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**ROUNDTABLE ON INTELLECTUAL PROPERTY
AND INDIGENOUS PEOPLES**

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INITIATIVES FOR PROTECTION OF RIGHTS OF HOLDERS OF TRADITIONAL
KNOWLEDGE, INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

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INITIATIVES FOR PROTECTION OF RIGHTS OF HOLDERS OF TRADITIONAL KNOWLEDGE, INDIGENOUS PEOPLES AND LOCAL COMMUNITIES*

Introduction

My intervention will focus on the international policy process on intellectual property, and not so much on intellectual property rights per se. This is due to the fact that at this stage, I consider questions related to the policy process as crucial. I believe that in the absence of mechanisms for dialogue between indigenous peoples, governments, private business, WIPO and other UN agencies, we will not have much progress in the field of indigenous intellectual property rights.

I often hear people saying that questions concerning intellectual property rights are technical in nature, and that therefore we should not politicize these questions. In my work as an indigenous activist for the last thirty years, and as a legal researcher, I have been met with this type of arguments in many cases of indigenous rights. I agree that to a certain extent they are technical legal matters, however, they are not legal technicalities only.

When talking about the needs and rights of indigenous peoples, we are talking about the rights of at least 300 million indigenous people around the world, often among the poorest and most disadvantaged in their countries. Therefore, it would not be correct to say that we - indigenous peoples - are opposing changes and new developments for the sake of opposing. I believe that most of us welcome changes and development, but on the clear condition that it take place in accordance to our needs and desires, and is not imposed upon us. Neither are we against business and trade per se, because we also see trade as an important element in an interdependent world. Trade links between countries and nations are crucial components in the maintenance of peace and security in the world. Unfortunately, traditional indigenous legal concepts, including in the field of intellectual property, are often seen as a threat to business interests, development and national prosperity.

One can observe an increasingly common trend that sees national governments working in the interests of global multinational corporations, against their own people, in particular indigenous peoples. However, globalization of the world economy is a reality which can hardly be reversed towards more closed national economics. Therefore, in my view the future challenge is the conceptualization of ways of organizing and managing the globalized economy and its mechanisms.

It is clear that a world economy which does not take into account important social, civil, cultural and economic aspects is not sustainable. In other words, governments and international institution, have to include new components in their policies, e.g. social components in their economic policies. They also have to take into account the rights of all sectors of the society, because it cannot be justified that policy is developed and implemented without the full and effective participation of all major groups, including indigenous peoples.

* This document reflects the opinion of the author and not necessarily that of the World Intellectual Property Organization (WIPO).

I am not suggesting that national governments and inter-governmental organizations, such as WIPO, can alone solve problems faced by indigenous peoples. However, governments and inter-governmental organizations have a key role to play due to their formal authority and mandate. National and international legal standards pass through their offices and corridors on their way towards adoption, follow-up and enforcement.

Legal standards

The present legal situation is the result of a grim unlawful past. It is hard to see how to find a lasting settlement without resolving core problems, one of which is the lack of protection for fundamental indigenous rights, such as intellectual property rights. Commercial interests very often violate indigenous intellectual property rights. Although, such violations often do not formally constitute a breach of written legal standards, as neither national legislations nor international standards acknowledge the rights of indigenous peoples, these enterprises are still accountable to indigenous customary law. This fact cannot any longer be ignored by governments, the UN-system and business entities.

ILO Convention No. 169 concerning indigenous peoples contain important international legal standards for indigenous rights, however, it does not give the desired protection for indigenous intellectual property rights.

The draft United Nations declaration on the rights of indigenous peoples is an enormous achievement for indigenous peoples. The Draft Declaration represents an international recognition of the rights and aspirations of indigenous peoples from around the world, including in the field of intellectual property rights. However, the Declaration, when adopted, will only be a non-binding document, which will not be legally enforceable.

From time to time, I am told that indigenous legal concepts and claims do not fit the existing legal systems. The fact that indigenous legal concepts, in particular the notion of collective rights, can be a challenge for existing legal regimes does not justify non-involvement from government or inter-governmental organizations, such as WIPO.

There is therefore an urgent need to develop binding legal instruments on indigenous intellectual property rights, and WIPO has an important role to play in this regard. The Saami Council strongly urges WIPO, as soon as possible, to initiate a standard setting process in the field of indigenous intellectual property rights.

I would like to draw your attention to the special study on the protection of the heritage of indigenous peoples, of the distinguished Chairperson-Rapporteur of the UN Working Group on Indigenous Populations, Professor Erica-Irene Daes. Through her excellent legal research and analysis, Prof. Daes has produced a very good assessment of the situation with regard to indigenous cultural and intellectual rights. Prof. Daes has also submitted draft principles and guidelines for the protection of the heritage of indigenous peoples to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. These draft principles and guidelines establish a good foundation for any national or international discourse on indigenous

intellectual property rights.¹ This pioneering work of Prof. Daes should be taken into account in future processes on indigenous intellectual property rights.

The need for further research

WIPO is responsible for the promotion of the protection of intellectual property rights throughout the world through cooperation among States, and for the administration of various multilateral treaties dealing with the legal and administrative aspects of intellectual property. However, none of the international treaties which are developed within WIPO's system are specifically addressing indigenous intellectual property.

It is hard to see how indigenous intellectual property rights can be promoted and protected within existing mechanisms, and without first collecting data from around the world and analyzing the material. The Saami Council is of the opinion that WIPO should consider to undertake a study on the concept and scope of indigenous intellectual property rights. I believe that a global study on indigenous intellectual property rights would be an extremely important device in the future work in this field. It is extremely important that the main United Nations agency in the field of intellectual property ensures that it has sufficient institutional knowledge and understanding of indigenous intellectual property rights. This study would be crucial for any standard setting development in this field.

The role of Transnational Corporations

The global economy, largely beyond the control of any national government, is an extremely powerful factor in the development of our future. Today, Transnational Corporations (TNC) control two-thirds of world trade. Many TNCs are today among the largest economies in the world; 50 of the world's 100 largest economies are TNCs. Many TNCs are much richer and more powerful than national governments. Their activities are the root of very many of the problems faced by indigenous peoples in the field of cultural and intellectual property rights, land and resource rights.

The effects of continually expanding requirements from urban societies are speeding up global economic activities. Without a change in the way of thinking and practicing there will be an ever-increasing effect on indigenous peoples. It is therefore time that all parties concentrate on making serious and constructive attempts to solve those problems.

Therefore, the Saami Council hopes that a dialogue between indigenous peoples and the business community can be established as soon as possible. Relevant UN agencies, such as ILO, WIPO, IMF, WTO and the World Bank should see their responsibility and try to facilitate such a process of dialogue. We cannot continue to shout at each other from our respective mountain tops.

¹ Contained in UN document E/CN.4/Sub.2/1994/31

International developments

The international community is slowly acknowledging that indigenous peoples have been discriminated against and deprived of their rights and freedoms for far too long a time. The World Conference on Human Rights, held in Vienna in June 1993, recognized the inherent dignity and the unique contribution of indigenous peoples to the development of society and strongly reaffirmed the commitment of the international community to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development. The World Convention also stated that indigenous peoples should be ensured full and free participation in all aspects of society, in particular in matters of concern to them.

In its last resolution on indigenous matters, resolution 52/108 of 12 December 1997, the United Nations General Assembly requested the UN Secretary-General to ensure a coordinated follow-up to the recommendations concerning indigenous peoples of relevant world conferences, including the World Conference on Human Rights.

I will now identify a key question. The question is:

How can WIPO follow up and implement the recommendations of the World Conference for Human Rights and the UN General Assembly?

The ongoing Roundtable on Intellectual Property and Indigenous Peoples is a good start. However, it is important that WIPO follow up this good initiative with something more. It is not possible for WIPO to fulfill its mandate in the field of indigenous intellectual property rights without establishing a permanent procedure within its own system which ensures full and effective indigenous participation. It is crucial that WIPO and its member States are willing to create space for indigenous peoples within the WIPO system, and thereby ensure indigenous participation in policy processes within WIPO.

The Saami Council proposes that a working group or committee on indigenous intellectual property rights should be established within WIPO.

Conclusions and recommendations

In conclusion, allow me to re-state three main points and recommendations from the Saami Council:

1. That indigenous intellectual property rights must be recognized and given effective protection in national legislation and in international legal instruments, and that international legal instruments in this field must be developed as soon as possible.
2. That WIPO should undertake a comprehensive global study on indigenous intellectual property rights, with the aim to (a) identify the nature and scope of indigenous intellectual property rights, and (b) to identify possible practical and legal ways of promoting and protecting indigenous intellectual property rights; and

3. That WIPO should establish a working group or committee on indigenous intellectual property rights with the full and effective participation of indigenous peoples.

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