

Call of the Earth Llamado De La Tierra
Ancient Wisdom for Sustainable Livelihoods
An Indigenous Peoples' Initiative on Intellectual Property Policy
Statement at the 3rd Session of the Permanent Forum on Indigenous Issues
New York, New York, 10-21 May 2004

Mr. Chairman, Members of the Permanent Forum, Delegations, NGOs, Brothers and Sisters:

Recommendations:

1. We strongly urge the Permanent Forum to work to promote the Draft Declaration on the Rights of Indigenous Peoples.
2. We ask the Permanent Forum to advise WIPO and the CBD that these forums are not appropriate for the development of an international regime for the protection of Indigenous Knowledge systems and suggest the appropriate place for these discussions would lie under the Working Group on Indigenous Populations.
3. We respectfully ask the Permanent Forum to designate Traditional Knowledge as a 2005 Mandated Area of the forum to highlight issues around the protection and maintenance of Indigenous Knowledge systems.
4. We call on the Permanent Forum to strongly recommend to the CBD Ad-Hoc Open Ended Working Group on Article 8j to advance their mandate to develop mechanisms for effective *sui generis* systems of protection based on the customary laws of Indigenous Peoples.
5. We request the PF to urge UN agencies such as WIPO and UNESCO to advance their exploration of non-intellectual property approaches for the protection of Indigenous Knowledge with the full and effective participation of Indigenous Peoples.

Justification:

1. Call of the Earth Llamado de la Tierra is an international indigenous peoples' initiative aiming to reframe the current debate on intellectual property rights and traditional knowledge from an indigenous perspective. In doing so, we aim to develop responses at local, national, regional and international levels to all policy and legal developments that impact upon our traditions of protecting and preserving our cultural and intellectual heritage for future generations.
2. Indigenous Nations have highly sophisticated ways of protecting and maintaining their Indigenous Knowledge systems. These measures have been effective for generations in shielding vast amounts of knowledge from outside exploitation. Although there is a strong ethic of sharing in many Indigenous cultures, specific kinds of knowledge are

carefully protected and shared only with appropriate individuals at an appropriate time and in an appropriate manner. Indigenous nations and communities have the right to control their intellectual and cultural traditions, the right to protect and maintain Indigenous Knowledge systems and the right to decide if and when they will share their knowledge with non-indigenous peoples and governments.

3. As natural resources become depleted, the world community has become interested in the knowledge Indigenous Peoples hold regarding their environments. After centuries of destroying the basis of and denying the existence of Traditional Knowledge, member states have become rather suddenly interested in how Indigenous Knowledge could be applied to a variety of environmental policy issues. This interest however has not translated into interest in protecting the basic human rights of Indigenous Peoples as evidenced in the lack of progress with regards to the Draft Declaration.

4. Institutions who used to shut their doors to indigenous peoples are now actively engaged in negotiations to develop international norms and standards over traditional knowledge. WIPO, UNESCO, WTO, WHO, CBD, UNCTAD, Commonwealth Secretariat, are examples. However, within these negotiations - indigenous communities remain marginalized, at best 'observers' to discussions that are occurring mostly between states and institutions rather than directly with indigenous communities. Many Indigenous people have noted the parallel between the dispossession of Indigenous lands and the dispossessions of their intellectual knowledge, and without effective protection of the special interests that Indigenous Peoples have in their ways of knowing and heritage, Indigenous cultures are threatened and endangered.

5. The Mataatua Declaration on the Cultural and Intellectual Property Rights of Indigenous Peoples in 1993 set out a framework for the development of protection mechanisms. Among the principles, are the following:

" Recognize that indigenous peoples are capable of managing their traditional knowledge themselves, but are willing to offer it to all humanity provided their fundamental rights to define and control this knowledge are protected by the international community;

Insist that the first beneficiaries of indigenous knowledge must be the direct descendants of such knowledge."

The Mataatua Declaration was subsequently signed by over 500 indigenous nations and organizations worldwide.

6. Since 1993, the focus of international discussions has been on *opening access* to Traditional Knowledge by non-descendants. This breaches a very important ethical and moral protocol. There should be a sequence to the development of any protection mechanism for traditional knowledge. The first step should be to assure that the guardianship of traditional knowledge and resources by indigenous communities is protected. This is critical to ensuring inter-generational cultural transmission. The second step is to negotiate terms and conditions for access by non-descendants, through

direct negotiations with indigenous communities. Benefit-sharing as a concept, and as an outcome, only takes its place as a compliment to these first two steps.

7. Call of the Earth Llamado de la Tierra is concerned that the move to open access and promote benefit-sharing arrangements is being rushed at the expense of ensuring there are sufficient protection mechanisms for onward cultural transmission of indigenous communities. Debate in the UN for a is centered on mechanisms that will promoted the exploitation of Traditional Knowledge and not the protecting of the knowledge systems of Indigenous Peoples. This is unacceptable. Western intellectual property laws are contrary to the customary laws of Indigenous Peoples and culturally inherent ways of protecting knowledge. Indigenous systems of protecting knowledge are effective and legitimate. Any new system must act in a complimentary way to Indigenous systems and must not undermine or replace them.

We call upon the PF to act upon the urgent need to stop the appropriation, exploitation and mis-use of Traditional Knowledge.

We ask the PF to intervene in the various UN fora to ensure sui generis systems of protection are respected and the rights of Indigenous Peoples are protected.

We urge the PF to stop the exploitation of Indigenous Peoples and Indigenous Knowledge by supporting the adoption of the Draft Declaration on the Rights of Indigenous Peoples.