



Economic and Social Council

Distr.: Limited
29 April 2019

Original: English

Permanent Forum on Indigenous Issues

Eighteenth session

New York, 22 April–3 May 2019

Draft report

Rapporteur: Mr. Brian Keane

Chapter I Matters calling for action by the Economic and Social Council or brought to its attention

B. Matters brought to the attention of the Council

Recommendations of the Permanent Forum

Discussion on the theme “Traditional knowledge: generation, transmission and protection” (item 9)

1. The Permanent Forum welcomes the fact that the theme for 2019 relates to traditional knowledge since it provides an opportunity for the Forum to raise awareness on the current threats to indigenous peoples’ knowledge systems. Such knowledge systems contribute directly to sustaining biological and cultural diversity, poverty eradication, conflict resolution, food security, ecosystem health – including freshwater and oceans – and serve as the foundation of indigenous peoples’ resilience to the impacts of climate change.
2. Traditional knowledge constitutes the foundational nexus of the creation, preservation and development of indigenous peoples’ communities and is inextricably linked to their languages, lands, waters, territories and resources. That knowledge has been continuously developed, refined, secured and transmitted from generation to generation over millennia.
3. The United Nations Declaration on the Rights of Indigenous Peoples includes the right of indigenous peoples to practise and revitalize their cultural traditions and customs (art. 11); the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies (art. 12); the right to the use and control of their ceremonial objects (art. 12); the right to repatriation of their human remains (art. 12); and the right to maintain, control, protect and develop their traditional knowledge (art. 31).



4. The Declaration also includes the right of indigenous peoples to self-determination. Through that right comes the right to freely determine their political status and freely pursue their economic, social and cultural development. Self-determination is closely linked to the generation, transmission and protection of traditional knowledge as indigenous peoples have the right to determine their own conditions for safeguarding and developing their knowledge.

5. Although there is increasing awareness of the importance of traditional knowledge in international forums related to global climate change, environmental degradation, food security and genetic resources, indigenous peoples' traditional knowledge is still threatened by misappropriation and misuse, and the undermining of the traditional context in which such knowledge is generated and transmitted. Urgent action is needed to ensure that such knowledge systems do not disappear.

6. The Permanent Forum welcomes the recognition of the rights of indigenous peoples to promote and protect their traditional knowledge, in the implementation of article 8 (j) of the Convention on Biological Diversity, which concerns traditional knowledge, innovations and practices. The Forum further welcomes steps already taken to include indigenous peoples in the development of the post-2020 global biodiversity framework to achieve the vision set out in the Convention of living in harmony with nature by 2050.

7. The Permanent Forum takes note of the effort of the Intergovernmental Panel on Climate Change, United Nations University and the United Nations Educational, Scientific and Cultural Organization (UNESCO) to include indigenous peoples in the relevant in situ observations and scientific data on topics relevant to Panel's fifth assessment report.

8. In response to the Permanent Forum's recommendation at its eleventh session, held in 2012, the World Intellectual Property Organization (WIPO) undertook a technical review of key intellectual property-related issues of the WIPO draft instruments on genetic resources, traditional knowledge and traditional cultural expressions.¹ Among other issues, the technical paper highlighted the following in paragraph 14:

14. In any event, with its reliance on a defensive mechanism of disclosure, the draft instrument [WIPO] does not go so far as to provide or require affirmative recognition of or specific measures of protection for indigenous peoples' rights in genetic resources or associated traditional knowledge. Such recognition and protection are largely left to the domestic legal systems of the countries of origin, with States not being specifically obligated in this regard beyond the obligation to impose on patent applicants the disclosure of origin requirement. The preamble does refer to ensuring the rights of indigenous peoples over genetic resources and traditional knowledge as an objective of the instrument, and one of the alternative formulations of "misappropriation" in the glossary refers to the absence of consent by holders of genetic resources and associated knowledge, implying that indigenous peoples are among such holders. But affirmation of these rights and the corresponding obligations of States do not explicitly make their way into the draft instrument's operative provisions.

9. The Permanent Forum therefore reiterates the urgent need to develop an instrument that responds to the current lack of adequate protection. The instrument should recognize indigenous peoples as being on a par with stakeholders, as well as being the legitimate holders of their traditional knowledge. The Forum calls upon the

¹ Document WIP/GRTKF/IC/29/INF/10, available at www.wipo.int/meetings/en/doc_details.jsp?doc_id=325863.

WIPO Intergovernmental Committee to fast-track the negotiations and to use its core budget to fund indigenous peoples' participation in the deliberations.

10. The Permanent Forum further recommends that WIPO update the above-mentioned 2016 technical review to reflect current issues, with an emphasis on concepts such as “balancing” and “public domain”, as well as explore how these might conflict with indigenous peoples' human rights and customary laws and the obligation to incorporate and respect human rights in their work.

11. The Permanent Forum also recommends that WIPO organize a second indigenous expert workshop on intellectual property and genetic resources, traditional knowledge and traditional cultural expressions before 2021.

12. In the light of the emerging international legal framework for local communities, the Permanent Forum recommends that the Office of the United Nations High Commissioner for Human Rights prepare, in consultation with other relevant organizations and bodies of the United Nations system, including the secretariat of the Convention on Biological Diversity, and before 2022, a comparative legal study that analyses and compares the rights of indigenous peoples and the emerging rights of local communities. Such a study could also include a matrix of the rights of local communities and of indigenous peoples to facilitate the comparison.

13. The Permanent Forum recognizes the arrangements made by the Convention on Biological Diversity for the participation of International Indigenous Forum on Biological Diversity, as well as its initiative to launch an international alliance for nature and culture as an inclusive multilevel platform for parties to the Convention. The Forum underlines the need to effectively include indigenous peoples in the negotiations of the post-2020 global biodiversity framework in order to reflect the fundamental relationship between indigenous peoples and biodiversity, in line with the Declaration.

14. The Permanent Forum urges Member States to include indigenous peoples' rights in the outcome document of the 2019 climate summit called for by the Secretary-General, which will be held on 23 September 2019. The Forum further recommends that States, the United Nations system and others partners secure funding to ensure adequate participation of indigenous peoples at the summit as well as at the preparatory meetings. The Forum also encourages indigenous peoples to coordinate with their organizations and networks to secure their participation, as needed, thereby ensuring that indigenous peoples have a strong voice at the summit.

15. The Permanent Forum encourages the General Assembly to consider proclaiming a decade of traditional knowledge and indigenous languages in order to raise awareness of the contribution that indigenous peoples' knowledge, innovations and practices can make with regard to responses to global challenges and to achieving the Agenda 2030.