁷ A full list is available at the CBD website www.cbd.int

⁴⁸ CBD, Arts. 6, 26.

⁴⁹ See <http://www.cbd.int/2010-target/>

⁵⁰ CBD, Art.23.

⁵¹ CBD, Art. 25.

⁵² COP Decision VII/19, Part D, para.1.

the current negotiations.

The Ad hoc Open-ended Working Group on Article 8(j) and related provisions was established in 1998 by COP4. The Working Group is open to all parties and observers, particularly representatives from indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity.

The mandate of the 8(j) Working Group is to:

- *Provide advice on the application and development of legal and other appropriate forms of protection for the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles;*
- *Provide the COP with advice relating to the implementation of Article 8(j) and related provisions, in particular on the development and implementation of a programme of work;*
- *Develop a programme of work;*
- *Identify objectives and activities falling within the scope of the Convention; to recommend priorities taking into account the programme of work of the COP, such as the equitable sharing of benefits; to make recommendations related to work-plan objectives and activities, including if they should be referred to other international bodies or processes; to identify opportunities for collaboration and coordination with other international bodies or processes with the aim of fostering synergy and avoiding duplication of work; and*
- *Provide advice to the COP on measures to strengthen cooperation at the international level among indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity and make proposals for the strengthening of mechanisms that support such cooperation;*⁵³

The COP encouraged parties to include and consult with indigenous and local communities, and facilitate their participation in the Working Group, and encouraged local and indigenous communities to engage in the Working Group.⁵⁴ The fifth meeting of the 8(j) working group took place in Montreal, Canada, in October 2007.

The programme of work on the implementation of Article 8(j) and related provisions of the Convention on Biological Diversity was adopted in 2000. Its objective is to promote a just implementation of Article 8(j) and related provisions, at local, national, regional and international levels and to ensure the full and effective participation of indigenous and local communities at all stages and levels of its implementation.

The programme of work is divided into: general principles; tasks of the first phase of the programme of work (e.g. a focal point is to be identified within the Clearing House Mechanism (CHM) to liaise with indigenous and local communities); tasks of the second phase of the programme of work (e.g. the working group is to develop guidelines for the respect, preservation and maintenance of traditional knowledge, innovations and practices and their wider application in accordance with Art. 8(j)); and ways and means.⁵⁵

One of the outcomes of the programme of work are the *Akwé:Kon Voluntary Guidelines* for conducting cultural, environmental and social impact assessments regarding

⁵³ COP Decision IV/9.

⁵⁴ Ibid.

⁵⁵ COP Decision V/16.

developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities.⁵⁶

3.3 Climate change, adaptation and Indigenous Peoples

In March 2008, an International Expert Meeting on Responses to Climate Change for Indigenous and Local Communities and the Impact on their Traditional Knowledge related to Biological Diversity - the Arctic Region, took place in Helsinki, Finland.⁵⁷

In May 2008, COP 9 in Bonn, in its decision on **Article 8(j) and related provisions**, highlighted the vulnerabilities of indigenous and local communities to the impacts of climate change and of activities aimed at the mitigation and adaptation to the impacts of climate change, including resulting accelerated threats to traditional knowledge. The COP also mentioned:

*'... the unique value of biodiversity related traditional knowledge, innovations and practices of indigenous and local communities, especially those of women, in contributing to the understanding and evaluation of impacts of climate change, including vulnerabilities and adaptation options ... and encourages Parties, Governments, and relevant international organizations, with the full and effective participation and prior informed consent of indigenous and local communities, to document, analyse and apply, as far as possible and where appropriate ... such knowledge in ways that complement science-based knowledge;'*⁵⁸

The COP encouraged parties to consider 'as far as possible and as appropriate' introducing measures for ensuring the full and effective participation of indigenous and local communities in formulating, implementing and monitoring mitigation and adaptation activities, where these could affect biodiversity and biodiversity-related traditional knowledge, innovations and practices.⁵⁹ The COP encouraged parties to make such information available to the CBD Executive Secretary for dissemination and requested the Executive Secretary to explore the usefulness of the clearing-house mechanism (CHM) and the Traditional Knowledge Information Portal, as well as opportunities for cooperation with the UN Framework Convention on Climate Change.⁶⁰

In its decision on **biodiversity and climate change**, COP 9 urged parties to enhance the integration of climate change considerations related to biodiversity in implementation of the Convention, with the full and effective involvement of relevant stakeholders, including applying the principles and guidance of the ecosystem approach⁶¹ such as adaptive management and the use of traditional knowledge. The COP invited parties and others 'as appropriate' to consider the negative impacts of

⁵⁶ See <http://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

⁵⁷ Further information available at <http://www.cbd.int/doc/?meeting=EMCCILC-01>

⁵⁸ COP Decision IX/13, Part B, para. 4.

⁵⁹ Ibid., para 6.

⁶⁰ Ibid., para 7. Further information about the CHM and Traditional Knowledge Information Portal is available via www.cbd.int.

⁶¹ For more information about the ecosystem approach, see <http://www.cbd.int/ecosystem/about.shtml>. Its principles include considering indigenous and local knowledge (Principle 11).

climate change on biodiversity and related traditional knowledge, innovations and practices of indigenous and local communities.⁶²

The COP also decided that the work of an **Ad hoc Technical Expert Group (AHTEG) on Climate Change and Biodiversity** should start as soon as possible and the report be completed for SBSTTA prior to COP 10, which takes place in 2010. The AHTEG will meet from 17-21 November 2008 in London, England. An Ad hoc Technical Expert Group on Biodiversity and Adaptation to Climate Change has met previously.⁶³

Building on earlier decisions on **protected areas**, COP 9 invited parties to establish processes for the full and effective participation of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, in the governance of protected areas, consistent with national law and applicable international obligations.⁶⁴ The COP encouraged parties and invited organisations to enhance research and awareness of the role that protected areas and connectivity of networks of protected areas play in addressing climate change.⁶⁵ The COP also invited parties, with full and effective participation of indigenous and local communities, to explore payments for ecosystem services, including biodiversity offsets⁶⁶

In addition, the COP invited parties to explore funding opportunities for protected area design, establishment and management 'in the context of efforts to address climate change recalling that effective actions to reduce deforestation could constitute a unique opportunity for biodiversity protection'.⁶⁷

Regarding **forest biodiversity**, COP 9 urged parties to promote multidisciplinary scientific research on the impacts of climate change, including mitigation and adaptation activities, and environmental degradation on ecosystem resilience, conservation and sustainable use of forest biodiversity and impacts on the livelihoods of indigenous and local communities.⁶⁸

The COP called on parties and others to ensure that actions to reduce emissions from deforestation and forest degradation do not run counter to the objectives of the CBD '*...and provide benefits for forest biodiversity, and, where possible, to indigenous and local communities, and involve biodiversity experts including holders of traditional forest-related knowledge, and respect the rights of indigenous and local communities in accordance with national laws and applicable international obligations*'.⁶⁹

The COP requested the Executive Secretary of the CBD to collaborate with the other members of the Collaborative Partnership on Forests to support efforts to address the reduction of emissions from deforestation and forest degradation in developing countries.⁷⁰

⁶² COP Decision IX/16, Part B, paras. 4(h) and 17.

⁶³ See Guidance for Promoting Synergy Among Activities Addressing Biological Diversity, Desertification, Land Degradation and Climate Change, CBD Technical Series No. 25 available at <http://www.cbd.int/doc/publications/cbd-ts-25.pdf>

⁶⁴ COP Decision IX/18, Part A, para 76(d).

⁶⁵ Ibid., para 23

⁶⁶ COP Decision IX/18, Part B, para 3 (a).

⁶⁷ Ibid., para 3(h).

⁶⁸ COP Decision IX/5, para. 1(j).

⁶⁹ Ibid., para 2(a).

⁷⁰ Ibid., para 3(b). Information about the Collaborative Partnership on Forests can be found at <http://www.fao.org/forestry/cpf/en/>.

Further information about adaptation and the CBD can be found on the adaptation pages on the CBD website <http://adaptation.cbd.int/>.

3.4 Observer Status

The CBD is a more open and participatory convention than the UNFCCC. Article 23.5 of the CBD provides the basis for granting of observer status:

'... body or agency, whether governmental or non-governmental, qualified in fields relating to conservation and sustainable use of biological diversity, which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties'.

Observers may participate without right to vote in any meeting of direct concern to them unless at least a third of the parties present at the meeting object.⁷¹ Indigenous Peoples Organisations frequently make statements at COPs and other meetings.

Organisations interested in participating in meetings should provide a letter of interest on the organisation's letterhead, signed by the chief executive or president. The letter should include:

- A request for the organisation to be represented as an observer to a particular meeting, with the name of meeting clearly stated;
- A statement demonstrating the organisation's qualifications in fields relating to the conservation and sustainable use of biological diversity;
- If possible, a website address;
- Names, titles and contact details of the nominated representative/s;
- The organisation's statutes/by-laws or terms of reference demonstrating the organisation's legitimacy as a bona fide organisation constituted in its home country;
- Any other relevant information.

The contact details of the Secretariat are:

Secretariat of the Convention on Biological Diversity
413, Saint-Jacques Street, Suite 800
Montreal QC H2Y 1N9
Canada
Tel: +1 514 288 2220
Fax: +1 514 288 6588
Email: secretariat@cbd.int

In contrast to the UNFCCC, the CBD has established a **Voluntary Funding Mechanism for participation** of indigenous and local communities. When a notification for a relevant meeting has been issued applications can be sent in. The Secretariat consults with a Selection Committee, consisting of representatives of indigenous and local communities, regarding applications for funding.

⁷¹ Rules of Procedure, (Annex to Decision I/1 and Decision V/20), Rule 7.

Detailed information about observer status, the Voluntary Funding Mechanism and related matters can be found at <http://www.cbd.int/traditional/participation.shtml>

3.5 Avenues for input

Participation in Ad hoc Technical Expert Groups provides one avenue for input. Annex III of decision VIII/10, which guides selection of experts, notes that AHTEGs should draw on the knowledge and competence of, among others, indigenous and local communities.⁷²

There are often opportunities to provide written input. For example, see <http://www.cbd.int/traditional/general.shtml> about written input and other ways of engaging.

Many of the CBD's activities focus on collection and sharing of information, The CBD Secretariat tends to have an open and participatory approach, which means that direct contributions can often be made.

3.6 Strategic considerations

As explained above, the year 2010 is an important target year for the CBD. It is also the International Year for Biodiversity.⁷³ It seems very unlikely that the target to reduce the current rate of biodiversity loss by 2010 will be achieved. The year 2010 will be a test for the CBD: it could result in a weakened CBD, but it could also raise the CBD's profile and increase its effectiveness.

In 2010, COP10 in Japan will undertake an in-depth review of the CBD's work programme on climate change and biodiversity. This will provide an opportunity to follow up the outcomes of the Fifteenth Conference of the Parties/Fifth Meeting of the Parties of the UNFCCC and the Kyoto Protocol, which take place in December 2009 in Copenhagen, Denmark.

In Japan, the combination of a failure to reach the 2010 target, the in-depth review of the work programme on climate change, and follow-up of the Copenhagen Climate Summit could create circumstances which might allow for real strengthening of the CBD's climate change-related work, including as it relates to Indigenous Peoples. The prospects for this will need to be assessed after the Copenhagen Climate Conference.

One issue that may merit exploration is the link to Article 2 of the UNFCCC, which sets out the objective of the UNFCCC and the Kyoto Protocol. Article 2 refers to:

'...stabilization of greenhouse gas concentrations in the atmosphere at a level that could prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.'

The CBD could seek to play a greater role in relation to determining whether ecosystems can adapt naturally to the current pace of climate change.

⁷² See Annex III, Part H, para (a).

⁷³ See <http://www.cbd.int/doc/notifications/2007/ntf-2007-013-unga-en.pdf>

Generally, using progress in the CBD to influence the UNFCCC negotiations may be one of the most useful advocacy approaches in the CBD. The Ad hoc Technical Expert Group (AHTEG) on Climate Change and Biodiversity, which will meet from 17-21 November 2008 in London is likely to be an important opportunity, especially as it takes place just prior to COP14/CMP 4 in Poznan (see also above under 2.6). However, even strong outcomes from CBD meetings are likely to have a limited impact on the UNFCCC and Kyoto Protocol negotiations, unless the political treaty landscape shifts.

4. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

4.1 Summary overview

The World Intellectual Property Organization (WIPO) is a UN specialised agency that promotes the protection of intellectual property worldwide. Intellectual property refers to *creations of the mind* such as inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.⁷⁴ WIPO was established in 1970 under the WIPO Convention.⁷⁵ It has 184 member states and it is based in Geneva, Switzerland.

WIPO administers over twenty treaties on the registration, classification, and protection of intellectual property. Most of them provide for the basic standards of protection in each country by, for example, determining and streamlining formal processes for the registration and recognition of rights, or requiring domestic laws against unauthorised duplication of sound recordings. Other agreements ensure that one international registration or filing of intellectual property rights has effect in any of the relevant signatory states. A third group of treaties deals with classification systems that organise information concerning inventions, trademarks and industrial designs into manageable structures for easy retrieval.

4.2 Operational structure

The main organs of the WIPO are the General Assembly, the Conference of the states parties, the Coordination Committee and the Secretariat (International Bureau). All decisions relating to the strategic direction and activities of the WIPO are made by the Member States in the General Assembly, the Conference and the Coordination Committee (governing bodies). They meet in September/October in Geneva - in *ordinary session* every two years, and in *extraordinary session* in alternate years.

Any of the governing bodies can constitute committees as required. Much of the important work at WIPO is done through committees, for example the Standing Committee on Patents and the Programme and Budget Committee. To carry out their work, the committees can establish further working groups and task forces. The WIPO Secretariat coordinates all formal and informal meetings throughout the year.

The following table provides a general overview on the structure of WIPO:

⁷⁴ For further information, see the WIPO website at <http://www.wipo.int>.
⁷⁵ Convention Establishing the World Intellectual Property Organization.

Bodies		Functions/responsibilities
<i>D e c i s i o n M a k i n g B o d i e s</i>	General Assembly	<ul style="list-style-type: none"> • appointment of Director General • review and approval of the reports of the Director General and the reports and activities of the Coordination Committee • approval of the measures proposed by the Director General in relation to the administration of the international agreements • adoption of the financial regulations of the organization • approval of observers to its meetings
	Conference	<ul style="list-style-type: none"> • discussions on matters of general interest • recommendations relating to such matters • adopting the budget • establishment of biennial program of legal-technical assistance • amendments to the Convention • approval of observers to its meetings
	Coordination Committee	<ul style="list-style-type: none"> • advice on administrative and financial matters to other WIPO organs and treaty bodies • preparation of draft agendas for the General Assembly and Conference • prepare draft programme and budget of the Conference • nominate the Director General
Standing Committees (established by the General Assembly)		<ul style="list-style-type: none"> • ad hoc committees of experts to carry out a particular mandate such as determining the need for new treaty provisions
Permanent Committees (under special treaties)		<ul style="list-style-type: none"> • established under special classification treaties to review and update of the classification systems
Permanent Committees (established by WIPO decision making bodies)		<ul style="list-style-type: none"> • Committees established by the main decision making bodies to prepare decisions and undertake work (studies, monitoring, proposals) in a specific area (budget or enforcement issues)
Working Groups		<ul style="list-style-type: none"> • established by Standing Committees or other bodies to examine a particular question in more detail
Task forces		<ul style="list-style-type: none"> • technical representatives of contributors from members or observers to provide draft inputs issues requiring technical • interested members or observers may be nominated as a rapporteur to take a lead in the discussions and report to working group or committee

The **Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore** was established by the General Assembly in 2000. The Member States identified three primary themes for the Committee to discuss, namely intellectual property issues that arise in the context of:

- Access to genetic resources and benefit-sharing;
- The protection of traditional knowledge, innovations and creativity; and
- The protection of expressions of folklore, including handicrafts.

The Committee has met twelve times - most recently from 25 to 29 February 2008. The next session will be held in Geneva from 13 – 17 October 2008.

4.3 Climate change, adaptation and Indigenous Peoples

At its 12th session in February 2008 the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore explored practical steps to intensify and accelerate its work relating to Indigenous Peoples' rights. The Committee considered a variety of formats that might advance its work towards a concrete outcome (e.g. additional meetings and working groups). It agreed to continue the discussion at the next session.

The Committee further reviewed the interplay between the existing international legal framework and calls for extended or enhanced protection of Indigenous Peoples' rights. It drew up proposals to analyse gaps in the existing framework. The analyses will contrast the current international legal framework with specific examples of gaps in protection and consider how these gaps might be best addressed. It is being developed through questionnaires and an open commentary process allowing member states, Indigenous Peoples and other stakeholders to contribute their views.

Another strand of the Committee's work is the development of two draft sets of objectives and principles for the protection of traditional cultural expressions and for the protection of traditional knowledge, respectively. The draft objectives and principles broadly comprise policy objectives, general guiding principles and specific substantive principles which (at some point in the future) could possibly define the legal essence of protection. The focus of both documents is very much on protection against illegal use and misappropriation of traditional cultural expressions and knowledge – not their destruction or loss.

Although the current regime of intellectual property rights has been consistently identified as a major impediment to the transfer of technology envisaged under the international climate change regime, to date hardly any work has been done by WIPO in relation to climate change. The bimonthly WIPO Magazine (available in English, French and Spanish) has recently launched a new series on the challenge to find technological solutions to climate change. The article states that the transfer of affordable climate-friendly technologies to developing countries is important to support climate change mitigation and adaptation efforts, but it recognises that the current intellectual property regime does not distinguish between environmentally-friendly and other technologies, nor does it provide specific incentives for development and dissemination of adaptation technologies.⁷⁶

⁷⁶ The magazine can be obtained as hardcopy (free of charge) or accessed through http://www.wipo.int/wipo_magazine/en

4.4 Observer status

Around 250 organisations are currently accredited as observers at WIPO. Any organisation wishing to apply for permanent observer status has to submit a request to the WIPO Secretariat.⁷⁷ When submitting a request for observer status, the following information from the applicant organisation is necessary:

- The text of its constituent instrument (e.g. articles of incorporation);
- An indication of the date and place where it was established;
- A list of its officers (showing their nationality in the case of an international NGO);
- A complete list of its national groups or members (showing their country of origin in the case of an international NGO);
- A description of the composition of the members of its governing body or bodies (including geographical distribution in the case of an international NGO);
- A statement of its objectives; and
- An indication of the field or fields of intellectual property (e.g. copyright and related rights) of interest to it.

On receipt of the application, the Secretariat then presents the request to the meeting of the member states for approval. The following principles are observed in extending invitations to national NGOs as observers:

- The organisation shall be essentially concerned with intellectual property matters within the competence of WIPO and shall, in the view of the Director General, be able to offer constructive, substantive contributions to the deliberations of WIPO;
- The aims and purposes of the organisation shall be in conformity with the spirit, purposes and principles of WIPO and the UN;
- The organisation shall have an established headquarters. It shall have democratically adopted statutes, adopted in conformity with the legislation of the member state from which the NGO originates;
- The organisation shall have authority to speak for its members through its authorised representatives and in accordance with the rules governing observer status; and
- The admission of national NGOs to observer status shall be the subject of prior consultations between Member States and the Secretariat.

Requests for *ad hoc* observer status at specific meetings should be submitted to the Secretariat, which will pass the request to the relevant committee for consideration.

All applications for observer status should be sent to the Secretariat:

Postal address:
WIPO Secretariat
PO Box 18
1211 Geneva 20
Switzerland
Tel: +41-22 338 9111
Fax: +41-22 733 54 28
Email: grtkf@wipo.int

⁷⁷ The deadline to submit a request for accreditation to the meeting of the WIPO bodies in October 2008 was 30 May 2008.

A fast track accreditation procedure was established for NGOs and intergovernmental organisations to participate in the proceedings of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. Applications need to contain the following:

- A brief description of the organisation, including its full name and main objectives;
- Full address and contact details;
- The name of the country or countries in which the organisation is primarily active;
- The name and title of the organisation's representative at the Committee sessions, should the applicant be accorded accreditation; and
- The relationship of the organisation with intellectual property matters.

All requests for accreditation should be received by the WIPO Secretariat at least two months prior to each session of the Committee. They should be addressed to the Traditional Knowledge Division of the Secretariat (address, see above).

Decisions on accreditation are made by the Member States at the beginning of each session of the Committee. To date more than 150 organisations have been accredited to the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore as *ad hoc* observers. The majority of these organisations represent Indigenous Peoples, local communities and other custodians of traditional rights and knowledge. A web page has been created for documents and submissions from accredited observers on issues before the Committee. Documents are posted in the form and languages in which they are received.

To facilitate the participation of accredited indigenous groups and local communities, the WIPO established the **Voluntary Fund for Indigenous and Local Communities** in 2005. The fund is resourced through voluntary contributions by governments, NGOs and other private or public entities. An Advisory Board composed of representatives from indigenous and local communities and government delegates assesses the eligibility of applicants for financial support and recommends who should be supported. Based on the recommendation the WIPO Director General decides whether to grant financial support or not.

To be eligible for financial support applicants need to satisfy the following criteria:

- Be a natural person;
- Belong, as a member, to an accredited observer which represents indigenous or local communities, or otherwise represents customary holders or custodians of traditional knowledge or cultural expressions;
- Have been duly nominated in writing by the observer to represent it at the session designated for the support and as possible beneficiary of support from the fund;
- Be able to participate effectively and contribute to the session, such as through expressing the experiences and concerns of indigenous and local communities; and
- Who the Board considers would not be able to take part in the session concerned without support from the fund, owing to a lack of alternative financial resources.⁷⁸

⁷⁸ For further information see the booklet *The WIPO Voluntary Fund: A Stronger Voice for Indigenous and Local Communities in WIPO's work on Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources*, available at http://www.wipo.int/tk/en/ngoparticipation/voluntary_fund/index.html

The Secretariat has to receive applications for financial support at least 60 days before the opening of the Committee session which precedes the session for which support is requested. Support will be granted for one session only. Applicants can obtain an application form from the official WIPO website⁷⁹ and must send these to the WIPO Secretariat - preferably by email.

4.5 Other avenues for input

Sessions of the Inter-governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore commence with a panel session Chaired by a representative of an indigenous or local community. These representatives inform the participants of their communities' experiences and concerns. Following a formal invitation by the WIPO General Assembly, the UN Permanent Forum on Indigenous Issues takes part in sessions of the Committee and the Forum Secretariat has also had a direct input into its working documents. The WIPO Secretariat further consults with interested representatives of indigenous and local communities on draft documents and other materials such as a distance learning courses contributed by indigenous experts.

Consultations and workshops at the national and regional level aimed at developing focused input for the Committee routinely include representatives of the Permanent Forum and indigenous and local communities as speakers and participants. Specific briefings and consultations for NGO representatives, particularly representatives of indigenous and local communities, are undertaken during Committee meetings and at other events.

The Global Intellectual Property Issues Division of the WIPO Secretariat is responsible for issues related to Indigenous Peoples. The division is primarily a research unit. It has undertaken fact finding missions and other exploratory activities requiring input from Indigenous Peoples (e.g. case studies), published reports and organised public consultations. Based on its findings, WIPO produces information materials, provides training and implements pilot projects on the management of intellectual property rights for traditional knowledge.

4.6 Strategic considerations

Although WIPO may be one of the less visible UN organisations, representatives of Indigenous Peoples have been involved in its work for many years. There are several avenues for participation in negotiations as accredited observer, through written submissions or expert advice, which NGOs can make use of. These mechanisms could be strengthened through additional resources and better coordination.

However, to date climate change has only been of marginal relevance for the work of WIPO. A proposal for a WIPO development agenda was launched at the 2004 General Assembly and a Committee on Intellectual Property and Development established in 2007. Its main focus is on technical assistance and capacity building, and there are no indications that a review of the current intellectual property regime, as demanded by many developing countries in view of climate change, may become part of the discussion.⁸⁰

⁷⁹ See http://www.wipo.int/tk/en/ngoparticipation/voluntary_fund/index.html

⁸⁰ Initial working document for the Committee on Development and Intellectual Property's 2nd session, CDIP/2/2, June 20, 2008.

5. UNESCO WORLD HERITAGE CONVENTION

5.1 Summary overview

The United Nations Educational, Scientific and Cultural Organization (UNESCO) is a specialised UN agency that is mandated to promote collaboration among nations through education, science and culture, to further universal respect for justice, the rule of law, human rights and fundamental freedoms. The Convention concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention) was adopted by the General Conference of UNESCO in 1972. The Convention entered into force in 1975 and at present has 185 member states.⁸¹

The Convention aims for the preservation of the cultural and natural heritage sites of outstanding universal value. It encourages states to identify outstanding sites for the protection, preservation and transmission to future generations of cultural and natural heritage around the world. On the basis of proposals submitted by parties, the World Heritage Committee designates World Heritage Sites. The World Heritage List currently lists more than 870 properties, for example, the Tower of London, Kilimanjaro National Park and the Great Barrier Reef.

5.2 Operational structure

The **General Assembly** of States Parties to the Convention meets during the sessions of the General Conference of UNESCO every two years. During its session, the General Assembly determines the contributions to the World Heritage Fund and elects members to the World Heritage Committee. The next meeting of General Assembly will take place in 2009.

The **World Heritage Committee** consists of representatives of 21 states parties, who meet to discuss the management of existing World Heritage Sites. The Committee is responsible for implementation and has the final say on whether a property is inscribed on the World Heritage List. One regular meeting, the World Heritage Committee Session, takes place in a different country each year.

The Committee examines reports on the state of conservation of inscribed properties, allocates financial assistance and can ask parties to take action when properties are not being properly managed. To coordinate its work and meetings, the Committee elects a Bureau consisting of seven of its members. The World Conservation Union (IUCN), the International Council on Monuments and Sites (ICOMOS) and the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) are named in the Convention as advisory bodies to the Committee. The World Heritage Committee may also create such consultative bodies as it deems necessary for the performance of its functions.⁸²

The Convention established the World Heritage Fund, which provides approximately US \$ 4 million annually to support activities requested by parties in need of international assistance. The World Heritage Committee allocates funds according to the urgency of requests, priority being given to the most threatened sites.

The **World Heritage Centre** is the secretariat to the World Heritage Committee. It is based in Paris at the seat of UNESCO.

⁸¹ For further information on the Convention see <http://whc.unesco.org/en/convention/>

⁸² World Heritage Convention, Art. 10.

5.3 Climate change, adaptation and Indigenous Peoples

Climate change is affecting many areas protected under the World Heritage Convention, such as glaciated mountain terrain and coral reefs (e.g. the Waterton-Glacier International Peace Park and the Great Barrier Reef). Parties are under the obligation to protect these sites to transmit their outstanding universal values to future generations. Some legal scholars therefore argue that under the World Heritage Convention, even countries that have not ratified the Kyoto Protocol need to make substantial efforts to tackle climate change.⁸³

The threats posed by climate change to natural and cultural sites on UNESCO's World Heritage List are outlined in the UNESCO publication 'Case Studies on Climate Change and World Heritage'.⁸⁴ A policy document on the impacts of climate change on world heritage properties was endorsed by the World Heritage Committee in 2007 and adopted by the General Assembly in 2008. The document was prepared with the participation of experts and civil society organisations.

The policy document identifies key research priorities. These include understanding and monitoring climate change impacts that cause changes in society such as the movement of peoples, displacement of communities, their practices, livelihoods, and their relation with their heritage. It emphasises the importance of building synergies with other international conventions and organisations, and considers incorporating the precautionary approach in the organisation's Operational Guidelines. The implementation of the new policy may provide opportunities for further input of Indigenous groups. Information regarding this may be obtained from the Deputy Director of the World Heritage Centre, Kishore Rao, k.rao@unesco.org, +33-(0)1-4568-1559.

The precautionary approach (or principle) means that lack of complete scientific certainty should not stand in the way of action to halt environmental damage. Thus it can result in the obligation of states to refrain from a particular activity or to take action, although there is no conclusive evidence that environmental damage will occur.

UNESCO has a history of addressing the rights and concerns of Indigenous Peoples. The starting point was arguably an international meeting on ethnocide and ethno-development in 1981 in San Jose, Costa Rica. At the end of the meeting a non-binding declaration, the Declaration of San Jose, was adopted recognising the *Indians' inalienable rights to ethno-development* and declaring cultural genocide as equivalent to genocide and in violation of international law.

Recently two binding instruments were adopted by the General Conference. These are the Convention for the Safeguarding of the Intangible Cultural Heritage (in force since 20 April 2006) and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (into force since 18 March 2007). The former aims to safeguard 'intangible cultural heritage' - the practices, representations, expressions, knowledge, skills that communities, groups and, in some cases, individuals recognise as part of their cultural heritage. The objectives of the latter include, for example, the creation of conditions for cultures to flourish and to reaffirm the importance of the link between culture and development for all countries.

⁸³ Thorson, Erica J., *The World Heritage Convention & Climate Change: The Case for Climate-Change Mitigation Strategy Beyond the Kyoto Protocol*, in Wil C. Burns & Hari Osofsky (eds), *Adjudicating climate control: sub-national, national and supra-national approaches*, Cambridge University Press, 2007.

⁸⁴ Available at <http://whc.unesco.org/en/activities/473/>.

In June 2007, the Director General of UNESCO established an inter-sectoral **task force on climate change**. The task force has the objective of defining a strategic and integrated approach for UNESCO. Its mandate includes the following:

- Take stock and map ongoing activities at the global, regional and country level in relation to global climate change;
- Elaborate an interdisciplinary framework and platform for UNESCO's contribution in the area of global climate change;
- Prepare a results-based implementation plan for UNESCO's action in this area from the initiation of the programme (June 2007) to the end of 2009;
- Define and propose mechanisms for ensuring a coherent and mutually reinforcing approach when addressing global climate change; and
- Suggest a strategy by which to insert UNESCO effectively into global and regional mechanisms and initiatives.

The draft strategy prepared by the task force focuses on actions in the areas of scientific research, assessment and monitoring, education, capacity-building, support to policy planning and national development; and effective public information and public awareness-raising. General UNESCO programme activities that relate to the rights and knowledge of Indigenous Peoples include, for example:

- The development of environmental education programs that draw on locally relevant and economically important knowledge (*Village-level Documentation and Transmission of Local Environmental Knowledge*);
- The promotion of community participation in the conservation of cultural landscapes and natural heritage (*Indigenous Peoples in Protected Areas*); and
- The Sustainable Management of Marginal Drylands (SUMAMAD).

Since 2002, UNESCO also operates the **Local Indigenous Knowledge Systems (LINKS)** Programme. LINKS creates a platform for local and indigenous groups to initiate a dialogue with traditional knowledge holders, natural and social scientists, resource managers and decision makers. It encourages discussions on, for example, biodiversity management and governance, and reinforces the transmission of indigenous knowledge from one generation to the next. LINKS carries out research and assessments based on local and indigenous knowledge systems. This includes local-level climate observations, understanding strategies devised by local communities to cope with changing environments, identifying needs and ensuring the relevance of adaptation measures for vulnerable populations in remote areas.⁸⁵

Indigenous Peoples have repeatedly voiced their concerns about a lack of involvement in the development and implementation of laws, policies and plans which apply to their ancestral lands, within or comprising designated World Heritage Sites. In response, a Working Group developed the idea of a World Heritage Indigenous Peoples Council of Experts (WHIPCOE) and presented it to the World Heritage Committee in 2001. The Committee did not take the proposal any further.

However, there is recognition that in designating World Heritage sites there have been omissions concerning the values assigned by local communities and indigenous peoples. The Committee therefore requested the World Heritage Centre, in close cooperation with the Advisory Bodies, to undertake a review of past Committee decisions, and create a guidance manual, from which precedents on how to interpret

⁸⁵ For further information see http://portal.unesco.org/science/en/ev.php-URL_ID=1945&URL_DO=DO_TOPIC&URL_SECTION=201.html

and apply discussions of outstanding universal value can be clearly shown. Amongst others, this should '*...specifically include the utilization of, or note the obvious omission of the values of minorities, indigenous and/or local peoples*'.⁸⁶

5.4 Observers

On invitation of the Director General of UNESCO observers of international NGOs may participate in the work of the Assembly, without the right to vote.⁸⁷ The consent of the Chairperson must be obtained whenever an observer wishes to address the Assembly. International NGOs and non profit-making institutions having activities in the fields covered by the Convention may participate in meetings of the Committee as observers.⁸⁸

Further information can be obtained from the UNESCO World Heritage Centre:

World Heritage Centre
UNESCO
7, Place de Fontenoy
75352 Paris 07 SP
France
Tel.: +33 (0)1 45 68 15 71
Fax: +33 (0)1 45 68 55 70
Email: wh-info@unesco.org

5.5 Other avenues for input

The World Heritage Committee may at any time invite public or private organisations or individuals to participate in its sessions for consultation on particular problems. On different occasion elders and other representatives of Indigenous Peoples have been invited to open and address the sessions of the Committee. In 2007, Rick Tau of the Ngai Tahu of South Island (New Zealand) urged the participants '*...to open the doors to knowledge and thought...and so that we may follow in the footsteps of our ancestors who left us the landscapes that we know*'.

UNESCO has a variety of mechanisms for strengthening relations between the organisation and NGOs. This includes the establishment of **formal relations**. These are aimed at sustained cooperation with UNESCO in its fields of competence. To qualify, an NGO must fulfil the following criteria:

- Qualify as non-governmental and non-profit-making;
- Engage in activities of UNESCO's competence;
- Conform with UNESCO principles;
- Active at the international level;
- Regular active and international membership (groups and/or persons);
- Recognised legal status;
- Established headquarters;
- Democratically adopted statutes; and

⁸⁶ Decision 30COM 9, Evaluation of Outstanding Universal Value, 2006, available at <http://whc.unesco.org/en/decisions/1192/>.

⁸⁷ General Assembly Rules of Procedure., Rule 2.2.

⁸⁸ Committee Rules of Procedure, Rule 8.3.

- Existing and active for at least four years

The formal relations are further sub-divided into **consultative or associate**, depending on the role and structure of the NGO. The UNESCO Executive Board (through its Committee on Non-Governmental Organisations) decides annually on requests for admission. Applicants must demonstrate their ability to supply UNESCO with competent advice and to contribute effectively. Associate relations are reserved for a small number of NGOs that are invited by the Director-General to advise him regularly, for a period of six years, on the preparation and execution of UNESCO's programme and to participate in UNESCO's activities.

Operational relations are less formal. They are designed to enable UNESCO to establish and maintain partnerships with any civil society organisation that is active in UNESCO's fields of competence at whatever level. NGOs must be either of an international nature that only partially meets the conditions for the establishment of formal relations; or of a national, local or field nature and able to provide the operational capacity for the cooperation.

The UNESCO LINKS programme (see above) is currently developing a register of **case studies focusing on indigenous knowledge and practice relevant for climate change adaptation** ('On the Frontlines of Climate Change'). Some of these case studies may be selected for additional in-depth documentation. It invites contributions from indigenous or rural communities in small islands, high altitudes, the Arctic, desert margins and other vulnerable environments (to links@unesco.org).

UNESCO, in partnership with the Secretariat of the Convention on Biological Diversity, the Secretariat of the UN Permanent Forum on Indigenous Issues and the Office of the High Commissioner on Human Rights, is also launching an **internet based climate change forum**. The forum will focus on the knowledge and experiences of indigenous communities and peoples living in small islands, the Arctic and other vulnerable environments. The forum seeks community-level observations on climate change impacts and local efforts to cope and adapt. It will provide an opportunity for communities to voice and share observations, experiences and concerns, while heightening the profile of Indigenous Peoples and their knowledge in international climate change debates.⁸⁹

5.6 Strategic considerations

UNESCO has a long history of collaborating with civil society organisations. The concerns and rights of Indigenous Peoples have played a role under the Convention on World Culture and Natural Heritage at least for some time, but formal engagement remains limited. The nexus with climate change is a more recent development, which may provide new opportunities to develop political pressure through existing mechanism and avenues of participation. World Heritage Sites are public icons and discussion about their protection is likely to attract major attention.

⁸⁹ See http://portal.unesco.org/science/en/ev.php-URL_ID=6550&URL_DO=DO_TOPIC&URL_SECTION=201.html.

6. CONCLUDING OBSERVATIONS

As described in this paper, many opportunities exist prior to the Fifteenth Conference of the Parties/Meeting of the Parties of the UNFCCC and Kyoto Protocol (Copenhagen, Denmark, December 2009) for Indigenous Peoples to advance their advocacy strategies related to climate change and adaptation through international fora.

The process towards the Fifth Assessment Report (AR5) of the Intergovernmental Panel on Climate Change (IPCC) should be noted as another important opportunity, although the outputs are not due until 2013-14. The IPCC is expected to focus to a greater extent than previously on adaptation, impacts and vulnerability.⁹⁰

Choices regarding Indigenous Peoples engagement will need to weigh the resources required to pursue a successful advocacy approach against the likely impact of the outcome achieved (for example, a supportive COP decision). Some times, advocacy at the national level may be more effective, especially taking into account the high cost of attending international meetings, which are often held in expensive locations. On the other hand, changes achieved at the international level can have a great impact, as they affect a large number of countries. It will be important to build on Indigenous Peoples assessments of climate change and on existing processes, such as *Many Strong Voices*, which brings together coastal communities in the Arctic and Small Island Developing States.⁹¹

In most cases the UNFCCC and the Kyoto Protocol negotiations will be the most relevant international process, as outcomes reached in these negotiations are likely to have the greatest impact. The special recognition that the CBD gives to Indigenous Peoples and the greater openness of the CBD can be used to support advocacy in the climate negotiations. Progress in WIPO and the World Heritage Convention can be used in the same way. The CBD, WIPO and the World Heritage Convention can also be used to advance specific adaptation-related issues which fall within their mandates.

The UN Declaration on the Rights of Indigenous Peoples provides a basis for demanding greater and more meaningful participation in international decision making processes. Unlike other legal instruments, the Declaration does not limit the requirement for consultation and cooperation to the national level. An argument can be made that the limited involvement of Indigenous Peoples in the international negotiation processes contradicts the content and spirit of the Declaration.

It is important to increase opportunities for input by Indigenous Peoples, such as opportunities to contribute research and knowledge in the UNFCCC and other fora. However, this may need to be weighed against the risks of becoming simply providers of information, rather than influencers. Related to this is the risk of legitimising decisions by participating in the process of making them, whether there have been real opportunities for influencing or not.

Indigenous Peoples have a critically important contribution to make to the world's understanding of climate change and adaptation to its impacts. Climate change poses a great threat to Indigenous Peoples. Their voices must be heard in the international climate change negotiations and in related international bodies, through strong participatory rights and opportunities to contribute.

⁹⁰ For information about the IPCC see www.ipcc.ch

⁹¹ See <http://www.manystrongvoices.org/>.

Useful reading

Guide for Negotiators of Multilateral Environmental Agreements

<http://www.unep.org/DEC/docs/Guide%20for%20Negotiators%20of%20MEAs.pdf>

Multilateral Environmental Agreements - Negotiator's Handbook

<http://www.joensuu.fi/unep/envlaw/Julkaisut/Handbook/handbook2006.pdf>