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RECENT DEVELOPMENTS AND CHALLENGES IN THE PROTECTION OF  
INTELLECTUAL PROPERTY RIGHTS (IPRS)

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THIS PAPER WAS PRESENTED AT A CONFERENCE 'BY  
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<sup>1</sup> Keynote address by His Royal Highness Prince El Hassan bin Talal of The Hashemite Kingdom of Jordan at the "Conference on Counterfeiting and Piracy: Enforcement of Intellectual Property Rights," Stockholm, April 23, 2001.

Excellencies, Ladies and Gentlemen,

It is exactly a month ago to the day that the European Union Summit was held in Stockholm, on March 23 -24, 2001. At the final press conference, Prime Minister Persson said: "The summit was the first in a series of summits each of which will realize the objective established in Lisbon: that the EU would be the most competitive economy of the world by the year 2010. In Lisbon we laid the foundations. In Stockholm we built the first of the ten stores."

I believe that the conference in Stockholm to address the issue of "counterfeiting and piracy" in the increasingly important field of intellectual property is of great importance to the successful completion of the remaining nine stores.

Allow me to emphasize at the outset that, in terms of the new economy characterized by increasing globalization co-existing with the digital divide, with the economic disparities and with cultural confrontations, the challenge of enforcing intellectual property rights (IPRs) cannot be effectively addressed merely through legal instruments and regional or international legislation. I do not mean to downgrade law or underestimate its importance. Rather, I wish to emphasize the vital role of enforcement and of compliance, based on understanding and on enlightened self-interest. It is my considered opinion that comprehensive cooperative programs for the benefit of both the public and private sectors need to be elaborated in a series of inter- and intra-regional dialogues. Public education and awareness in different parts of the world is called for to deal with misconceptions about IPRs prevailing among policymakers and the general public. Fear and confusion regarding our common future is widespread, as we witnessed once again last week in Quebec, in the form of protests and riots in connection with free trade discussions covering the Americas.

As we say in relation to the peace process in the Middle East, a successful outcome requires dealing with the root causes of conflict. Similarly, the successful enforcement of IPRs requires combating the root causes of counterfeiting and piracy and a proactive promotion of a "culture of compliance." It calls for a comprehensive, holistic approach. An approach that recognizes not only the role of governments and regional bodies but also the great contribution that science, R&D and private enterprise can make for the progress of humanity. I am pleased to see so many eminent representatives of the private sector among us today and I wish to seize this occasion to launch a pressing appeal to them, particularly the representatives of multinationals, to undertake a concerted effort to help governments as well as regional and international bodies to address the root causes, to promote a climate of confidence and to help develop global strategies to combat the twin problems of counterfeiting and piracy.

I come from a region, which is sometimes referred to as a "near neighbour" to Europe. In the spirit of Euro-Mediterranean Partnership founded in Barcelona six years ago, I consider myself not an outsider but rather a partner and a stakeholder in the ongoing process of European integration and construction of a single market.

Having chaired the Policy Advisory Commission (PAC) of the World Intellectual Property Organization (WIPO) for the last two years, I recall with satisfaction the "World Intellectual Property Declaration" issued by your Commission in June last year. That declaration highlighted among other things, the inter-connectedness between human progress, intellectual property, culture, creativity, identity and education.

We should avoid a myopic or uni-dimensional view of intellectual property enforcement. The same applies to the globalization process. The normative as well as the material underpinnings of the emerging world orders should be considered and understood. Likewise, the rule of law, both at the national and international levels, must be addressed in a holistic manner.

Sociologists usually refer to the historical "civilizing process" that enables societies to be at peace with themselves and consequently with others. This process removed violence and brought to life the rule of law. But its continued application requires a strong civil society that upholds the values and norms, which in the first place underpin the rule of law.

In the current "post-historical" times, intellectual property rights are a priority agenda item of industrialized countries. This is because high-tech has become extremely information-intensive and digitized information lends itself easily to simple copying. Recent advances in technology have paradoxically made such infringements much less difficult than was historically the case.

There is a widespread belief, however, that developing countries do not have an interest in enforcing these rights. They need incentives for protection of intellectual property rights. One approach to doing so has been to link IPRs to other areas of external relations, such as trade. Trade sanctions are one tool. As a result, trade-related intellectual property rights (TRIPS) emerged as a comprehensive multilateral agreement in this regard. The issues covered by TRIPS range from non-discrimination to duration, scope, licensing, transition period and dispute settlement mechanisms.

Another important element in relation to intellectual property rights is the need to provide what is so frequently referred to as a "level playing field." The rules and their enforcement should be the same; there should be no direct or indirect discrimination and no one should be more equal than the others. Otherwise the incentives for creativity and investments in the creative industries will dry up.

Some analysts have recommended political pressure on developing countries to speed up the process of their adopting TRIPS Agreement standards. But to be realistic, political or economic pressures alone would not suffice if they are not preceded by advocacy, education and persuasion. Considering the wider range of subjects to be covered by this Conference, it is my hope that the experts assembled here would lay the foundations for a comprehensive strategy of advocacy and compliance.

The experience of Hong Kong is relevant. The Director of Intellectual Property in Hong Kong aptly summed it up: "The public has a poor grasp of why piracy and counterfeiting are wrong, and why protection of copyright, trademarks, designs and patents represent a social and economic benefit.... The public's general awareness of intellectual property is often expressed in terms of what they are not allowed to do. That is to say, they understand the subject in negative terms, with undue weight on obligations rather than rights."

In order to transform negative perceptions into a positive force, we need to address, of course, the root causes but this is a long-term process. In the immediate, a comprehensive process of education and persuasion could begin. The EU can play a pivotal role in this regard if it were to initiate the process not only within the Union and, more importantly, the "candidate countries" but at a global level. The approach must cover producers and consumers alike; it must encompass the whole of the shrinking interdependent world we inhabit.

How to achieve this in practical terms? Can we imagine a “civilizing process” within the context of globalization and the international rule of law? Can we consider, as Hans Küng has done, a “global ethic” that stresses rights as well as responsibilities, as a foundation for global society? I personally do not want to dwell on the elusive paradise of Global Civil Society (GCS). Nor do I wish to explore what scholars have referred to as “the promise and peril of Global Civil Society” nor to refer to the ongoing debate about the democratic deficit in globalization as well as the widening international gaps in income and wealth.

But if it is extremely relevant for the purpose of a more comprehensive framework for your deliberations, I refer to the statement of Mary Kalder of the London School of Economics, who in a recent article entitled “The Implications of the Battle of Seattle” stated “Is this idea, of ‘civilizing globalization’ a new ideology or utopia? There are two answers to this question. One is that human societies need utopia to avoid anarchy. In a sense, we could be said to be caught between the barbarism of past utopias... and the barbarism of the absence of utopia, i.e. the descent into incivility. The other is that global civil society is not a model or a blueprint; it is a contested process, in which different views about the world’s future can be expressed.”

Not long ago, the World Bank launched its so-called “Comprehensive Development Framework (CDF).” I personally had the privilege to participate with the President of the World Bank, Jim Wolfensohn and the Archbishop of Canterbury in a parallel effort in the World Faiths’ Development Dialogue (WFDD). The aim was to encompass different views about the world’s future relating to governance, ethics, poverty, responsibilities and rights within the context of the global development agenda. The “World Intellectual Property Declaration” which was issued by the Policy Advisory Commission of WIPO, and to which I refer elsewhere, aims to encourage a similar process in relation to intellectual property.

Sweden, in its current position of presidency of the European Council, is ideally suited to promote new thinking in this regard. The objective is to evolve a roadmap for an international dialogue on IPRs, in conjunction with TRIPS, to ensure a positive understanding of IPRs by Global Civil Society.

A Scandinavian perspective on world issues has always promoted “civility.” This has been felt in many parts of the developing world including my own area of the Middle East. But looking at the globe from Stockholm, my part of the world becomes the Middle South rather than the Middle East. From Stockholm the Middle East would instead be somewhere in Siberia, halfway to Japan! The view from Stockholm can help do away with stereotyping in more sense than one.

According to the EU Commission’s Communication of November 17, 2000, as a follow-up to the Green Paper on combating counterfeiting and piracy, the internal market suffers much from the on-going illegal activities. The Communication states that “the scale on which the phenomenon takes place in the Single Market is considerable and generally increasing. Counterfeiting and piracy... caused deflections of trade and market disturbances, particularly when national differences in the means of enforcing intellectual property rights are exploited.”

Many people in all parts of the world view globalization as a dragon with many heads. One of them is the globalization of international crimes and the accompanying failure by States to prevent or even to contain them. The globalization of organized crime has made the task of combating counterfeiting and piracy that much harder. Consequently, the share of

counterfeiting and piracy has reached unprecedented levels as they become increasingly linked to organized crime.

You are all familiar with the findings of the Green Paper. The share of counterfeiting and piracy in relation to legitimate trade at the world level has reached 46% in the software sector, data processing industry 35%, the audio-visual industry 25% and so on. The New Economy and its technologies, which have contributed in the first place to the expansion of trade and globalization, have been ironically the hardest hit by counterfeiting and piracy. According to the Counterfeiting Intelligence Bureau established by the International Chamber of Commerce (ICC), counterfeiting accounts for 5 to 7% of the world trade in value terms.

The Green Paper made an important assertion affecting the future of everyone when it stated and I quote: "Owing to its scale, the phenomenon of counterfeiting and piracy has a damaging effect not only on businesses, national economies and consumers, but on society as a whole. It is much more than a blight on the economic and social order as it also affects public health and public security. The international community has not remained inactive in the face of this threat but for various reasons the measure taken so far have not succeeded in stunting the phenomenon's growth." In my view, this Conference in Stockholm needs not only to identify the strong and weak points of the measure taken so far, but also to suggest a blueprint for future action. This is a matter of urgency not only within the EU and with regard to the "candidate countries" but generally for the world community at large.

Counterfeiting and piracy are also harmful to the developing countries because two thirds of the world community risks being deprived of the stimulus to develop their own creative talent. Intellectual property law is there to stimulate creativity and inventiveness but there is a dire need to strike a proper balance between this goal and the broader interests of the general public. That balance has to be struck by the legislators; once it is done, measures must be taken to ensure that law is obeyed and the balance it represents is respected. Counterfeiting and piracy aim at upsetting that balance and are thus harmful to society at large. As for the stimulus for creativity and inventiveness, intellectual property protection serves in a way the same aims as the Nobel Prize which was set up to promote and recognize important contributions to the progress of mankind.

But unfortunately, these realities have become blurred by the rhetoric and emotions relating to the issue of intellectual property at the international level. Jagdish Bhagwati who helped in the policy-making process at the GATT during the nineties, has recently reminded us that regrettably "the developing countries see intellectual property protection as a dagger aimed at them." It is not enough to say that such a view is wrong. Much more needs to be done on the basis of empathy and understanding. For example one cannot ask the developing countries to respect IPRs in order to promote local creativity and development of new ideas and at the same time do little or nothing to reverse the 'brain drain'. If those trained and educated people who can be innovative and creative are sucked away by the developed countries, one should not be surprised if the local economy, for the most part grey economy, should have recourse to piracy. The victim countries are not, in any way, compensated for their loss. Instead they are expected to be grateful for being a source of foreign exchange through remittances. I had suggested almost thirty years ago to the general conference of ILO to help create an International Labour Compensatory Facility (ILCF) as one possible way of redressing the situation. Almost no progress has been made at the international level although at national level, some bilateral arrangements for direct or indirect compensation are made from time to time.

The action plan as announced by the Communication of November 17, 2000, is considered by the Commission as a supplement to the initiatives with non -member countries. It is precisely in this area of relations with non -member states, that creative new approaches can play a decisive role in ensuring the success of enforcement within the EU and, subsequently, serve as a model to be emulated at a global level while taking fully into account the needs and aspirations of the developing world as well as the specificities of each situation.

Pamela Samuelson of the University of California at Berkeley has pointed out that intellectual property is in fact just one component of intellectual capital. This is true for nations as much as for individual companies. Policies that nurture and promote intellectual capital are at the heart of successful development strategies. These include human resources development, labor, employment and entrepreneurial policies. Therefore, what is needed is the integration of intellectual property rights with other relevant components of development. This is the way forward for a positive dialogue with the developing countries if we are to go beyond Bhagwati's metaphorical "dagger". In this connection, one should also bear in mind that in the short term, the developing countries are bound to incur huge losses if strict measures of enforcement are taken. Unless remedial measures are taken in time, this situation could lead to aggravation rather than amelioration of the overall situation. The supporters and dependants of the grey economy are bound to revolt, causing serious political and socio-economic tensions.

Successful enforcement stems from respect rather than fear. Respect in turn, calls for comprehension and understanding. Cooperation programs with the candidate countries and eventually the world community at large should promote this through education, human resource development and culture, and not merely through negotiations of trade relations and legal reform. In this way the mistakes of Seattle can be avoided and the "dagger" replaced by the hand of partnership and cooperation.

The heat of the debates since the so-called "Battle of Seattle" has, however, made the task of communication and cooperation more challenging. Seattle occurred in November 1999, exactly a decade after the collapse of the Berlin Wall in November 1989. This coincidence of chronology points to the need for a global discourse away from the heat of confrontations and from an outdated east -west/north-south view of the world. Otherwise within this decade a new, albeit less visible, "global wall" will replace that of Berlin.

It is important for the future of our "common humanity" that we recognize that after the end of the cold war, we are increasingly inhabiting "a single world with a single agenda". That is why I believe that Sweden, during and after its current presidency of the EU, can play a unique role in a dialogue across cultures in a "civilizing process" for globalization and for the international rule of law: a dialogue to help dismantle that global wall which is being unwittingly erected.

In this context, it is worth recalling that the Presidency Conclusion of the Stockholm summit stressed the need for a dialogue with civil society in the context of the 4th WTO Ministerial Conference scheduled for November 2001, in Doha. It was stated, *inter alia*, that "This new round should respond to the interests of all WTO members, in particular developing countries, and should be prepared in a transparent and inclusive manner taking into account the need for a dialogue with civil society." Let me add that a dialogue is not a series of monologues. It is a process, which needs to be tenaciously pursued.

In conclusion, allow me to recall the initiative actively promoted by the Swedish Government to formulate a set of fundamental standards of humanity based on international law and human rights as well as cultural and ethical norms. The purpose was to promote global action against flagrant violations. Now, a similar need is being recognized in order to contain the growing problem of piracy and counterfeiting in the realm of intellectual property. May I suggest that this Conference should lead to a "Stockholm Declaration" which should serve as a standard-setting document and as guidelines for future regional and global action, which can be reviewed and improved as we make progress. Should a shortage of time and pressure of work not allow for elaboration of such a document within the conference period, let me suggest that one of the conclusions of the Conference should be an active follow-up based on the deliberations of this Conference and leading to a "Stockholm Declaration" during the period of Swedish presidency. This suggestion should be linked to the appeal I launched earlier for a proactive role by the private sector, particularly the multinationals.

Ladies and Gentlemen, in the past I often referred to the need for "anthropolitics" or politics for people. I would like to think that your efforts here in Stockholm will contribute to "anthroponomics" or economics for people and, that in this regard, not only the governments and regional bodies but also the multinationals as well as non-governmental actors and the civil society at large, will jointly play an active and positive role as possible.

I wish you well in your deliberations.

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