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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-second session
Agenda item 4

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Ms. Daes, Mr. Eide, Mr. Goonesekere, Mr. van Hoof, Mr. Oloka-Onyango, Mr. Pinheiro,
Mr. Sik Yuen, Ms. Warzazi, Mr. Yimer, Mr. Yokota and Ms. Zerrougui: draft resolution

2000/... Intellectual property rights and human rights

The Sub-Commission on the Promotion and Protection of Human Rights,

Reaffirming that, as declared in article 28 of the Universal Declaration of Human Rights, everyone is entitled to a social and international order in which the rights and freedoms set forth in the Universal Declaration can be fully realized,

Stressing the need to work towards the realization for all people and communities of the rights, including to food, housing, work, health and education, enshrined in the International Covenant on Economic, Social and Cultural Rights,

Recalling its resolutions 1998/8, 1998/12, 1999/8, 1999/29 and 1999/30, and resolution 1999/59 of the Commission on Human Rights,

Noting the statement of the Committee on Economic, Social and Cultural Rights to the Third Ministerial Conference of the World Trade Organization (Seattle, 30 November-3 December 1999) (E/C.12/1999/9),

Welcoming the preliminary report submitted by J. Oloka-Onyango and D. Udagama on globalization and its impact on the full enjoyment of human rights (E/CN.4/Sub.2/2000/13),

Noting the Convention on Biological Diversity, which echoes the International Covenant on Economic, Social and Cultural Rights on the right to self-determination and on the balance of rights and duties inherent in the protection of intellectual property rights, and its provisions relating to, inter alia, the safeguarding of biological diversity and indigenous knowledge relating to biological diversity, and the promotion of the transfer of environmentally sustainable technologies,

Aware of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and of its current review by the World Trade Organization Council on TRIPS,

Aware also of the panel discussion organized by the World Intellectual Property Organization on 9 November 1998 on “Intellectual property and human rights”,

Noting the Human Development Reports 1999 and 2000, which identify circumstances attributable to the implementation of the TRIPS Agreement that constitute contraventions of international human rights law,

Noting also that members of the Working Group on Indigenous Populations, participants at the World Intellectual Property Organization Roundtables on Intellectual Property and Indigenous Peoples (23-24 July 1998 and 1-2 November 1999), and representatives of indigenous peoples have called for adequate protection of the traditional knowledge and cultural values of indigenous peoples,

Noting further that actual or potential conflicts exist between the implementation of the TRIPS Agreement and the realization of economic, social and cultural rights in relation to, inter alia, impediments to the transfer of technology to developing countries, the consequences for the enjoyment of the right to food of plant variety rights and the patenting of genetically modified organisms, “bio-piracy” and the reduction of communities’ (especially indigenous communities’) control over their own genetic and natural resources and cultural values, and restrictions on access to patented pharmaceuticals and the implications for the enjoyment of the right to health,

1. Affirms that the right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author is, in accordance with article 27, paragraph 2, of the Universal Declaration of Human Rights and article 15, paragraph 1 (c), of the International Covenant on Economic, Social and Cultural Rights, a human right;
2. Declares, however, that since the implementation of the TRIPS Agreement does 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 to self-determination, there are apparent conflicts between the intellectual property rights regime embodied in the TRIPS Agreement, on the one hand, and international human rights law, on the other;
3. Reminds all Governments of the primacy of human rights obligations over economic policies and agreements;
4. Requests all Governments and economic policy forums to take international human rights obligations and principles fully into account in international economic policy formulation;
5. Requests Governments to integrate into their national and local legislations and policies, provisions, in accordance with international human rights principles, that protect the social function of intellectual property;
6. Calls upon States parties to the International Covenant on Economic, Social and Cultural Rights to fulfil the duty under articles 2, paragraph 1, 11, paragraph 2, and 15 paragraph 4, to cooperate internationally in order to realize the legal obligations under the Covenant, including in the context of international intellectual property regimes;
7. Requests the World Trade Organization, in general, and the Council on TRIPS during its ongoing review of the TRIPS Agreement, in particular, to take fully into account the existing State obligations under international human rights instruments;
8. Requests 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;
9. Requests the United Nations High Commissioner for Human Rights to undertake an analysis of the human rights impacts of the TRIPS Agreement;

10. Encourages the Committee on Economic, Social and Cultural Rights to clarify the relationship between intellectual property rights and human rights, including through the drafting of a general comment on this subject;

11. Recommends to the World Intellectual Property Organization, the World Health Organization, the United Nations Development Programme, 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;

12. Commends the Conference of Parties to the Convention on Biodiversity for its decision to assess the relationship between biodiversity concerns and intellectual property rights, in general, and between the Conference on Biological Diversity and TRIPS, in particular, and urges it also to consider human rights principles and instruments in undertaking this assessment;

13. Encourages the relevant civil society organizations to promote with their respective Governments the need for economic policy processes fully to integrate and respect existing human rights obligations, and to continue to monitor and publicize the effects of economic policies that fail to take such obligations into account;

14. Decides to continue consideration of this question at its fifty-third session under the same agenda item.
