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UN PERMANENT FORUM ON INDIGENOUS ISSUES

Sixth Session

New York, 14-25 May, 2007

Agenda Item (9) – Future Work of the Forum – Protection of Traditional Knowledge

Presented by the Pacific Caucus

Endorsed by the Asia Caucus, Arctic Caucus,

Malia Nobrega

Madame Chairperson,

In this statement on the Future work of the Forum, we want to underline the leadership role that the UNPFII needs to take on the matter of the protection of traditional knowledge at a global level.

We commend the Report of the Secretariat on Indigenous Traditional Knowledge (E/C.19/2007/10) and congratulate the Special Rapporteur Michael Dodson for his excellent work. The report rightly points out that amidst the plethora of processes and activities at international, regional, national and local levels, there is lack of effective protection for indigenous traditional knowledge.

Indigenous peoples, who should be central to the process of protecting indigenous traditional knowledge, are reduced to observers or “stakeholders” in ongoing international processes and negotiations, each dealing with traditional knowledge according to their specific mandates and specialised interests such as intellectual property, biodiversity-related knowledge, trade, culture or a combination of these.

The UNPFII has the distinct mandate within the UN system of coordinating efforts within the UN system on indigenous issues, as well as providing expert advice. The UNPFII can become the much needed forum where Indigenous Peoples on an equal footing with States and other interested groups, can elaborate of proposals for the protection of traditional knowledge. The UNPFII can uniquely enhance the deliberations and outcomes under the numerous ongoing international processes on the protection of traditional knowledge – in particular the negotiations under the CBD’s International Regime on Access and Benefit-Sharing, and the WIPO Inter-governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, as well as clarifying the interlinkages between standards and mechanisms for the protection of traditional knowledge at international, regional, national and local levels.

The role of customary law and institutions, in relation to domestic legislation, regional policies and international law, needs to be understood and better defined in constructing effective *sui generis* regimes for the protection of traditional knowledge, which can be elaborated under the guidance of the UNPFII.

ACTIONS BY THE UN PERMANENT FORUM ON INDIGENOUS ISSUES

1. Recommend that the UNPFII elaborate its role and its strategy to provide leadership and guidance on the theme of Traditional Knowledge.
 - ⇒ Commission a Study on Sui Generis Protection of Traditional Knowledge
 - ⇒ Maintain close inter-action with the various UN agencies active on this theme
 - ⇒ Encourage and cooperate with universities and research bodies
 - ⇒ Promote a process of awareness-raising on the protection of Traditional Knowledge, including regional and sub-regional workshops
 - ⇒ Recommend that the CBD facilitate the holding of an Indigenous Peoples Expert Workshop back-to-back with the IASG meeting to allow technical advice and information
2. The UNPFII to appoint Mr. Michael Dodson as a Special Rapporteur to undertake a study considering a shift in the focus on the protection of indigenous traditional knowledge away from intellectual property law to protection via customary law. The study should consider how indigenous traditional knowledge could be protected at an international level by utilizing customary law, including the extent to which customary law should be reflected, at national and regional levels.
3. The UNPFII at its Seventh Session appoint five members to hold specialized meetings on indigenous traditional knowledge during its sessions.

RECOMMENDATIONS WITH RESPECT TO CBD'S INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING

We further make the following recommendations on the protection of traditional knowledge in support of the recommendations arising from the International Expert Meeting on the CBD's International Regime on Access and Benefit-sharing, and the Human Rights of Indigenous Peoples organised by the UNPFII in January 2007.

4. The Permanent Forum decides to transmit the report of the expert group meeting to the Executive Secretary of the Convention on Biological Diversity as an information document for the meetings of the open-ended Working Group on Access and Benefit-sharing and the open-ended Working Group on Article 8 (j) and Related Provisions, to be presented during the discussion of the relevant agenda item at those meetings.
5. The UN Permanent Forum on Indigenous Issues decides to organize a side-event at the fifth meeting of the open-ended Working Group on Access and Benefit-sharing of the Convention, as an occasion for the co-Chairs of the CBD Working Group on Access and Benefit-Sharing, representatives of States parties and other interested groups to consider the conclusions and recommendations of the expert group meeting and to hear the views of indigenous peoples on an international regime on access and benefit-sharing.
6. The UNPFII, with the assistance of relevant Inter-Agency Support Group members, and in collaboration with Indigenous Experts, to conduct timely technical reviews at critical stages in the negotiations of international standards on the protection of traditional knowledge, such as the international regime on access and benefit-sharing and WIPO IGC deliberations, to evaluate consistency and harmonisation with existing and developing international legal instruments, standards and arrangements and, in particular, the human rights of indigenous peoples.

7. UNPFII calls upon CBD parties continue to enhance participatory mechanisms by ensuring that diverse regional views of indigenous peoples were reflected in discussions on the International Regime on ABS. In particular, the parties were urged to ensure adequate representation of indigenous peoples from the seven geo-cultural regions and sub-regional levels in the CBD Working Group on Access and Benefit-sharing and that they are provided with opportunities to express diverse regional and sub-regional views.
8. The UNPFII recommends that the CBD facilitate an Indigenous Peoples Expert Workshop on Traditional Knowledge in a timely manner to feed into the meetings of WG8j5, WGABS5 and WGABS6 in order to support the elaboration by indigenous peoples' of recommendations vis a vis an International Regime on Access and Benefit-sharing. This meeting could be organised back-to-back with the IASG meeting, on order to avail of the presence of some UN agencies to provide technical support and information.
9. The UNPFII calls upon the Secretariat of the CBD to work in partnership with other members of the Inter-Agency Support Group and donors to organize regional workshops for the purposes of information exchange and capacity-building among governments, indigenous peoples and local communities and other stakeholders with regard to the proposed international regime on access and benefit-sharing to access. Also to provide financial support for indigenous networks to disseminate information, in appropriate and accessible languages, and through appropriate media, to indigenous communities on this issue.