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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**

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**ROUNDTABLE ON INTELLECTUAL PROPERTY  
AND TRADITIONAL KNOWLEDGE**

**Geneva, November 1 and 2, 1999**

REPORT

*Document prepared by the International Bureau of WIPO*

## INTRODUCTION

1. The Roundtable on Intellectual Property and Traditional Knowledge (hereinafter referred to as “the Roundtable”) took place in Geneva, on November 1 and 2, 1999.

2. The following Member States of WIPO were represented at the meeting: Angola, Argentina, Bangladesh, Bolivia, Brazil, Bulgaria, Burundi, Canada, China, Costa Rica, Côte d’Ivoire, Dominican Republic, Egypt, El Salvador, Ecuador, Fiji, France, Ghana, Guatemala, Guyana, Holy See, India, Indonesia, Iran (Islamic Republic of), Italy, Jamaica, Japan, Jordan, Kenya, Madagascar, Malaysia, Mali, Morocco, Mexico, Nigeria, New Zealand, Panama, Paraguay, Peru, Philippines, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Slovenia, Slovakia, South Africa, Spain, Switzerland, Trinidad and Tobago, Tunisia, Uganda, United Kingdom, United States of America, Uzbekistan, Vietnam, Zambia.

3. The following intergovernmental organizations were represented at the meeting: Benelux Trademark Office (BBM), Caribbean Community (CARICOM), European Communities (EC), International Labour Office (ILO), International Union for Conservation of Nature and Natural Resources (World Conservation Union) (IUCN), Office of the United Nations High Commissioner for Human Rights (OHCHR), Organisation Internationale de la Francophonie (OIF), Permanent Delegation of the League of Arab States, United Nations Conference on Trade and Development (UNCTAD), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Industrial Development Organization (UNIDO), Universal Postal Union (UPU), World Health Organization (WHO), World Meteorological Organization (WMO), World Trade Organization (WTO).

4. The following non-governmental organizations were represented at the meeting: Arctic Council Indigenous Peoples’ Secretariat, Association nouvelle pour la culture et les arts populaires (TAMAYNUT-ANCAP), Asociación para los Derechos Humanos Secretario Coordinación Pueblos Indigenes Centre y Sud América (ALDHU), Belgian Coordinated Collections of Micro Organisms (BCCM), Centre de documentation de Recherche et d’information des Peuples Autochtones (DoCip), Centre international des droits de la personne et du développement démocratique, Comisión Jurídica de los Pueblos de Integración Tawantinsuyana (COJPITA), Consejo Indio de Sud America, Coordinadora de las Organizaciones Indígenas de la Cuenca Amazónica (COICA), Foundation for Aboriginal and Islander Research Action (FAIRA), Ibero-Latin-American Federation of Performers (FILAIE), Institute of Problems of Northern Indigenous Peoples of Sakha Republic International Indian Treaty Council, International Alliance of the Indigenous Tribal Peoples of the Tropical Forest, International Chamber of Commerce (ICC), International Commission of Jurists (ICJ), International Council of Graphic Design Associations (ICOGRADA), International Council of Societies of Industrial Design (ICSID), International Development Research Center (IDRC), International Federation of Commercial Arbitration Institutions (IFCAI), International Federation of Industrial Property Attorneys (FICPI), International Federation of Musicians (FIM), International Organization of Indigenous Resource Development (IOIRD), International Publishers Association (IPA), International Working Group for Indigenous Affairs (IWGIA), Legal Committee for the Self-Development of Peoples of Andean Origin (CAPAJ), Max Planck Institute for Foreign and International Patent, Copyright and Competition Law (MPI), National Aboriginal and Islanders Legal Services Secretariat (NAILSS), National Secretariat Torres Strait Islander Organisations (NSTSIO), National Working Group-Intellectual Property and West Australian Environment Working Group, Organización Nacional Indígena de Colombia (ONIC), Pacific Concerns

Resource Centre, Russian Association of the Indigenous Peoples of Northern Russia, Tebtebba Foundation-Indigenous Peoples' International Centre for Policy Research and Education, Tourism Alert, World Wide Fund for Nature (WWF).

5. The list of participants is contained in the Annex to this report.

6. Discussions were based on the document "Protection of Traditional Knowledge: A Global Intellectual Property Issue", prepared by the International Bureau (WIPO/IPKT/RT/99/2), and the following documents submitted by speakers invited by the International Bureau of WIPO: "What Is TK? Why Should It Be Protected? Who Should Protect It? For Whom? Understanding the Value Chain", prepared by Professor Michael Blakeney, Centre for Commercial Law Studies, Queen Mary and Westfield College, University of London, United Kingdom (WIPO/IPKT/RT/99/3), "TK: A Holder's Practical Perspective", prepared by Mr. Shri Sundaram Varma, Society for Research and Initiative for Sustainable Technologies and Institutions (SRISTI), Ahmedabad, India (WIPO/IPKT/RT/99/4), "Access To and Use of TK — A View from Industry", prepared by Mr. Bo Hammer Jensen, Principal Patent Counsel, Corporate Strategy, Corporate Patents, Novo Nordisk A/s, Denmark (WIPO/IPKT/RT/99/5), "Efforts at Protecting TK: The Experience of the Philippines", prepared by Mr. David Daoas, Attorney, Chairperson, National Commission on Indigenous Peoples, President's Office, Manila, The Philippines (WIPO/IPKT/99/6A), and "Efforts at Protecting TK: The Experience of Peru", prepared by Mrs. Begoña Venero Aguirre, Head of Patents, National Institute for the Defense of Competition and Intellectual Property (INDECOPI), Lima, Peru (WIPO/IPKT/99/6B).

7. The Secretariat of WIPO noted the interventions made following each presentation and recorded them on tape. This report summarizes the discussions without reflecting necessarily all the observations made. Some statements were submitted by participants in writing. This report makes reference to some of those statements, a copy of which will be made available by the International Bureau upon request.

## OPENING

8. The Roundtable was opened by Mr. Shozo Uemura, Deputy Director General of WIPO, who welcomed the participants and the speakers and underlined the responsibility of WIPO to engage constructively with legitimate, if only recently articulated, needs for protection of traditional human creativity and innovation.

9. Following a proposal by the delegation of Peru, with the support of the delegation of Mali, the plenary elected by acclamation Mrs. Thu-Lang Tran Wasescha, Director of the International Affairs Department, Swiss Federal Institute of Intellectual Property, Berne, Switzerland, as chairperson of the Roundtable. The Chairperson thanked the plenary for their confidence and emphasized the importance that her government gave to the subject-matter of the Roundtable. She explained that, at the General Assemblies in September 1999, the Member States of WIPO had clearly expressed their intent that WIPO take a more active role in exploring the intellectual property-related issues of Traditional Knowledge (TK). Even though in other fora, such as the World Trade Organization, serious attention was being given to the protection of TK and it was difficult to predict any consensus to be reached, at least there was a wide consensus on the fact that the issue could not be ignored. The Roundtable was a relevant approach that led to a win-win situation and a positive spirit, for it would give the opportunity for different views and positions to be heard and discussed. On the organization of the Roundtable, the Chairperson noted that, during the three first sessions,

each presentation would be followed by interventions by three invited experts: Professor Joseph H. Kwabena Nketia, Director, International Centre for African Music and Dance (ICAMD), University of Ghana, Accra, Ghana; Mr. Graham Dutfield, Coordinator, Working Group on Traditional Resource Rights, University of Oxford, United Kingdom; Mr. Anil K. Gupta, Coordinator, Centre for Management in Agriculture, Indian Institute of Management, Ahmedabad, India. Subsequently, the floor would be given to the plenary, so that participants could present their views and ask questions to the speakers and the experts. The fourth session would be dedicated to the submission of statements by representatives of WIPO Member States, holders of TK and intergovernmental and non-governmental organizations.

## SESSION I

### **Topic 1**

10. Mr. Richard Owens, Director of the Global Intellectual Property Issues Division of WIPO, introduced WIPO's work on emerging intellectual property issues, in particular on the protection of TK. He presented an overview of the program of the Global Intellectual Property Issues Division between 1998 and 2001, namely the identification of new beneficiaries and users of intellectual property rights, the analysis of intellectual property-related issues concerning biodiversity and biotechnology, the protection of expressions of folklore, and an investigation into the links between intellectual property and development. The overview of WIPO's work on TK and intellectual property followed five steps. Firstly, there was the problem of defining TK, which was a multi-faceted concept. Secondly, it was necessary to realize why the protection of TK was important. A third aspect was the utilization of customary protection and its eventual inclusion into formal legal systems. Intellectual property had the purpose of promoting and disseminating creativity and innovation in general. But, when applied to TK, intellectual property would have the additional value of documenting and preserving it. Nevertheless, it should be borne in mind that TK was not necessarily old. TK was also contemporary because it was a continuing response by individuals and communities to challenges posed by their environment. The fourth step was the assessment of the problems confronting TK holders. The final point was the response given by WIPO to the challenge of promoting intellectual property protection for TK. That response comprised: the Roundtable on Intellectual and Indigenous Peoples, held in 1998; nine Fact-Finding Missions to various parts of the world; one panel discussion on intellectual property and human rights, held in Geneva, in 1998, in cooperation with the OHCHR; four Regional Consultations on the protection of folklore, in cooperation with UNESCO; the participation in international processes that might impact TK protection in other fora, such as the Convention on Biological Diversity, the FAO, UNESCO; cooperation with intergovernmental and non-governmental organizations. Finally, the work on TK protection required its integration into WIPO's development for cooperation activities. He underlined that the Fact-Finding Missions had permitted WIPO to understand that TK holders' problems were common to all countries, that TK systems were frameworks for continuing creativity and innovation, that TK was a constantly renewed source of wealth and that all branches of intellectual property law were relevant to TK. He also noted that the regional consultations had produced several recommendations concerning the need for expansion of WIPO's work plan, such as provision of legal and technical assistance, training in folklore documentation, financial support for national and regional institutions and engagement in work towards an effective international regime to protect expressions of folklore. In the 2000-2001 biennium WIPO's work program on TK and intellectual property would be dedicated to addressing conceptual problems and testing practical solutions. The program contemplated four items: case studies on the use of the intellectual property system

to protect TK; a study on customary law governing TK in relation to formal intellectual property systems; information exchange on intellectual property implications for TK documentation; and increased training and awareness-raising worldwide for TK stakeholders.

## **Topic 2**

11. Professor Michael Blakeney presented the paper “What Is TK? Why Should It Be Protected? Who Should Protect It? For Whom? Understanding the Value Chain”, which was distributed to the participants of the Roundtable (document WIPO/IPKT/RT/99/3). The speaker, in concluding, referred to the proposal that the WTO Seattle Ministerial Conference should establish a mandate to carry out studies and initiate negotiations on the protection of TK as the subject matter of intellectual property rights, which was submitted by Bolivia, Colombia, Ecuador, Nicaragua and Peru to the WTO General Council (WTO document WT/GC/W/362, of October 12, 1999).

12. The Chairperson noted that it was premature to predict whether TK would be included in the next Round of WTO negotiations. Nonetheless, it had become clear that TK could not be ignored any longer. That fact alone, she added, illustrated the extreme importance of the Roundtable.

13. In discussions on the definition of Traditional Knowledge, Professor Nketia said that the term “Traditional Knowledge” was appropriate provided it also included the notion of “folklore”. There was a difference to be made between knowledge that was meant to be shared and knowledge that was restricted. There were few difficulties with knowledge meant to be shared. However, as far as the latter was concerned, limited transmission, access and use was intended, and therefore protection was needed. The context of application of TK was also very important. If it was used within the context of traditional societies, there would be no problems. But when its application moved to contemporary societies, there might be problems. An added difficulty arose when a TK holder wished to apply TK in a non-traditional context. This posed a problem. One should allow for the application of TK in a non-traditional context, otherwise knowledge would not be allowed to develop.

14. Mr. Graham Dufield said that the intellectual property paradigm in general did not fit TK, but one should not exaggerate the case against applicability of intellectual property rights, especially certification marks and geographical indications. Property rights were basically the right to exclude others. In this context, they were more easily applicable to TK. Sharing of TK by a community should not be assumed to mean that third parties could or should be able to obtain exclusive rights over that knowledge. Property rights over knowledge was not an alien concept. It was often said that intellectual property rights were individualistic and that, in contrast, TK was collective. In his view, this was overly simplistic. Not all intellectual property rights were individualistic. Increasingly, invention took place within firms, where groups of inventors might be named in patent applications, but the patents were held by the firm. Similarly, not all TK was collective. Intangible knowledge had unclear borders, unlike tangible property. If TK was inadequately protected and the innovations of firms and “modern knowledge” were protected, it was not because of incompatibility of the systems, but because of a difference in power. As an example, the laws of two countries did not consider information disclosed abroad in a non-written form to constitute prior art, which made it impossible to prevent the grant of patents for inventions known to traditional communities.

15. Mr. Anil Gupta noted that the experience of customary law in protecting TK was worth being examined by WIPO. For example in Nigeria, New Mexico and India some experience

of protecting TK had been developed by traditional communities. At the core of TK there was an ethical dimension. The ethics that accompanied TK was that people frequently shared it without specifying any reservations. Moral grounds, therefore, should be enough to qualify some exclusive rights. However, the concept of moral grounds did not exist in modern law, such as the TRIPS Agreement. Moreover, TK was not static or fossilized. Every successive generation created new knowledge. TK was a living tradition, a tradition of invention. New knowledge that used traditional ways should be protected, such as the selection of new varieties from landraces. TK holders had the right to say “no”, but also to say “yes” to the utilization of their knowledge, on certain conditions, of which there were a range. Finally, all TK was not necessarily collective. There were individuals within communities who excelled and who had particular skills and had not shared or made collective their knowledge. They should be attributed rights, in order to promote and reward excellence. One needed incentives, so that the youth were more encouraged to preserve TK. The erosion of TK was the biggest threat.

16. The experts’ comments were followed by interventions by the participants. There was a question on the relationship between the need for documentation in order to facilitate TK protection and the risk of stifling its evolution. The same participant added that the value of TK was intimately linked to land and territory, which the interim reports of the Fact-Finding Missions, prepared by WIPO, apparently had overlooked. A comment was made that WIPO seemed to assume that the TRIPS Agreement would have been implemented by developing countries by January 1, 2000, regardless of the fact that several WTO Members had requested an extension of the transitional periods. The concept of demand of TK should also be investigated. TK should be examined as a sellable product, an international commodity. However, there was the question on how to protect TK, either as an element of private rights or of a sui generis system, adapted to the concrete needs of TK holders. At the same time, legal training of TK holders should be taken into account by WIPO. One participant emphasized that intellectual property rights in TK should cover its various aspects, combining its economic dimension with medicinal and food plants as well as artistic expressions. There must be a common denominator so that all interests were protected in a balanced manner. A question was posed about the possibility of protecting traditional Chinese medicinal knowledge through copyright mechanisms. A point was made that it might be difficult to cover the costs of protecting TK that had no commercial value.

17. WIPO clarified that documentation was not the only mechanism available for the protection of TK. However, it would be very difficult to protect TK without some sort of documentation. Documentation, furthermore, would be very helpful in the event that TK was already in the public domain, so as to be used as sources of prior art by patent examiners. The link of TK to land and territory had not been overlooked by WIPO, and it would be referred to in the final report of the Fact-Finding Missions. However, it was clear that it did not pertain to intellectual property matters. As regards the implementation of the TRIPS Agreement, it was widely understood that it would take some time, irrespective of transitional periods, given the complexity of the tasks to be undertaken by governments. On valuation of TK, which constituted an extremely difficult process, WIPO was considering the possibility of developing a methodology.

18. Prof. Nketia noted that it was undoubted that TK was valuable, that it needed to be protected under some sort of structure. The problem of defining it should constitute no barrier. For example, even though folklore was seen as a living culture in Ghana, an inventory was being prepared throughout the whole country. Mr. Anil Gupta made a final point that TK called for the protection of two types of rights: private and collective. Some

experience was being acquired in obtaining herbal patents in several countries. In India, the establishment of a national registry of TK was planned, which would require documentation.

## SESSION II

### **Topic 3**

19. Mr. Shri Sundaram Varma presented the paper “Traditional Knowledge: A Holder’s Practical Perspective” (WIPO/IPKT/RT/99/4).

20. A participant noted that there were two categories of TK. One sort of TK had no economic significance. But there was TK that represented a strong economic contribution, such as traditional medicinal knowledge that was helping States perform their duties of providing healthcare. Any mechanism for the protection of TK should take those two dimensions into account. A parallel could be drawn with scientific research undertaken by universities and industrial research undertaken by firms. A question was posed on how TK and “modern” knowledge could be used in an integrated manner. Another participant stressed that the present generation was losing more knowledge than it was acquiring and wondered how the TK developed by the speaker could be protected. There could also be a problem of assessing the practical benefits of TK as compared to other knowledge. Indigenous peoples should have the freedom to decide on how to use and transfer their knowledge, with the aim of guaranteeing that TK continued. A question was asked on the relevance of intellectual property for the individual and the collective. Another point was made that intellectual property in mechanical inventions was a well-established concept, but the same did not apply to life forms. Besides, the predominant concept of intellectual property did not recognize knowledge that was collectively developed. There might be excessive optimism in supporting a global system of registration of TK, given that a legalistic approach would generate heavy costs.

21. The speaker clarified that he had tried to integrate both systems of knowledge in selecting traditional varieties and developing new ones. When farmers grew varieties, they generally did not grow a single one. Varieties developed from traditional ones were comparable and sometimes had superior yields than “modern” varieties. However, his country (India) did not provide for plant variety protection. Of course, it was difficult sometimes to assess stability of varieties. However, excellent results had been obtained by him in the last decade. He strongly supported the view that all individuals who contributed in obtaining new plant varieties should be rewarded individually. Research involved time and resources. Recognition might come in other forms, but monetary rewards were essential. As regards the costs of a registration system, the speaker clarified that it would reduce costs, instead of increasing them since the main discussion was not about to whom the knowledge belonged but how protection could be accessed.

### **Topic 4**

22. Mr. Bo Hammer Jensen spoke on “Access To and Use of Traditional Knowledge — A View from Industry” (WIPO/IPKT/RT/99/5).

23. One participant raised the question on how firms could acknowledge the rights of indigenous peoples and TK holders. A view was presented that knowledge and access to knowledge should not be regulated in a strict manner so that it could be available to all. It

was asked how the existing legal framework protected traditional communities and their knowledge.

24. Mr. Anil Gupta pointed out that two issues had emerged. First, if random screening of the plants for pharmacological activity produced useful results without a TK “lead” from the local community, that did not imply that the community had made no contribution, since no screening would have been possible if the community had not conserved the local plant diversity. Therefore, sharing of benefits arising from the utilization of plant biodiversity should not be limited to the uses of TK. Secondly, the expert pointed out that numerous patents which had been granted in certain countries already acknowledged the source of biological material and TK utilized in the invention.

25. One participant inquired whether the rules of family secrecy which regulated the transmission of TK by TK holders could be compared to trade secrecy. He added that the basic premise of existing intellectual property systems that any knowledge should enter the public domain after a limited term of protection might not be acceptable to TK holders. Another participant pointed out that discussions on intellectual property protection of TK would have to consider not only the economic value of TK, but also certain non-economic values, which could not be expressed in monetary terms.

26. The speaker pointed out that in some countries where the biotopes, from which relevant biological resources originated, were very sensitive, the providers of the resource did not want the source location to be disclosed in patent applications.

27. One participant added that besides the bioprospecting activities of commercial companies, the role of academic institutions in developing countries should be considered. He explained that funding and training from private companies in the context of benefit sharing and capacity building often become a conduit through which large amounts of TK were transferred out of the country of origin without sharing the benefits with the TK holders. In particular, consideration should be given to copyright in, and access to, databases of TK which had been compiled by such academic institutions, the involvement of the knowledge providers in the compilation process, and the relation of such databases to the public domain. The scope of protectable subject matter of process patents in relation to plants was questioned. Another participant pointed out that besides the State and the communities, individual local experts should be considered as a third group of TK providers. From the experience of that participant in working with traditional healers it became clear that most traditional medicinal knowledge was held as family secrets by one individual in a family and was passed on individually. Regarding the establishment of contacts between foreign TK users and TK holders in a country, a two-step approach was suggested. A participant suggested that foreign prospectors could establish initial contact with the relevant country through governments or non-governmental organizations. He emphasized, however, that in a second step they should approach the knowledge holders within the country through the community’s own traditional institutions and decision-making structures, such as chiefs, elders, traditional rulers and so on.

28. The speaker pointed out that there was at present no Plant Patent Act in Europe. Mr. Graham Dutfield added that in Europe patents claiming plant inventions had been granted where plants were not characterized as botanical species. He referred to a recent patent on camomile as an example. The speaker recalled that due to private sector funding for academic institutions, these institutions often became a conduit for transferring large amounts of local knowledge from the local societies to the prospecting institutions. In particular, almost all publications of ethnobotany failed to acknowledge the providers, be they



individuals or communities. The expert suggested two measures to address these issues. The first was a policy by which knowledge could only be collected with acknowledgement of the knowledge providers, by mentioning their names and addresses. The second step was to establish an ethical code of conduct, by which both the knowledge and the value-added research results, which were based on the knowledge, should be shared with the providers in their local languages. The expert added that many academic institutions and companies within developing countries had usurped the knowledge of local communities. Finally, he suggested that attention should be given to the possibility of defensive patenting. A participant asked whether the patenting of plants was compatible with a resolution of the Food and Agriculture Organization (the FAO), regarding the status of phyto-genetic resources as the common heritage of Humankind.

29. The speaker explained that the subject matter which was currently being patented was limited to novel plants, which were the result of genetic engineering. If patent protection for such inventions were not available, there would be no incentive to produce such expensive innovations. The speaker pointed out that patent protection of an invention did not provide any means to commercialize a product if it was not in demand from consumers. He also pointed out that the small inventor had more benefits to gain from the patent system than the large inventor.

30. The speaker concluded that, even though firms pursued economic goals, they were willing to establish a dialogue with TK holders. Many firms had already acknowledged indigenous peoples' rights. Indigenous communities were entitled to keep secrets and, like firms, to have them protected. But, he added, the problem with secrecy was that if a third party developed a similar knowledge, secrecy was not an enforceable right.

### SESSION III

#### **Topic 5**

31. Mr. David Daoas presented the paper "Efforts at Protecting Traditional Knowledge: The Experience of the Philippines" (WIPO/IPKT/99/6A), and Mrs. Begoña Venero Aguirre spoke on "Efforts at Protecting Traditional Knowledge: The Experience of Peru" (WIPO/IPKT/99/6B).

32. Prof. Nketia said that in some areas of Africa, knowledge was shared beyond the boundaries of specific communities. On the other hand, TK had various forms, some of which were so specialized that they required a particular approach. There should be a difference between knowledge that had commercial utility and knowledge that had not. TK that was subject to commercial use should be protected against insiders and outsiders alike. The historical background of TK was one of inequalities, and one of the purposes of this type of event was to reduce them. Special attention should be given to the modalities of partnerships. Developing countries, like Ghana, were concerned with attracting foreign investors. But the opportunities and the possible modalities of partnerships were likewise important, in particular in the area of academic research.

33. Mr. Anil Gupta said that he could identify six different issues. The first issue was the identification of the legislative process aiming at protecting TK. Experience showed that, irrespective of the process chosen, the dialogue must be intensive and that it must rely on indigenous means of communication. The second issue was partnerships. There were different forms of partnerships involving States, indigenous communities and private

companies. But, at the same time it was important that the role of the State should be categorically recognized, although governments should not be too rigid in defining rules on access to genetic resources. The differences between extractive and non-extractive resources, on the one hand, and between commercial and non-commercial resources, on the other, might be taken into account. Perhaps the rules should be tailored to the nature of the resources. The third issue was the system of registration. Without a registry potential users could not possibly identify the holders of the knowledge. Registries should be recognized, at least, as important sources of information. The fourth point was the duration of rights in TK. One could invoke the precedents of the 99 year long terms of public leases in some countries. It could also be proposed that TK should be protected for four generations. There was no clear notion of the rights of licensees and the exclusive or non-exclusive nature of licences. What was clear was that there must be trade-offs in negotiations leading to the protection of TK. The fifth point was the nature of the incentives. Intellectual property, as a matter of course, allowed one sort of incentive only. But other incentives were available as well, such as public recognition, access to education and to information. Incentives could also be either individual or collective. The final issue was diversity of culture. Some degree of pragmatism and flexibility in approaching TK, which was of a diverse nature, must exist. There was a great difference between right to knowledge and right to resources.

34. Mr. Graham Dutfield said that he could summarize the discussions in three questions. The first question concerned prior informed consent. Fair negotiations did not always lead to fair outcomes. As a matter of fact, there was an important asymmetry in power of those involved in access to resources. The question was how to resolve that asymmetry. The second question was in respect of the regulation of access to resources that were used in commercial research vis-à-vis resources used in non-commercial research. And the third question was about the necessity or not of codifying customary law.

35. One participant asked whether indigenous communities were recognized in Peru. Another participant noted that TK could be found within traditional communities as well as within modern societies. It was his view that governments should be involved in the process of negotiating and sharing benefits arising from TK. One participant wished to know whether the legislative experiences were flexible enough to accommodate TK that might not fit the legal categories established by law. It was also noted that references to public domain in law might not make much sense given that indigenous communities were not familiar with the intellectual property system and therefore had made information publicly available without knowing the consequences. Public domain, in the area of TK, should be a result of a voluntary act by TK holders. One participant wondered whether the term "indigenous" was appropriate to identify traditional communities. Another point that should be taken into account was the difficult co-existence of systems of protection of TK with the formal systems of intellectual property rights. A participant asked whether there was legislative practice in recognizing traditional medicinal knowledge. That issue gained particular relevance since the World Health Organization (the WHO) was encouraging its Member States to integrate traditional medicine into national health systems.

36. Addressing the questions raised by participants, one speaker emphasized the importance of the role of governments in the protection of TK, yet without impairing the freedom of communities to enforce their rights. The Peruvian draft regulations recognized the rights of indigenous communities. The decision to enforce those rights belonged to them. As to individual incentives and rewards, the communities were entitled to assign them. The Government of Peru, acknowledging the diverse nature of the problem, had established a multidisciplinary committee to provide communities with assistance and support. She

informed that indigenous communities were recognized as such by the Constitution of Peru. The matter of protecting TK was extremely complex, which explained the long time taken by the committee to elaborate the proposed regulations. Two representatives of indigenous communities took part in the Working Group. The draft regulations did not cover all sorts of TK. They were a first step. In the future other legislative mechanisms could be adopted to protect other forms of TK, such as folklore. As to the term “indigenous peoples”, Peru had followed the guidance of Convention 169, of the International Labour Office (the ILO), but it was clear that was not a consensual concept.

37. The other speaker said that the nature and the amount of the incentives to be awarded to TK holders depended on the contracts with foreign firms, which had to be cleared by Government authorities beforehand. In his view, customary law should be codified in order to become more effective, even though he realized that was a debatable issue. The law of the Philippines only covered the relations of TK holders with foreign researchers and prospectors. Prior informed consent was required in order to acquire resources and TK from indigenous communities.

38. One participant said that the holistic nature of TK should be respected. Not only TK to which society attributed economic value should be protected. The risk of dividing TK should be avoided. At the same time, legislation should seek to preserve cultural integrity. He added that during the debates some problems had been identified. Perhaps there should be no hurry in finding the solutions. Instead more time might be dedicated to deepening the discussions. Another participant stated that although States had the responsibility to recognize and protect communities' rights, they frequently failed to do so. There were even cases where TK holders' rights were infringed by the government itself. That fact concurred to the urgent need to establish a legal framework that protected TK and access to resources. Another participant noted that the Peruvian draft regulations should include a provision protecting TK in the pharmaceutical area, in particular taking into account that TK continued to evolve and that it was being applied in fields such as engineering and genetics. Therefore, the modern applications of TK should be included therein as well. As to the role of WIPO, the same participant stressed that for the prior informed consent to become a valuable tool, WIPO should establish mechanisms to provide traditional communities with information on their rights. On the other hand, WIPO should contribute to the establishment of an international policy on the protection of TK by its Member States.

39. One participant submitted a written statement emphasizing that traditional Chinese medicine was an important constituent of the Chinese cultural heritage. He described the origins of traditional Chinese medicine, which started more than two thousand years ago, and its current status, as an element that integrated the Chinese Health Care System, with an importance equal to Western medicine. Nonetheless, intellectual property laws of China failed to adequately cover traditional medicine because of its specific characteristics. He urged WIPO to undertake efforts towards the protection of traditional medicine at the international level.

40. Another participant informed the plenary of the work of the Crucible Group, which followed the subject of these discussions very closely. About sixty-five persons representing TK holders, non-governmental organizations, governments, the private sector and, as observers, multilateral organizations participated in the Group. One of the topics covered by the Group was whether it was appropriate to protect TK by intellectual property mechanisms or by a sui generis system. When facing controversial issues, the Group preferred to adopt

different options rather than seeking an improbable consensus. He hoped that the final product of the Crucible Group would be available soon.

41. Another participant said that he had a particular interest in the discussions of the Roundtable because he was a traditional healer in Senegal. Traditional medicine was becoming more relevant in the whole African continent, in particular in Mali, Burkina Faso, Ghana, Angola and Senegal. He explained how he had been trained in traditional medicine and explained how some plants and parts of plants are used for medicinal purposes.

#### SESSION IV

##### **a) Statements by representatives of Governments**

42. The representative of Canada said that Canada had a large indigenous population, where more than 600 First Nations represented wide cultural and linguistic diversity. Canada's experience was that the issues being discussed at the Roundtable were important and complex. Meetings like the Roundtable were important to share national experiences and to learn from other Member States and indigenous and local communities. Much more analysis remained to be done and Canada considered that WIPO was the best forum to advance that work. Institutionally, WIPO had both the expertise and experience in emerging intellectual property issues and benefits from input of non-governmental experts. WIPO was also in a strong position to cooperate with other international organizations such as the Secretariat of the Convention on Biological Diversity and WTO Council for TRIPS. TK was arising in a number of international fora and it was Canada's view that WIPO leadership on these issues would promote a coherent and cohesive consideration of the complex issues being raised. WIPO's regional Fact-Finding Missions, Roundtables and work plan showed that WIPO was actively seeking the views and participation of indigenous people and local communities. Given the worldwide diversity of cultures and customary laws governing TK, it was important that WIPO continued those efforts.

43. The representative of Guyana recalled that the purpose of the Roundtable was to seek understanding and cooperation among all interested parties. He hoped this was the start of a process, which would develop a positive and productive momentum in the months and years to come. He wished to make three important points. First, in countries such as Guyana, with a long and really psychological debilitating history of colonialism and economic depression, there was a conditioning into thinking that all good things including goods and knowledge came from outside of local communities, indeed outside of the country and society. In the words of one of Guyana's most well known novelists, "nothing was ever created in the Caribbean", hence it was a profoundly unimportant part of the world. This, of course, was not true and had never been true, nevertheless it had been accepted as such until many developing countries, particularly those with an oppressive colonial past, began to rediscover the vast reservoirs of knowledge that resided within their borders. Guyana was inhabited more than seven thousand years ago. Subsequent forced movements of people brought to Guyana the ancestors from Africa who came as slaves, the ancestors from India and China and Madeira, who came as indentured laborers. The irony of all of this, of course, was that far from being culturally and intellectually poor, the people of Guyana were gifted with TK from some of the greatest traditions in the world and this knowledge had been contextualized and in a way nationalized in the natural and social landscape of Guyana. There was the urgent need to promote TK, therefore, within the country for more than economic value. Indeed, as a source of pride, authenticity, identity and self-confidence, particularly in order to retain young

people, who now saw their own country as poor backwaters of the rich world, as well as to reinforce the value of older citizens. Secondly, as far as biodiversity was concerned, an issue with which he was familiar (for he represented the Environmental Protection Agency as Director of Education, Information and Training), Guyana was in the forefront of promoting the protection, conservation and sustainable use of biodiversity, particularly in the recently developed National Biodiversity Action Plan. But biological diversity, its value and use, commercial, scientific and others, implied of course a local, national and global context. Article 8 of the Convention on Biological Diversity, which involved the respect, acknowledgement and sharing of benefits for the use of indigenous knowledge, innovations and practices, was one of the major principles of Guyana's national biodiversity Action Plan. And finally, developing countries like Guyana must first identify and catalogue the array of TK within their borders — from biodiversity to cultural products and artifacts, to craft, to all kinds of knowledge that had not even been recognized or categorized as yet. Most importantly, this task must be undertaken by the local experts. He was referring to local experts in the TK field and not necessarily from universities and other institutions. Furthermore, they must come from within the communities in which such knowledge and practices resided. This had to be essentially a bottom-up rather than a top-down exercise. Local communities could then note the different forms of TK, because they would be well aware of the various kinds of exploitations that currently took place, or potentially could take place. In his view, it was in this area that WIPO could play a very important role. He wished to express Guyana's strong commitment to WIPO's activities in this area and looked forward to sharing the experiences and, hopefully, successes of other developing countries in helping Guyana along in formulating its own plans.

44. The representative of Peru said that it should be clear that her Government considered the issue of TK to be very important. For that reason, the Peruvian Government had for some years been involved in the study and analysis of the issue which had led to the proposal presented to the Roundtable. However, she wished to clarify a few points. At the outset, she stressed that the purpose of the Government of Peru was not to establish a bureaucratic, heavily formal system of protection of TK, but rather to adopt clear and simple rules that would facilitate the licensing of TK within an established legal framework. Such a framework, of course, should rely on principles of equity and justice. So far, the discussions had focused on TK associated with biodiversity. This should not mean ignorance of the importance and value of preserving other types of TK held by traditional communities. However, the Government of Peru wanted to start with a subject matter which it considered to be extremely important and perhaps more urgent because it was related to the immense biodiversity and the immense biological resources available in the country. She understood it was clear from the presentation by the expert from Peru that her country was moving towards a *sui generis* protection regime. Nonetheless some links to the intellectual property system remained and her government had also made some progress on those issues as well. As mentioned, the draft regulation on the protection of TK did have a provision, which tied the protection of TK in with the protection of intellectual property. In other words, this happened in those cases where TK was used to make an innovation which was likely to be protected via patent or by other traditional intellectual property protection measures. In this connection she wished to inform the meeting that in the review which was being carried out on the norms on industrial property of the Andean Community, the adoption of provisions establishing the protection of TK as a requirement of patentability was being considered. For example, a provision to prove that a license to use the knowledge had been granted was being included. As regards access to genetic resources, when these resources were used independently of the knowledge, there would be a provision linking legitimate access with intellectual property rights. Her delegation understood that in so doing, it was giving integral treatment to all types

of knowledge and the use of knowledge by third parties. Her delegation was aware that real and full protection of TK would be achieved only if it was multilateral. Therefore she wished to reiterate and emphasize the importance for her government of the work being done on this issue by WIPO. Furthermore, two other initiatives deserved comment. In the negotiations being carried out on the Free Trade Area of the Americas, Peru, together with other countries of the Andean Community, had proposed that the issue of TK and access to genetic resources be included as a subject for study and analysis within the Intellectual Property negotiating group. That proposal had been approved at the last meeting of the negotiating group. In addition, Peru, together with other countries, had proposed in the WTO that at the forthcoming Ministerial Conference in Seattle, the discussions include the establishment of a mandate to start the studies which would be necessary to ensure an appropriately international legal framework for the protection of TK. In her delegation's view, the systems to protect intellectual property rights could adapt as changes took place in the world, and the proposals being discussed in various international fora were one illustration of that.

45. The representative of India hoped that deliberations in the meeting would result in aggregation of use to the mutual advantage of both holders of TK and its users. There was a growing realization among communities which were storehouses of TK that there was a need for protecting such knowledge from uncontrolled and improper commercialization. National concerns had been shown as regards the grant of patents in developed countries on TK systems. A recent example of this was the patent granted by the US Patent and Trademark Office concerning the wound healing properties of turmeric. That patent had been successfully contested by demonstrating proof of prior art. As a result, the patent had been cancelled. In this context, he referred to the first ever regional meeting on Intellectual Property issues in the Field of Traditional Medicines organized by WIPO at New Delhi in October 1998. A WIPO Fact-Finding Mission had also visited India during that period and his delegation was now eagerly awaiting the final report of the Fact-Finding Mission. His delegation felt that, often due to non-availability of information relating to TK and traditional medicine practices in a qualified manner, intellectual property offices in developed countries granted patents on traditional medicine practices. Therefore there was an urgent need to create an electronic database on TK and traditional medicinal practices. Such a database could be utilized as a proof of prior art by examiners in patent offices, nationally and internationally. His government was committed to creating such a database. Another aspect that he wished to mention was that the International Bureau of WIPO might consider undertaking a system of study and exploration of the social, cultural and overall economic aspects of TK to both the producers and the direct and indirect users of such intellectual property. Without undertaking that type of research it would not be possible to objectively specify the role and importance of TK in an increasingly knowledge-driven global economic system—for knowledge and knowledge alone underpinned all economic development.

46. The representative of China underlined that China had a vast territory, with a long history and rich culture and many different ethnic groups. His country had vast TK which needed to be protected. In fact intensive work had been done on drafting regulations to protect folklore. But his government had come to realize that there were other sorts of TK which could not be covered by the expressions of folklore, such as the Chinese traditional medicine and treatments, which resulted from long-term creative experiences but were quite difficult to legally protect. They could not be protected by patent law because they did not meet the requirements therefor. Neither could they be protected as trade secrets because they had been disclosed already. As for copyright, it could not apply to that sort of creations, because copyright only protected expressions, it did not protect ideas, operations and processes. So it seemed that TK could not be sufficiently protected by the traditional existing

methods of protection of intellectual property. Therefore there was the need for finding another way to protect TK so that a proper balance could be reached between the stakeholders and the public.

47. The representative of Brazil noted that the concept of TK was very broad but it could be divided into two categories, that might sometimes overlap: knowledge linked to folklore and knowledge associated with genetic resources. Brazil considered that both categories should be deeply analyzed. As for the latter, Brazil, as holder of significant biodiversity, had a special interest in the matter. TK developed and held by indigenous and local communities represented an important part of Brazil's cultural heritage and might also have significant economic value. The protection of TK was essential as a means of recognizing and disseminating this sort of knowledge with the approval and participation of the legitimate holders. Although generally associated with knowledge held by indigenous communities, there were many examples of non-indigenous local communities in Brazil that could also benefit from this protection, for instance, communities of former slaves that had maintained some specific traditions for centuries; people who dwelled in specific areas such as on the margins of some rivers; and so on. The protection of practices related to TK had an important additional benefit, the protection of the environment. Due to the structure and content of TK, so deeply linked to ecosystems themselves, the protection of those rights constituted an important tool for the improvement of the general conditions of environment protection. Often, the areas inhabited by local and indigenous communities were relatively poor but, on the other hand, rich in traditions associated with their biodiversity and biological resources. In view of the preceding facts, Brazil favored a deep study on the matter with a view to establishing an international regulatory framework in accordance with the provisions of the Convention on Biological Diversity. The current discussions on the review of Article 27.3 (b) of the TRIPs Agreement provided for an interesting forum where the issue would also be discussed with a view to ensuring that the TRIPs Agreement and the CBD were mutually supportive. At the national level, as discussed at the Roundtable, several countries had been working to establish a legal framework on the matter. In the case of Brazil, there were three different projects of law in Congress related to access to genetic resources and the protection of TK. Some delicate questions had been raised in those discussions, such as what substantive rights could be conferred and to whom and under which conditions. Finally, he stressed the importance of the discussions of the matter in several other fora such as the WTO, FAO, UNESCO and UNCTAD.

48. The representative of Mexico said that his government was well aware of the complexity of the issue of TK protection. For countries such as Mexico, that had a great diversity of indigenous peoples and invaluable accumulated wealth in terms of TK, biodiversity and traditional medicine, it was clear that there was a need to support any attempt to carry out specific studies in this field. In accordance with the new strategic vision of WIPO, the promotion of creativity was one of the pillars of the organization. His delegation supported the promotion of creativity within the framework of TK, allowing the carrying out of projects with several different aims. The first of these would be to give access to the relevant legal information on this subject to indigenous peoples, to governments and other stakeholders. Secondly, to develop strategies aiming at disclosing knowledge related to intellectual property in TK, taking into account the ethical and community values of indigenous peoples. Lastly, this work should be aimed at strengthening the setting up of an intellectual property culture for indigenous peoples, underlining the potential benefits that those peoples could obtain by accepting the establishment of intellectual property standards for TK.

49. The representative of Tunisia said that her delegation was convinced that one of the fundamental resources in many developing countries was their cultural capital. To provide protection for that capital, both at a national and international level, required great solidarity. Tunisia's commitment to the protection of TK and folklore in general was dictated by two essential imperatives. The first was History, for the history of Tunisia had very particular aspects. The second was the deeply-rooted conviction that culture was vital in future innovation and that there was the need to allow future development of those cultural assets in order to enrich the national heritage. A link had been established between folklore and heritage and its transfer, not as a museum item, but as an element of sustainable development. This had been done through legislation to guarantee protection of folklore and establishing the provisions related to the national heritage and folklore. Tunisia's legislation on copyright protected folklore and made its use dependent on the permission from the Ministry of Culture, upon payment of a fee to the agency charged with copyright protection. The same applied to works derived from folklore. Folklore was defined by the law as any artistic work transferred from one generation to another and which was associated with customs and traditions. The aspects related with cultural heritage were regulated by the code of archaeological and historic heritage, which was introduced in 1994. Certain institutions had been set up to focus on the need to protect TK and culture, such as the Center for Traditional Arts, whose purpose was to collect different examples of traditional art and to ensure that they were disclosed to the public. This also applied to certain items of jewelry and items of daily life. The creation, in 1992, of the Center of Mediterranean and Arab music sought to protect and highlight the music of that region. Tunisia had several centers that looked at the protection of the different aspects of the arts. Since 1992, Tunisia had held annual demonstrations to celebrate its cultural heritage. All concerned thereby became much more aware of the heritage that was being transferred to them by their forefathers. With respect to the work of craftsmen, in order to ensure that the old arts were not forgotten and new arts were innovative, a National Day of Handicrafts had been established.

50. The representative of Indonesia said that, in his delegation's view, the meeting was an important step in the process of defining the so-called new paradigm of intellectual property rights. He hoped that this work would continue to be done in a comprehensive, transparent and inclusive manner, by which broad participation would be further encouraged. The fact that this matter had been taken up by WIPO reflected the great interest and concern which was shared by the majority of the Member States, including Indonesia. As a nation with a very large territory, population and such diverse cultures, Indonesia was very much aware of the complexity and sensitivity of the issues concerned. He therefore appreciated very much all the points raised in the course of the Roundtable, both by the speakers and the other participants, which could become very valuable inputs in Indonesia in dealing with the matter.

51. The representative of the United States of America (USA) said that this had been a very instructive meeting, from which her delegation had learned a great deal. In her delegation's view, the meeting had demonstrated the growing recognition of the importance of intellectual property and the need to reconcile intellectual property issues with the concerns of the holders of TK. The discussion demonstrated that the indigenous communities and the holders of TK had much to bring to the table in terms of innovation and creative expression. Accordingly, they wished protection for their innovations, as would the holders of any other kind of intellectual property. In light of this, it seemed to her delegation that the implementation of the TRIPS Agreement presented opportunities for all to benefit from this wealth. These two days of the meeting had suggested solutions and raised questions regarding the issues, such as definition, ownership, subject matter and the law. Stakeholders in the USA had also come to terms with some of these issues. In particular a law dealing with the rights of Indian



handicraft creators had been passed. USA firms were working to come up with innovative solutions to benefit sharing.

52. The representative of Mali stated that his government was aware of the importance of the protection of intellectual property in all domains, as a factor of development. The Copyright Law of 1984 already protected some aspects of TK, such as expressions of folklore. The meeting constituted a first step towards a new system, which was necessary but nonetheless raised some concerns. In particular, his delegation could identify two problems: the definition of TK as an element of intellectual property and the documentation to be undertaken.

53. The representative of Morocco underlined that, in his delegation's view, TK was one of the most important elements on which national culture was based. The laws of Morocco had taken that aspect into account, namely by protecting folklore as "paid public domain". Currently, a draft copyright law extended that treatment to the expressions of folklore. His delegation, however, understood that those were preliminary solutions, which would not prevent his country from supporting the efforts undertaken by WIPO to seek appropriate solutions for the protection of TK. For that reason, his delegation followed with great interest the debates on that topic under the auspices of WIPO.

#### **b) Statements by representatives of holders of TK**

54. The representative of the National Institute for Pharmaceutical Research and Development (NIPRD), of Nigeria, presented a written statement describing the experience of NIPRD as regards the collaboration between the holders and the users of traditional medicinal knowledge. He underlined that the first aspect to be taken care of was the establishment of terms of trust and credibility which was important for the two parties to work together. The Agreement which the NIPRD normally used for that collaboration had clearly placed responsibilities on the holders. Those responsibilities included: the obligation of complete disclosure of the recipe; the obligation of secrecy in respect of other parties; the right to continue to practice the knowledge. On the part of the user, he was expected to subject the samples to standard research and development investigation for safety and efficacy, as well as to inform the holder, in writing, of any findings on the research. Users were supposed to apply for patent and, if granted, to cover their costs. His paper described those arrangements in further detail and also gave examples of some successes in developing new pharmaceutical drugs and in obtaining patent protection. He remarked that the approval of the commercial exploitation of pharmaceutical products raised some practical problems concerning the need to prove clinical efficacy and safety. The basic message that could be extracted from the experience of the NIPRD was the commitment of his government to recognize the importance of traditional medicinal knowledge in his country.

55. The representative of the National Indigenous Organization of Colombia (ONIC) said that even though the organization she represented worked with a broad spectrum of the indigenous population of Colombia, there was the need for a forum where all the holders of TK could meet. As a matter of fact, TK was a very complex issue and in Colombia it was held at various levels. Part of that knowledge was held by the whole of the community, some of it by part of the community. Besides, there were holders of specialized TK such as doctors and midwives. Other types of knowledge were held by families or by particular groups.

Therefore, it might be difficult to develop a method of registration that covered all those areas of TK. She said that the concept of intellectual property conflicted very often with the concept of TK because the concept of property meant appropriating something. However, when it was connected with life, animal, vegetable or human, one could not conceive appropriation in that sense. She introduced a paper describing the relationship between TK and the preservation of biodiversity as well as the efforts concerning training and capacity building in that area.

56. The representative of Transmission du Patrimoine, of Switzerland, referred to her personal experience with traditional healing and the use of natural plants. She described her efforts in setting up a center, in the Swiss area of Valais, which dedicated to the transmission of traditional medicinal knowledge.

57. The representative of the South African Traditional Medicines Research Group, University of Cape Town, said that the mission of the group he represented was to do research in traditional medicine and introduce that type of science into South African Universities, to encourage young researchers to develop an interest in this subject, to preserve that valuable information and, more importantly, to work closely with traditional healers in a mutually beneficial relationship, to better the quality of life in the communities. What the group wanted to achieve was to actually do research which was appropriate to the needs of the country and its community and to bring recognition of the values of traditional medicines, and to restore the dignity and the respect of traditional healers and traditional healing. His group wished to work closely with traditional healers on various problems, primarily on the issues of primary health care because it was known that traditional healers played a very important role in the communities. His group had detected the need for recognition and protection of traditional healing practices and medicines by the Government, which was achievable. Traditional healers did not need to be taught by someone doing the work for them, they needed to be trained to do things for themselves. Traditional healers also wanted a system of registration of their medicines and their incorporation into the national regulatory drug policies. He described some initiatives concerning the preservation and the protection of traditional medicines, such as a number of workshops organized with the cooperation of traditional healers, the publication of a book on traditional primary health care, and the drafting of a Bill, by the Department of Arts, Culture, Science and Technology, for the protection of indigenous knowledge and arts. Through the Department of Health and through the Medicines Control Council, the Government had formed a complimentary medicines committee, which was, at the moment, trying to register traditional medicines. With the help of the Government, his group was also developing a national reference center for traditional medicines. He realized that there were some problems which had no easy solution. First, there was the question of trust, which was difficult to establish and preserve. Secondly, there was the problem of management and attribution of rights, such as royalties and copyright sharing. He also mentioned the efforts of his group to develop new drugs based on information provided by traditional healers. Finally, he referred to work done by his group in other areas, such as cooperation with the South African Museum.

58. The representative of the Comitê Intertribal — Memória e Ciência Indígena (ITC), of Brazil, said that TK was, for indigenous peoples, a form of wealth. They did not transfer it in exchange of money. They had simply an agreement amongst indigenous peoples to exchange information to ensure their own survival and existence. One very important point he wished to make was that TK was associated with the protection of the environment. Indigenous peoples were attempting to draw up certain rules, an ethical covenant that regulated access to TK by the western world. Information, knowledge and wisdom could be found through

machines and laboratories in the west but the indigenous peoples found that TK was the strongest of all and machines could not change that knowledge. They could kill it, but if they killed it, this would also be the end of Humankind. Indigenous peoples had custodianship of that knowledge. Governments had committed themselves to define the borders of the lands of indigenous peoples and this was something which ought to be done. This was one way of ensuring not only the survival of the indigenous peoples but also the survival of the environment and protection of the natural elements on that land. It should be quite clear that indigenous peoples had always practiced sound and self-sustaining development. Finally, he wished that all the stakeholders in TK shared information as part of an overall construction of new rules. They should not remain as if they were within a labyrinth. They should emerge from the labyrinth and move onto a straight road where all could move forward together, not only as a unique source of wisdom but as part of an overall scientific movement to protect the earth and the people living on it.

59. The representative of the Centro de Culturas Indias, of Peru, had a few comments on the draft regulations presented by the speaker from Peru. She was worried with a predatory approach concerning biodiversity by the pharmaceutical industry or other industries. Furthermore, she wondered whether TK which was being transformed by Western technology could be protected. She also urged that current traditional innovators should be protected, and not only TK in a static sense, as something past. She proposed the creation of an international forum where governments and indigenous peoples could exchange views. Moreover, WIPO should look at the possibility of the establishment of an international policy concerning the protection of TK because national laws, as sophisticated as they could be, were not sufficient.

60. The representative of the Indigenous Peoples Biodiversity Network (IPBN), of Peru, said that, in his view, the appeal of the Roundtable was aimed at the promotion and protection of indigenous knowledge and this knowledge should be respected as a whole. Its holistic aspect should be taken into account so that future regulation should not be limited to the use of TK that society considered to have economic value. He underlined that any protective measures should not discriminate between areas of knowledge, because there was knowledge that covered more than one type of expression, such as music or the use of medicinal plants, which were very closely linked in certain cultures. Laying emphasis on patents or other forms of intellectual property protection might jeopardize such unity. He believed that legislation should respect the cultural integrity of indigenous peoples. In some way, legal systems should strengthen social and cultural processes in the traditional communities so that all this could continue. In particular, and as much as possible, there should be respect for indigenous cosmos visions so that those communities benefited directly from this knowledge by means of incentives compatible with local cultures. Finally, he stressed that there was an urgent need for education of TK holders on the subject of TK and intellectual property protection.

61. The representative of the Department on Political and Legal Issues of Mejlis of Crimean Tatar People of Ukraine, wished to share a very negative experience of the use or maybe the destruction of TK in Crimea. He said that without an appropriate legal framework that protected TK and its holders, the State itself could destroy the cultural heritage taken from the indigenous peoples, because of changes of public policies and orientations in culture. He mentioned the specific examples of books on History, which necessarily reflected an official interpretation as they were published by the State, and a campaign against alcohol, which had eliminated the traditional production of some types of vinegar by local communities. These examples were evidence of the need for a regulatory framework that provided that access to TK should be legally based and legally ensured to TK holders.

**c) Statements by representatives of intergovernmental and non-governmental organizations, and the private sector**

62. The representative of the United Nations Educational, Scientific and Cultural Organization (UNESCO) said that UNESCO, in view of its broad competence, was very closely involved in all activities linked to traditional cultural heritage. He did not want to recall the different areas in which UNESCO was active in these fields but he would like to recall one salient feature of recent dates, the World Intellectual Conference on Science which was held from the June 6 to the July 1, 1999 in Hungary, in Budapest. The agenda of that meeting had included the consideration of TK and traditional sciences. These matters had been discussed and the final resolution had adopted five recommendations on TK for the future work program. Those recommendations mainly called on States to promote TK as well as advance and develop it. However, TK should not be seen as an element of interest and an input to science only, it should rather be integrated as a decisive element in the development of the peoples concerned. UNESCO, together with WIPO, was involved in the protection of intellectual property and TK. The two organizations had vast experience in this field and they had been looking into folklore and popular culture for a number of decades. Research had shown that the protection of cultural heritage identified two things. The first was that the heritage should be identifiable in order to preserve it as an element of the nations' History and secondly that cultural heritage in its use in modern day life should be protected from unlawful and fraudulent use. In the light of the dangers that did exist in this direction, UNESCO and WIPO were focusing on the legal protection of expressions of traditional and popular culture and also its preservation. During the period between 1973 and 1982, the organizations had brought together lawyers and others to define the nature of heritage, to decide how best it could be protected and what actually needed to be protected. A common heritage of all Humankind had been determined and this heritage was, at that time, being subject to fraudulent use and abuse. One legal way of protecting heritage today was to create a system which guaranteed a form of protection. At the time, the two organizations were interested only in the artistic aspects of TK, namely expressions of music, poetry, popular literature and the arts. The discussion led to a model law of 1982 which was drawn up between WIPO and UNESCO. Very many issues were found in the text and were taken up and explained and certain solutions that were proposed could be used as the basis for future action. The second aspect, the conservation and preservation of heritage, was initiated in UNESCO from 1989 onwards, when its General Conference adopted a resolution on the safeguard of traditional and popular culture and heritage. Since that time UNESCO had been encouraging its Member States to adopt a reliable system by which national heritage could be identified and protected. Substantial work had been done along those lines. In 1999 several meetings had been held in various regions of the world, Latin American, Asian and African areas, during the course of which debates had been held on different aspects of TK. The following conclusions had been reached. With respect to intellectual property aspects of TK related to the arts, there was the need for a system similar to copyright, and the model law of 1982 could be a basis for that. With respect to TK, thought had been given to identifying within the intellectual property system what aspects were to fall into this other category. This led to the identification of certain approaches and during the course of the next biennium UNESCO was going to attempt to help Member States develop national systems adapted to the reality of the situation incorporating two aspects of heritage protection: its identification and protection and the establishment of a legal system to protect the various forms of exploitation of this heritage which must take account of a fair balance of the interests between the innovators and the people who were using the knowledge.

63. The representative of the Fédération Internationale des Conseils en Propriété Industrielle (FICPI) said she agreed that industrial property rights and especially patents, which required some conditions to be met, such as novelty, were not the right mechanism for the protection of TK. TK often did not fulfil the novelty requirement. Moreover some TK, such as the use of certain plants, might be known in several countries, which might cause problems. Therefore, it was encouraging to hear experiences, such as the one in the Philippines, where both industrial property rights and customary laws could exist together. In her view, this was the right way to handle the very important issue of TK. Patents allowed the owner to prevent others from using an invention commercially. This was a very important aspect. It was only the commercial use that was prohibited. Anyone could make experiments with a patented invention and develop it further. Moreover, other national laws might very well prevent the use of a patented invention. For example, inventions that violated environmental laws or other laws, such as customary laws, might be excluded from usage. Even though the establishment and use of industrial property rights might be costly, she suggested that developing countries should be encouraged to develop good industrial property laws together with other laws for the protection of TK. Once there were good industrial property laws, the linking together of inventions, investment and enterprise would come on its own. History had proven that good industrial property laws stimulated inventiveness, it helped to lead the interest from inventors and entrepreneurs into inventions and that more inventions were made when there were safe and good industrial property laws compared to when there were no such laws. According to the economic theory proposed by R.W. Fogel and D.C. North, Nobel laureates in 1993, good laws, including industrial property laws, were considered to be an explanation to why some countries were rich. It was not the political status of a country, it was not even the national resources that allowed for good economic performance but rather it was due to good, safe and predictable laws. Therefore, it might be very important for all countries to have good industrial property laws together with other national laws, for example, for the protection of TK. She hoped that WIPO could assist its Members to adopt industrial property laws in combination with customary law in order to protect TK.

64. The representative of the International Indian Treaty Council, informed that the fundamental purpose of his organization was to fight for and achieve policies and legal measures which would enable indigenous peoples, without external interference of any kind, to maintain, recreate, develop, plan and transmit to future generations all their particular and specific types of cultural heritage. However, it was a sine qua non condition to have guarantees and legal measures taken and policies adopted which would enable indigenous peoples to continue to live on their land, from their land and with their land so that in total freedom they could implement their own development policies in accordance with their own customs and traditions. This struggle was both a dream for indigenous peoples and something they wanted to see successfully implemented. However, it was taking place in a discriminatory setting and where the contributions which indigenous peoples had made and continued to make to society, were being denied. This meant that science, technology and indigenous art forms had been undervalued and the TK of indigenous peoples had been stolen and misappropriated. As far as legal issues were concerned, his organization considered that, first of all, paragraph 2 of Article 27 of the Universal Declaration of Human Rights was important. Another important provision was Article 27 of the International Covenant of Civil and Political Rights, including the interpretation of that Article by the Human Rights Committee. Further instruments included the following: the fifth introductory paragraph of the Declaration of Principles of International Cultural Cooperation adopted by UNESCO; the spirit and letter of the Convention on the Elimination of Racial Discrimination adopted by the United Nations; the spirit and letter of ILO Convention 169; the legal and philosophical

reasoning contained in the Draft Declaration on the Rights of Indigenous Peoples, being worked on currently in the United Nations; and lastly, the relevant provisions of Agenda 21, in particular Chapter 26 and the Convention on Biological Diversity. In his organization's opinion, these instruments clarified the indigenous peoples' demand for the corrective recognition of their special and specific forms of Intellectual Property. He also informed that his organization agreed with and had signed the declaration prepared by representatives and organizations of indigenous peoples on July 25, 1999. The declaration was entitled "No to Patent on Life" and he would like it to be considered an integral part of this statement. He proposed that WIPO undertook activities on technical assistance to indigenous peoples on how to use existing mechanisms of intellectual property rights as well as advocate the recognition of TK in areas such as science and technology. Any future discussion or legislative standard on these issues should take into account the fact that indigenous peoples demanded a guarantee to withhold the right to communicate or share certain aspects or parts of their TK.

65. The representative of the Tebtebba Foundation-Indigenous Peoples' International Centre for Policy Research and Education, of the Philippines, said that, in her organization's view there was a serious conflict on the rights and obligations of the Member States between the TRIPS Agreement and the CBD, particularly between Article 8(j) of the CBD and Article 27.3(b) of TRIPS. Article 8(j) called on Governments to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities on biodiversity conservation and encouraged equitable sharing of benefits arising from the utilization of this knowledge. On the other hand, Article 27.3 (b) of TRIPS legitimized private property rights in the form of intellectual property rights over life and processes entailed in modifying life forms. But those were rights for individuals, corporations and governments, not for indigenous peoples and local communities. Governments were asked to change their national intellectual property right laws to allow for patenting of microorganisms and non-biological and microbiological processes. Even many developing country Governments recognized this incompatibility and in fact they had already tabled proposals in the WTO on the need to obtain compatibility between the two Agreements, proposals which could be found in the revised draft of the Ministerial text on the preparations for the 1999 WTO Ministerial Conference. She was concerned that the Roundtable appeared to be organized so as to enforce the mandate of WIPO to promote and implement the dominant intellectual property rights regime and to assert that intellectual property rights were the only viable path to protect TK. She reiterated that any discussion on traditional and indigenous knowledge should always refer to the Articles of the Draft Declaration on the Rights of Indigenous Peoples, particularly Articles 24, 25, 29 and 26. Those Articles clearly established indigenous peoples' rights to their knowledge, innovations and practices, which were also referred to as intellectual and cultural heritage. Those rights could not be discussed in isolation from the indigenous peoples' rights to their territories and resources. Her organization saw a problem in the fact that, while on the one hand there were efforts to protect indigenous rights and TK, such as the CBD and the FAO International undertaking, on the other hand, there were international agreements, like the WTO Agreement, which were undermining those same efforts. This was also happening at the national level, as in the Philippines. So the prospects were not very good for indigenous peoples struggling to have rights in their indigenous knowledge and cultural heritage because powerful economic and political interest were behind the efforts to undermine that struggle. In this context she believed that the challenge for WIPO and Governments, as well as other international organizations, was to maintain an open mind and be more daring in exploring other ways and means to protect and promote indigenous and TK outside of the dominant intellectual property rights regime. WIPO should not insist on imposing the intellectual property rights regime to protect indigenous'

knowledge. Nevertheless, this issue should be explored and developed in partnership with indigenous peoples and other TK holders. Any effort to negotiate a multilateral framework to protect indigenous and TK should consider the indigenous practices in customary laws used to protect and nurture indigenous knowledge at the local, national and regional levels. She wished to submit a document prepared during the Working Group meeting in July of 1999, in Geneva. It contained some proposals for the review of Article 27.3(b) of the TRIPS Agreement and which echoed some of the proposals presented by African countries, Cuba, Honduras and other Latin American countries in the WTO. Finally, she proposed that WIPO undertake studies, in collaboration with other relevant organizations, in order to make recommendations on the most appropriate means of recognizing and protecting TK, medicinal practices and expressions of folklore of indigenous and local communities. She also proposed that WIPO's technical assistance program included TK holders. Any future mechanism of protection of TK should provide for prior informed consent. Moreover, indigenous peoples should be compensated for the misappropriation of their knowledge.

66. The representative of the Pauktuutit Inuit Women's Association, of Canada, informed that her organization represented all Inuit women in Canada. It promoted the full and equal participation of Inuit women at the community, regional and national levels. Inuit lived primarily in 53 communities, spread across the vast northern one third of Canada. Inuit had a remarkable and rich culture that was recognized worldwide for its innovative adaptation to the harsh arctic environment. The concerns and issues she wished to raise, however, were not unique to Inuit but lent themselves to the concerns of other indigenous women in the Americas and to all indigenous peoples in Canada. Her organization had had the opportunity to voice the concerns of Inuit women at a number of national and international fora. More notably, as a Member of the Indigenous Women of the Americas, efforts had been made to promote an understanding among indigenous women in North, Central and South America of the legal and economic rights associated with the commercialization of their artistic creations. As a participant of the Indigenous Peoples Caucus of the Canadian open-ended Working Group on Article 8(j), her organization had sent delegates to various United Nations CBD meetings and had worked to promote the implementation of the Convention in Canada. In addition, it had been granted consultative status at the UN's Economic and Social Council. Since 1994, her organization had worked with hundreds of Inuit women based in the communities to promote traditional Inuit clothing designs and artistry. This work had involved the transfer of traditional sewing skills of elder to younger women for the production of handcrafted traditional and contemporary garments for southern consumers. This was intended to provide Inuit women with viable economic opportunities, financial independence and control over their products while respecting the cultural integrity of the Inuit communities. However, without clarification and protection of the intellectual property rights of Inuit women, these creations could be exploited by others like other Inuit products, such as the kayak, parka and kamik. This process continued. Recently a New York fashion designer had made a venture into the Northwest territories to buy traditional Inuit clothing with the intent of incorporating those designs into her own fashions and after listening to the discussions yesterday and today she had been inspired and motivated to see what specific action her organization could take in the immediate future. She informed that the open-ended Working Group had developed a number of focal points or case studies that addressed various biodiversity themes related to Article 8(j) within a Canadian context. These included forestry, agriculture, aquatics, intellectual property rights, policy and legislation and ethical guidelines. The Pauktuutit project on intellectual property rights would serve as a case study of the issues, procedures and obstacles associated with legal protection of a specific product, the amauti, an Inuit women's parka, designed for the purpose of carrying a baby or young child. This was an ideal subject for a project of this nature as the amauti embraced Inuit TK and

cultural expressions. It related to the traditional harvesting and utilization of resources and the role of Inuit women. Moreover, it addressed the issues of commercialization of a traditional product and how this impacted the economic circumstances of modern Inuit women. A critical component would be consultation with Inuit women to determine how best to collectively protect, market and share the benefits of their products. Inuit women were discriminated against and did not get the economic recognition and remuneration they deserved although they were equal stakeholders in the debate surrounding the use and the protection of intellectual property and TK. The project's concept had been widely supported throughout the North and her organization was most appreciative of having received the support from a number of regional Inuit political organizations in Canada. Inuit had an oral tradition and knowledge, much of which was held collectively, not individually. This fact challenged existing intellectual property laws and regimes. It was therefore important that WIPO addressed these issues. Her organization wished to express its deep concern over how existing regimes failed to protect TK and the intellectual property of indigenous peoples. The recent developments in the Council for TRIPS highlighted some of those concerns. Article 27.3 (b) failed to protect TK and ways of thinking with respect to living things. The TRIPS Agreement was inconsistent with the Convention on Biological Diversity. For example, indigenous knowledge on health, agriculture and biodiversity was open to appropriation. Rather than protecting the rights and knowledge of indigenous peoples, that provision served to undermine their rights to control and manage their heritage. In concluding, she emphasized two points that were very important for her organization: financial support for continued attendance by representatives of indigenous peoples of international meetings and lack of their representation in the staff of WIPO International Bureau.

67. The representative of the National Working Group — Intellectual Property and West Australian Environment Working Group, of Australia, speaking on behalf of the Aboriginal and Torres Strait Islander Commission (ATSIC), the Foundation for Aboriginal and Islander Research Action (FAIRA), the National Aboriginal and Torres Strait Islander Legal Services Secretariat (NAILSS), the National Secretariat of Torres Strait Islander Organizations (NSTSIO) and the National Working Group on Intellectual Property and Western Australia Environmental Working Group, informed that the Australian Indigenous delegates during an Australian Workshop on TK and Biodiversity in Adelaide, Australia, on September 25 and 26, 1997, stated that “Indigenous Australians (Aboriginal and Torres Strait Islander Peoples) are very aware of the critical state of Australia's biodiversity and want to play an active role in its use and management. We have a right to be involved in the use and management of Australia's biodiversity by virtue of the fact that we have never ceded our rights to the land, the sea and its resources. We can contribute to the use and management of Australia's biodiversity through the continued practice of our culture and through negotiated access to our knowledge about biodiversity”. The laws protecting innovation through intellectual property rights should, in the view of the indigenous organizations he represented, adapt to the changing nature of TK and adapt to the needs of the people through the laws they were meant to serve. Instead, it was more often the case that indigenous peoples were told that they must compromise their rights or that they must change their TK in order to gain protection of intellectual property right laws. In other words, it seemed, indigenous peoples must change to suit the law, instead of the laws changing to suit indigenous peoples. In his view, indigenous peoples must have an education system which allowed indigenous knowledge to be passed on to future generations by themselves. They must have the right to decide what TK was available for commercial use and what was not available for such use. These rights should be exercised by indigenous peoples themselves rather than by any Government or by any court system. Furthermore, indigenous peoples should have the right to link TK and the exercise of that knowledge to geographical areas of land, seas and territories. This was very much a right



for which indigenous peoples were still seeking legal recognition on a global basis. Intellectual property rights for TK must be based on the simple verification that indigenous peoples as a community had recognized this knowledge as continuing. Aboriginal and Torres Strait Islander Peoples would continue to call for the recognition of their ownership of land and seas and the resources within them as well as the right to be compensated for their utilization. The right to protect indigenous knowledge systems should not be seen as threatening or challenging management agencies or the foundations of scientific understanding. Rather, it should be seen as complimenting and broadening the collective management structures and basic ecological knowledge. He added that the law should not fear indigenous people's TK. Indigenous peoples must be convinced that their TK had nothing to fear from the laws concerning intellectual property rights. Indigenous peoples still waited for lawyers, academics, Governments and media to seek their permission to use their TK. Finally, he reiterated the commitment of the organizations he represented to continue their struggle to have indigenous peoples' rights to their TK, their lands and resources recognized and protected. He called on WIPO to become an instrument in promoting indigenous peoples' rights to self-determination. He had a single recommendation that WIPO appointed an indigenous expert on indigenous intellectual property and TK in consultation with the indigenous peoples.

68. The representative of the Inuit Circumpolar Conference (ICC) informed that his organization was an indigenous non-governmental organization established in 1977, serving approximately 150,000 Inuit in Chukotka (Russian Federation), Alaska (United States), Canada and Greenland. ICC was seeking to accomplish a number of critical objectives which were mentioned in a document "The Principles and Elements for a Comprehensive Arctic Policy" done by ICC. Those principles and elements were intended to apply to the Arctic both in the present and in the future, as they would not remain the same. He said that from Inuit elders came Inuit culture. Elders provided Inuit with an identity and were responsible for the transmission of culture and language. Without them Inuit identity, which bound Inuit together across the circumpolar world, would be lost. In Inuit society, oral tradition was the primary means by which knowledge was transferred from generation to generation. The areas of TK of elders that should be transmitted to youth included Inuit spiritual beliefs, customs and traditions, harvesting skills, history, arts, medicine and Arctic environment. In relation to the management and conservation of material culture, his organization believed that Inuit must be involved in all aspects considering that (a) collective and individual rights to the material culture of Inuit must be respected and protected from improper removal, counterfeiting, copying or trading; (b) handling and treatment of cultural property must, at all times, be carried out with full respect for the sensitivity and values of those Inuit concerned; (c) States involved should provide Inuit with financial assistance in order to manage their own cultural resources as well as design and administer their own programs; (d) Inuit culture and tradition must be maintained through the official use and mapping of Inuit place names which had been, and continue to be, established by Inuit as a result of generations of use and occupancy of Arctic lands and waters; (e) agreements should be encouraged between Inuit and Museums and other institutions that were in possession of Inuit cultural property. In this way the terms of custody, exhibition and return of such property could be satisfactorily worked out. Furthermore, researchers and scientists working on matters related to Inuit culture should provide Inuit with copies of their work and make this available in Inuit languages. It was especially important to include Inuit traditional scientific knowledge when determining the research terms of reference and methods to be employed. Reasonable opportunities should be given to Inuit and their organizations to comment on research results, prior to finalization. Finally, he wished to emphasize that indigenous peoples should be considered not as beggars, but rather as custodians of a very important part of the world's

heritage. That was what TK actually was. He welcomed WIPO's plans of further assessing the intellectual property implications of TK and increasing training and awareness raising worldwide for TK stakeholders.

69. The representative of the Arctic Council Indigenous Peoples' Secretariat informed that his organization served and furthered the interests of four Arctic indigenous peoples organizations, which were the Inuit Circumpolar Conference, the Sami Council, the Russian Association of Indigenous Peoples of the North (RAIPON) and the Aleut International Association. The Arctic Council was a high-level governmental forum established by 8 Arctic States (Russia, Norway, Sweden, Finland, Denmark/Greenland, Iceland, the United States and Canada) to cooperate on the protection of the Arctic environment based on sustainable development and inclusion of the TK of the Indigenous Peoples of the Arctic. He believed that there was immediate need for the protection of the rights of indigenous peoples to own and control their cultural and intellectual property. In that sense it was absolutely necessary to develop and establish an ethical convention on intellectual property rights which recognized diverse property values and included the intellectual property rights of indigenous peoples. In this regard, it was of absolute importance to include recognition of the rights to self-determination of the indigenous peoples in order to be recognized as distinct peoples with their own cultural heritage. Therefore, he urged the Roundtable to recommend to the relevant United Nations bodies the immediate adoption of the Draft Declaration on the Rights of Indigenous Peoples as it stood at that moment to further the recognition and protection of the intellectual property rights and TK of indigenous peoples. A number of provisions of that draft declaration had particular relevance to the assertion of indigenous peoples' rights in their cultural and intellectual property. He hoped that those provisions would be seriously considered for adoption in the future.

70. The representative of the Center for Orang Asli Concerns, of Malaysia said that frequently, proponents of the intellectual property rights regime reduced the issues involving TK to either that of ascribing a value to an already defined property or to that of revolving around the mechanisms for equitable monetary compensation. Perhaps for that reason there was considerable focus on intellectual property protection for biological products and very little attention to other elements of TK that equally needed protection. This was understandable, given that the TK of indigenous peoples had been described as the west's new frontier in the great resource rush. Nevertheless sometimes the expropriation of TK did not involve a commercial product, nor did it involve a monetary gain to the expropriator. However, the loss of pieces of TK could have major consequences for the survival of the community as a distinct people. He illustrated his point by referring to the mischaracterization of indigenous peoples' legends by the media, which could add to the dilution of the cultural heritage of minorities, the enrichment of the cultural heritage of the dominant group, but not of individuals, being the natural result. The point he wished to make was that issues concerning indigenous intellectual property rights did not only translate into dollars and cents lost to the community or gained by outsiders. They often affected the very basis of indigenous peoples' autonomy and identity. Given that the modern legal systems of States had not guaranteed an end to the continuing deprivation of indigenous peoples from their traditional territories, his organization could not expect the current legal framework of intellectual property rights to cater for, and provide protection to, the interests of indigenous peoples with regard to TK. He understood that WIPO was being entrusted to take the necessary initiatives to concretely and adequately secure indigenous peoples' rights to their TK. This was a heavy responsibility but he was confident that WIPO could accomplish it. The first step in this process, however, should be to recognize that the current regime of

intellectual property rights could not guarantee the interests of indigenous peoples and as such there was the need to go beyond it and not be bound by it.

71. The representative of Traditional and Modern Health Practitioners Against Aids (THETA), of Uganda, said that the organization she represented was bringing together traditional healers and herbalists and modern health practitioners in Uganda. The idea was that holders of traditional medicinal knowledge had an important role to play in the development of healthcare in her country. It was her organization's experience that holders of traditional medicinal knowledge were not asking for money or other monetary incentives but they were asking for recognition. They were asking for the recognition of their role and importance in the development of nations. For that to happen, there was the need to adapt existing laws to the changing realities. Therefore, she urged the relevant intergovernmental organizations, such as WIPO, to work with national governments in reviewing legislation governing the practice of traditional medicine and establishing modalities of identification and documentation of the rich diversity of TK.

72. The representative of the Association nouvelle pour la culture et les arts populaires (TAMAYNUT-ANCAP), of Morocco, submitted a written statement emphasizing that both international and national intellectual property laws had tended to ignore the particular situation of Indigenous Peoples minorities, thus depriving them of legal instruments that recognized their specific cultural and linguistic identity. He proposed a number of concrete actions for the protection of intellectual property rights of indigenous peoples.

73. The representative of the International Chamber of Commerce (ICC) informed that his organization represented private industry and commerce throughout the world, including individuals and companies, both big and small, and had national committees in countries throughout the world. ICC had a long record of supporting intellectual property, dating back to the Paris Convention in 1883 and it would, therefore, certainly support the principle of respect of indigenous intellectual property. His organization was very anxious to know what that meant in practice, for the meeting had shown that was far from being straightforward. Apart from that, he emphasized the need for the various stakeholders to listen to and seek to understand each other. A fundamental consideration was the aim of obtaining a balanced system, under which benefits could be distributed equitably among TK holders, users, governments and the public at large. Another aspect of balance involved the term of protection of rights in TK. This was a very sensitive issue and required careful consideration, in particular where licensing of commercial exploitation was at stake. Concerning the issue of public domain, he underlined its importance for industry, because it increased commercial freedom, certainty and legal security. Nonetheless, specific exceptions would at least be worth discussing. He suggested that WIPO undertake some work on how the idea of public domain could affect the protection of TK and what kind of exceptions, if any, might be appropriate and practical. Finally, he informed that his organization had put out a policy statement explaining its views on the relationship between the CBD and the TRIPS Agreement, which he requested to be considered as a part of his intervention.

74. Mrs. Monica Castelo, a legal researcher from Uruguay, said that indigenous peoples and traditional communities should have the right to promote the exchange of TK as far as that was possible and in a way which was acceptable for them and beneficial for the rest of Humankind. She noted that there was a feeling of urgency behind the efforts to protect TK because TK systems were very fragile and nobody wanted any further damage done to them. Further, she said that conflicts within the communities or between communities which shared the same knowledge might arise concerning the division of royalties. She suggested that

alternative ways of providing material benefit or compensation, bearing in mind that material values, as well as immaterial ones, should be considered.

75. The representative of the International Publishers Association (IPA) said that he had been particularly interested in the discussions involving the relationship between the cultural identity of traditional communities and the intellectual property protection of their artwork and garments. He could see a relevant demonstration of that relationship in the now wide spread use of the Scottish tartan patterns, which used to represent the clan system of the Scottish highlands, destroyed in the 19<sup>th</sup> Century. His organization had a keen interest in documentation of TK. He wished to emphasize that WIPO would need to grapple with issues of diverse oral versions, and therefore with issues of authenticity, of what was worth documenting and what was not, which issues required expert editorial support and guidance. His organization was willing to cooperate with the TK communities, and WIPO as well, as they might find appropriate, in a project of documenting TK, by providing expert editorial support and guidance.

76. The representative of the Iwokrama International Centre for Rain Forest Conservation and Development, of Guyana, said that his organization had been created ten years ago at the Commonwealth Heads of Government Meeting in Kuala Lumpur, in 1989. At that meeting the President of Guyana offered to make a substantial area of pristine tropical rainforest available to the international community, provided the international community responded by supporting the establishment of an international research and development center in Guyana. The purpose of the center was to demonstrate how tropical rainforest ecosystems could be conserved and sustainably used while still making a substantial contribution to both local and national economic development. It became a legal entity in May of 1996 and started effective operation in July of 1998. It was governed by an international board of trustees established under legislation passed by the Parliament of Guyana. Under that legislation, the Centre was responsible for the day-to-day conservation and management of the 360,000 hectares of the Iwokrama forest. Under the Centre's governing legislation, approximately half of the Iwokrama forest would be preserved as a wilderness reserve, while the other half would be considered as a sustainable utilization area. The forest was the major focus for the Centre's research and development activities. Commercial partners would be sought for a wide range of activities including bioprospection, ecotourism, training, the sustainable harvesting of both timber and non-timber forest products and lastly the sale of global environmental services. A key objective for the Centre was to become financially self-sufficient for core activities within ten years and this was based largely on the endowment of the forest that had been made available by the Government and People of Guyana to the Center. The key priority for the Centre was the development of working protocols on the protection of intellectual property rights and the promotion of equitable benefit sharing amongst the Centre's stakeholders. This included, in particular, the people living in and near the forest and also the broader public and the Government of Guyana. With funding support from IDRC of Canada, the Centre was currently initiating studies to synthesize lessons learned and best practices emerging from the wide range of experience that were coming from different parts of the world. His organization was preparing draft protocols governing all its operations in research, utilization, training and promotion. The draft protocols would be subject to wide national and international reviews, both by legal experts and stakeholders, before presentation to the board of trustees for adoption. Of course, the Centre did not expect these protocols to be the last word on those important and complex issues. Over the next few years a key research objective would be to monitor the effectiveness of the protocols from the perspective of the different stakeholders. Given the complexity of the issues involved, the Centre believed that it must adopt an action-learning, adaptive management approach to the development, use and

improvement of the protocols. In that regard, the Centre would look forward to learning from the WIPO network associated with the Roundtable. It also looked forward to sharing its experience with the development, implementation, monitoring and improvement of the protocols.

77. The representative of the National Art Development Industries of Mashrabeya, of Egypt, wished to share with the other participants in the Roundtable an experience of protecting TK through training a new generation in traditional arts and crafts. More than twenty years ago, he was involved in a project of restoration and conservation of a traditional house in Cairo. There was no problem in finding academic professors to work as consultants in different specialties. The real problem was the scarcity of traditional master artisans who had the knowledge and experience of doing restoration in architectural work. Western style was prevailing as long as traditional artisans, because of the shrinking market, turned to serve the tourism bazaar, which encouraged them to make items that would fit in the suitcase of a tourist who generally did not know much about the esthetical values of the traditional arts. Back in 1978, he established an Institute for training young men in traditional arts in order to create a new generation of traditional artists who would master the traditional arts through producing artifacts for the modern Egyptian families and who would later be able to work in the restoration of old monuments. The Institute started in 1978 with only four master Artisans housed in a one-room atelier. The Institute relied on the traditional system of apprenticeship where the apprentices would be trained on the job under a Master Artisan until they themselves became competent enough to produce acceptable works. At that stage, they would have their own apprentices to train and so on. He said that the Institute now had about 500 persons specializing in different traditional arts, such as woodturning, inlaying, wood carving, interlocking techniques of woodwork, upholstery, appliqué works, rag weaving, metal art work, bookbinding. All these arts used traditional techniques and traditional designs to produce high quality artifacts. A most important result was that for the last six years the Institution, through these competent artisans, had been responsible for the restoration of a whole area with four monuments, in a traditional quarter of Cairo. Finally, he said that in Egypt it would be difficult to distinguish people who were indigenous from those who were not, since the Egyptians had formed a single cultural body for thousands of years. Therefore he would encourage the use of the term “Traditional Culture”, instead of Indigenous Knowledge.

78. The representative of the Caribbean Community (CARICOM) said that she represented a community of fifteen States, the Independent English speaking islands of the Caribbean, Haiti, the newest member, Belize, in Central America, and Guyana and Surinam in South America. While it was true that some of the Community’s Member States were home to indigenous peoples, in many cases, it was the majority of the population or, at least, a large percentage of the population who were in fact the holders of TK. She had no objection to the use of the term “indigenous peoples”, as she fully appreciated the concerns of those communities. However, her organization asked that, when considering this issue, it should be borne in mind that in some cases the term “indigenous” would not be applicable. She had a second point related to the history of his region. The peoples of the Caribbean descended from persons who came to the region often involuntarily and sometimes voluntarily. Therefore, their TK, however influenced by the ancestry, had been adapted to suit the Caribbean and had developed into a product which the peoples in the region considered uniquely theirs. She wished to stress that any effort at protecting TK must acknowledge the contribution of other peoples to Caribbean TK or that more action might be necessary. This matter had to be further explored in order to make a decision on the subject.

79. The representative of the Association Arc-En-Ciel, of France, said that life forms should not be appropriated because they constituted the common heritage of Humankind. As an alternative option to patents, he suggested that TK could be protected by the guarantee of a label, a sort of *appellation d'origine contrôlée*, which indicated the territory and was recognized by everyone. This label, although not a patent, could be registered. It would depend on the community to decide on applying for the registration. Such a system would give back to TK holders the possibility to make the appropriate decisions on how to protect, use and transfer it. On the other hand, he believed that only modifications on living material should be considered patentable subject-matter, not only in order to protect the interests of the inventors, but also to identify their responsibilities. Given that WIPO's mandate was the protection of intellectual property, it had to take an ethical position on the protection of TK. Whatever that position would be, TK holders should always be empowered to decide on how to transmit it and be supported by WIPO' Members in their choice.

## CLOSING REMARKS

80. The Chairperson said that the first conclusion to draw from the Roundtable was that there was unanimity on the leadership of WIPO in the work relating to the role of intellectual property in the protection of TK. The Roundtable had been a very useful exercise of sedimentation of the field exploratory work done by WIPO as well as of the establishment of guidelines for the work that would follow. Stakeholders had had the opportunity to maintain very enriching, frank and informative discussions. She said that much work had been done before and no single solution applicable to all the situations or aspects seemed to have been found so far. Therefore, the experience of two countries, the Philippines and Peru, were of greatest interest. It would be interesting to accompany the evolution of those experiences and draw lessons therefrom. This being said, it should not prevent other countries from adopting other imaginative solutions, provided these were efficient and operational. TK was a socioeconomic issue. It had many facets, many aspects. It involved all sectors. Besides, there were various types of TK. Therefore, it appeared from the discussions that a unique response was difficult to find. Time was needed to study these issues further. She stressed that there was the need for maintaining a dialogue with TK holders at the national and the international levels. One important point had been made on the possible forms of partnership as well as on the various possible partners. Another point was made on the rules of access, which had to be tailored to the types of TK, resources and situations. It was necessary to identify those situations before defining rules of access. It was noted, furthermore, that rights were territorially and time limited. The question of duration of rights should be examined. Another point was made concerning the fact that TK should not be viewed from a commercial perspective only but also from the perspective of social recognition of its contribution to society. Opinions were expressed that the existing intellectual property rights system could be used in the most efficient way wherever possible to protect TK. In cases where TK could not be protected by intellectual property rights, imaginative and creative solutions had to be found. That had been the very purpose of the Roundtable as well as of future meetings. In this regard, fact-finding work should be further pursued in order to have a complete overview of the variety of situations existing in the world. A balanced system was a *sine qua non* condition in order to set up efficient and operational systems. Documentation was also an important point. In this respect an offer of assistance had been made by the private sector. She underlined that the Roundtable had been dedicated to the role of intellectual property in the protection of TK. The Roundtable was a milestone in the work of WIPO. She was very pleased that all sides in the discussions had shown goodwill. Nonetheless, she understood that some mutual education was still necessary.

81. Mr. Richard Owens, Director of the Global Intellectual Property Issues Division of WIPO, said that it was really gratifying for the International Bureau of WIPO to watch the birthing of a process. At the Roundtable WIPO had held last year the two legal systems of protection of knowledge had come into contact in the same place for the first time. They had been referred to as ships passing in the night, highly developed, integrally functioning effectively within their respect fields of operation but heretofore virtually in complete exclusion, one from the other. This year, in his view, what participants in the Roundtable had seen over the two days was the beginning of a constructive dialogue to find a way that intellectual property might serve some, probably not all, of the interests. The work that was before the International Bureau for the next two years was based on WIPO's mandate as an international intergovernmental organization, and a member of the United Nations family of organizations, which was to promote the protection of intellectual property in human creativity and innovation throughout the world. It was thus WIPO's responsibility to scrutinize in much detail, within the extent of its resources, the protection that might be provided for TK through the existing intellectual property system. Once that was done, it would be much more possible than it was today to identify the lacunae, the holes, the areas where intellectual property could not reach to protect TK as well as some of the needs and expectations that had been expressed by participants. At that time, there would be consensus among industrialized countries, among developing countries, among holders of intellectual property rights, among the intellectual property exporting industries, among new users of intellectual property, that there was a need for something new. All stakeholders were embarking upon a process, which would be long and extremely technical. But there was an absolute technical engagement that had begun over the last two days. He welcomed the positive, the constructive comments, including the criticisms, of the existing intellectual property system as it was viewed by TK holders and by Governments of developing countries. Speaking on behalf of his colleagues in the International Bureau, he said that he looked forward to working, at the same time, with all of these groups, to move forward so that the intellectual property system of which WIPO was custodian at the international level could include newly recognized forms of creativity and innovation. In any case, it was absolutely crucial that the efforts the stakeholders would take henceforth achieved a viable structure at the international level. If there was no protection at the international level, there was no protection. He offered thanks to the Chairperson, to the speakers and to the participants, for their contribution to the success of the meeting. He also wished to thank his colleagues in the Global Intellectual Property Issues Division who had worked in the preparation and organization of the event.

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