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DALEE SAMBO DOROUGH, PhD
Chairperson
United Nations Permanent Forum on Indigenous Issues

First of all, allow me to thank Wend Wendland, Director of the Traditional Knowledge Division, and Q'Apaj Conde Choque, Indigenous Fellow within the Traditional Knowledge Division, for their kind invitation to address the Committee today.

Please know that the topic of intellectual property and traditional knowledge is not my specialty. However, I believe that I have a firm grasp on the status and human rights of Indigenous peoples having been a long time and direct participant in the drafting of a range of international instruments, including the UN Declaration on the Rights of Indigenous Peoples as well as the revision of ILO Convention No. 107, which resulted in the 1989 adoption of Convention No. 169.

As an Inuit, my reference point for intellectual property is a quote from the late Eben Hopson, who was an extraordinary elder statesman, a person who had a vision for uniting the Inuit peoples across the artificial and imposed boundaries of the Russian Federation, the United States, Canada, and Denmark. He succeeded in uniting us as a people through the Inuit Circumpolar Council [ICC]. On June 13, 1977, at the founding meeting of the ICC, in his opening address he stated “Our language contains the memory of four thousand years of human survival through the conservation and good managing of our Arctic wealth...Our language contains the intricate knowledge of the ice **that we have seen no others demonstrate.**” His opening remarks addressed the pressures being experienced by the Inuit, especially from off-

shore oil and gas development. However, through even these few words, Hopson was speaking volumes about the inter-related and inter-connected nature of our rights, from intellectual property to cultural rights to safeguarding the Arctic environment.

I understand that your discussions will focus on the matter of “Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions: Indigenous perspectives on Cross-Cutting Issues in the WIPO IGC.” Therefore, in this presentation, I would like to highlight the cross cutting issues related to the nature of Indigenous human rights and in particular, the broader issue of the right to culture and cultural heritage of Indigenous peoples. In addition, I want to briefly address what I perceive to be the outstanding issue concerning the necessary normative framework that should be operationalized in the context of the World Intellectual Property Organization’s efforts to arrive at text [or multiple texts] that genuinely recognize and respect the status and human rights of Indigenous peoples.

At the outset, it is clear that there is an ongoing need for distinct or peculiar attention to be paid to the conditions facing Indigenous peoples. Indeed, these WIPO Indigenous-specific initiatives underscore this ongoing and sometimes urgent need. In fact, one might argue that the entire process to establish international human rights standards concerning Indigenous peoples in the form of the UN Declaration was to ultimately safeguard their distinct cultures and cultural heritage. And, we know that there are particular repercussions when the cultures and cultural heritage of Indigenous peoples are not safeguarded – the overall matter essentially pivots on the “survival and flourishing of the cultures of Indigenous peoples” as distinct peoples. Therefore, to a great extent, the very survival and flourishing of Indigenous cultures and cultural heritage, is a cross cutting issue and one that is at stake in all of your deliberations – this matter is at the heart of your collective work and in no way should this be underestimated.

As many of you know, Article 31 of the UN Declaration is the main provision addressing Indigenous cultural heritage:

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

In addition, Articles 11 and 12 address cultural rights, including traditions and customs as well as other manifestations of their cultures. What I would like to highlight about the cross cutting right to culture is the customary international law nature of this set of rights and especially the linkages between these particular rights and the ongoing WIPO IGC dialogue concerning the need to affirm Indigenous peoples' rights to genetic resources, traditional knowledge, traditional cultural expressions and intellectual property.

A number of scholars, including those associated with the International Law Association Committee on Rights of Indigenous Peoples as well as former UN Special Rapporteur James Anaya, have carefully reviewed the question of the status of the UN Declaration. Though they have concluded that the whole of the UN Declaration cannot be considered binding, they assert that some of its fundamental provisions correspond to “established principles of general international law” and as such create legally binding international obligations that states are bound to uphold.

In the learned view of the Committee, the rights that fall within the “discourse on customary international law” include self-determination; culture and identity; land rights; and reparation, redress and remedies. More significant for our discussions today is the fact that the ILA Committee has affirmed that the cluster of provisions embraced by the UN Declaration related to cultural rights and identity are in the neighborhood of customary international law.

In the view of the International Law Association Committee on Rights of Indigenous Peoples, “a specific rule of customary international law has developed recognizing the right of Indigenous peoples to recognition and preservation of their cultural identity, which presupposes that all the prerogatives that are essential to preserve their cultural identity must be preserved; their rights to protect and use their own cultural heritage according to their needs and traditions is included among these prerogatives.”

Furthermore, consistent with the inter-related, inter-connected, indivisible and inter-dependent nature of human rights, this cluster of Indigenous human rights to cultural heritage must be read in context with all other rights enunciated in a wide range of international human rights instruments, including the UN Declaration. For example, this cluster of rights must be interpreted and affirmed in relation to the right to self-determination; the rights to free, prior and informed consent; and the rights to lands, territories, and resources, all of which are embraced by the UN Declaration. In fact, the jurisprudence of various human rights treaty bodies have made such linkages and they have drawn similar conclusions, all of which are aimed at safeguarding Indigenous peoples and ultimately, their societies as distinct cultures.

Again, these “established principles of general international law” create legally binding international obligations that states are bound to uphold. And, I would submit, that this includes all of the drafting and dialogue related to the various texts being discussed within the

Intergovernmental Committee of WIPO concerning the rights of Indigenous peoples to intellectual property, genetic resources, traditional knowledge, traditional cultural expressions. In my view, these solemn obligations are cross cutting issues.

Though states and the corresponding interests of pharmaceuticals, multi-national corporations and others have been primarily focused upon their interests throughout these discussions, the “political, moral, and legal imperative” for all should be acutely focused upon upholding international obligations related to the human rights of Indigenous peoples, including our rights to culture, our cultural heritage, and ultimately our identity as distinct peoples.

Indeed, the emerging trend for the international community is to ensure that businesses, corporations and financial systems take into account human rights. The pressure by civil society, placed upon governments, is focused upon compliance with human rights standards and human rights treaties. The recent Human Rights Council decision to establish an open-ended inter-governmental working group on a legally binding instrument on transnational corporations and other business enterprises with respect to human rights is a recent example of this trend. Therefore, the emerging treaty or treaties from WIPO on Intellectual Property and Traditional Knowledge should anticipate this changing world order on international trade and human impacts, and more importantly, uphold the entrenched standards that Indigenous Peoples hold distinct property rights as collective entities.

As such, the task before you in the coming days and coming months is to arrive at language that does in fact uphold the rights of Indigenous peoples and maintains the solemn obligations of states in relation to the distinct status and human rights of Indigenous peoples. In the context of the customary international law nature of Indigenous peoples’ rights to culture and identity AND all of its various prerogatives and manifestations, there is a duty of states to refrain

from, to abstain from, creating a rule or standard contrary to OR incompatible with such obligations.

It is abundantly clear to me, as reflected by the numerous bracketed words and phrases in the pending texts, that those engaged in the “conventional” fields of international trade law and intellectual property rights, at the present time, are not properly equipped to address the specific features of Indigenous peoples’ human rights and their unique cultural context. Therefore, the direct, meaningful, full and effective participation of Indigenous peoples, as rights holders and beneficiaries, must be guaranteed and accommodated. I note that particular steps have been taken to engage Indigenous peoples’ representatives in the important work of WIPO.

I’m pleased to note the reaction and response of WIPO to the various Permanent Forum recommendations, which have called for increasing and enhancing the direct participation of Indigenous peoples in the ongoing dialogue, especially those recommendations adopted at our tenth and eleventh session. As many are aware, the Permanent Forum has also called “upon States, foundations and other organizations to contribute to the WIPO Voluntary Fund for Accredited Indigenous and Local Communities” in order to advance and implement Article 18 of the UN Declaration in relation to the WIPO.

It is safe to say that the human rights standard setting exercise that resulted in the UN Declaration, was a recognition by the world community that the existing human rights regime was not fully responsive to the diverse cultural contexts of Indigenous peoples and their distinct status and rights. The world community, through the United Nations and its member states, recognized that human rights standards that take into account this unique cultural context as well as additional measures were needed to promote universal respect for and observance of the human rights of Indigenous peoples, and in particular, their collective human rights.

In the same way that the United Nations, through its member states, and with the full, meaningful and direct participation of Indigenous peoples, managed to arrive at the UN Declaration, I would suggest that the WIPO focus upon establishing a regime that comprehensively responds to the unique status, conditions and rights of Indigenous peoples. Rather than attempting to fit Indigenous peoples into the copyright, patent, trademark, trade, and industrial design rules, policies, and laws, the WIPO, in collaboration with Indigenous peoples and informed by the minimum standards of the UN Declaration on the Rights of Indigenous peoples, develop an innovative regime that properly safeguards their cultural heritage, cultural rights and identity.

Such a regime would not exclude Indigenous peoples from the existing regime of intellectual property. In fact, a framework that first upholds the minimum human rights standards reflected in the UN Declaration could be complemented by additional measures to safeguard Indigenous human rights within the context of WIPO. Certainly, in relation to the right to self-determination, Indigenous peoples may choose to engage and use, to their benefit, the existing and long-standing intellectual property rights path. However, my main point is that, distinct standards and rights as well as a regime must be established to fully address and safeguard the unique status and rights of Indigenous peoples, first and foremost.

In conclusion, I call upon all participants to consider the nature of Indigenous human rights in relation to the work before you. I know that much of what I have said, in all likelihood, conflicts with national and other economic interests and it is often times difficult to set aside the interests of national governments and third parties. However, the combined elements of the international legal obligations of member states to promote and protect human rights and respect for and recognition of the right of Indigenous peoples to meaningful participation in the

negotiations should result in and ensure a just, fair, and equitable outcome. However, the real test OR the real measure will be in the language to be eventually adopted by the WIPO. Will the language safeguard Indigenous peoples' cultural rights and all their manifestations from misappropriation? Will Indigenous peoples' rights to maintain their cultural heritage, including genetic resources, traditional knowledge, traditional cultural expressions, and intellectual property, be upheld? Will Indigenous peoples, nations and communities be able to fully control, protect and develop their intellectual property consistent with their own conception of the right to development? Due to the urgency of threats to the cultural integrity of Indigenous peoples in many parts of the world, will states, through WIPO and in conjunction with indigenous peoples, take effective measures to recognize and protect the exercise of these rights?

And, once an international, human rights based regime to safeguard, protect and promote the rights of Indigenous peoples to their cultural heritage and all of its manifestations is in place, it must have substantive relevance at the national, domestic level and at the regional and local level. It must be felt by Indigenous peoples who hold such intellectual property in their minds, in their hearts and in their hands. Quyanaq. Thank you.