

Statement of the European Commission on behalf of the European Community at the 23rd session of the Working Group on Indigenous Populations - Geneva, 20 July 2005

under item 4(b) "Indigenous Peoples and the International and Domestic Protection of Traditional Knowledge"

It is highly topical that the Working Group on Indigenous Populations focuses the work of this 23rd session on the issue of the international and domestic protection of traditional knowledge. Currently, this matter dominates a number of lively debates notably in the World Intellectual Property Organization (WIPO), in the TRIPS Council of the World Trade Organization (WTO), and in the framework of the UN Convention on Biological Diversity; we can expect that this will still continue to be the case, making it one of the leitmotifs of the second Decade dedicated to the world's indigenous people. The views of indigenous peoples themselves on the protection of traditional knowledge are crucial to feed the ongoing debate as traditional knowledge is a distinctive element of indigenous cultural identities as well as a key asset to contribute to the self-development of indigenous communities.

We participate to the Working Group first and foremost to listen to the concerns and proposals that indigenous representatives and members of the Working Group will present in order to be able to integrate them in the reflections and discussions shaping the positions of the EC. However we felt that, because of the large representation of indigenous peoples in the sessions of the Working Group, it would be useful to reiterate here the principles that the European Community has defended on this issue in other fora, where the presence of indigenous representatives may be more limited or inexistent.

The European Community is committed to continue participating constructively in the debate on the protection of traditional knowledge and supports further work towards the development of international *sui generis* models of protection. We consider that measures to protect traditional knowledge need to strike a fair balance between the rights and interests of holders and potential users and beneficiaries. More work is, however, needed to define and agree on key concepts.

In addition to supporting specific instruments in the field of intellectual property aimed at protecting traditional knowledge, the EC supports the recognition of customary laws of indigenous peoples that protect traditional knowledge. Such laws should be respected by governments when taking decisions that could potentially impact on indigenous communities and the traditional knowledge they hold.

In the context of the UN Convention on Biological Diversity, for instance, the EC is fully engaged in the development of the Work Programme on Article 8j; a provision of the Convention that specifically addresses the role of traditional knowledge. The EC has also been active in the development and adoption of the so called "Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their

Utilization". Among other objectives, the guidelines aim at contributing to the development of mechanisms at the national level that respect and protect traditional knowledge, innovations and practices of indigenous and local communities.

Under the Bonn Guidelines, when traditional knowledge associated with genetic resources is accessed, national authorities are expected to involve the holders of traditional knowledge and seek their prior informed consent before taking any decision. A requirement to disclose the origin of genetic resources and associated traditional knowledge when applying for a patent would probably help enforcing national requirements on Prior Informed Consent. - This is one of the reasons why the EC supports the introduction of a disclosure requirement and has made submissions on its specific views on this issue to both WIPO and the WTO.

The EC has consistently held that the participation and involvement of indigenous representatives in fora where protection of traditional knowledge is discussed is of great importance. In this context it has supported notably the establishment of a voluntary fund in the WIPO to hind the participation of indigenous representatives to the work of its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. The European Initiative on Democracy and Human Rights, aimed at funding projects of civil society and international organizations, has also recently targeted funds to support initiatives designed to improve the participation and follow-up of UN processes relevant to indigenous peoples and the issue we are discussing fall into this category.