

UN WORKING GROUP ON INDIGENOUS POPULATIONS
22nd SESSION JULY 19-23 2004

OPENING REMARKS BY THE SAAMI COUNCIL

Item: 5 (b) "Standard setting: Review of the draft principles and guidelines on the protection of the heritage of indigenous peoples"

Thank you Mr. Chairperson,

And thank Mr. Yokota for very good cooperation. I think you have in a very elaborate manner has presented the Working Paper that we in a collaborative manner have produced. I will only make a few additional comments.

I want to commend the Working Group for again engaging in standard setting activities aiming at protection the cultural heritage of indigenous peoples'. Those of us that have been involved in these issues during the last couple of years are just too aware that although several parts of the UN system have addressed these issues lately, all these processes fail to adequately address issues relating to GR, TK, TCEs and cultural heritage from an indigenous perspective. The reasons for this are mainly two; current processes fail to take a cohesive approach towards these issues and do not adequately reflect human rights. These shortcomings the Working Group should seek to remedy.

Therefore, the Saami Council is very grateful for being allowed the possibility to take an active part when the Working Group is revisiting Mdm. Daes' principles and guidelines for the protection of Indigenous Peoples Cultural Heritage.

Also, we would like to take the opportunity to generally commend the Working Group Experts for taking the initiative to build research partnership with indigenous organizations, not only on cultural heritage but also on FPIC. We believe that there are room for further such cooperations between indigenous representatives and the Working Group Experts.

Turning to the Guidelines, the Saami Council - as we have done in the past - would like to commend Mdm. Erica-Irene Daes for the excellent work she did when drafting these. We believe that the Guidelines constitute an excellent starting point for discussions on protection of cultural heritage of indigenous peoples. However, as outlined in the Working Paper, activities within this field have been extremely rich in the recent years, rendering it necessary to update and to some extent revise the Mdm. Daes' Guidelines. Moreover, as, also outlined in the Working Paper, the Guidelines are, at least in parts, descriptive in nature. As also pointed out in the Working Paper, my organization firmly believes that the international instrument that the Working Group embarks on elaborating upon, should aspire to be binding in nature.

As to possible elements in such an instruments, I will not spend too much time on these. Many of the core issues that the Working Group will have to address in the process towards a Convention on Indigenous Cultural Heritage have been highlighted in the Working Paper. I would like to ~~underline, however, that it is the Saami Council's firm~~ ^{underline the importance of the WG} ~~believe that any international instrument on the cultural heritage on indigenous peoples - in order to be relevant to the peoples it is supposed to protect - must has as a starting point a~~ ~~right based approach. The~~ ~~existing processes addressing genetic resources, TK and TCEs are~~ ~~all based~~ ~~on accomplishing a "fair" and "equitable" sharing of such resources and knowledge, for example in the ABS process established under the CBD. The problem is, however, that noone has cared to establish who it is that actually do the sharing. Perhaps a little bit exaggerated, the result is a "two-party dialogue" where essentially, developing and industrialized countries discuss how to share the cultural heritage of indigenous peoples, without recognizing that there are human rights that apply to such knowledge and resources that might actually forbid such sharing. Indigenous peoples sometimes equals benefit sharing with someone coming to your house, taking all the furniture and then return some time later with a sofa and a few chairs. It is imperative that this Working Group as speedy as possible forward its work with an international instrument that protects the cultural heritage of indigenous peoples, so that equitable sharing mechanisms are fair to all but indigenous peoples.~~ ^{tend to open} ^{as Y.}

Secondly, a Convention on Indigenous Peoples Cultural Heritage must address the fact that a substantial parts of indigenous peoples' cultural heritage are today in what for IPR purposes are in the so called *public domain*. Today, TK and TCEs that have been exposed to a wider public is being abused, misrepresented and destroyed on a daily basis, with detrimental effects on indigenous cultures. Of course, an international instrument must also protect indigenous cultural heritage outside the *public domain*, for other than IP purposes.

A Convention must acknowledge the collective nature of indigenous knowledge and resources, recognizing that the knowledge and resources vest with the people as such, compared to the individual nature of intellectual property rights. An international instrument must also, however, recognize that individual indigenous persons may have right to their creativeness too.

aboriginal and commercialized

In order to address these and other problems, the Saami Council believes that a Convention on the Rights of Indigenous Peoples must be based on indigenous peoples' right to self-determination and must also acknowledge indigenous peoples' right to their land, water and natural resources.

- A Convention must recognize the crucial role indigenous customary legal systems plays for the protection of indigenous peoples' resources and knowledge. Indigenous heritage must be protected in accordance with the concerned peoples' own legal practices and customs, which should be reflected in international and domestic law.

*
Finally, Mr. Chairperson,

Rec that short work guidelines

~~The ICC also concurs with the recommendation in paragraph 33 of the Working Paper, that the WGIP, in coordination with other relevant UN bodies, holds a technical seminar or workshop to discuss the contents in an international instrument for the protection of indigenous peoples' cultural heritage.~~

Any international instrument must also, however, be build on the understanding that no culture is completely isolated, that cultures have always borrowed and been inspired by each other. Still, such must always be done in a respectful manner.

Indigenous cannot be excluded in this regard

~~Coordinate with other activities in the UN system~~