Past International Normative Developments Related to Intellectual Property: Lessons Learned – the UN Declaration on the Rights of Indigenous Peoples

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Mataatua Declaration on the Cultural and Intellectual Property Rights of Indigenous Peoples 1993
UN-DRIP Article 31

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
UN-DRIP Articles regarding the UN system

- Article 41 - The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

- Article 42 - The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.
The ‘Dodson principles’

- Emphasised that any textual amendment of the draft Declaration must be founded on the basis of a very high presumption of the integrity of the existing text.
- in order to ‘rebut that presumption, any proposed change must be shown to be’:
  - 1 Reasonable;
  - 2 Necessary; and
  - 3 Improve and strengthen the existing text.
- In addition, any proposal must be consistent with the fundamental principles of: Equality; Non-discrimination; and The absolute prohibition of racial discrimination.
2006 – 2007 – UNDRIP PROCESS

- From WGDD to the HUMAN RIGHTS COMMISSION
  - 30 in favour,
  - 2 against,
  - 12 abstentions,
  - 3 absent
  - Sent to UNGA indigenous expected adoption in 2006

- UNGA 3rd COMMITTEE (Social, Humanitarian and Cultural)
  - Draft Resolution requesting the GA to defer consideration and action on the Declaration with the aim of concluding consideration before the end of its 61st session. (Peru)
  - A revised resolution lead by Namibia on behalf of African countries … allow time for further consultations thereon…
  - African amendments adopted by vote, 82 in favour, 67 against, 25 abstentions
  - New amended draft adopted 83 in favour, 91 abstentions (countries that had been co-sponsors of the original motion)
  - Amended draft resolution to the UNGA 83 in favour, 91 abstentions
Lessons learned

- The sky did not fall down – drama – delays caused by opinions not supported with evidence
- Timeframe - commitment to successfully complete – no brackets around the entire DRIP
- Indigenous participation is essential – inclusive registration process, multiple voices
Lessons learned

- Good faith - and strategies for dealing with lack of good faith
- Leadership – by session Chair, like-minded pro-governments, and indigenous groups
- Vision and consensus
- The IGC instrument(s) (like the UN-DRIP) are just the beginning – the real work will be in the implementation