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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 (art. 15, para. 1 (c), of the Covenant)

I. Introduction

578. At its twenty-fourth session, on 27 November 2000, the Committee held a day of general discussion, organized in cooperation with WIPO, on the right of everyone to benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which he is the author, as enshrined in article 15, paragraph 1 (*c*), of the Covenant. The Committee had decided, during its twenty-second session, to devote its day of general discussion to this issue in connection with recent developments in the international intellectual property regime, namely, the inclusion of the Agreement on Trade-Related Aspects of Intellectual Property Rights as part of the Marrakesh Agreement establishing the World Trade Organization. The implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights has heightened international awareness of the potential conflict between this regime and the legally binding international human rights norms.

579. The day was also intended to lay down the groundwork for the elaboration of a general comment dealing with relevant aspects of article 15, paragraph 1 (*c*), of the Covenant, called for by the Sub-Commission on the Promotion and Protection of Human Rights, in its resolution 2000/7 adopted in August 2000. In this resolution, the Sub-Commission encouraged the Committee to clarify the relationship between intellectual property rights and human rights, including through the drafting of a general comment on the subject.

580. Participants in the day of general discussion included: Mr. Vladimir Aguilar, Contextos Latinoamericanos para la Promoción de los Derechos Económicos, Sociales y Culturales (Switzerland); Ms. Annar Cassam, Director, UNESCO liaison office in Geneva; Ms. Audrey Chapman, American Association for the Advancement of Science; Ms. Caroline Dommen, 3D Associates; Mr. Julian Fleet, Senior Adviser, Law and Ethics, UNAIDS; Mr. Evgueni Guerassimov, Senior Legal Advisor, UNESCO; Ms. Julia Hausermann, President, Rights and Humanity; Mr. Hamish Jenkins, Non-Governmental Liaison Service; Mr. Miloon Kothari, Habitat International Coalition; Mr. Patrice Meyer-Bisch, University of Fribourg (Switzerland); Ms. Conchita Poncini, International Federation of University Women; Mr. Peter Prove, Lutheran World Federation; Mr. John Scott, Aboriginal and Torres Strait Islander Commission (Australia); Mr. Alejandro Teitelbaum, American Association of Jurists; Mr. Hannu Wager (Counsellor, Intellectual Property Division, WTO); Mr. Wend Wendland, Principal Legal Counsel, WIPO; Mr. Michael Windfuhr, Executive Director, FIAN - Foodfirst Information and Action Network.

581. The Committee had before it the following background papers:

(*a*) Discussion paper submitted by Ms. Audrey Chapman (American Association for the Advancement of Science): "Approaching intellectual property as a human right: obligations related to article 15, paragraph 1 (*c*)" (E/C.12/2000/12);

(*b*) Background paper submitted by the International Commission of Jurists: "The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights" (E/C.12/2000/13);

(*c*) Background paper submitted by Ms. Mylène Bidault, (University of Geneva, Switzerland, and University Paris X-Nanterre, France): "La protection des droits culturels par le Comité des droits économiques, sociaux et culturels" (E/C.12/2000/14);

(*d*) Background paper submitted by Ms. Maria Green (International Anti-Poverty Law Center, United States of America): "Drafting history of the Article 15 (1) (c) of the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2000/15);

(*e*) Background paper submitted by Mr. Patrice Meyer-Bisch (University of Fribourg, Switzerland): "Protection of cultural property: an individual and collective right," (E/C.12/2000/16);

(*f*) Background paper submitted by Aboriginal and Torres Strait Islander Commission (Australia): "Protecting the rights of Aboriginal and Torres Strait Islander traditional knowledge" (E/C.12/2000/17).

II. Opening remarks

582. The Chairperson of the Committee, Ms. Bonoan-Dandan, opened the day of general discussion by referring to the three distinct elements of article 15 of the Covenant: the right to participate in cultural life, the right to benefit from scientific progress, and intellectual property rights. The Committee had decided that the latter aspect of article 15 merited the most urgent attention, although the Committee would, in due time, formulate a general comment on each element of the article.

583. Opening the discussion on behalf of WIPO, Mr. Wendland greeted the decision of the Committee to devote a day of general discussion to intellectual property. In his view, the issue had regained interest and importance due to globalization, the emergence of new technologies and the recognition of the value of knowledge.

III. Approaching intellectual property as a human right: Obligations related to article 15, paragraph 1 (c) of the Covenant

584. Ms. Chapman (American Association for the Advancement of Science) introduced her background paper by noting that although intellectual property had long been analysed in juridical and economic terms, very little attention had been paid to intellectual property as a human right. A human rights approach acknowledged that intellectual products have an intrinsic value as an expression of human creativity and dignity.

585. Ms. Chapman said that the establishment of the WTO in 1994 and coming into force of the Agreement on Trade-Related Aspects of Intellectual Property Rights in 1995 had

strengthened the global character of intellectual property regimes. In order for these regimes to conform with human rights norms, they needed to fulfil certain criteria, including addressing in an explicit manner its ethical and human rights dimensions. Further, intellectual property regimes needed to reflect individual countries' development requirements and be consistent with the cultural orientations of major groups of society. With regard to science, intellectual property regimes needed to promote scientific progress and broad access to its benefits.

586. Recent developments in the intellectual property regime were often inconsistent with a human rights approach, a matter that underscored the need for a human rights approach. Ms. Chapman enumerated issues that remained to be addressed in this respect: inappropriate or inadequate protection of the rights of the author, creator, or inventor; inadequate protection of public interest; varying impact on developed and developing States; lack of democratic controls and participation; lack of effective incorporation of ethical concerns.

587. Furthermore, not only did there exist inconsistencies between the norms of the intellectual property regime and human rights norms, in addition, the intellectual property regime had demonstrated detrimental effects to the rights enshrined in the Covenant. Ms. Chapman noted that the current intellectual property regimes were not applicable to indigenous artistic creations and knowledge. Similarly, the regimes affected negatively the right to health in that they reduced availability to pharmaceuticals. As for the right to food, it was threatened in a variety of ways, including by extension of broad patents for specific plant varieties to a few agricultural corporations that thus held virtual monopolies on the genome of important global crops.

588. Finally, Ms. Chapman recalled the recommendations made by the Sub-Commission on the Promotion and Protection of Human Rights in its resolution 2000/7. The Sub-Commission had requested governments to protect the social functions of intellectual property in accordance with international human rights obligations and principles; inter-governmental organizations to integrate international human rights obligations and principles into their policies, practices, and operations; and the WTO in general and the Council for Trade-Related Aspects of Intellectual Property Rights more specifically, to take fully into account existing state obligations under international human rights instruments during its ongoing review of the Agreement.

589. Mr. Marchán Romero addressed the problem of differing degrees of protection granted to indigenous people in international instruments in the field of intellectual property. The right of indigenous people to intellectual property, absent in ILO Convention No. 169 (1989) concerning indigenous and tribal peoples in independent countries, is addressed in article 29 of the current draft United Nations declaration on the rights of indigenous peoples.[1] The draft had been under discussion in the United Nations since 1994. In this regard, Mr. Marchán Romero called for governments to take specific measures to protect the rights of everyone to benefit from cultural rights.

[1] See Sub-Commission on the Promotion and Protection of Human Rights resolution 1994/45, annex.

590. Mr. Rattray stated that intellectual property rights were not absolute rights but should instead be seen in the framework of international norms regulating the behaviour of States and individuals. He stressed the importance of striking the appropriate balance between individual rights and the rights of other individuals, the rights of States, and collective rights, and acknowledged the challenge the Committee was facing in this respect.

591. Mr. Hunt hoped that the debate would provide a response to the question of whether the current international property regime tended to accentuate or to diminish the inequalities existing between North and South, and rich and poor countries. In the first case, a second question would need to be replied, namely to know how to reform the system to render it more egalitarian in this respect.

592. Mr. Sadi noted that intellectual property rights were negative in quality, protecting the rights of the author rather than providing for the right of everyone to access cultural, artistic and scientific products. He asked whether it was not necessary to find a better balance between the rights of the public at large to enjoy intellectual products and the rights of the inventor or author.

593. Mr. Texier concurred with Mr. Hunt by stating the importance of looking for ways of ameliorating the current system of intellectual property protection to render it more egalitarian. Another essential question was to find ways of protecting collective knowledge, as currently intellectual property rights are defined as individual rights.

594. Mr. Grissa agreed that a balance needed to be struck between author's rights and the right of everyone to enjoy the products of scientific progress.

595. Mr. Ceville expressed the hope that the debate would assist the Committee in clarifying the means with which it can help State parties to link intellectual property rights with other Covenant rights.

596. Mr. Wendland (WIPO), summarizing the working draft submitted by WIPO (E/C.12/2000/19), said that the primary objective of the intellectual property system was to protect and promote human intellectual creativity and innovation. The system did not in and of itself regulate the use and commercialization of harmful or undesirable products or processes. Instead, limitations to and prevention of the invention or use of such products or processes required domestic legal regulation.

597. Addressing the subject of traditional knowledge, Mr. Wendland explained that, in recognition of the importance of the issue, WIPO member States had mandated an exploratory programme on the relationship between intellectual property and tradition-based creation and innovation, and the preservation, conservation and dissemination of global biological diversity. In the framework of this programme, WIPO had undertaken nine fact-finding missions in 1998 and 1999 to 28 countries to learn about the needs and expectations of holders of traditional knowledge in relation to the protection of their knowledge. More recently, the member States had established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, which would meet for the first time in spring 2001 in Geneva.

598. Finally, acknowledging that article 15, paragraph 1 (*c*) of the Covenant protected both the rights of authors and the right of the public at large to access products protected by

authors' rights, Mr. Wendland maintained that it was possible to strike a balance between the two potentially complementary yet conflicting rights. Namely, intellectual property rights were subject to various limitations and exceptions, and in some cases to compulsory licensing, which could be used to resolve tensions such as human rights. Furthermore, Mr. Wendland held that the balance between human rights and intellectual property rights could only be struck by adopting a case-by-case method, as contexts of sectors of activity, of countries and of regions varied infinitely.

599. Mr. Guerassimov (UNESCO) stressed the point made by Ms. Chapman in her discussion paper that protection of authors' rights was not an end in itself but should instead be understood as a preliminary condition, essential for cultural freedom, for the participation of the public in cultural life and scientific progress. The level of protection needed to correspond to the socio-economic realities and cultural goals of a given country.

600. For Mr. Guerassimov, the tendency in industrialized countries in the last 20 years to further strengthen the protection of the rights of authors could only be welcomed, as long as levels of protection did not hamper public access to knowledge. The issue was particularly important to developing countries which imported up to 80 per cent of their intellectual property and often lacked coordinated governmental policy in the field of intellectual property as well as corresponding infrastructures and specialists to apply policies. The Agreement on Trade-Related Aspects of Intellectual Property Rights provided for a high standard of protection, and as many developing countries were actively seeking adherence to the WTO, they were obliged to adhere to the high standard of protection. Furthermore, the Agreement provided for severe economic sanctions for countries that were unable to respect their international obligations in this field.

601. In conclusion, Mr. Guerassimov drew attention to a second current tendency, that of legal persons being recognized as the initial copyright owners for the purpose of protecting their investment. On the other hand, the Universal Declaration of Human Rights and the Covenant only recognized physical persons as entitlement holders. There was a danger that adopting criteria other than that of the originality of a work resulting from creative activity would undermine the respect for authors' rights, and would run counter to the provisions of the Universal Declaration and the Covenant.

602. Mr. Antanovich drew attention to the need for creating a mechanism to allow for the diffusion of cultural information from the North to the South. He asked the representative of WIPO to elaborate on why the intellectual property system was only partially compatible with human rights.

603. Mr. Riedel asked the representative of WIPO for clarification regarding compulsory licensing mechanisms in the system of protection of the right to intellectual property. He wanted specifically to know whether these mechanisms were subject to control.

604. Mr. Marchán Romero asked whether in the intellectual property system, States could choose to strengthen either the protection of the rights of authors or of the public at large, in function of the particular situation in a particular State. In the opinion of the representative of WIPO, would such atomization engender as many regimes and exceptions as there were different national contexts?

605. Mr. Wimer Zambrano, addressing the issue of conflicting interests referred to by Mr. Marchán Romero, wanted to know whether the right of succession engendered legal disputes between inheritors that prevented or delayed public access to literary works.

606. Ms. Cassam (UNESCO) underscored the urgency of establishing arrangements for the protection of traditional knowledge, since the existing intellectual property arrangements only served the interest of individuals whose inventions were of monetary value, and since these arrangements allowed for the expropriation of indigenous knowledge for commercial use. Ms. Cassam said that it was necessary to rethink the entire system of protection of rights of authors, and encouraged the Committee to play a leading role in this effort.

607. With regard to the issue of technology transfer, Mr. Wendland (WIPO) said that it was addressed in the Agreement on Trade-Related Aspects of Intellectual Property Rights and in the Convention on Biological Diversity. One should bear in mind, however, that technology transfer depended upon many factors, of which the intellectual property rights system was only one.

608. On the question of compatibility of the intellectual property rights system with human rights, Mr. Wendland stated that not only could intellectual property rights conflict with human rights, human rights could also enter into conflict with one another. Therefore, it was necessary to find a balance between human rights in general, and between intellectual property rights and human rights in particular. In fact, the numerous limitations and exceptions in the framework of the intellectual property rights system served precisely this purpose. There were exceptions in particular with regard to teaching, research, certain population groups and private copying, and these did not undermine the principles of the intellectual property system.

609. As regards compulsory licensing, used in many countries in the case of sound recordings for example; article 31 of the Agreement on Trade-Related Aspects of Intellectual Property Rights defined clearly the conditions under which it was possible to use intellectual property without permission of the author. As for the more general question of the existence of a rigid borderline between the interests of the author and those of the general public, Mr. Wendland said that borderline differed from local context to another. This applied equally to Mr. Wimer Zambrano's question on succession disputes. Mr. Wendland said that international norms provided only a framework of minimum rules and left the national legislator with the task to complete the frame.

610. Mr. Guerassimov (UNESCO) said that a fair balance between the interests of the author and of the general public alluded to by the WIPO representative had been achieved in the Universal Copyright Convention as revised at Paris on 24 July 1971. Under the provisions of the Convention, developing countries benefited from exceptions that allowed them to reach an equitable balance. The Agreement on Trade-Related Aspects of Intellectual Property Rights, however, based on the more restrictive Bern Convention for the Protection of Literary and Artistic Works, is silent on exceptions allowed for national legislators with a view to encouraging education, development and scientific research.

611. Mr. Wager (WTO), summarizing the background paper prepared by WTO (E/C.12/2000/18), said that the overall objectives of WTO included those of full employment, rising standard of living in the context of sustainable development, and efforts to ensure that developing countries share in the growth of international trade. The objectives of the

Agreement on Trade-Related Aspects of Intellectual Property Rights included the transfer and dissemination of technology to the mutual advantage of producers and users of technological knowledge, in a manner conducive to social and economic welfare. The Agreement also promoted other values essential for the realization of human rights, such as non-discrimination on the basis of nationality.

612. Furthermore, said Mr. Wager, the Agreement on Trade-Related Aspects of Intellectual Property Rights recognized the importance of ethical and other considerations, and allowed for exceptions on such considerations. Member States could refuse to grant a patent to an invention the commercial exploitation of which could be dangerous to life or health or be seriously prejudicial to the environment. Diagnostic, therapeutic and surgical methods for the treatment of humans and animals could also be excluded from patentability. Specific flexibility was provided in the area of biotechnology, allowing member States to refuse patents for plants and animal inventions other than micro-organisms and microbiological processes. The Agreement also allowed for the formulation of regulations necessary to protect public health and nutrition, and to promote public interest in sectors of vital importance to the socio-economic and technological development of the member States, provided that such measures were consistent with the provisions of the Agreement.

613. With regard to traditional knowledge, Mr. Wager explained that patenting by foreigners of traditional knowledge was not possible under the principles of the Agreement on Trade-Related Aspects of Intellectual Property Rights. The problem in this regard was that much traditional knowledge was not recorded in databases that could be consulted by patent examiners when deciding whether to grant a patent. Efforts were being made, at both national and international levels, to remedy this situation by drawing up appropriate databases. Another concern with regard to traditional knowledge was that the intellectual property system did not provide sufficient opportunities for the communities where the knowledge originated, to protect it from use by others. The WTO Council for Trade-Related Aspects of Intellectual Property Rights had made proposals for action with regard to remedying the situation. It was acknowledged, however, that the issue gave rise to complex and difficult questions, such as the limited time period of protection of creations and inventions, after which they fell into the public domain and became freely usable by mankind at large. With regard to biodiversity, Mr. Wager told that the Agreement was silent on the issues addressed in the Convention on Biological Diversity, which meant that governments were free to legislate in accordance with the requirements of the Convention on these matters.

614. Mr. Fleet (UNAIDS) said that the impact of HIV had reversed years of hard-won development gains in Africa, which is home to 70 per cent of the infected around the world. Today, the availability of drugs for HIV and AIDS had significantly reduced AIDS morbidity and mortality in industrialized countries, whereas the vast majority of HIV-positive people in developing countries did not have access even to relatively simple medications for the prevention and treatment of potentially fatal infections, let alone the more sophisticated antiretroviral medicines that would work against the virus itself.

615. Mr. Fleet emphasized that UNAIDS supported patent protection and intellectual property rights as an incentive for innovative research and development that could lead to the discovery of HIV vaccines. UNAIDS was involved, together with UNFPA, UNICEF, WHO and the World Bank, with five pharmaceutical companies holding patents on HIV-related medicines and committed to expanding access to HIV-related care and treatment, in the "Accelerating Access to HIV Care, Support and Treatment" project. UNAIDS also

advocated the granting of compulsory licences where necessary, particularly in countries where HIV/AIDS constituted a national emergency, and called for the reduction or elimination of import duties, and for the setting of preferential prices for HIV-related drugs consistent with local purchasing power.

616. Mr. Hunt reiterated his question as to whether the contemporary intellectual property regime reinforced global inequality. He looked forward to the reactions of the representative of WIPO in that regard. According to the World Bank's *World Development Report 2000-2001,* industrialized countries continued to account for the vast majority of patents (97 per cent) worldwide. 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 Agreement on Trade-Related Aspects of Intellectual Property Rights.

617. Mr. Riedel wondered whether article 15, paragraph 1 (*c*), encompassed all aspects of intellectual property protection, as it could be said that intellectual property did not have a human rights dimension at all levels. The fundamental question to be answered was whether intellectual property rights were merely a policy issue to be resolved in international treaties that had little to do with human rights. Mr. Riedel said that he personally favoured the response stating that some aspects of intellectual property, such as copyright, reflect a certain human rights dimension, while other aspects, such as trademarks and patents, do not. In his view, the Committee would need to examine further how the conditional rights enshrined in article 15, paragraph 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 people 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.

618. Mr. Jenkins (Non-Governmental Liaison Service), referring to Mr. Hunt's question as to whether the Agreement on Trade-Related Aspects of Intellectual Property Rights reinforced inequality, said that he was not convinced by the WTO representative's argument that the Agreement's prohibition of discrimination on the basis of nationality in the area of intellectual property rights would be in accordance with the non-discrimination provision contained in human rights instruments. WTO established broadly similar rules for all players, whereas the human rights definition of non-discrimination required States in certain circumstances to take affirmative action in order to protect marginalized and vulnerable groups.

619. Ms. Hausermann (Rights and Humanity), referring to the Agreement on Trade-Related Aspects of Intellectual Property Rights, asked the representative of WTO whether the current meeting of the Council for Trade-Related Aspects of Intellectual Property Rights would address the issue of the impact exerted by the Agreement on access to essential drugs.

620. Mr. Wendland (WIPO) said that, in the conceptual sense, there are at least three major aspects of equality in the intellectual property context: standard-setting, decision-making, and the implementation and exercise of intellectual property 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 - these issues would be best examined on the basis of specific cases.

621. Mr. Wager (WTO), in response to Mr. Jenkins, said that non-discrimination in the context of the Agreement on Trade-Related Aspects of Intellectual Property Rights involved

either questions relating to the treatment of individual human beings or assessment of the differences between stages of development in different countries. 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. It was true that the Agreement did not provide for affirmative action in favour of individuals. However, countries benefited from an extensive system of special treatment rules under the Agreement on Trade-Related Aspects of Intellectual Property Rights, the General Agreement on Tariffs and Trade of 1994 and the General Agreement on Trade and Services. In reply to the president of Rights and Humanity, Mr. Wager 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 round of negotiations at the Third WTO Ministerial Conference, held at Seattle in December 1999.

622. Ms. Hausermann (Rights and Humanity) suggested that one way of considering the relationship between human rights and intellectual property rights was to view human rights as providing an additional analytical and decision-making tool in the process of determining, in the intellectual property 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 intellectual property 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.

623. Ms. Hausermann saw the Committee holding a particular role in reasserting the primacy of human rights concerns over commercial interests and the profit motive and in reminding States parties to the Covenant that their human rights obligations accompanied them in all international forums. Further, the Committee could also recommend that all international trade and intellectual property negotiators 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. The Committee could also consider what mechanisms were currently available or should be introduced in order to resolve the apparent conflict between the implementation of intellectual property-related trade law on the one hand, and human rights norms on the other. Finally, the Committee should try to establish 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.

624. Mr. Scott (Aboriginal and Torres Strait Islanders Commission) said that the current international intellectual property regime was unfair for indigenous people and for developing countries, and that it both maintained and reinforced inequalities. In this regard, an adequate system of protection of indigenous intellectual property would provide for the right to refuse access to traditional knowledge for those deemed undeserving, and the right to share parts of their knowledge when deemed appropriate without fear of exploitation.

625. The principle of protection of traditional knowledge and that of 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.

Countries would not only benefit from such an arrangement, but would also realize that they themselves were losers if their indigenous peoples lost touch with traditional knowledge.

626. Mr. Meyer-Bisch (University of Fribourg) held that the right to intellectual property was a human right because it formed part of the right to property. The particular feature of a property right was that its subject was both individual and collective. Individual, as a human being could own property in the context of his environment; and collective, in the sense that he owns his environment or the common cultural heritage, which belongs to all members of society. In this sense, the current intellectual property system sustained inequality through a false separation between those with property and those without. The right to cultural property, then, clarified the dividing line between that which is marketable and that which is not: no rule could a priori define the limits, apart from the need to protect all human rights. In this regard, the obligations of States consisted in establishing clear rules balancing freedom of cultural expression against the need for democratic regulation. A democratic cultural policy was one that developed all the public spaces needed for the free exercise of cultural actors' rights.

627. Ms. Dommen (3D Associates) said that three processes were currently under way in the WTO regarding intellectual property, and that the Committee was well placed to intervene in the processes. Firstly, a review of article 27, paragraph 3 (*b*), of the Agreement on Trade-Related Aspects of Intellectual Property Rights - concerning exceptions to patenting of life forms - was taking place. The article was to be amended to impose stronger patenting obligations. Secondly, the Agreement as a whole was under review. The deadline for implementation of the Agreement was 1 January 2000 and the Council for Trade-Related Aspects of Intellectual Property Rights was reviewing implementing legislation in a number of countries. Thirdly, the WTO General Council was holding special sessions to review implementation of a whole range of WTO agreements, 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. On the question of the Agreement itself, several developing country WTO members have called for a closer examination of articles 7 and 8 of the Agreement, arguing for an assessment of its social, economic and welfare impacts.

628. Mr. Teitelbaum (American Association of Jurists) said that, in relation to intellectual property, a distinction should be made between human rights as a fundamental category of the rights of the human person, and other legally protected rights, such as commercial rights and the rights of corporate entities. This distinction raised the question whether the human and proprietary right to intellectual property could take precedence over the human rights aspects of intellectual property. He considered that the primacy of human rights over the proprietary right to intellectual property was clearly established by article 7 of the Universal Declaration of Human Rights and article 15 of the Covenant.

629. Mr. Prove (Lutheran World Federation, also on behalf of Habitat International Coalition) maintained that the framework within which article 15, paragraph 1 (*c*), of the Covenant was set, and the nature of the subparagraphs which preceded it, made it clear that overly stringent protection of the rights of authors or creators of scientific, literary or artistic productions which had the effect of reducing the capacity of other members of the community to take part in cultural life, or to enjoy the benefits of scientific progress and its applications, could be challenged on human rights grounds. Mr. Prove encouraged the

Committee to consider article 15, paragraph 1 (*c*) in the context of the Covenant as a whole, because the right provided for in the article was also circumscribed by other provisions of the Covenant.

630. Mr. Kothari (on behalf of the International NGO Committee on Human Rights in International Trade and Investment), spoke on Trade-Related Aspects of Intellectual Property Rights and drew attention to the fact that patent requirements for life-forms reduced the right to self-determination by reducing people's control over their 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. Mr. Kothari also pointed to the similarities between the Covenant and the Convention on Biological Diversity, and to conflict existing between the Agreement and the Convention. Furthermore, the Agreement was silent on gender, and it was important to assess its implications for women's rights in light of relevant provisions of the Convention on the Elimination of All Forms of Discrimination Against Women.

631. Mr. Windfuhr (FIAN - Foodfirst Information and Action Network) said that his organization was currently gathering information on cases of violations of the right to food related to the Agreement on Trade-Related Aspects of Intellectual Property Rights and hoped to publish a detailed study of the subject at the end of February 2001. Mr. Windfuhr stressed, in connection with the Committee's General Comment No. 12 (1999) on the right to adequate food (art. 11 of the Covenant), that access to food-producing resources, and in particular to seeds, was an important aspect of the right to food. 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. Small farmers also created biological diversity by adapting seed varieties to local conditions. 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. The issues involved were of such urgency that he advocated a moratorium on any new regulation under the Agreement until their implications had been thoroughly studied.

632. Mr. Aguilar (Contextos Latinoamericanos para la Promoción de los Derechos Económicos, Sociales y Culturales) said that 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 intellectual property norms. Many of those norms were modeled on the Agreement on Trade-Related Aspects of Intellectual Property Rights and took no account of local conditions. Almost all the reforms had been introduced under pressure from Powers such as the United States of America, which took punitive legal action under domestic legislation to enforce compliance with intellectual property treaties.

633. Ms. Chapman (American Association for the Advancement of Science), in an effort to summarize the discussion, said that a number of speakers had noted that the public interest

provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights were not being effectively implemented and were being ignored in basic decisions. Further, a consensus had emerged that the provisions governing intellectual property as a human right differed sharply from other current intellectual property laws and regulations. Several speakers had recommended that patents and trademarks should not be included under the rubric of human rights. That was an appealing argument on many levels, but Ms. Chapman 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.

634. 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 intellectual property community clearly needed to know more about human rights and it could reciprocate by providing more information about intellectual property.

635. Concluding the discussion, 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.