UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/C.12/2000/SR.77
13 December 2000

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-fourth session

SUMMARY RECORD OF THE 77th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 27 November 2000, at 3 p.m.

Chairperson: Mrs. BONOAN-DANDAN

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GE.00-46398 (E)

The meeting was called to order at 3.15 p.m.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 3) (continued)

Day of General Discussion, "The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (article 15.1 (c) of the Covenant)", organized in cooperation with the World Intellectual Property Organization (WIPO) (E/C.12/2000/12)

1. The CHAIRPERSON urged speakers to focus on the relationship between intellectual property rights and the Covenant, especially article 15 (1) (c). She invited Mr. Wager to conclude the statement he had begun at the previous meeting.

2. Mr. WAGER (World Trade Organization (WTO)) said he wished to address the issue of traditional knowledge and its relationship with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Traditional knowledge was a topical issue of international concern and was also one of the subjects under discussion at the current meetings of the Council for Trade-Related Aspects of Intellectual Property Rights, the WTO body responsible for monitoring the TRIPS Agreement. Under the TRIPS Agreement, it was not possible for foreigners to patent traditional knowledge. For an invention to be patentable it had to meet the requirements of novelty and innovation; in other words, it should not be "prior art". Traditional knowledge could not pass such tests, although there had been cases where patents had been granted for traditional knowledge, only to be revoked subsequently.

3. One of the practical problems was that much traditional knowledge was not recorded in databases that could be consulted by patent offices. However, efforts were being made to remedy the problem, at both national and international level, by establishing appropriate databases. The World Intellectual Property Organization (WIPO) was particularly active in that area.

4. Another source of concern was that the traditional knowledge of indigenous peoples and other traditional manifestations, such as folklore, were not guaranteed sufficient protection, under intellectual property regimes, from use by outsiders. It was true that existing intellectual property regimes did offer a certain amount of protection in respect of authors' and performers' rights and trade marks. However, those provisions were more applicable to collective rights, such as geographical indications and collective and certification marks, than to individual rights, although the latter were covered to some extent.

5. In addition, there was a debate as to whether supplementary protection should be provided specifically for traditional knowledge, especially that of indigenous and local communities. A related topic concerned intellectual property rights and biodiversity, in particular the relationship between the TRIPS Agreement and relevant provisions of the Convention on Biological Diversity (CBD). The TRIPS Agreement did not address the issues mentioned in the CBD, notably the right of countries to regulate access to biological resources

within their territories on the basis of the "prior informed consent" principle and the sharing of benefits. The silence of the TRIPS Agreement on those matters gave Governments ample scope to adapt their legislation to the provisions of the CBD.

6. Mr. FLEET (Joint United Nations Programme on HIV/AIDS - UNAIDS) said that the impact of the human immunodeficiency virus (HIV) had reversed years of hard won development gains. More than one fifth of the adult population of seven countries of sub-Saharan Africa was HIV-positive and life expectancy in southern Africa was expected to decline to the mid-40s over the next 20 years, instead of rising to 64 years in the absence of AIDS. The human rights approach to intellectual property was directly linked to the AIDS epidemic. Ever since its inception, UNAIDS had been advocating such an approach in the international, national and community responses to the epidemic. HIV-positive people in industrialized countries had been able to live healthier, productive lives thanks to the availability of drugs for HIV/AIDS. However, the vast majority of HIV-positive people in developing countries had no access even to relatively simple medications for the prevention and treatment of opportunistic infections, let alone the more sophisticated antiretroviral medicines that worked against the virus itself.

7. UNAIDS supported patent protection and intellectual property rights as an incentive for innovative research and development that might lead - it was hoped - to the discovery of HIV vaccines, in particular vaccines suitable for use in developing countries. The discussion paper under consideration (E/C.12/2000/12, paras. 46 and 56) stated that commercialization had changed intellectual property from a means of providing incentives to researchers and inventors to a mechanism intended to encourage investment and protect the resources of investors. But the fact remained that most of the crucial research in HIV-related vaccines and treatment was being conducted by the private sector, and UNAIDS and many of its co-sponsoring agencies had appealed for greater cooperation between the private sector and the United Nations system. The UNAIDS Secretariat, along with the World Bank, the United Nations Population Fund (UNFPA), UNICEF and WHO, were involved in a project, commonly known as Accelerating Access, with five pharmaceutical companies holding patents on HIV-related medicines, which were committed to expanding access to HIV-related care and treatment, including through price reductions. As a result, Senegal had already announced a projected 75 per cent decrease in the costs of triple therapy.

8. In addition, UNAIDS had been providing information to Governments on generic medicines (or generic competition) and promoting the idea set out in the discussion paper that intellectual property rights must be considered in conjunction with other human rights, in particular the rights set forth in articles 12 and 15 (1) (b) of the Covenant.

9. Turning to the issue of State obligations and, in particular, the example of Brazil referred to in paragraph 63 of the discussion paper, he noted that the Brazilian Government, through a combination of political commitment and social mobilization by civil society, had been able to produce its own HIV medicines and introduce generic competition in the market, with the result that prices had dropped substantially in recent years. Approximately 87,500 people with HIV were receiving antiretroviral medicines through the public health system and the Government was offering virtually universal access to antiretroviral therapy. Brazilian legislation guaranteed

HIV-positive citizens free access to essential medicines and provided for the granting of compulsory licences in cases of national emergency and public health-related events. UNAIDS had advocated recourse to compulsory licensing where necessary, in accordance with the TRIPS Agreement, particularly in many developing countries where HIV/AIDS constituted a national emergency. Furthermore, it was essential for countries to have access to objective information on all the opportunities available to them under international agreements, including TRIPS article 31, for expanding access to HIV-related medicines.

10. UNAIDS had called for preferential prices for HIV-related drugs consistent with local purchasing power, reduction or elimination of import duties and compulsory licensing. Adequate health infrastructures were also essential for expanding access to HIV medicines.

11. Finally, in view of the urgency of the HIV/AIDS situation, every effort should be made to ensure that intellectual property played an important role in the global response to AIDS and, in that connection, UNAIDS was grateful for the strong support provided by its co-sponsors, the active role played by civil society, and the commitment of various United Nations agencies, of the United Nations human rights system in general, and the Committee in particular.

12. Mr. HUNT reiterated a question he had asked earlier as to whether the contemporary intellectual property regime reinforced global inequality. He wished to thank the representatives of UNESCO and WTO for their replies and looked forward to the reactions of the representative of WIPO in that regard.

13. He had been appalled to read of the World Bank's statement in its World Development Report for 2000-2001 that industrialized countries continued to account for the vast majority of patents worldwide - 97 per cent. Although he was certain that it was not intended to increase global inequality, he wondered if that might not in fact be the effect of the TRIPS Agreement. There seemed to be a paucity of authoritative research on the impact of the intellectual property regime on equality and it would perhaps be helpful to examine that impact from a human rights perspective.

14. Mr. RIEDEL said that he wished to examine the issue of intellectual property rights through the prism of human rights, which was the Committee's perspective. The issue was complicated by the fact that intellectual property rights were not necessarily human rights. Article 15 (1) (c) was probably one of the most difficult provisions of the Covenant, and the drafting history showed that there had been much controversy surrounding the scope of the right to intellectual property as a human right. Access to scientific progress and the protection of individual inventors were two conflicting issues that had not been fully discussed. It was, therefore, not surprising that the normative content of the article in question was not sufficiently precise, since it merely referred to the protection of intellectual property without specifying the extent of such protection.

15. Three different positions on article 15 (1) (c) were possible. First, it might be said that intellectual property had no human rights dimension, that intellectual property rights were simply legal rights, not human rights, to be accorded in international treaties or national legislation, and thus subject to restriction or extension depending on the prevailing political consensus at a given

time or place. The inclusion of copyright, or author's rights, in a human rights covenant would, therefore, be a drafting mistake, as some commentators had claimed. Nevertheless, the majority opinion ran counter to that position.

16. Second, one might argue that intellectual property rights were fully fledged human rights to be included in all relevant international and regional human rights treaties. However, emphasis would be placed more on individual than on community concerns.

17. The third position, which he personally favoured, was that only some aspects of intellectual property, such as copyright, had a human rights dimension, as opposed to other aspects, such as trade marks and patents. The fundamental question to be answered, therefore, was whether intellectual property rights were merely a policy issue to be resolved in ordinary international treaties with only a tenuous connection to human rights. If so, would such treaties have an indirect effect on human rights if they violated other existing Covenant rights such as the right to food, health or education? It could be argued that copyright had a human rights dimension because the protection of the moral right (the "droit moral") of the creator of a work of art was related to his/her personal integrity or human dignity, which were protected under other treaties for the period of a lifetime or even for 50 years thereafter. The cultural dimension of protecting the originality of a creation could be construed as an aspect of the dignity to which every individual was entitled. That moral right would fit into the traditional pattern of inviolable and inalienable rights that were purely personal.

18. A human rights dimension thus seemed at least plausible, to the extent that the material benefits accruing from the intellectual property right were the author's sole means of subsistence. However, since that right was normally traded, it should not be extended as a human right to those who acquired the traded property right, since historically, the human right to property referred only to such property as was necessary for subsistence. Even though the right to own property in excess of that minimum level might be protected under domestic or constitutional law, it did not rise to the level of a fundamental human right. Controversies surrounding the right to own property under article 17 of the Universal Declaration of Human Rights had centred on the consequences of limitations on such property rights, for example whether compensation needed to be prompt, adequate and effective, or whether there might be expropriation without compensation, for the benefit of society as a whole. Property rights affected other members of society to a greater extent than personal integrity rights since property did not relate to the human person as such, but rather protected the "suum" of a person, indirectly forming part of the preconditions for a life of dignity.

19. As a rule of thumb, it could be said that the more strongly a right affected an individual's core personality, the greater was its prevalence over the common good. Conversely, the more strongly a right was embedded in the social context, the greater the likelihood of societal rights prevailing over individual rights in cases of conflict.

20. Applying that test to intellectual property rights, the moral and material interests attaching to the creation of a scientific, literary or artistic work would be restricted to the copyright dimension. Thus, no publishing company could lay claim to a human right accruing

from a creative work. Only the strictly personal right belonging to the creator of the work would be protected as a human right. Copyright as a human right, therefore, would be rooted in the human dignity of the author of the work.

21. Patents, on the other hand, were subject only to ordinary international treaty law, falling outside the scope of human rights since they granted exclusive commercial rights and did not represent intellectual, moral rights. The mere fact that patents had a limited duration seemed to indicate that they were treaty rights, not human rights, which were lifelong. It should not be forgotten that human rights had originally been conceived as a reaction against fundamental injustices. That was not the case for patents.

22. A different issue, albeit one inextricably linked to the above, concerned the conflict between public needs and private rights in relation to intellectual property. If the patentability of biological material was excluded from the domain of human rights, problems might arise when non-human rights treaties, such as the TRIPS Agreement, affected the traditional knowledge of a people, for example, or natural resources, which were protected under article 25 of the Covenant. Therefore, a treaty which accorded patent rights for the utilization of neem tree seeds from India would clearly violate the human rights of the people in question and a State party involved in the patenting of the seeds would contravene its Covenant obligations. However, those would be indirect human rights concerns not stemming from the patent treaty itself.

23. Lastly, the Committee would need to examine further how the conditional rights enshrined in article 15 (1) (c), or rights such as the right to food, health and education, could be negatively affected by intellectual property rights. The special situations of indigenous peoples and developing and least developed countries should also be considered carefully, as should the scope of the limitation clauses in articles 4 and 5 of the Covenant.

24. Mr. GUERASSIMOV (United Nations Educational, Scientific and Cultural Organization (UNESCO)) said it had been estimated that the United States cultural industry (industries based on copyrighting activities) accounted for 6 per cent of that country's gross domestic product (GDP), which was greater than the combined share of any other three United States industries. The Swedish cultural industry's share of GDP was also fairly high, compared with 3.5 to 5 per cent in other European countries. What was more, much of the industry's income came from outside those countries, in particular from the developing world. Hence the call for more countries to accede to international intellectual property agreements - in order to increase such income.

25. In his long experience in the field, he had not seen any connection made between human rights and author's rights. Two arguments were frequently put forward. The first was that, notwithstanding national copyright law, if countries did not accede to international intellectual property instruments, they would be flooded with foreign works, to the detriment of national works. For example, a publisher obliged by national legislation to pay royalties to a national author would not have the same obligation with regard to a foreign work if the State in which he lived was not party to an international agreement. The second argument was that lack of protection under international intellectual property instruments would result in a brain drain, in

the sense that a developing country author could choose to publish his work in an industrialized country, knowing that the work would be protected under international instruments to which that State was a party.

26. He saw no merit in those arguments for the following reasons. The United States had only acceded to the Universal Copyright Convention (1952) in 1955; hitherto the United States had been party only to regional agreements. The former Union of Soviet Socialist Republics (USSR) had only acceded to the said Convention in 1973, followed by China and others. As to whether there had been any invasion of those domestic markets by foreign inventions, it could be said that, on the contrary, in the case of the United States at least, free use of knowledge from all over the world had contributed to the development of the educational system and facilitated the creation of a cutting-edge cultural industry which was a major source of tax revenue and employed 2.5 million people.

27. Regarding the possibility of a brain drain, he took the view that hard currency would flow back to the country of origin. The counter-argument was that, since the author would have assigned the copyright to a foreign publisher, authorization would be required for a national publisher to gain access to the work. It should be pointed out, however, that in the case of France, for example, at least 40 per cent of all radio and television programmes broadcast on national networks were required by law to be of national origin.

28. Mr. JENKINS (UN/NGLS), referring to Mr. Hunt's question as to whether the TRIPS Agreement reinforced inequality, said he was not convinced by Mr. Wager's argument that TRIPS prohibited discrimination on the basis of nationality in the area of intellectual property rights, in accordance with the non-discrimination principles contained in human rights instruments. Careful examination of human rights interpretations of non-discrimination showed that they were quite different from the rules on non-discrimination applied under certain national treatment provisions and, in particular, by the WTO, which had established broadly similar rules for all players, irrespective of their size and economic power.

29. While it was true that the rules on TRIPS implementation had been relaxed for certain countries, with the LDCs in particular not having to comply until 2006, the fact was that the application of non-discrimination in the human rights context went beyond mere rules; under certain circumstances, States were required to take affirmative action in order to protect and promote vulnerable groups and sectors with a view to preventing further marginalization and discrimination.

30. With 97 per cent of patents being held by industrialized countries, one did not have to be an economist to understand how companies in those countries had used the patents on knowledge-driven activities to accumulate great wealth. The irony of the current situation was that countries at a lower level of development were now barred by the TRIPS Agreement from employing the wealth-creating strategies that had proved so successful for the industrialized countries in the past.

31. Mrs. HAUSERMANN (Rights and Humanity) asked Mr. Wager whether the current meeting of the TRIPS Council would address the issue of the impact exerted by TRIPS on access to essential drugs.

32. Mr. WENDLAND (World Intellectual Property Organization (WIPO)) said that, in the conceptual sense, there were at least three major aspects of equality in the intellectual property (IP) context: standard-setting, decision-making, and the implementation and exercise of IP rights. He agreed with previous speakers on the need to distinguish between the principles set forth in WIPO and other treaties and what happened in practice - the issues were best examined on the basis of specific cases. He suggested that the way forward would be, as Mr. Hunt had suggested, to conduct further studies on how intellectual property rights (IPRs) affected the right to equality or non-discrimination in specific cases.

33. Mr. WAGER (WTO), replying to Mr. Jenkins, said that, to some extent, the issue of non-discrimination in the IP context involved either questions relating to the treatment of individual human beings or assessment of the differences between stages of development in different countries. Under TRIPS, individual authors, inventors and others were protected from discrimination on grounds of national origin, and were entitled to the same treatment under all types of jurisdiction. That was particularly important for citizens of poorer countries seeking to protect their original creations. He pointed out that TRIPS had only come into force at the start of the current year for the majority of developing countries, and that it constituted only one link in a development policy chain. Although at present there was a clear correlation between a country's stage of development and the level of IP protection it enjoyed, only empirical evidence would reveal the true nature of the relationship between those two factors.

34. It was not entirely surprising that countries with strong patent systems that encouraged innovation accounted for a high percentage of patents. He would expect the pattern to change as other countries adopted similar policies. In some developing countries, the level of corporate protection achieved in sectors such as films, software and music had already resulted in cultural and economic devolvement and increased employment. It was true that TRIPS did not provide for affirmative action in favour of individuals, so as to enable authors from developing countries, for example, to receive higher royalties than those from developed countries. However, countries benefited from an extensive system of special treatment rules under TRIPS, GATT and the General Agreement on Trade in Services. At the same time, he acknowledged that IP rights were not considered as human rights under those rules.

35. Finally, in reply to Mrs. Hausermann, he said that the issue of expanding the number of exemptions from patentability in relation to essential drugs was being actively discussed by the WTO's General Council as part of the implementation review mechanism established in the wake of the failed Seattle round of negotiations.

36. Mrs. HAUSERMANN (Rights and Humanity) said that, in addressing the issue of the impact of TRIPS on the wider enjoyment of economic, social and cultural rights, she did not intend to belittle the importance of IPR protection and the contribution that TRIPS might make to individual artists' enjoyment of additional rights under expanded copyright protection. Rather, her concern was how best to deal with some of the tensions and conflicts exposed in the discussion to date. The rights protected under article 15 (1) (c) of the Covenant were important

and could not be considered in isolation from other human rights. That indivisibility was critical to understanding the impact of TRIPS on, for example, the enjoyment of the right to health in developing countries, or poor people's enjoyment of the right to health in industrialized countries.

37. No empirical evidence of the impact of TRIPS had yet emerged, but its impact could be anticipated. The current discussion was therefore particularly timely, since many feared that the TRIPS Agreement would have a negative impact on the ability of middle-income and developing countries to produce generic pharmaceuticals, and that the expansion of the TRIPS patenting regime to include product patents as well as process patents was likely to inhibit the development of accessible drugs at affordable prices.

38. As Mr. Riedel had pointed out, although article 15 referred to the right of "everyone" to enjoy individual rights, pharmaceutical patents were invariably owned not by individuals but by corporations, and primarily by pharmaceutical companies in the North. It was debatable whether the protection of the IP rights of such corporations could really be considered a branch of human rights, or whether it was a separate branch of law. That raised the question alluded to by Mr. Antanovich earlier in the discussion: what was the relationship between those wider IP rights and the human rights regime?

39. One way of considering the relationship was to view human rights as providing an additional analytical and decision-making tool in the process of determining, in the IP context, the balance between the rights of the creator and the public interest. A clearer understanding of the public interest could be obtained by considering the impact of an IP agreement or the individual granting of a copyright or patent on others' enjoyment of, for example, the right to education or health or the right to benefit from scientific progress.

40. Turning to Mr. Wager's earlier statement that the TRIPS Agreement recognized the importance of ethical and other considerations by allowing a country to refuse to grant a patent if the commercial exploitation of the invention was prohibited on grounds of public order or morality, or if its exploitation might be dangerous to life or health, she asked whether TRIPS and the other IP texts permitted a State to refuse a patent on the grounds that granting it would limit the enjoyment of other rights. Was it permissible, for example, to refuse a patent for pharmaceutical products if the existence of such a patent could restrict access to essential drugs and therefore be considered a threat to life or health?

41. A number of speakers had emphasized that developing countries were not yet in a position to introduce advanced IP regimes, yet that was exactly what the TRIPS Agreement required. Concerning Mr. Wendland's reference to the importance of States determining their own balance between the rights of the creator and the public good, she noted that States joining WTO were obliged to implement TRIPS because of its association with the WTO Agreement, and that limited their freedom of choice with regard to TRIPS and their ability to decide on the appropriate balance in the light of their individual development objectives.

42. An important related issue was that the introduction of high levels of IP protection in national laws and procedures placed severe strains on countries' financial and technical

resources. There was a real risk that the increasing attention being devoted to economic reforms by developing countries wishing to accede to WTO would further limit the resources available to them for meeting social needs and that the parliamentary time taken up in adopting the necessary economic laws could block vitally needed legislative reforms designed to protect human rights in general and to strengthen the rights of women and minorities in particular. In many respects, the lack of empirical evidence referred to by Mr. Wager meant that countries were acceding to WTO and TRIPS without having gained a full understanding of the likely impact on their own pharmaceutical industries or on the price and availability of drugs which remained subject to patent.

43. In response to the concerns expressed by Mr. Hunt, many observers would say that, at least in terms of impact and outcome, the current IP system not only failed to promote equality between North and South and rich and poor, but widened the gap between them.

44. How should the Committee address those issues, particularly in the light of the emphasis it placed on protecting the rights of the most disadvantaged and vulnerable sectors of society? Firstly, it could continue contributing to the identification of the human rights impacts of TRIPS and other IP instruments. Second, it could reassert the primacy of human rights concerns over commercial interests and the profit motive. Third, it could remind member States that their human rights obligations accompanied them in all international forums. They were not a coat that could be left in the vestibule of the WTO conference halls.

45. Fourth, it could recommend that all international trade and IP negotiators, at both international and national level, should be trained in human rights principles and obligations, thereby ensuring that they took adequate account of human rights in their efforts to determine the appropriate balance between the rights of the creator and the public interest. Her organization would be launching an initiative along those lines with a training day on human rights for UNCTAD staff, taking the TRIPS Agreement as an example.

46. Fifth, the Committee could remind all concerned that the declaration on the right to development provided that everyone had the right to participate in, contribute to and enjoy economic, social, cultural and political development, and that States bore primary responsibility for creating international and national conditions favourable to the realization of the right to development.

47. Sixth, the Committee might wish to consider what mechanisms were currently available or should be introduced in order to resolve the apparent conflict between the implementation of IP-related trade law on the one hand, and human rights norms on the other. Should an inter-agency review body be established to consider such issues? At a recent Rights and Humanity conference, a WTO representative had proposed the establishment of a higher council comprising experts in trade law and human rights. The Committee might wish to explore that proposal further with WTO.

48. The Committee might also wish to develop fundamental principles that reaffirmed the universality, indivisibility and interdependence of human rights. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the

same emphasis. Member States should attach as much priority to ensuring access to drugs in accordance with the right to health as they did to the intellectual property rights of pharmaceutical companies.

49. Finally, the Committee might wish to make a clear distinction between the human right of individual artists or scientists under article 15 of the Covenant and the corporate right of companies that were driven primarily by the dictates of the market and by their shareholders' desire to maximize profits.

50. Mr. SCOTT (Aboriginal and Torres Strait Islander Commission (ATSIC)) said the current international IP regime was so unfair to indigenous peoples that they would rather do without it. Thus, in answer to Mr. Hunt's earlier question, he would maintain that the international IP regime as currently applied both reinforced and maintained inequalities. However, the ATSIC welcomed the fact that international forums increasingly recognized the importance of protecting the knowledge, innovations and practices of indigenous communities.

51. Indigenous peoples everywhere sought to ensure that the traditional knowledge (TK) generated by cumulative innovation continued to provide traditional benefits for its holders while also enhancing their social and economic development. A further important objective was to prevent the improper appropriation of TK without compensation for its custodians and without indigenous peoples' prior consent. That was no more than individuals had already achieved under western legal systems.

52. In that regard, he drew attention to the excellent work being undertaken by the secretariat of the Convention on Biological Diversity (CBD) in implementing the articles of the Convention concerned with indigenous and related matters. The CBD secretariat's studies on strategies for protecting indigenous traditional knowledge, intellectual property and cultural heritage covered several important areas: the effective use of current legal systems; reform of intellectual property laws; redefining intellectual property to include indigenous concepts, recognition of traditional and customary law; TK documentation by and for its holders; and equitable benefit-sharing arrangements and enhancement of national systems and international multilateral cooperation, including the harmonization of various international instruments.

53. The indigenous peoples maintained that the protection of their intellectual property was conditional on their right of refusal and to choose what part of their TK they wished to share or make public. Traditional knowledge was vitally important to indigenous peoples, and the receiver of such knowledge should understand that it was accompanied by an obligation to protect and respect it.

54. The concept of sharing was an essential element of indigenous cultures. However, the world's 340 million indigenous people, most of whom lived in dire poverty, could no longer afford to share their traditional knowledge only to be exploited in return, receiving nothing while others reaped the rewards.

55. The principle of TK protection and equitable benefit-sharing provided the world with an opportunity to help indigenous communities to build their own economic foundations and break

the cycle of poverty and welfare dependence. Not only could countries benefit from that arrangement, they should also realize that they themselves were losers if their indigenous peoples lost touch with TK. International collaboration was required in order to ensure that the rights of all peoples were adequately and equally protected under an international legal system that attached equal value to collective and individual rights.

56. His generation of aborigines, like those before it, was obliged to protect its territories and to pass on its traditional knowledge to future generations undamaged. For its part, the material world faced a considerable challenge in taking account of such cultural and spiritual values. In doing so, it should heed the words of Aristotle: "There is nothing so unequal as the equal treatment of unequals".

57. Mr. MEYER-BISCH (University of Fribourg) said that the question whether intellectual property rights reinforced inequalities between rich and poor was a difficult one to answer inasmuch as the right to property, by its very nature, implied respect for a right to inequality and defined both an owner and a non-owner.

58. The argument had been put forward that, because it was a human right, the right to intellectual property must be integrated with cultural rights, thus enabling everyone, including the poorest, to enjoy the minimum exercise of their cultural freedoms. However, in that regard he agreed with Mr. Riedel's comments on the vital importance of respecting different levels of rights.

59. Referring to Mrs. Chapman's comments on patent rights, he pointed out that IP rights were the expression of the right of creation or the basic freedoms inherent in human rights. Unlike derived rights, they could not, therefore, be limited or made subject to exceptions. Human rights were counterbalanced, but not limited, by other rights.

60. Two elements were missing from the current debate: the concept of a general IP right which was also a human right, and the concept of a more particular level of entitlement corresponding to cultural rights and freedoms.

61. The particular feature of a property right was that its subject was both individual and collective. By contrast, the subject of a human right was strictly individual, whereas its scope was collective.

62. Cultural property rights were a clear expression of the close link between every human being as an individual subject and the extremely wealthy environment to which he had access, which he was entitled and obliged to protect and pass on to posterity.

63. The subject of an IP right, be it an individual or a member of a group, was to be treated not as an isolated individual but as part of his environment: his capacity to appropriate things and to identify with a heritage and with a social group was a fundamental cultural freedom. Article 17 (1) of the Universal Declaration stated that: "Everyone has the right to own property alone as well as in association with others". That was the basis for the phrase often used in work on cultural rights, "the subject, alone or as a member of a group".

64. The subject was linked to his surroundings by his capacity for appropriation. In that regard, property could not be considered exclusively to be a safeguard of the subject's individuality in relation to his different needs; it also included work tools and the common property of a family, or an enterprise, as well as public property.

65. "Cultural property" was thus broader in meaning than "intellectual property", because it included what was produced not only by an artist, a scientist or a writer, but also by a cultural community, by the custodians of a heritage or by a people. Every creative activity was based on a common cultural capital. Ownership of one's territory, dwelling, work tools and the fruits of one's labour was a means of guaranteeing equitable cultural autonomy and establishing a border or demarcation line with regard to a uniform market that could not produce anything but standardized articles. An important aspect of the right to property was that it entailed a distinction, even a discrimination, which placed it on the same level as the principle of non-discrimination that lay at the root of legality. In that sense, the right of ownership guaranteed economic and cultural freedoms. The right to cultural property guaranteed that the holder, whether an individual or a group, was both author and actor in terms of rights, freedoms and responsibilities. A distinction therefore had to be made between two types of holder of that right. The first was the subject, who was always an individual author or actor, and the second was the beneficiary, which could also be a group. That definition did not simply imply a distinction between authors on the one hand and the public interest on the other, or between individual and collective right holders, be they authors or users. As Mr. Texier had observed, both author and user formed part of a continuum. Authors relied on their heritage, their knowledge and other sources, but guardians of knowledge and traditions were also required.

66. The laws on research provided a useful example to follow in interpreting the right to cultural property, in that they provided for a cultural community involving academics, public debate and objective examination of evidence.

67. A work in need of protection was a baton to be passed from one person to another. What was being protected was not the individual, but the passing of the baton. That interactivity between authors made the distinction - which was the basis for the right to intellectual property - between the presentation of a work and its content harder to draw. Only the presentation of the work was protected by copyright, not the content, which belonged to everyone. Nowadays, presentation was usually interactive and it was difficult to tell the difference between the private part and the public part of a work.

68. Turning to the nature of the appropriated object, whether private or collective, he said that the individual and collective dimensions of the beneficiary corresponded to the individual and shared dimensions of the object. Both private and collective property needed to be protected, against abusive collectivization in the former case and against privatization in the latter, as both were indispensable to freedoms.

69. While respect for private property guaranteed the freedom of individuals and the interactive wealth of cultural and economic systems, respect for collective property guaranteed free access thereto; otherwise individual freedoms would have no common resource. True liberalism was based not on privatization but on the idea of access to collective property being

free. Excessive privatization diminished the capital of creativity to which each individual should have access. More generally, the object of the right, property, was always a bridge between persons. The universal core which had to be safeguarded in any culture was the balance of the relationship. What mattered in all cases was access for everyone to the wherewithal for exercising freedoms, which meant specifically that every common heritage, every heritage of value had to be declared. States needed to define and protect every common heritage important to them. Stateless peoples and transnational cultural communities needed opportunities to display their heritage publicly in one place or another. Cultural actors should be empowered so that they could demonstrate the value of different types of heritage and the conditions for their protection.

70. The scope and duration of access to, and potential appropriation of, all cultural objects needed to be defined for the benefit of everyone, including the poorest. Being an owner meant first and foremost being the owner of a difference based on a right of exclusion which could be understood as an inequality useful for everyone since it brought about a global increase in human resources. The common objective was cultural wealth and access by the poor to that wealth.

71. The ownership of property, whether tangible or intellectual, carried with it certain responsibilities. Although respect for the right to own property was essential to the functioning of democracy, the effective exercise of that right also had to be guaranteed. The obligations of States in that regard were basically obligations to establish ground rules balancing freedom of cultural expression against the need for democratic regulation. A democratic cultural policy was one which developed all the public spaces needed for the free exercise of cultural actors' rights.

72. The lack of a definition of and respect for the intangible core of each individual's and each group's cultural heritage prevented implementation of other cultural rights, such as linguistic rights and the right to work.

73. Tampering with cultural property meant tampering with the core of every person and every culture. It should be remembered that free access was at the root of every liberal system and it was the concept of "public space" which gave concrete shape to that common asset which was the source of all freedoms.

74. Ms. DOMMEN (3D Associates) said that present circumstances provided a unique opportunity for external input into the intellectual property debate within WTO and that the Committee was well placed to play an important role in that process.

75. Her answer to Mr. Hunt's question whether the TRIPS Agreement served to increase inequality was that it did.

76. It was not widely known that the WTO comprised four distinct entities: the WTO Agreement; the Member-driven Organization proper; the secretariat; and the Dispute Settlement Mechanism. Any approach to the WTO had to take account of that set-up. The environmental, labour and human rights issues raised within the WTO were often perceived, by its developing country Members in particular, as a disguise for protectionist interests. Those countries would probably find in the Covenant a natural ally for their economic and social concerns.

77. Three processes were currently under way in the WTO regarding intellectual property rights: firstly, a review of TRIPS article 27 (3) (b), concerning exceptions to patenting requirements, which had been interrupted by the collapse of the Seattle Ministerial Conference in 1999, although the United States considered the process to be at an end. The article was to be amended to impose stronger patenting obligations. That was an area in which human rights bodies could intervene.

78. Secondly, the TRIPS Agreement as a whole was under review. The deadline for implementation of the Agreement was 1 January 2000 and the TRIPS Council was reviewing implementing legislation in a number of countries.

79. Thirdly, the WTO General Council was holding a series of special sessions to review implementation of the whole range of WTO agreements and in particular to address developing countries' concerns about their lack of input into the negotiating process and about the substance of their commitments under the existing agreements. Developing countries had called for an assessment of the implementation process to be completed before any new issues were placed on the WTO's agenda.

80. One specific concern was that articles 7 and 8 of the TRIPS Agreement could be implemented in ways that infringed human rights. The Committee could play a useful role in highlighting that issue and would find allies among developing countries.

81. The TRIPS Agreement was not yet fully operational. In a recent dispute between the European Union and Canada regarding pharmaceuticals, no mention had been made of the Agreement. Pending a further round of multilateral trade negotiations, WTO was in reflective mode, and that presented the Committee with a unique opportunity to take up human rights issues with the appropriate WTO bodies.

82. The Committee, unlike its parent body, ECOSOC, could forge for itself a strong international and bilateral role by requesting countries to include in their periodic reports information regarding the extent to which human rights were taken into account in trade negotiations. The Committee represented the interests of more than 140 States parties and could thus act as a counterweight to the imbalances in WTO.

83. Mr. TEITELBAUM (American Association of Jurists) said that, in the absence of a general definition, human rights could be described as the rights of human beings as such, with all their inherent qualities, as set forth in a series of fundamental instruments. Human rights were a fundamental category of the rights of the human person, which must be distinguished from other legally protected rights, such as commercial rights and the rights of corporate entities.

84. That distinction should be made in connection with the right enshrined in article 15 (1) (c) of the Covenant and article 27 (2) of the Universal Declaration of Human Rights, which, in their respective contexts, could only be interpreted as the right of all human beings to recognition of the fruits of their knowledge, intelligence, creativity and imagination.

85. The right to intellectual property was therefore a right inherent in the human person. It was a human right if its holder was the author of an invention or creation, but it became a

proprietary right when the holder was an enterprise or one of its representatives. If the Committee were to decide to prepare a general comment on the right to intellectual property, it should first establish a clear distinction between those two aspects.

86. The right to intellectual property rested on two basic principles. First, it must concern an invention, innovation or original creation; accordingly, things already existing in nature, which were the common heritage of humankind, or the products of human creativity, whose authors were already known or recognized, were not patentable. Second, intellectual property rights were of limited duration and subsequently passed into the public domain. If human rights were recognized as the fundamental rights of human beings, valid erga omnes, then the primacy of those rights over the particular interest represented by proprietary rights, including the proprietary right to intellectual property, must also be recognized.

87. In that connection, in preparing a general comment on intellectual property the Committee should examine the TRIPS Agreement and the case law of the WTO's Dispute Settlement Body, which dealt with the right to intellectual property exclusively as a proprietary right, with one exception, of limited duration, for the benefit of the least-developed countries, as stipulated in articles 65 and 66 of the Transitional Arrangements. The Agreement also violated the two basic principles of intellectual property: article 27 (3) (b) recognized the right to patent micro-organisms, while article 33 established a term of protection of 20 years for patents, and article 18 an indefinitely renewable 7-year term of protection for trade marks, contrary to the principle of limited duration.

88. The distinction between the human and proprietary aspects of intellectual property raised the question whether the proprietary right to intellectual property could take precedence over the human rights of much of Africa's population, decimated by disease, especially since the prices set by the large multinational pharmaceutical corporations holding the relevant patents were many times higher than those of the same pharmaceuticals produced in Brazil, India and Thailand.

89. The American Association of Jurists considered the primacy of human rights over the proprietary right to intellectual property to be clearly established by article 7 of the Universal Declaration of Human Rights and article 15 of the Covenant which stated that everyone had the right to enjoy the benefits of scientific progress. That point was not taken into account in the TRIPS Agreement and had been ignored by the WTO's Dispute Settlement Body which in 1997 had found in favour of the United States in proceedings concerning a complaint that India's legislation prohibited the patenting of pharmaceutical and agrochemical products. The Panel decision in the case, later upheld by the Appellate Body, had interpreted paragraphs 8 and 9 of article 70 of the TRIPS Agreement as requiring India to grant exclusive marketing rights to the multinational pharmaceutical corporations forthwith, and not to wait until 1 January 2005, as India had proposed on the basis of its interpretation of articles 70 and 65 of the Agreement. The Appellate Body's decision had put the interests of the multinationals above the fundamental rights of the Indian people and the policy of the World Health Organization, which advocated the use of a list of essential drugs.

90. In conclusion, his Association recommended that the Committee's prospective general comment should comprise two fundamental aspects: first, a clear distinction between the right to

intellectual property as a human right and as a proprietary right; second, recognition of the primacy of human rights and the public interest, particularly with regard to the interpretation of the TRIPS Agreement and its Dispute Settlement Mechanism.

91. Ms. PONCINI (International Federation of University Women), approaching the topic from the perspective of an NGO activist with first-hand experience of intellectual property right violations, said that, in one instance, a doctoral thesis she had submitted to a university official for review had subsequently been published in another country under that person's name, while in another a friend's invention for which she had submitted a patent application had disappeared. Her friend had been unable to afford a lawsuit and had eventually dropped the matter. A third incident had involved an invention by her son, which had been duly patented, but had not been returned by a potential buyer. It was a device that would have been very useful to poorer people who could not afford a similar one already on the market. There had been a further incident involving an ethically correct e-commerce product whose domain name had been confused with the similar domain name of a totally immoral product. While that case had been decided fairly, it had sparked a series of copycat incidents.

92. All the situations she had described had involved ignorance of an author's right to intellectual property. Appealing to the experts present to explain whose rights had been violated, she said that that question had been partly answered by Mr. Riedel.

93. Turning to the question of social, intellectual and cultural discrimination between rich and poor, she asked whether economic affordability was a collective social responsibility or simply a right enjoyed by individuals in respect of their own inventions. Was access to the competent authorities a right involving a public good? At a recent regional educational scientific and technological conference in Bangkok, a scientist had revealed that a male contraceptive was being developed. She had asked whether the marketing of such a product, with its strong gender bias, since it gave men yet more sexual freedom, did not have the potential to turn a public good into a public evil. She wondered about the potential implications for women's reproductive health and the further spread of AIDS, which violated the right to a decent life, not to say the right to life itself.

94. Mr. PROVE (Lutheran World Federation), speaking also on behalf of Habitat International Coalition, said that advancing economic globalization and the growing significance of intellectual property protection in a knowledge-based economy called for a human rights analysis of intellectual property law and practice, a subject too long ignored by international human rights bodies.

95. Referring to the distinction drawn by Dr. Peter Drahos between "instrumental" intellectual property rights and "fundamental" human rights, he said that it was important to bear in mind the essential difference between the human right described in article 15 (1) (c) of the Covenant and intellectual property rights, such as copyright. The latter were instruments of commercial law, were generally limited in time, and varied significantly from jurisdiction to jurisdiction and era to era. Unlike fundamental human rights, they were not universal, indivisible or immutable.

96. Another clear distinction was implicit in article 15 (1) (c), which concerned only "authors" of scientific, literary and artistic productions, disregarding the rights of those who might have acquired ownership of such productions through commercial or other arrangements. However, intellectual property rights were a commodity which could be acquired by entities other than the "author". Human rights, by definition, were the sole province of the human individual and could not be held by corporate or other entities, unlike intellectual property rights, which were overwhelmingly held by corporations. Thus, intellectual property rights could not be human rights. Nevertheless, the Covenant provided an essential paradigm for consideration of the social impact of excessively stringent and dehumanized intellectual property protection.

97. The right enshrined in article 15 (1) (c) was closely linked to the right, under article 15 (1) (a) and (b), to take part in cultural life and enjoy the benefits of scientific progress and its applications. The framework for subparagraph (c) and the nature of the preceding subparagraphs made it clear that excessive protection of the rights of authors of productions, which could impair the capacity of other members of the community to participate in cultural life or to enjoy the benefits of scientific progress, could be challenged on human rights grounds.

98. The right described in article 15 (1) (c) was also circumscribed by other provisions of the Covenant pertaining to the rights of everyone to health and to education. Moreover, the right of all peoples freely to dispose of their natural wealth and resources, and the prohibition on a people being deprived of its means of subsistence, challenged the practice of biopiracy and the commercial exploitation by others of traditional knowledge. It was therefore of the utmost importance that the Committee should not consider article 15 (1) (c) in isolation, but in the context of the Covenant as a whole.

99. Mr. KOTHARI (Habitat International Coalition), speaking also on behalf of the Lutheran World Federation, said that the existing intellectual property regime, particularly as reflected in the TRIPS Agreement, clearly had a significant adverse impact on the core Covenant right of self-determination. Patents on life forms, which were currently being challenged by the African countries in the WTO Council for TRIPS, undermined self-determination by reducing people's control over their own genetic and natural resources. Moreover, by threatening the sanctity of life, such patents could come into conflict with religious, social and ethical values in developing and developed countries alike. The question of self-determination was also linked to broader ethical issues raised by human genome mapping and patenting and to the points raised by the representative of the Aboriginal and Torres Strait Islander Commission of Australia. He suggested that the Committee should take those aspects of the right of self-determination into account in developing an interpretation of intellectual property that was more humane and more oriented towards social functions.

100. It was important to remind States, in the context of intellectual property rights, of their legally binding obligation under general international law to refrain from violating and from assisting other States in violating human rights law. Article 15 (4) of the Covenant concerning international contacts and cooperation in the scientific and cultural fields was particularly relevant in that connection and tied in with article 16 (5) of the Convention on Biological Diversity, which recognized that patents and other intellectual property rights could have an influence on the implementation of the Convention and encouraged international cooperation in order to ensure that such rights were supportive of and did not run counter to its objectives.

He urged the Committee to examine the affinities between the Convention and the Covenant. Noting that the delegation of India, in a recent paper submitted to the WTO Committee on Trade and Environment, had drawn attention to potential incompatibilities between the Convention on Biological Diversity and the TRIPS Agreement, he suggested that the Committee should persuade States parties to look into the question of the potential conflict between the Covenant and various articles of the Agreement.

101. As the TRIPS Agreement was a gender-neutral instrument, it was important to examine its implications for women's rights in the light of relevant provisions of the Convention on the Elimination of All Forms of Discrimination against Women. As a reflection of world power structures, the Agreement created an unnecessary conflict between the intellectual and social functions of property and between individual and collective rights.

102. The Committee should reassert the primacy of human rights obligations over the commercial and profit-driven motives on which instruments such as the TRIPS Agreement were based.

103. Mr. WINDFUHR (Food First Information Action Network (FIAN) International) said that his organization, which usually drew the Committee's attention to specific violations of the right to food, was currently gathering information on cases related to the TRIPS Agreement and hoped to publish a detailed study of the subject at the end of February 2001.

104. The developing body of commercial, environmental and human rights law often left States with conflicting obligations. It was thus important for the Committee to investigate potential sources of conflict and to focus on the primacy of human rights obligations.

105. According to the Committee's General Comment No. 12, access to food-producing resources was an important aspect of the right to adequate food. In that connection, he stressed the importance of access to seed. Farmers traditionally set aside a considerable proportion of their harvest for seeding in subsequent years. As more and more patents were taken out on parts of plant varieties, they were compelled to pay royalties for seeds, in some cases to as many as eight different agents. That state of affairs had serious long-term implications for access to seed, particularly by poor and subsistence farmers. Moreover, terminator technology prevented any resowing of seeds so that farmers had to lay in a new stock each year.

106. Small farmers often created biological diversity by adapting seed varieties to local conditions, as advocated in the Convention on Biological Diversity. The United Nations Food and Agriculture Organization (FAO) was preparing a legally binding international undertaking on plant genetic resources that would regulate access to varieties found before the Convention was adopted. Both treaties created different rules from those that would prevail under any TRIPS patent regime. It was argued that farmers who had created biological diversity should derive some economic benefit from their inventions.

107. The possibility of adding patentable ingredients to the most widely used varieties of seeds was setting a new research agenda, as scientists endeavoured to develop new higher-yield varieties. As a result, local varieties were in danger of disappearing. If they were no longer available, cultivators would find it increasingly difficult to adapt to climate changes. For

example, traditional farmers in drought-prone parts of Africa who had previously planted up to 20 varieties of sorghum or millet suited to different climate conditions might in future have to depend on one or two varieties. A global decline in biological diversity due to the impact of intellectual property rights would thus undermine food security.

108. The issues involved were of such urgency that he advocated a moratorium on any new regulation under the TRIPS Agreement until the implications had been thoroughly studied. The United States and the European Union were trying to have the International Convention for the Protection of New Varieties of Plants (UPOV) incorporated in the TRIPS Agreement as a legal standard. If that came about, it would create a quasi-patent system for seeds within the Agreement, entailing problems such as those he had already described.

109. The human rights community must offer guidance to trade experts with a view to resolving the conflict of regimes. He urged the Committee to recommend a moratorium and to support the studies of the TRIPS Agreement requested by the Sub-Commission on the Promotion and Protection of Human Rights in resolution 2000/7 adopted at its fifty-second session.

110. Mr. AGUILAR (Contextos Latinoamericanos) said that intellectual property (IP) legislation increasingly reflected trends in global economic policy without taking account of the social impact of such legislation and of the economic policies that were being imposed. The globalization process was producing a sort of uniformity in the area of intellectual property, while the implications for other rights guaranteed by international law were being ignored.

111. The concern of industrialized countries and leading entrepreneurs to subject the global use of technology to more rigorous legislation, especially with a view to liberalizing world trade, had led to the development of the TRIPS Agreement, which had entered into force in 1995. WTO, as the administrator of the Agreement, had undermined WIPO's role as the organization responsible for administering international instruments governing intellectual property. All intellectual output, creative activity and inventions were viewed under the Agreement in purely commercial terms, to the detriment of social concerns.

112. Accelerated and in some cases far-reaching reforms of national legislation had been undertaken in Latin America, focusing on patents, copyright and related rights, commercial secrecy, plant breeders' rights, and geographical indications. They reinforced the rights of patent holders, especially in the pharmaceutical industry, introduced substantial increases in fines and penalties for lawbreakers, and had led to the enactment of legislation and the adoption of administrative decisions that would prevent the infringement of IP norms. Many of those norms were modelled on the TRIPS Agreement and took no account of local conditions. Almost all the reforms had been introduced under pressure from Powers such as the United States, which took punitive legal action under domestic legislation to enforce compliance with IP treaties.

113. Intellectual property could not be allowed to continue expanding at the expense of the human rights recognized in the International Bill of Human Rights or to impose a straitjacket on economic, social and cultural rights, since the general interest must take precedence over individual interests. The Committee's initiative was in keeping with similar moves in other parts of the United Nations system, the purpose of which was to draw attention to the dangers inherent in the universalization of intellectual property rights. Chapter II of the Human Development

Report 1999, published by the United Nations Development Programme (UNDP), entitled "New technologies and the global race for knowledge", contained an analysis of the harmful effects of the wholesale application of patent law. The Sub-Commission on the Promotion and Protection of Human Rights noted in resolution 2000/7 that, since the implementation of the TRIPS Agreement did not adequately reflect the fundamental nature and indivisibility of all human rights, including the right of everyone to enjoy the benefits of scientific progress and its applications, the right to health, the right to food, and the right of self-determination, there were apparent conflicts between the intellectual property rights regime embodied in the TRIPS Agreement and international human rights law. It invited WTO, in general, and the Council for TRIPS, in particular, to take fully into account existing State obligations under international human rights instruments, requested the Special Rapporteurs on globalization and its impact on the full enjoyment of human rights to include consideration of the human rights impact of the implementation of the TRIPS Agreement in their next report, requested the United Nations High Commissioner for Human Rights to undertake an analysis of the human rights impact of the TRIPS Agreement, and recommended to WIPO, the World Health Organization, UNDP, the United Nations Conference on Trade and Development, the United Nations Environment Programme and other relevant United Nations agencies that they continue and deepen their analysis of the impacts of the TRIPS Agreement, including a consideration of its human rights implications.

114. His organization urged the Committee, with the support of NGOs and academic bodies, to undertake an analysis of intellectual property rights and their impact on human rights, and to take steps to ensure that they did not encroach on economic, social and cultural rights.

115. Ms. CHAPMAN (American Association for the Advancement of Science) said that the discussion had been productive and thought-provoking. A key theme had been the need to view States parties' obligations under article 15 (1) (c) of the Covenant and the implications of intellectual property regimes for human rights in the context of globalization. In the global economy, some 20 countries were major actors and poor countries were increasingly marginalized. Intellectual property regimes were a tool that had benefited multinational corporations and large economic actors far more than individuals.

116. A number of speakers had noted that the public interest provisions of the TRIPS Agreement were not being effectively implemented and were being ignored in basic decisions. The requirement of novelty for patenting and the exclusion in principle of material directly copied from nature were being ignored by the United States Patent and Trademark Office. If that Office practised indiscriminate patenting, the rest of the world would soon follow suit. Persons concerned about the human rights implications of intellectual property laws should therefore pay close attention to empirical developments and not just to the principles that theoretically underpinned the intellectual property system.

117. A consensus had emerged at the meeting that the provisions governing intellectual property as a human right differed sharply from other current IP laws and regulations. Several speakers had recommended that patents and trade marks should not be included under the rubric of human rights. That was an appealing argument on many levels, but she pointed out that certain kinds of scientific knowledge were currently protected by patents rather than copyright even where the creator or author was an individual scientist.

118. It was necessary, in her view, to develop a mechanism such as a human rights ombudsman for intellectual property to ensure regular consideration by international organizations of the ethical and human rights dimensions of intellectual property in order to counterbalance the emphasis placed on economic considerations by patent and trade mark offices and WTO.

119. Mr. WENDLAND (WIPO) said that the fundamental question, as he saw it, was whether any basic values and principles should inform all intellectual property decisions. To answer that question, it would be necessary to look carefully at specific cases. The dialogue initiated that day had been very promising. The intellectual property community clearly needed to know more about human rights and it could reciprocate by providing more information about intellectual property.

120. The CHAIRPERSON said that the Committee intended to draft a general comment on intellectual property. She looked forward to participation by the intellectual property community in that process.

The meeting rose at 6.05 p.m.