# AT Biocolonialism AC

## Nebel T

#### Interpretation: medicines is a generic bare plural. The aff may not defend that member nations of the World Trade Organization reduce intellectual property protections for a subset of medicines.

Nebel 19 Jake Nebel [Jake Nebel is an assistant professor of philosophy at the University of Southern California and executive director of Victory Briefs.] , 8-12-2019, "Genericity on the Standardized Tests Resolution," Briefly, https://www.vbriefly.com/2019/08/12/genericity-on-the-standardized-tests-resolution/ SM

Both distinctions are important. Generic resolutions can’t be affirmed by specifying particular instances. But, since generics tolerate exceptions, plan-inclusive counterplans (PICs) do not negate generic resolutions. Bare plurals are typically used to express generic generalizations. But there are two important things to keep in mind. First, generic generalizations are also often expressed via other means (e.g., definite singulars, indefinite singulars, and bare singulars). Second, and more importantly for present purposes, bare plurals can also be used to express existential generalizations. For example, “Birds are singing outside my window” is true just in case there are some birds singing outside my window; it doesn’t require birds in general to be singing outside my window. So, what about “colleges and universities,” “standardized tests,” and “undergraduate admissions decisions”? Are they generic or existential bare plurals? On other topics I have taken great pains to point out that their bare plurals are generic—because, well, they are. On this topic, though, I think the answer is a bit more nuanced. Let’s see why. 1.1 “Colleges and Universities” “Colleges and universities” is a generic bare plural. I don’t think this claim should require any argument, when you think about it, but here are a few reasons. First, ask yourself, honestly, whether the following speech sounds good to you: “Eight colleges and universities—namely, those in the Ivy League—ought not consider standardized tests in undergraduate admissions decisions. Maybe other colleges and universities ought to consider them, but not the Ivies. Therefore, in the United States, colleges and universities ought not consider standardized tests in undergraduate admissions decisions.” That is obviously not a valid argument: the conclusion does not follow. Anyone who sincerely believes that it is valid argument is, to be charitable, deeply confused. But the inference above would be good if “colleges and universities” in the resolution were existential. By way of contrast: “Eight birds are singing outside my window. Maybe lots of birds aren’t singing outside my window, but eight birds are. Therefore, birds are singing outside my window.” Since the bare plural “birds” in the conclusion gets an existential reading, the conclusion follows from the premise that eight birds are singing outside my window: “eight” entails “some.” If the resolution were existential with respect to “colleges and universities,” then the Ivy League argument above would be a valid inference. Since it’s not a valid inference, “colleges and universities” must be a generic bare plural. Second, “colleges and universities” fails the upward-entailment test for existential uses of bare plurals. Consider the sentence, “Lima beans are on my plate.” This sentence expresses an existential statement that is true just in case there are some lima beans on my plate. One test of this is that it entails the more general sentence, “Beans are on my plate.” Now consider the sentence, “Colleges and universities ought not consider the SAT.” (To isolate “colleges and universities,” I’ve eliminated the other bare plurals in the resolution; it cannot plausibly be generic in the isolated case but existential in the resolution.) This sentence does not entail the more general statement that educational institutions ought not consider the SAT. This shows that “colleges and universities” is generic, because it fails the upward-entailment test for existential bare plurals. Third, “colleges and universities” fails the adverb of quantification test for existential bare plurals. Consider the sentence, “Dogs are barking outside my window.” This sentence expresses an existential statement that is true just in case there are some dogs barking outside my window. One test of this appeals to the drastic change of meaning caused by inserting any adverb of quantification (e.g., always, sometimes, generally, often, seldom, never, ever). You cannot add any such adverb into the sentence without drastically changing its meaning. To apply this test to the resolution, let’s again isolate the bare plural subject: “Colleges and universities ought not consider the SAT.” Adding generally (“Colleges and universities generally ought not consider the SAT”) or ever (“Colleges and universities ought not ever consider the SAT”) result in comparatively minor changes of meaning. (Note that this test doesn’t require there to be no change of meaning and doesn’t have to work for every adverb of quantification.) This strongly suggests what we already know: that “colleges and universities” is generic rather than existential in the resolution. Fourth, it is extremely unlikely that the topic committee would have written the resolution with the existential interpretation of “colleges and universities” in mind. If they intended the existential interpretation, they would have added explicit existential quantifiers like “some.” No such addition would be necessary or expected for the generic interpretation since generics lack explicit quantifiers by default. The topic committee’s likely intentions are not decisive, but they strongly suggest that the generic interpretation is correct, since it’s prima facie unlikely that a committee charged with writing a sentence to be debated would be so badly mistaken about what their sentence means (which they would be if they intended the existential interpretation). The committee, moreover, does not write resolutions for the 0.1 percent of debaters who debate on the national circuit; they write resolutions, at least in large part, to be debated by the vast majority of students on the vast majority of circuits, who would take the resolution to be (pretty obviously, I’d imagine) generic with respect to “colleges and universities,” given its face-value meaning and standard expectations about what LD resolutions tend to mean.

#### It applies to medicines:

#### Upward entailment test – spec fails the upward entailment test because saying that nations ought to reduce IPP for one medicine does not entail that those nations ought to reduce IPP for all medicines

#### Adverb test – adding “usually” to the res doesn’t substantially change its meaning because a reduction is permanent

#### Vote neg:

#### Semantics outweigh:

#### T is a constitutive rule of the activity and a basic aff burden – they agreed to debate the topic when they came here

#### Jurisdiction – you can’t vote aff if they haven’t affirmed the resolution

#### It’s the only stasis point we know before the round so it controls the internal link to engagement – there’s no way to use ground if debaters aren’t prepared to defend it

#### Limits – there are countless affs accounting for thousands of medicines – unlimited topics incentivize obscure affs that negs won’t have prep on – limits are key to reciprocal prep burden – potential abuse doesn’t justify foregoing the topic and 1AR theory and functional limits checks PICs

#### There are over 20,000 affs

FDA 11/18 [(U.S. Food and Drug Administration, federal agency of the Department of Health and Human Service) “Fact Sheet: FDA at a Glance,” 11/18/2020] JL

There are over 20,000 prescription drug products approved for marketing.

FDA oversees over 6,500 different medical device product categories.

There are over 1,600 FDA-approved animal drug products.

There are about 300 FDA-licensed biologics products.

#### Ground – spec guts core generics like innovation that rely on reducing IP for all medicines because individual medicines don’t affect the pharmaceutical industry broadly – also means there is no universal DA to spec affs

#### TVA solves – read as an advantage to whole rez

#### Paradigm issues:

#### Drop the debater – their abusive advocacy skewed the debate from the start

#### Comes before 1AR theory – NC abuse is responsive to them not being topical

#### Competing interps – reasonability invites arbitrary judge intervention and a race to the bottom of questionable argumentation

#### No RVIs – fairness and education are a priori burdens – and encourages baiting – outweighs because if T is frivolous, they can beat it quickly

#### Fairness is a voter ­– necessary to determine the better debater

#### Education is a voter – why schools fund debate

## CP

#### CP: The member nations of the world trade organization ought to –

#### ---create a new form of Sui Generis patent applications as per Vezina 20

#### ---Grant this form of patent to Indigenous peoples

#### ---Exclude non Indigenous groups from applying for Sui Generis patents and reduce intellectual property protections for medicines for non Indigenous groups

#### Sui generis moral rights framework emphasizing guardianship over ownership and are the only way to stop the appropriate that comes with public knowledge – answers the reforms fail ev bc it bars settlers from using knowledge which isn’t sharing – also solves K of IPR used by Indigenous groups bc it uses a new fw

Vézina 20 “Ensuring Respect for Indigenous Cultures A Moral Rights Approach” Brigitte Vézina [fellow at the Canadian think tank Centre for International Governance Innovation. She holds a bachelor’s degree in law from the Université de Montréal and a master’s in law from Georgetown University], Centre for International Governance Innovation Papers No. 243 — May 2020, <https://www.cigionline.org/static/documents/documents/vezina-paper_1.pdf> SM

Features of a Sui Generis Moral Rights-type Framework

Subject Matter and Beneficiaries

TCEs that maintain a current and significant relationship with the Indigenous peoples who hold them would be protected. As long as a community, as a whole and by virtue of its own internal cultural rules, identifies with a specific form of expression and can establish a particular relationship with it, it can claim protection over it. As Susy Frankel points out, the key rationale in favour of protecting TCEs is the guardianship relationship, from which proportionate moral rights flow.155 Guardianship is to be contrasted with ownership, which is the concept buttressing most IP law systems, with the notable exception of moral rights. To wit, the Waitangi Tribunal did not recommend that TCEs be treated as owned, lest that would amount to building a legal wall around TCEs and end up choking culture.156 At any rate, cultural boundaries are porous and fluid, and it follows that blending, intermixing, hybridization or even “contamination” of cultures can be promoted.157

Obviously, cultures are seldom unique to a people. TCEs might be shared among different Indigenous groups that all identify and hold a guardianship relationship with them. In such cases, procedures should be in place to facilitate cooperation and settlement of disputes. What is more, no people are monolithic, a reality that is rendered in one illustrative phrase: “The Sámi people are one, but multiple.”158 Some communities might have distinct TCEs that have been part of their culture for a long time, with little or no outside influence. Others might have experienced contact with other cultures and incorporated various elements over the generations that have substantially modified previous iterations. For example, in the case of Mixe huipil at stake in the Isabel Marant case, some were quick to point out that the embroideries had, in the upshot of the Spanish conquest, incorporated European elements.159 Hence, when considering a relationship between a TCE and its holder, one should not exact uniqueness or exclusiveness, but embrace the fact that a group can identify with TCEs that are dynamic and kaleidoscopic, all the while remaining authentic.

Beneficiaries of protection should be TCE holding Indigenous communities as a whole, such that moral rights would be afforded to the entire community as group rights. Recognition of beneficiaries as well as determination of the authority to exercise the rights would have to be done from within the community, by way of application of customary law160 or be captured under the legal constructs of trusts, associations, or other legal entities holding the rights.161 Indigenous communities need to have the autonomy to exercise control over and make their own decisions regarding the management of their moral rights in their TCEs.162

Scope of Protection

At first glance, it is difficult to reconcile the notion of personhood, the cornerstone of moral rights, with the pluralistic conception of a community, by definition made up of several persons with their own individual personalities. In response, some scholars have wrought the concept of “peoplehood” to encapsulate the personality of a people in its entirety and provide a justification for granting a personality right to a group.163 As mentioned, TCEs often encompass cultural elements that are integral to Indigenous peoples’ sense of identity, that bear the distinct mark of their holders and, indeed, that reflect their peoplehood. Moral rights can therefore fulfill the duty, arising out of human rights law, to protect the identity of Indigenous peoples.164

Forasmuch as TCEs are collectively and communally held, so too must the moral rights of Indigenous peoples be communal.165 In fact, even conventional moral rights are not purely individualistic, and there has been a recognition of a “socially-informed view of the author” and “the social gestation of authorship... the social womb from which authors brought forth their works.”166 This strand of moral rights theory might be more congruent to accepting a group right for a community than the classic individual theory underpinning moral rights.167

Moral rights would only regulate the relationship between the community and the outside world; use in a traditional and customary context would not be affected. Just as moral rights vest automatically in the author (without any need for registration or any other form of assertion), so too would sui generis moral rights vest in the community.

Communal moral rights would include, at a minimum, the right of attribution, including false attribution (to ensure proper recognition of the community as the source and to prevent others from falsely claiming a guardianship over a TCE) and integrity (to protect TCEs against inappropriate, derogatory, or culturally insensitive use). It could be considered to also include the rights of disclosure (to make, where desired, TCEs known to the world and to retain the power to keep TCEs out of “public” reach, for example, in the case of sacred or secret TCEs) and withdrawal (to allow TCE holders to remove from circulation the TCEs that they no longer wish to make publicly available).

In most national laws, moral rights are inalienable or non-transferable. In other words, they cannot be divested from the author — they cannot be assigned, licensed or given away. As mentioned, if an author transfers all their economic rights to a third party, the author retains their moral rights in the work.168 As such, sui generis moral rights in TCEs would be independent from any economic rights that might arise and be held and exercised separately, regardless of who might hold these economic rights (in cases, for example, where communities would commercialize their TCEs and grant licences) or who might have physical ownership of a TCE (such as a cultural institution). However, in some jurisdictions, such as Canada, the United States and the United Kingdom (but not Australia and France), moral rights can be waived, irreversibly, in whole or in part, explicitly, by contract, at the discretion of the author. In order to ensure flexible protection to TCEs, it could be envisaged that sui generis moral rights be made waivable.

When applying the right of integrity, the determination of what is offensive should not be narrowly prescribed but based on the facts at hand. Assessment should be done both subjectively, from the point of view of the community that claims violation, and objectively, by the court, within the framework of guidelines to be developed legislatively or through case law, as informed by Indigenous customary laws, practices and protocols. Reliance on particular facts may be difficult to reconcile with the need for certainty and predictability, but flexibility trumps these concerns, as no use should be considered offensive per se.

#### Their ev even agrees – 1AC McGonigle

the ethnopharmacology community has not yet addressed these questions with sustained debate, nor has there been much done to envision an ethical platform upon which to establish exchange agreements that incorporate ‘non-modern’ visions of the world. **Indigenous communities therefore need sui generis laws to protect their shared cultural heritage and shared natural resources**.

#### Reforming IPR is key to affirming native sovereignty. Solves the aff because it shifts away from western conceptions of property, but the perm fails since we think IPR is good.

Younging 10 “Intergovernmental Committee On Intellectual Property And Genetic Resources Traditional Knowledge And Folklore” Seventeenth Session Geneva, December 6-10, 2010 Wipo Indigenous Panel On The Role Of The Public Domain Concept: Experiences In The Fields Of Genetic Resources, Traditional Knowledge And Traditional Cultural Expressions: Experiences From Canada Document prepared by Mr. Gregory Younging [Creative Rights Alliance, Kelowna, Canada, Opaskwayak Cree Nation-Canada] <https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_17/wipo_grtkf_ic_17_inf_5_a.pdf> SM

Under the IPR system, knowledge and creative ideas that are not “protected” are in the Public

Domain (i.e. accessible by the public). Generally, Indigenous peoples have not used IPRs to protect their knowledge; and so TK is often treated as if it is in the Public Domain – without regard for Customary Laws. Another key problem for TK is that the IPR system’s concept of the Public Domain is based on the premise that the author/creator deserves recognition and compensation for his/her work because it is the product of his/her genius; but that all of society must eventually be able to benefit from that genius. Therefore, according to this aspect of IPR theory, all knowledge and creative ideas must eventually enter the Public Domain. Under IPR theory, this is the reasoning behind the time period limitations associated with copyright, patents and trademarks.

The precept that all Intellectual Property, including TK, is intended to eventually enter the Public Domain is a problem for Indigenous peoples because Customary Law dictates that certain aspects of TK are not intended for external access and use in any form. As a response to this, there have been circumstances where indigenous people have argued that some knowledge should be withdrawn from circulation and that for specific kinds of knowledge, protection should be granted in perpetuity. 29 Examples of this include, sacred ceremonial masks, songs and dances, various forms of shamanic art, sacred stories, prayers, songs, ceremonies, art objects with strong spiritual significance such as scrolls, petroglyphs, and decorated staffs, rattles, blankets, medicine bundles and clothing adornments, and various sacred symbols, designs, crests, medicines and motifs. However, the present reality is that TK is, or will be, in the Public Domain (i.e., the IPR system overrides Customary Law.)

Certain aspects of TK should not enter the public domain (as deemed under Customary Law) and should remain protected as such into perpetuity, which could be expressed as a form of “Indigenous private domain.” (Younging 2007). Indigenous peoples’ historical exclusion from the broad category of ‘public’ feeds part of the differences in objectives. Indigenous peoples also present different perceptions of knowledge, the cultural and political contexts from which knowledge emerges, and the availability, or perceived benefits of the availability, of all kinds of cultural knowledge. 30

Copyright Case Study: The Cameron Case

In 1985 the Euro-Canadian author Anne Cameron began publishing a series of children’s books though Harbour Publications based on Westcoast Indigenous traditional stories. These books include: The Raven, Raven and Snipe, Keeper of the River, How the Loon Lost Her Voice, Orca’s Song, Raven Returns the Water, Spider Woman, Lazy Boy and Raven Goes Berrypicking. Cameron had been told the traditional stories by Indigenous storytellers and/or had been present at occasions where the stories were recited. The original printing of the books granted Anne Cameron sole authorship, copyright and royalty beneficiary, and gave no credit to the Indigenous origins of the stories. As the discourse around Indigenous cultural appropriation emerged in the 1990s, Cameron’s books came under severe Indigenous criticism; not only on the grounds of cultural appropriation, but the Indigenous TK holders asserted that some of the stories and aspects of the stories were incorrect.

This led to a major confrontation with Indigenous women authors at a women writer’s conference in Montreal in 1990. At the end of the confrontation Cameron agreed not to publish any more Indigenous stories in the series: however, she did not keep her word and the books continued to be reprinted and new books in the series continued to be published (Armstrong and Maracle1992). Some minor concessions have been made in subsequent reprints of books in the series and new additions. Reprints of the books that were produced after around 1993/94 contained the disclaimer: “When I was growing up on Vancouver Island I met a woman who was a storyteller. She shared many stories with me and later gave me permission to share them with others… the woman’s name was Klopimum.” However, Cameron continued to maintain sole author credit, copyright and royalties payments. In a further concession, the 1998 new addition to the series T’aal: the One Who Takes Bad Children is co-authored by Anne Cameron and the Indigenous Elder/storyteller Sue Pielle who also shares copyright and royalties.

Patent Case Study: The Igloolik Case

An example of the failure of the Patent Act In Canada to respond to Inuit designs is the Igloolik Floe Edge Boat Case.31 A floe edge boat is a traditional Inuit boat used to retrieve seals shot at the floe edge (the edge of the ice floe), to set fishing nets in summer, to protect possessions on sled when travelling by snowmobile or wet spring ice, and to store hunting or fishing equipment. In the late 1980’s the Canadian government sponsored the Eastern Arctic Scientific Research Center to initiate a project to develop a floe edge boat that combined the traditional design with modern materials and technologies. In 1988 the Igloolik Business Association (IBA) sought to obtain a patent for the boats. The IBA thought that manufactured boats using the floe edge design would have great potential in the outdoor recreation market. To assist the IBA with its patent application the agency, the Canadian Patents and Developments Limited (CPDL) initiated a pre-project patent search that found patents were already held by a non-Inuit company for boats with similar structures. The CPDL letter to the IBA concluded that it was difficult for the CPDL to inventively distinguish the design from previous patents and, therefore, the IBA patent would not be granted. The option of challenging the pre-existing patent was considered by the IBA, however, it was decided that it would not likely be successful due to the high financial cost and risk involved in litigation.

Trademark Case: The Snumeymux Case

As most Indigenous communities are far behind in terms of establishing businesses most trademarking of TK involves a non-Indigenous corporation trademarking an Indigenous symbol, design or name. Again, many cases could have been examined in this section but only two have been chosen: one case involving the Snumeymux Band trade marking petroglyphs through the Canadian Patent Office, and one involving an international corporation’s patent licence being the subject of an intense international Indigenous lobbying effort.

The Snumeymux people have several ancient petroglyphs located off their reserve lands near False Narrows on Gabriola Island, BC. In the early 1990s non-Indigenous residents of Gabriola Island began using some of the petroglyph images in coffee shops and various other business logos. In the mid-1990s the Island’s music festival named itself after what had become the local name of the most well known petroglyph image, the dancing man. The Dancing Man Music Festival then adopted the image of the dancing man as the festival logo and used it on brochures, posters, advertisements and T-shirts.

The Snuneymux Band first made unsuccessful appeals to the festival, buisnesses and the Gabriola community to stop using the petroglyph symbols. In 1998 the Snuneymux Band hired Murry Brown as legal counsel to seek protection of the petroglyphs (Manson-2003). At a 1998 meeting with Brown, Snuneymux Elders and community members on the matter, The Dancing Man Festival and Gabriola business’ and community representatives were still defiant that they had a right to use the images from the petroglyphs (Brown-2003).

On the advice of Murry Brown, The Snuneymux Band filed for a Section 91(n) Public Authority Trademark for eight petroglyphs and was awarded the trademark in October of 1998 (Brown2003). The trademark protects the petrogylphs from “all uses” by non-Snuneymux people and, therefore the Dancing Man Festival and Gabriola Island business and community representatives were forced to stop using images derived from the petroglyphs. In the Snuneymux case the petroglyphs were trademarked for “defensive” purposes. The Snuneymux case represents an innovative use of the IPR system that negotiated within the systems limitations and found a way to make it work to protect TK.

Case Studies Summary

The case studies have shown that serious conflicts exist between the IPR and TK systems and lead to the conclusion that it constitutes a major problem which Indigenous peoples must work out with the modern states they are within and the international community. In contrast to Eurocentric thought, almost all Indigenous thought asserts that property is a sacred ecological order and manifestations of that order should not be treated as commodities.32 It is clear that there are pressing problems in the regulation of TK. It is also clear that IPR system and other Eurocentric concepts do not offer a solution to some of the problems. There have been cases of Indigenous people using the IPR system to protect their TK. However, the reality is that there are many more cases of non-Indigenous people using the IPR system to take ownership over TK using copyright, trademark, patents and the Public Domain. In many such cases this had created a ridiculous situation whereby Indigenous peoples cannot legally access their own knowledge. A study undertaken on behalf of the Intellectual Property Policy Directorate (IPPD) of Industry Canada and the Canadian Working Group on Article 8(j) concluded: “There is little in the cases found to suggest that the IP system has adapted very much to the unique aspects of Indigenous knowledge or heritage. Rather, Indigenous peoples have been required to conform to the legislation that was designed for other contexts and purposes, namely western practices and circumstances. At the same time, there is little evidence that these changes have been promoted within the system, i.e., from failed efforts to use it that have been challenged” (IPPD-2002). Such conclusions, along with other conclusions being drawn in other countries and international forums, and the case study examples discussed, appear to support the argument that new systems of protection need to be developed. Sui Generis models based on and/or incorporating Customary Laws have been proposed and developed in many countries and are being discussed in the WIPO IGC.

Gnaritas Nullius (Nobody’s Knowledge)

Just as Indigenous territories were declared as Terra Nullius in the colonization process, so too has TK been treated as Gnaritas Nullius (Nobody’s Knowledge) by the IPR system and consequently flowed into the public domain along with Western knowledge. This has occurred despite widespread Indigenous claims of ownership and breech of Customary Law. The problem is that advocates for the public domain seem to see knowledge as the same concept across cultures, and impose the liberal ideals of freedom and equality to Indigenous peoples knowledge systems. Not all knowledge has the same role and significance within diverse epistemologies, nor do diverse worldviews all necessarily incorporate a principle that knowledge can be universally accessed. Neither can all knowledge fit into a Western paradigms and legal regimes. A central dimension of Indigenous knowledge systems is that knowledge is shared according to developed rules and expectations for behavior within frameworks that have been developed and practiced over centuries and millennium. Arguments for a public domain of Indigenous knowledge again reduces the capacity for Indigenous control and decision making (Anderson 2010) and can not be reasonably made outside the problematic frameworks of the colonization of TK and Gnaritas Nullius.

## CP

#### The member nations of the World Trade Organization should eliminate patents on medicines based on Indigenous knowledge from patentability unless the patents are already owned or will be owned by indigenous people.

## DA

#### Indigenous people need strong intellectual property rights to traditional medicines – their unique medicinal knowledge is open to appropriation and theft from larger Western pharmaceutical companies without it – Sinela and Ramcharan ‘05

SINJELA, MPAZI, and ROBIN RAMCHARAN. “Protecting Traditional Knowledge and Traditional Medicines of Indigenous Peoples through Intellectual Property Rights: Issues, Challenges and Strategies.” International Journal on Minority and Group Rights, vol. 12, no. 1, 2005, pp. 1–24. LK

At one stage a desire began to emerge in indigenous circles for a forum in the United Nations that dealt not only with human rights issues but with the broad range of environmental, developmental and cultural issues affecting indigenous populations. This led to calls for the establishment, as a subsidiary body of the ECOSOC, of a permanent forum on indigenous issues. This forum was finally established in 2000 and met for the first time at UN headquarters in New York in the summer of 2002.9 The Permanent Forum has thus far held three sessions. As of the time of writing there is a debate going on whether the buo Commission's Working Group on Indigenous Populations should be continued in the light of the establishment of the Permanent Forum. Some governments have apparently favored the discontinuance of the Working Group while indigenous peoples favor its continuation. At the Summer Session of the ECOSOC in 2004 the Secretary General of the United Nations submitted a report summarizing the views of States and indigenous organizations on this issue, and, as of the time of writing, the issue still remains open. The study by Mr. Martinez Cobo, the Working Group on Indigenous issues, the working group on a draft declaration and the Permanent Forum have thus been the main building blocks within the United Nations in the past four decades to advance the human rights of indigenous peoples. In the course of their work, they have, inter alia, highlighted the need for the protection of the intellectual property rights of indigenous peoples. Following on from the work of Mr. Martinez Cobo, cultural heritage and intellectual property have been issues of interest to the Working Group. In 1992, the Working Group and the World Intellectual Property Organization (WIPO) held a Technical Conference on Indigenous peoples at which participants recommended that the United Nations develop more effective measures to protect the intellectual and cultural property rights of indigenous peoples.10 A 1993 report by Erica Daes, Chairperson of the Working Group, on the protection of cultural and intellectual property, noted that the term "'indigenous' embraces the notion of a distinct and separate culture and way of life, based on long-held traditions and knowledge which are connected, fundamentally, to a specific territory. Indigenous peoples cannot survive, or exercise their fundamental human rights as distinct nations, societies and peoples, without the ability to conserve, revive, develop and teach the wisdom they have inherited from their ancestors."" The Chairperson was "compelled to the conclusion" that the distinction between cultural and intellectual property, from the indigenous viewpoint, was an artificial one. Indeed, "Industrialized societies tend to distinguish between art and science, or between creative inspiration and logical analysis. Indigenous peoples regard all products of the human mind and heart as interrelated, and as flowing from the same source: the relationship between the people and their land, their kinship with other living creatures that share the land, and with the spirit world. Since the ultimate source of knowledge and creativity is the land itself, all of the art and science of a specific people are manifestations of the same underlying relationship, and can be considered as manifestations of the people as a whole."12 It is not a coincidence that Article 8(j) of the 1992 Convention on Biological Diversity (CBD) adopted at the Rio Earth Summit, creates legal obligations for States party to respect, preserve and maintain knowledge, innovations and practices of indigenous people related to the conservation and sustainable use of bio diversity. The protection of cultural and intellectual property "is connected fundamentally with the realization of the territorial rights and self determination of indigenous peoples".13 The Chairpersons' report noted that the Working Group had received news from "indigenous representatives from every continent about the priority and urgency they attach to the protection of their spiritual and cultural life, arts and scientific and medical knowledge".14Consequently, the Draft Declaration prepared by the Sub-Commission, while recognizing in its preamble the "inherent rights and characteristics of indigenous peoples, especially their rights to their lands, territories and resources," provided for the right to fully participate, inter alia, in the cultural life of the State (Article 4), the right to revitalize and practice their cultural traditions (Article 11), the right to revitalize, use, develop and transmit to future generations their language, oral traditions, writing systems and literatures (Article 13) and, more importantly for present purposes, "the right to their traditional medicines and health practices, including the right to the protection of vital medicinal plants, animals and minerals" (Article 22). In this vein, the draft Article 27 provides that "[indigenous peoples have the right to special measures to protect, as intellectual property, their sciences, technologies and cultural manifestations, including genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual performing arts". Moreover, Article 28 provides that States should seek the free and informed consent of indigenous peoples "prior to commencement of any projects on their lands and territories, particularly in connection with natural resource development or exploitation of mineral or other sub-surface resources".15 In December 1995, to give impetus to the Decade for Indigenous People, the UN General Assembly adopted a Program of activities aimed at strengthening international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, health, culture and education. Among the specific actions to be taken were: (i) "the promotion and protection of the rights of indigenous people and their empowerment to make choices which enable them to retain their cultural identity while participating in political, economic and social life, with full respect for their cultural values, languages, traditions and forms of social organization" and (ii) a request for specialized agencies of the UN system and other international and national agencies, as well as communities and private enterprises, "to devote special attention to development activities of benefit to indigenous peoples".16 WIPO has responded accordingly and the report by the Coordinator of the UN Decade for Indigenous Peoples has noted that WIPO's response "has been dramatic" as there is an entire division as part of the regular budget which is now responsible for traditional knowledge and related issues.17 The Permanent Forum has maintained a keen interest in traditional knowledge, soliciting information from all relevant parts of the UN system, notably WIPO.18 The last three sessions of WIPO have focused on its activities in the areas of intellectual property and genetic resources, traditional knowledge and traditional cultural expressions, and are described in greater detail below. Before proceeding to a consideration of the protection of the intellectual property rights of indigenous peoples, we shall in the next section, examine a major heritage of indigenous peoples - traditional medicine. TM, an important part of TK, refers to medicines used by local, tribal and indigenous communities. Such medicine is often herbal and sometimes combined with spiritual elements, such as those practiced by the shaman in tribal communities.19 TM has been refined over centuries of practice by communities who have inherited knowledge from their ancestors. For example, Felix, a member of the Arawak indigenous community of Guyana who works in the Shanklands resort on the banks of Essequibo River, conveyed his impressive knowledge of his community's medicinal uses of various plants and trees in the tropical rainforest. Using the native names of trees, he related the use of the 'yarula' tree for preventing and curing malaria, the use of the 'kakaballi' tree for treating diarrhea and the use of the 'capadulla' tree as a local viagra.20 While relying on textbooks for the Latin names, Felix's knowledge came from his father, the shaman in his community and from inherited knowledge among his people. Thus, often such knowledge is held communally and does not 'belong' to any single person or entity. Equally often, such knowledge cross-cuts communities as well as territorial boundaries. These aspects have implications for intellectual property protection, which we will consider below. The type of TM differs from community to community depending on the type of healing system that is historically prevalent. Until recently non-western healing systems and medicines were disregarded by western health systems, which insist on the development of medicines and healing techniques based on scientific proof and testing. Centuries-old healing systems of the world, such as Chinese traditional medicine and Indian Ayurveda, were given scant attention as the 'scientific' approach was allegedly missing. In Chinese medicine, for example, "disease is viewed as a disharmony of the various elements of the body and the personality of the patient. Chinese therapeutic thought concerns the entire organism's balance, rather than being devoted to clearly localizing and defining the nature of the illness" as in western medicine.21 The argument that non-western medicine is not based on scientific evidence may well ignore the centuries of trial and error, which has actually gone into making a particular medicine or remedy appropriate to a given community. Western science has grudgingly accepted alternative healing systems. However, they have readily sought after TK/IK, which could lead to the production of new drugs, "especially since the cost of putting new drugs on the market is becoming very high".22 Erica Daes noted in her 1993 report, cited above, that studies found that "using traditional knowledge increased the efficiency of screening plants for medical properties by more than 400 percent".23 Already by 1993, estimates of the total world sales of products derived from traditional medicines ran as high as USD 43 billion.24 However, only a tiny fraction of the profits are returned to the indigenous peoples and local communities. For example, it was estimated in the early 1990s, "that less than 0.001 per cent of profits from drugs developed from natural products and traditional knowledge accrue to the traditional people who provided technical leads for research".25 Attempts by Western governments and drug producing companies to harness such TK and TM for their own benefit have led to phenomena such as 'bio piracy' (theft of genetic resources by 'bioprospectors'). Concern has arisen for the preservation of biological diversity and genetic resources. The United States National Cancer Institute had already, by 1960, began a global program to collect and study naturally occurring substances and had tested some 35,000 plant species and a larger number of micro-organisms by 1981. This process intensified with the advent of research to combat AIDS. Pharmaceutical companies, necessarily driven by profit, have become increasingly aware of the potential economic rewards of TK/TM. Among the major US pharmaceutical companies engaged in screening plant species were Merck and Co., Smithkline Beecham, Monsanto, Sterling and Bristol Meyers. But this creates a conflict with the holders of TK/TM. The problem was stated thus by former Filipino President, Fidel Ramos at a ceremony for the signing of a Traditional and Alternative Health Care Law (R.A. 8423) in Manila on 9 December 1998: "We have looked forward to other nations for new technologies and cures, even for ordinary ailments. Indeed, many other nations have been exploiting the potentials of our own resources, claiming them as their own discoveries without giving due credit to us, and in addition to making tremendous profits at our own expense".26 The problem was recognized by Mrs. Daes in her report in 1993, namely that 'collectors' or bio-prospectors, "do not ordinarily have any formal contractual arrangements ... with the indigenous peoples upon whose knowledge of ecology they may rely. Indigenous people have also objected to alleged appropriation of their bodily substances which is taking place in the context of the Human Genome Diversity Project.28