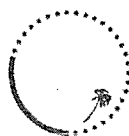


REPORT OF MEETING

SYMPOSIUM ON THE PROTECTION OF TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF INDIGENOUS CULTURES IN THE PACIFIC ISLANDS

(Noumea, New Caledonia, 15–19 February 1999)



SECRETARIAT OF THE PACIFIC COMMUNITY
NOUMEA, NEW CALEDONIA

The Secretariat of the Pacific Community

SYMPOSIUM

ON

**THE PROTECTION OF TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF INDIGENOUS
CULTURES IN THE PACIFIC ISLANDS**

(Noumea, New Caledonia, 15–19 February 1999)

Organised by

THE SECRETARIAT OF THE PACIFIC COMMUNITY

and

**The UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION
(UNESCO)**

At the request of

THE PACIFIC ARTS COUNCIL

REPORT OF MEETING

**Noumea, New Caledonia
1999**

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CONTENTS

I. INTRODUCTION	1
II. AGENDA	3
III. SUMMARY OF DISCUSSIONS	5
IV. DECISIONS AND RECOMMENDATIONS	21
V. DECLARATION ON THE PROTECTION OF TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF INDIGENOUS CULTURES IN THE PACIFIC ISLANDS	23
VI. LIST OF PARTICIPANTS	29

I. INTRODUCTION

The Symposium on the Protection of Traditional Knowledge and Expressions of Indigenous Cultures in the Pacific Islands was held from 15 to 19 February 1999 at the Headquarters of the Secretariat of the Pacific Community.

This Symposium brought together representatives from 21 Pacific Arts Council member countries and territories, the heads of cultural institutions and legal scholars from the region as well as experts from France and the United States and a large number of observers.

This report is a summary of the discussions which took place during the Symposium and includes a copy of the declaration which participants adopted at the end of these discussions.

Country reports and presentations by experts form the body of the technical document entitled the Symposium on the Protection of Traditional Knowledge and Expressions of Indigenous Cultures in the Pacific Islands: Technical Document published along with the report.

II. AGENDA

OFFICIAL OPENING

1. Elections
 - a. Chairperson
 - b. Vice-Chairperson
 - c. Drafting committee
2. Working hours
3. Adoption of the agenda
4. Theme #1: Reports by delegates on the situation in the Pacific Islands in regard to the legal protection of traditional knowledge and of the expressions of Indigenous cultures
5. Theme #2: Legal Protection at the National Level
6. Theme #3: Legal Protection at the Regional and International Level
7. Theme #4: Protection of Biological Diversity and Genetic Resources
8. Theme #5: Management of author's rights

III. SUMMARY OF DISCUSSIONS

OPENING OF THE MEETING

1. The official opening of the Symposium on the protection of traditional knowledge and expressions of indigenous cultures in the Pacific Islands took place at the headquarters of the Secretariat of the Pacific Community (SPC) in Noumea, New Caledonia, on Monday 15 February 1999.
2. Participants and observers were welcomed by the songs and dances of Kanak performing group We Ce Ca. This was followed by a traditional custom exchange with the representatives of the customary chiefs of the Djubea-Kapone region, before the delegations and observers entered the premises.
3. Welcome addresses were delivered by the Honorary Chairperson of the Symposium, Mrs Marie-Claude Tjibaou (Chairperson of the Agence de développement de la culture Kanak); the President of the Council of Pacific Arts, Mr Octave Togna (Director of the Agence de développement de la culture kanak); the Director-General of the SPC, Dr Bob Dun; and the Representative of the Director General of UNESCO. Their welcome addresses are included in the accompanying Technical Document.
4. The honorary Chairperson introduced Mr Guy Agniel (Head of the School of Law, French University of the Pacific), whom she had chosen as facilitator of the Symposium because of his experience and qualifications.
5. The Symposium adopted its agenda and discussed all agenda items as follows:

THEME # 1: REPORTS BY DELEGATES ON THE SITUATION IN THE PACIFIC ISLANDS IN REGARD TO THE LEGAL PROTECTION OF TRADITIONAL KNOWLEDGE AND THE EXPRESSIONS OF INDIGENOUS CULTURES

6. The following delegations presented their country reports: the Australian Commonwealth Government and the Aboriginal and Torres Strait Islander Commission (ATSIC), the Cook Islands, the Federated States of Micronesia, Fiji, French Polynesia, Kiribati, Nauru, New Caledonia, New Zealand, Niue, Norfolk Island, the Commonwealth of the Northern Mariana Islands, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Vanuatu, and Wallis and Futuna. Written statements provided by the delegations are included in the accompanying Technical Document
7. The facilitator noted that the delegation of the Marshall Islands had not yet arrived but had provided a written statement that would also be attached to the report.
8. Summary presentations provided by the delegates follow:

- *Cook Islands*

We have in respect to copyright the New Zealand Copyright Act 1962. It doesn't adequately address the problems we have today nor does it provide adequate protection. In 1998 there was an attempt to draft a Copyright Bill based on the New Zealand committee. The Committee felt there was too much emphasis on international concerns e.g. video piracy.

Other legislation:

Cultural and Historic Places Act 1995

Environmental Act 1996

House of Ariki Act.

- **Federated States of Micronesia**

Customs and traditions are recognised in the FSM Constitution. Through the Constitution they impact substantially different areas of law, including land and civil liability. A general status exists for the protection of cultural attributes (defined broadly) as well as historic properties and artifacts. A copyright law exists but is inadequate in the present form. A need exists for more legislation in all fields of intellectual property. Some sui generis protection is also needed.

Customary practices and beliefs that serve as either regulative or protective mechanisms for the traditional knowledge and cultural property rights of the societies in the FSM exist but should be recognised and reflected in any sui generis protection derived. Non-profit organisations and/or NGO's whose goals and objectives are directly or indirectly related to protection of traditional knowledge and cultural properties in the FSM exist in the region.

- **Fiji**

Legal protection and support for traditional knowledge and cultural property rights in Fiji consist of international conventions on intellectual property rights in particular the TRIPS Agreement, and the UN Convention on Biological Diversity to which Fiji is a party. These treaty obligations are implemented by various legislation which however, have become dated, impractical and less relevant to the current realities and needs of traditional knowledge and cultural property rights. Current reform efforts aim to remedy these weaknesses and explore scope for improvement. Laws for heritage protection currently existing under different ministries and government departments equally need updating, and, in the immediate future, some co-ordinating mechanism.

- **French Polynesia**

The protection, conservation and dissemination of traditional culture and knowledge for the well-being of its population within its own culture and its recognition by other cultures are French Polynesia's goals. The Planning Code of French Polynesia and the Territory's customs tax and duty arrangements (Resolution no. 93 27/AT dated 8/4/93) protect our archaeological heritage and related material. Our autonomous status, the Tahitian Academy and soon the Marquesan Academy, the University's Department of Polynesian Language and Civilisation, and a CAPES (High School teacher) diploma in Reo Mao'hi/French (4.9.97) all contribute to the quality and vitality of our languages. The intellectual and artistic property code in force since 24/8/92 covers all tangible and intangible works. Finally, our public institutions, the Territorial Arts Conservatory, the "Maison de la Culture" (Cultural Centre), and the Polynesian Centre for the Humanities participate in achieving the above-mentioned objectives.

- **Nauru**

Affluence combined with a severely degraded environment has resulted in the erosion of Nauruan traditional culture. Land degradation automatically degrades the life of the people and their culture.

Customary Laws traditionally protected knowledge and skills, protecting the transfer and ownership rights of a person, family, clan and tribe. The concept of protecting our heritage is not one new to us but one that is already embedded in the cultural system.

Nauruan items which fall under the scope of the need for intellectual property rights protection, remain, for the time being, at domestic level and have not been tried in outside research.

This legal regime of IPR is yet to be explored, developed and implemented in ways that are compatible to our expectations and needs.

• **New Caledonia**

Long-standing expressions of traditional culture and knowledge, i.e. all aspects of indigenous intellectual property need to be protected against exploitation which is wrongful and harmful to the Kanak community. However, the existing law on intellectual property rights in New Caledonia was not designed to ensure such protection as its application to long-standing works places them in the public domain, and it does not provide protection for either ideas or methods. Any planned system of protection for "Kanak intellectual heritage" must take into consideration:

- *customary rules of protection which are specific to the Kanak community;*
- *existing ordinary law regulations concerning intellectual property.*

The protection system must be a corollary to the development of a policy to identify, promote and disseminate the intellectual heritage.

In New Caledonia, the system to protect Kanak intellectual rights must also take into account needs arising from the Noumea Accords in terms of the emergence of a common national identity based on the Kanak identity. For this reason, to a certain extent, a "feeling of ownership" of the Kanak heritage by other communities must be allowed.

• **New Zealand**

New Zealand interprets cultural heritage in its broadest sense, including tangible and intangible, cultural and natural resources. New Zealand's approach to the protection of Maori cultural heritage is not covered in any one single piece of legislation or through one single agency. Rather it is addressed in parts through 17 separate laws, as well as to some extent through fine intellectual property laws (copies of the relevant laws were tabled). While New Zealand does regard existing intellectual property laws to provide some degree of protection there is acknowledgement that a more comprehensive approach is required to address issues such as the protection of traditional knowledge. Te Puni Kokiri, the Ministry of Maori Development in consultation with the Ministry of Commerce will explore sui-generis mechanisms, both legal and non-legal. Te Puni Kokiri is undertaking a full review of government role in Maori cultural heritage throughout this year.

• **Niue**

There is currently no specific statute for the protection of traditional knowledge and expressions of indigenous cultures in Niue. However there are a number of statutes that made reference to Niuean custom, and practices. Likewise the industrial intellectual property legislation such as the Copyright Act and the Trademarks Act may also provide some degree of protection depending on the circumstances of what item of traditional knowledge or culture that needs protection. Otherwise the protection through non-legal mechanisms is basically through the community traditional practices of passing on the knowledge from old generation to young generation and through the conservative attitudes towards the general public access to this information.

• **Norfolk Island**

- *Legal:*
Norfolk Island has a Protection of Moveable Cultural Heritage Act which protects land sites detailed on the Heritage Register.
Australian copyright laws apply to Norfolk Island.
- *Non-Legal:*
Perhaps the most significant is Norfolk Island's system of "Community" where as a collective group protection or support can be initiated and implemented.

- ***Commonwealth of the Northern Mariana Islands***

The CNMI Constitution provides broad protection and support for traditional knowledge and culture property rights of the indigenous people: the Chamorros and Carolinians.

Unless provided for enactment of legislations, the CNMI customary rights, particularly for the Carolinians, are upheld by the Courts.

The legal mechanisms for the protection of traditional knowledge and cultural property rights of the Northern Mariana Islands are provided in the country statement of this country.

- ***Palau***

The Republic of Palau's traditional knowledge and culture is protected and enhanced through social structures such as the Councils of Chiefs and traditional organisations. The transmission of skills and knowledge is passed down from generation to generation. Yet skills and knowledge acquired by a particular person, family, or clan may be considered secret or sacred, and as such, passed down only within a particular lineage. The Master Plan for Education presently calls for culture and the arts as a major component in the curriculum at the primary and secondary levels.

Traditional law is recognised in the Constitution, and statutory law provides certain protections for Palau's heritage, natural resources, and the environment. A National Copyright Act is currently under review by the National Legislature. The proposed bill, as drafted, does not provide express provisions for the protection of cultural expression and traditional knowledge, however, it is anticipated that the Legislature will consider these factors before submitting the bill for final review.

- ***Samoa***

Current situation:

1. Samoa is governed by four legislations

- *Copyright Act 1998*
- *Industrial Design Act 1972*
- *Trademarks Act 1972*
- *Patent Act 1972*

2. At the moment, the "expressions of folklore" are the only aspects of Samoa traditional knowledge and expressions of indigenous cultures which the legal system specifically affords protection to.

3. Our Justice Department is now establishing the Division of Intellectual Property and is responsible for administering the Copyright Act.

4. The copyright stipulates legal protection of expressions of folklore from reproduction with the exception of matters of education (for teaching purposes) or for scientific research.

5. The Copyright Act does not protect other traditional knowledge and expressions of indigenous Samoa culture, which are not expressions of folklore.

6. Samoa is establishing a museum and an archive.

7. There are also legislations enforced by village councils to protect cultural and legendary sites.

8. *Incorporation of organisations (NGOs) for the preservation and promotion of Samoan traditional knowledge and expressions of indigenous cultures inclusive of:*

- *Traditional leaders organisation*
- *Tattoo artist organisations*
- *Dance schools and performing groups*
- *Music schools*
- *Schools of Fine Arts*
- *Orators and High Chief Caucus*
- *Weavers, Carvers, under small business*
- *Church programme on culture.*

9. *Government promotion of culture to implement its cultural mandate are manifested through the works of:*

- *Ministry of Youth, Sports and Cultures, e.g. workshops, ongoing projects on compilation of legends, books, and monolingual dictionary.*
- *Visitors Bureau*
- *Justice Department*
- *Land and Titles Court*
- *Ministry of Women Affairs*
- *Department of Internal Affairs*
- *National Council of Women*
- *Radio/Television Audio Visual*

10. *Re-enactment of fables, riddles, fairy tales within a traditional context and using a cultural contact.*

• ***Solomon Islands***

In the Solomon Islands, the protection and support of traditional knowledge and cultural property rights exists at three different levels as follows:

1. *Community Levels:*
Since 85% of the population still live in communities the powers of protection and support for traditional knowledge and cultural protection rights remain with them. These are done by applying non-legal means.
2. *Provincial Levels:*
Various by-laws are already in place since 1978 but they mainly focus on historic and archaeological sites and not the traditional knowledge and expressions of indigenous cultures in each Province.
3. *National Levels:*
The only Act that covers anything relating to the cultural heritage, history, etc.; is the Research Act of 1982.
The Act requires that the researcher(s) must:
 - a. *Lodge a formal application 9 months prior to the date the research work is intended to start;*
 - b. *Deposit a SI\$2000 bond (refundable after all the research requirements are fully complied with)*
 - c. *Be allowed by the Area Council and Provincial Authorities from the areas where the research work is intended to be done.*
 - d. *Provide copies of any publications, films and videos at the end of the work to the National Museum, National Archives, National Library and, in the case of films or videos, to the Government Information Department as well.*

- **Tonga**

The National motto of the Kingdom of Tonga is God and Tonga are thy heritage, hence Sunday is, by law, sacred for ever and ever.

The Copyright Act of 1985 allows Tongan authors to have copyright protection of original literary, artistic and scientific works. This act was twice amended (Act No 10 of 1989 and Act No 46 of 1998) but both are yet to be brought into force. There is no statute law in Tonga regarding inventions and patents nor a Trade Mark Act. All the above-mentioned Copyright Acts are yet to have their own regulations, let alone be approved by Parliament.

WIPO in 1997 conducted the first workshop on legal protection of property rights both intellectual and industrial in Tonga. The need to continue this most welcome process is a priority.

Tonga Traditions Committee (under Palace Office), Culture (under Ministry of Education, Youth and Sports), Tonga National Centre (under Ministry of Labour, Commerce, Industries and tourism) are all co-operating to document, conserve and preserve traditional knowledge and culture, and traditional cultural artifacts. Tonga needs a lot of assistance in all aspects of development to ensure that legal and non-legal protection of its traditional knowledge and culture becomes a reality.

Tonga's legal mechanism relies on the following:

- Constitution of Tonga 1875
- Preservation of archaeological objects
- Polynesian Heritage Trust Fund
- Ministry of Lands, Survey and Natural Resources
- Educational Act
- Ministry of Education, Youth, Culture and Sports

Tonga's non-legal mechanisms are:

- Local communities especially elders
- Traditional experts such as matapules (talking chiefs), ulumotu'a (household heads)
- Medicinal practitioners: midwives, herbal medicine
- Mediators (regional/national/local) - could be either gender
- Females conducting household chores
- Young children with elders.

- **Vanuatu**

There are no specific legal mechanisms.

- Legislation that supports protection:

The National Constitution; the Vanuatu National Cultural Council Act; the Preservation of Sites and Artifacts Act; the Island Courts Act; and elements of the criminal code (e.g. on desecration of graves).

- Policies supporting protection:

Kastom polisi blong Malvatumauri (the custom policy of the National Council of Chiefs); the Vanuatu Cultural Research Policy.

- Sui generis mechanisms:

Existing traditional or customary copyright systems; the Vanuatu Cultural Research Policy, particularly the DRAFT Policy on the use of traditional forms.

• **Wallis and Futuna**

There are currently no existing legal instruments designed to protect traditional knowledge, which is transmitted orally to children or family members. Some types of knowledge are passed on within the village (there are dances which are unique to certain villages). This knowledge is transmitted orally and through practice or use. There is no non-legal system of protection. Thinking here tends towards conservation.

There is no legal protection of intellectual property rights either. If a person or clan feels that their rights have been abused, they contact the customary chiefs concerned so that they can decide on the matter, i.e. the penalty and recognition of the rightful holder and ban on the other party (or offender) exploiting the stolen right.

9. Responding to a question, Mr Pierre Culand from the French Delegation for Cultural Affairs (New Caledonia) explained that the concept of heritage was relatively new in France, dating back only to the French revolution in response to a need to define a French identity. As such, the concept of heritage in France was first developed around tangible heritage and it was only during the 20th Century that the concept of non-tangible heritage was recognised. Noting that the development of the national heritage in France had developed to the detriment of regional cultures, he stressed that the question of national versus regional heritage and the development of a multicultural heritage were modern issues that are at the heart of the discussions of this Symposium.

Report on the Seminar on the application of the UNESCO Recommendation on the Safeguarding of Traditional and Popular Culture in the South Pacific, held on 11 and 12 February 1999 at SPC

10. Mrs Noriko Aikawa, Chief, Section of Intangible Heritage (UNESCO), outlined the background of this seminar and the importance of the Recommendation on Safeguarding of Traditional Culture and Folklore adopted by the UNESCO General conference at its 25th Session in Paris, 15 November 1989. The Recommendation is included in the accompanying Technical Document.

11. Ms Jodi Bacchiochi, PIMA Director, gave the conclusion from the synthesis report completed from the UNESCO questionnaire concerning the Recommendation on Safeguarding of Traditional Culture and Folklore (included in the accompanying Technical Document). Ms Bacchiochi reported on the lack of response from the Pacific to this Recommendation and on the reasons (such as lack of awareness) as outlined by the results of a questionnaire UNESCO sent out that she had analysed.

12. Dr Jacob Simet, Chairperson of the recent Seminar, then summarised the outcome and the Recommendations of this Seminar (included in the accompanying Technical Document). The full report of the Seminar on the application of the UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore is available on request from the SPC or UNESCO offices.

13. Noting from the Representative of Palau that the next Forum meeting would be held in Palau in October this year, Dr Simet explained that the Seminar had discussed the possibility of bringing this matter to the attention of the Forum meeting and indicated that he would do his best to do this in co-operation with Palau.

14. These presentations concluded with the signing of a formal co-operation agreement between SPC and UNESCO. On this occasion, Mr. Salah Abada, representing UNESCO, read out a message from the Director-General, Mr Frederico Mayor. In his message, the Director-General of UNESCO expressed his satisfaction that this agreement reflected a convergence in the two organisations' objectives as well as their desire to strengthen relations in order to work together for the development and well-being of Pacific communities. A copy of this agreement is attached to this report.

THEME # 2: LEGAL PROTECTION AT THE NATIONAL LEVEL

15. The Symposium heard the following presentations:

- *Sui generis* protection: The UNESCO/WIPO Model Law, by Mr Salah Abada, Chief of Section, Division of Creativity and Copyright, UNESCO;
- Protection through Intellectual Property and Law on Unfair Commercial Practices, by Prof. Pierre-Yves Gautier, University Paris II;
- Copyright and the challenge of digital technology, by Prof. Peter Jaszi, American University Washington DC.

16. Their written presentations are included in the accompanying Technical Document.

DEBATE ON THEME # 2

17. During the discussion on this theme, a number of issues were raised:

The concept of specificity

- The specificity of traditional culture and folklore was tied to the communal manner in which they were created and their role as expressions of a community's aspirations. The nature and extent of any form of legal protection for the expressions of traditional culture and folklore must be adapted to these circumstances with regard to regulations covering the monitoring of their social exploitation and penalties for harmful distortions and illicit appropriations (Salah Abada – UNESCO).
- Some of the concerns go beyond specificity and there is a need to broaden our scope of enquiry and look at different angles. Since cultural heritage is not purely a Pacific concern but a world concern, it would be helpful to know what legal tools are available to deal with specific similar issues in the Western world.

The concept of communal property/knowledge

- There is a need to address the issue of terminology when dealing with legislation since one should not automatically assume that all traditional property in the Pacific was communally owned.
- There is a need to adapt existing mechanisms to take into account the concept of communal property; this may take longer than expected but can be done if there is a will to achieve it.
- The concept of ownership in intellectual property rights could be adapted to the Pacific to take into account communal ownership (Prof. Gautier).
- Legislation must be developed to protect traditional heritage similarly to that affording protection to European cathedrals that were collective and not individual creations (Pierre Culand).
- Speaking in a private capacity, Mali Voi gave a practical example from his own culture of different kinds of ownership of knowledge from everyone in the community to specific families and individuals.
- Pohnpei, for instance, has a traditional form of copyright for communal property but the problem occurs when the property becomes public, with respect to the definition of property and the disclosure time.

The concept of territoriality

- Traditional societies had internal mechanisms to protect their heritage, in particular the intangible heritage, but this notion of internal protection has become unreliable with growing exposure to the modern world (Pierre Culand).
- The problems of protection occur when there is circulation or contact between different "territories" (French Polynesia).

- When such circulation occurs, it is known as "private international heritage" (*patrimoine international privé*), and courts will rule on the basis of the protected status in the country of origin as well as their perception of protection and infringement in their own country (similarly to what is contained in the Berne Convention) (Prof. Gautier).
- Many countries in the region have a traditional living system of copyright, such as in Vanuatu where the owning community and those who want to exploit the item can reach an agreement; however there is a need for blanket protection of all indigenous knowledge and cultural expressions at the international level before problems arise.
- In a situation where the work of art or knowledge remains within the community, there is no need for legal protection; it becomes necessary to enact a law when a stranger tries to appropriate this item. Under Western law then, either it is considered as a work of art and can be protected under copyright law, or it is considered to be in the public domain and then needs to be protected under specific laws (Prof. Gautier).
- When property is recognised beyond the boundaries of its original territory, it is usually because of treaty commitments between States; existing international treaty arrangements such as the Berne Convention allow for extensive recognition of copyright beyond national boundaries but no such mechanisms yet exist for *sui generis* protection of traditional systems (Prof. Gautier).
- Sometimes several States share ownership and steps have to be taken to identify the works and the original group and identify the elements shared (Salah Abada).

Culture and the environment

- Pacific cultures are uniquely intertwined with the environment, as is the case for cultural property in Micronesia. This unique relationship with the environment always needs to be considered when determining appropriate mechanisms for protection of the cultural expressions.

Patents and the protection of plants and medicines

- An example was given of how exposure of traditional knowledge outside the traditional community can be an act of appropriation itself: a lactone derived from kava plants has been patented outside the Pacific, with the Pacific countries' producers of kava having lost all rights to it.
- Medicinal applications of plants can be patented at the national and international levels but a patent can be challenged in court within a certain time limit (Prof. Gautier).
- Although a patent can be challenged in court, the process can be costly and time consuming (Noriko Aikawa).
- Traditional medical knowledge and techniques cannot be protected by copyright, except in the formulation of their expression. As such, they can be patented when the conditions of novelty make it possible to establish discovery. (Salah Abada).
- The ownership of a medicinal product derived from a plant from the Pacific region can be patented, based on the scientific technology of DNA fingerprinting to identify chemical and genetic types of that plant species (Forum Secretariat).
- Because of the medicinal properties of kava, the quality of the original plant in terms of anti-stress medication is where the financial profit really is (Tonga).

Inspiration and adaptation of traditional works of art

- A dilemma occurs when a traditional item is used as inspiration for a creation since the traditional owners still expect that their authorisation should be sought to do this, as is the case with some dances created by Kanak performing group We Ce Ca in New Caledonia.
- The question in the case of work derived from pre-existing work is whether the rights of the new work belong to the original owners or not (Prof. Gautier).

- In the classical copyright system, the difference is between adaptation when authorisation has to be sought and inspiration. When only a sign or an idea is borrowed, copyright of the original work does not apply. It is clear that all countries are affected and solutions will have to be found to take into account specificities (Salah Abada).

The impact of Internet and computers on Pacific cultures

- Legal aspects of protection must address the question of the growth of Internet in relation to copyright of information and designs.
- The current controversy on Internet is really whether ISPs are liable for the information made available by web page owners on their sites (Prof. Jaszi).
- We have to evaluate negative aspects of the speed at which computers and the Internet are impacting on traditional societies.

General comments

- The significance of disclosure is important when dealing with rights and traditional knowledge, since it was the case that the period of protection would run from the time of disclosure rather than prior to such time of protection (Prof. Jaszi).
- There is a need not to overdo copyright protection since there is a danger that overprotection may hinder dissemination and development (Noriko Aikawa).

THEME # 3: LEGAL PROTECTION AT THE REGIONAL AND INTERNATIONAL LEVELS

18. The Symposium heard the following presentations:

- Non-legal responses of indigenous peoples to intellectual property, by Ms Aroha Mead, Manager, Cultural Heritage and Indigenous Issues, Te Puni Kokiri, Ministry of Maori Development, Wellington, New Zealand, but speaking in a private capacity.
- Exploitation of the Indigenous traditional culture, by Pr Kamal Puri, Queensland University, Australia (included in the accompanying Technical Document).
- The UNESCO Recommendation of 1989 and the prospects in international protection of traditional and popular culture, by Salah Abada, Chief of Section, Division of Creativity, Cultural Industries and Copyright Section (included in the accompanying Technical Document).

DEBATE ON THEME # 3

19. During the discussions on this theme, a number of issues were discussed:

Outside dissemination of traditional knowledge versus secrecy

- The question is two-fold: it needs to be asked on one hand whether traditional knowledge should be disseminated outside when it has almost ceased to be transmitted even within the community itself, or, on the other hand, if it is really necessary to slow down the transmission of traditional knowledge when our young people are going abroad to learn knowledge which is foreign to their traditional society.

- Two schools of thought prevail on this: First that traditional culture is derived from the aspirations of the community which is therefore the only control authority on how to use such knowledge; secondly that, in order to be dynamic, traditional culture needs to be known and disseminated outside the community (Salah Abada).
- French Polynesia's answer to this question has been to foster transmission of knowledge through information and training, create academies and publish documents on particular aspects of culture in order to protect the historical heritage.
- FSM has tried to maintain existing traditional mechanisms of protection in its four States but this is proving increasingly difficult and there is now a need both to protect and disseminate information.

Regional mechanisms

- There is a need to establish a regional mechanism to enable Pacific Island countries to represent themselves at international fora in a much stronger position (Forum Secretariat).
- Even should such a mechanism be established, it would still need ratification and unanimity by all Pacific countries to be effective, hence UNESCO has preferred to encourage a sub-regional approach of bilateral and multilateral agreements to protect national cultures and focus on protection of traditional knowledge and expressions of indigenous cultures through this workshop for instance (Salah Abada).
- UNESCO is not a funding agency but the 14 UNESCO Pacific member States can apply for UNESCO funding under the Participation Programme for member States (Noriko Aikawa).
- The Representative of New Zealand formally requested UNESCO and SPC to dedicate a project in the Pacific towards the International Decade of Indigenous Peoples and suggested that national/regional workshops be held on customary systems of ownership, management and transmission of the Pacific cultural heritage of indigenous peoples.

A heritage in danger

- Discussion on preservation of Pacific heritage should not be based only on economic and financial constraints but on a cultural identity, as stressed in the national reports; this heritage must be collected in order to preserve it so that our children faced with the dominant Western culture do not forget their heritage; in addition, the rightful place of Pacific cultures must be revived in Pacific societies.
- The economics are important but must not cloud the issue of the impact and implications of exposing Pacific cultures to the outside world.
- The right of future generations to have access to their traditional knowledge is a human rights issue and extends beyond solely economic or property rights.
- The Seminar on the application of the UNESCO Recommendation on the Safeguarding of Traditional and Popular Culture in the South Pacific (Noumea, 11–12 February 1999) addressed some of these fundamental issues such as what to protect, why protect it and who to protect it from.
- Traditional knowledge needs to be protected but our attitude must not be purely defensive; we must also attempt to develop our cultures so that our children do not come to consider them as marginal or belonging to our past.
- Pacific cultures must be protected as they are the basis for Pacific identity; in order to achieve this, they must be documented before the elders, who are the key stakeholders, disappear.
- Very few Pacific Island countries have acceded to WIPO, WTO, and to TRIPS agreement. There is therefore a need to establish regional mechanisms to facilitate protection of indigenous cultural and intellectual expressions (Forum Secretariat).

Frozen vs evolving cultures

- When traditional knowledge is written and taped, there is a danger that it will become frozen in time and cease to evolve as is the case with oral tradition.

- Oral cultures are dynamic and oral transmission needs to continue as the risk of freezing our cultures once they are written has become real.

Tools to preserve traditional knowledge

- Most countries recognise that existing laws are inadequate to protect traditional knowledge because the type of protection being sought is of a collective and perpetual nature.
- Legislation must support and enhance the capacity of communities to preserve and document their own heritage. This capacity must be built up through training and support as is done throughout Vanuatu.
- The official government policies must be in line with the work of those in charge of protecting and disseminating traditional culture, rather than work against it as is the case in all countries.
- The development of the cultural sector is still marginalised in the region and therefore policy makers must be involved in meetings such as this one.
- It is important that Pacific people become aware of the reasons for the need to protect our cultures through legislation and become actively involved in the process.

***Sui generis* versus copyright laws**

- The symposium should make a statement on the inadequacy of copyright law to protect traditional knowledge.
- The next symposium organised by the SPC should put aside the approach of intellectual property rights and attempt to develop a suitable *sui generis* draft. In addition, it was also suggested that the Pacific Islands create a sub-regional or regional corpus of law as has been done in other regions.
- When the conservation function of traditional societies was threatened, Pacific countries attempted to protect their cultures through existing Western law and in particular the provision for intellectual property law. However this does not adequately cover traditional forms of culture and its protection is limited in time. The only two other avenues are the transmission and dissemination of knowledge and the protection through *sui generis* law.
- The presentations have all emphasised that there are shortcomings in the application of existing law relating to communal ownership and traditional knowledge and a working committee should be established to identify a common action plan for SPC, UNESCO and other UN agencies (Mali Voi).
- Prof. Puri explained that existing international agreements do not address the issue of traditional knowledge and that copyright law based on an economic approach has proven inadequate to protect traditional cultures. The danger is that such cultures may disappear in the face of the dominant Western culture. He stressed that *sui generis* law may provide a more suitable approach.
- Prof. Gautier disagreed with the views of Prof. Puri. He emphasised that copyright laws do offer some form of protection for culture and that they must be adapted further to incorporate the concept of communal ownership.
- Prof. Jaszi noted that there was common agreement that custodians of traditional knowledge need to be given legal tools to protect and promote their heritage. He urged the participants to consider that the history of copyright law is less important than its potential and not to dismiss making use of this and restructure it into a powerful legal structure.

THEME # 4: PROTECTION OF BIOLOGICAL DIVERSITY AND GENETIC RESOURCES

20. Mr Clark Peteru made a presentation on the protection of plant genetic resources. His written statement is included in the accompanying Technical Document. Mr Peteru is a lawyer with a background in environmental issues and IPR issues in relation to plant resources, who is currently working on an environment act for Samoa.

DEBATE ON THEME # 4

21. During the debate on protection of biological diversity and genetic resources, a number of issues were discussed:

Economic benefits

22. There is a concern by policy leaders that there must be economic returns from research carried out in Island countries by scientists from outside the region and that Pacific countries cannot continue to depend on handouts.

23. The issue of economic returns is directly linked to ownership of knowledge, a problem compounded by the fact that some NGOs act as facilitators for overseas donors.

24. There is a need to develop our own expertise and patent our own products, particularly with respect to plants of cultural and economic significance such as kava, in order to maximise our benefits in the region (Forum Secretariat).

Control of research and ethical issues

25. When research is being carried out under the pretence of promoting the country overseas, and the country is left unaware of the full implications of the research carried out, what avenue is there for appeal?

26. There is a need to ensure that research is stringently controlled and that the results are monitored and made available to indigenous people.

27. A useful mechanism would be for Island countries to share information on research by networking, to ensure economic returns and protection without overexploitation.

28. Ethics are involved when the germplasm or blood/cell samples provided to researchers can help save human lives. However there is another ethical problem when the source is not even acknowledged or the sample is obtained under false pretences to gain scientific recognition or financial gain.

29. When Islanders base their lives on moral principles of contact with the supernatural and perpetuation of themselves, they need to seek the truth within themselves before anything else (Mali Voi).

30. There needs to be a code of ethics for research.

Legal protection of biodiversity and other possible solutions

31. In Solomon Islands for instance, contracts are now being formally signed between researchers and representatives of the community, area council, provincial council and Government, with royalties going back to the community.

32. A draft sustainable development bill has been completed and is being considered by major stakeholders in Fiji. The next question is how to implement and monitor this legislation.

33. The best arrangement would be for traditional owners themselves at the local community level to manage their own resources, the problem being the question of cost.

34. Since there is little likelihood that Island countries may have the financial and technical capability to claim patents, one can wonder what are the real benefits Island countries will get from international conventions.

35. There is a clear and urgent need for Pacific countries to adopt a uniform approach in dealing with countries from outside the region, perhaps through a share mechanism involving multilateral or regional treaties within the Pacific (Prof. Puri).

36. We need to consider carefully short-term remedies until long-term solutions are available.

37. Access to traditional knowledge and genetic resources must be jealously protected through contractual and legal agreements, since patent laws that are used and abused by multinationals offer inadequate protection; until solutions are found, trademark laws (such as appellation of origin) may offer an avenue for protection (Prof. Puri).

38. CNMI requested Clark Peteru to provide copies of the draft legal frameworks he has been developing for Samoa and Niue, and from which protective laws can be implemented (for instance to safeguard native flora). Clark Peteru indicated that another approach is that of an all-inclusive legislation as chosen by Fiji.

39. Responding to Noriko Aikawa on what tools were available to protect knowledge or know-how, as opposed to the resource itself, Clark Peteru explained that conventional law offered partial protection through trade secrets or author's moral rights but that more appropriate solutions may have to be found to deal with the public outing of traditional knowledge such as preparation of traditional medicines.

40. Pacific countries need to look at international treaties for protection when dealing with exploitation of items of cultural significance such as kava or betel nut.

41. Pacific Islanders need to be made aware of issues such as overexploitation, consequences for their children, ownership, research feedback, benefits and economic returns, when dealing with outsiders who wish to obtain traditional plants (as is currently the case with the nono in Niue); the issue is not only that of protection from outsiders but also from those Islanders who willingly co-operate with them either because of lack of awareness or for their own economic gain.

42. Salah Abada (UNESCO) provided an overview of UNESCO's scientific and environmental agenda and the legal protection tools available.

THEME # 5: MANAGEMENT OF AUTHOR'S RIGHT

43. Presentation by Mr Scot Morris, Director of International Relations of the Australasian Performing Rights Association and Committee Member of the Asia-Pacific Committee of CISAC, on the experience of collective administration of author's rights and the possibilities for its application to the follow-up of exploitation of traditional and popular culture. His written statement is included in the accompanying Technical Document.

DEBATE ON THEME # 5

Protection of traditional owners

44. When dealing with copyright, it was suggested that tribes, clans, etc., could be protected as corporate groups. Scot Morris suggested that a way forward would be the establishment of a local society of authors.

45. When there is no copyright law to protect traditional work, recordings or copies can be made by ethnomusicologists and the use or misuse of these recordings cannot be regulated.

46. Copyright payments can be directed back at the community. APRA for instance collects royalties on behalf of Maori of New Zealand and Aboriginal and Torres Strait Island owners in Australasia. It has agreements with affiliated organisations and through international copyright agreements has been able to present some Pacific music to the world (Scot Morris).

47. Responding to a question by New Caledonia as to whether traditional works were best protected under copyright arrangements or other mechanisms, Scot Morris explained that WIPO was looking at different approaches favouring a regional Pacific approach. Although different structures could be established to represent different rights holders, he noted that there might be advantages in having one society to represent the rights of all and be a powerful lobby force.

48. Traditional heritage needs specific protection based on copyright technology, to ensure that owners are protected from misappropriation, that their rights are recognised and that they receive royalties; this is impossible to achieve without specific legislation to protect the traditional heritage (UNESCO).

Use of traditional items within contemporary work

49. An important issue is when composers use indigenous music as inspiration or as part of their work; in some cases it is possible to draw up agreements between the parties.

50. When dealing with derivative works, attempts must be made to trace accurately the original owners; the organisations representing indigenous people must lobby for more protection from exploitation of items collected by ethnomusicologists (Scot Morris).

51. In the case of world music which incorporates traditional music or songs within a modern piece, specific examples (e.g. Deep Forest) have proven that there is no protection for the traditional work in the absence of copyright (Noriko Aikawa). UNESCO has now developed specific procedures aimed at protecting the rights of traditional owners for collection of traditional music by ethnomusicologists.

Protection of contemporary work

52. Copyright offers effective protection for contemporary work created throughout the region (for pop and rock bands for instance), and hence encourages creativity of our youth; there is therefore a need to establish societies to protect their work and collect royalties on their behalf.

General issues of copyright protection

53. Responding to a question raised by Solomon Islands, Scot Morris indicated that APRA focuses on contemporary music and that copyright only protects the music but not the instrument itself (in the case of Solomon Islands pan pipes for instance); however, there is no copyright law in PNG or Solomon Islands and therefore no protection until such laws are passed.

54. Copyright law can be useful because it affords protection and the owners can then receive royalties collected through specific local societies; governments need to be convinced of the usefulness of copyright agreements and there is a need to fight for these protective rights (Scot Morris).

55. After twenty years of efforts, PNG is about to adopt copyright legislation and one of the arguments used against it has been that copyright would be an impediment to creativity.

56. Scot Morris explained that experience proves on the contrary that copyright protection encourages creativity by protecting and rewarding the creators and owners and that, as evidenced in Fiji, it promotes national culture and becomes an incentive for creativity.

57. UNESCO further explained that in order for collective management and administration of author's right to promote the cultural heritage and encourage younger generations to do modern creations, you first have to recognise these rights and establish copyright societies.

58. It may not always be easy for Island countries to establish working societies of authors, as evidenced by the operating difficulties of SCACEM in New Caledonia, apparently caused by funding problems.

Statements by observers

59. The Symposium heard presentations by the Presidents of SPACEM (French Polynesia) and SCACEM (New Caledonia) on the advantages of copyright protection in the islands and the difficulties experienced. The President of SCACEM referred in particular to exploitation of Kanak heritage within the last ten years.

60. Pierre Culand from the French Delegation for Cultural Affairs (New Caledonia) alluded to the measures put in place in New Caledonia in the last ten years to protect the Kanak cultural heritage through the ADCK (Kanak Cultural Development Agency), the cultural mandate given to the Provinces and the Matignon and Noumea Accords.

IV. DECISIONS AND RECOMMENDATIONS

DECLARATION ON THE PROTECTION OF TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF INDIGENOUS CULTURES IN THE PACIFIC ISLANDS

61. The Symposium adopted the **Declaration on the protection of traditional knowledge and expressions of indigenous cultures in the Pacific Islands** which is included in this report and in the accompanying Technical Document. The Declaration will be presented by the SPC Cultural Affairs Officer to the Second Meeting of the Executive Board of the Council of Pacific Arts (Noumea, 22–23 February 1999), WIPO and the Conference of the Pacific Community (French Polynesia, December 1999), for endorsement. It will also be submitted to the UNESCO General Conference by the UNESCO representative.

ADOPTION OF THE REPORT

62. The Symposium adopted its report as amended. The Symposium further noted the comments by the Cultural Affairs Adviser that countries and territories represented at the Symposium would not be bound by the declaration until they so wished.

CLOSING CEREMONY

63. All the participants thanked the authorities and people of New Caledonia, and in particular the Kanak people, for their warm welcome and hospitality. They thanked the organisers of the meeting, UNESCO and SPC, for making this exchange possible. They expressed particular thanks to the Chairperson of the Council of Pacific Arts, Octave Togna of New Caledonia, and the SPC Cultural Affairs Officer, Yves Corbel, for playing an instrumental role in the organisation of the Symposium. They also expressed appreciation to the various resource people. Last but not least, they paid tribute to the Chairperson of the Symposium, Marie-Claude Tjibaou, and the Facilitator, Guy Agniel, for their leadership during the discussions.

64. The Chairperson of the Council of Pacific Arts, Octave Togna of New Caledonia, expressed similar sentiments of appreciation. He attributed the success of the Symposium and the quality of the discussions to the commitment of all participants. Noting that the Symposium was a direct result of the efforts made by the SPC Cultural Affairs Officer, he congratulated him and invited all members to utilise fully the valuable services of Yves Corbel. He also alluded to the future challenge of preserving our Pacific identity in the face of modern developments.

65. The Representative of UNESCO, Salah Abada, speaking as co-sponsor of the Symposium with SPC, also expressed appreciation to everyone. Noting the level of experience and commitment of all participants, he stressed that implementation of the Declaration would be a real challenge for all the parties concerned.

66. The SPC Cultural Affairs Officer, Yves Corbel, also paid tribute to all those who had worked hard to achieve positive results. He noted that the Symposium concluded the first stage of an ambitious project to protect traditional knowledge and expressions of indigenous cultures in the Pacific Islands and that the next implementation stage would be a challenging one. He stressed that PIMA would from now on also play an active role in the preservation of culture and heritage in the region.

67. The Chairperson of the Symposium, Marie-Claude Tjibaou, made a few concluding remarks. She expressed appreciation to the participants and resource people for the high standard of their discussions. She thanked the organisers, Unesco and SPC, and in particular Yves Corbel, for their hard but extremely valuable work. She emphasised that all Pacific Islanders were concerned by the current place of their culture and the need to

harmonise policies. In conclusion, noting that it was a difficult task to defend Pacific cultures, she welcomed the presence of many young people at this Symposium.

V. DECLARATION ON THE PROTECTION OF TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF INDIGENOUS CULTURES IN THE PACIFIC ISLANDS

A Symposium on the protection of traditional knowledge and expressions of indigenous cultures in the Pacific Islands was held at SPC headquarters in New Caledonia from 15 to 19 February 1999, at the request of the Council of Pacific Arts, under the auspices of the Secretariat of the Pacific Community (SPC) and the United Nations Educational, Scientific and Cultural Organization (UNESCO).

The following members of the Council of Pacific Arts were represented at the Symposium: Australia, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Kiribati, Marshall Islands, Nauru, New Caledonia, New Zealand, Niue, Norfolk Island, the Commonwealth of the Northern Mariana Islands, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Vanuatu, Wallis and Futuna.

The Symposium adopted the following **Declaration on the protection of traditional knowledge and expressions of indigenous cultures in the Pacific Islands**, which articulates in concrete terms the concerns of the Symposium. The Declaration will be presented by the SPC Cultural Affairs Officer to the Second Meeting of the Executive Board of the Council of Pacific Arts (Noumea, 22–23 February 1999), WIPO and the Conference of the Pacific Community (French Polynesia, December), for endorsement. It will also be submitted to the Unesco General Conference (Paris, October/November 1999) by the Unesco representative in the context of the implementation of Unesco's 1999 programme and will serve as a programming reference for the 2000/2001 biennium for the needs of the South Pacific sub-region.

DECLARATION

Considering that the majority of Pacific countries and territories do not have appropriate legal tools to protect the expressions of indigenous cultures and their intellectual property;

Recognising the need to promote awareness of the crucial importance of protecting the Pacific cultural heritage, particularly in the context of globalisation of the economies and increasing development of information technologies;

Noting that several initiatives are currently taking place in the Pacific at national and regional levels to promote the establishment of intellectual property legislation;

Stressing the need for a collective voice for the Pacific Islands in the international fora and for concrete and effective measures at national, regional and international levels in the region;

The Symposium endorsed the Declaration on the protection of traditional knowledge and expressions of indigenous cultures in the Pacific Islands, for presentation to and endorsement by all Pacific countries and territories, SPC, UNESCO, WIPO, the Forum Secretariat, SPREP, USP and SOPAC, and consisting of :

1. The definition of traditional knowledge and expressions of the indigenous cultures of the Pacific Islands contained in the Declaration;
2. The Pacific position on the international debate on the protection of traditional knowledge and expressions of indigenous cultures;
3. Recommendations for a policy of regional harmonisation of the protection of traditional knowledge and expressions of indigenous cultures;

4. Recommendations for technical assistance and support of a homogenous system of legal protection, identification, conservation and control of exploitation, of indigenous culture in the countries and territories who are members of the Pacific Arts Council.

DEFINITION OF TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF THE INDIGENOUS CULTURES OF THE PACIFIC ISLANDS

The traditional knowledge and expressions of indigenous cultures are defined as the ways in which indigenous cultures are expressed and which are manifestations of world views of the indigenous peoples of the Pacific. Traditional knowledge and cultural expressions are any knowledge or any expressions created, acquired and inspired (applied, inherent or abstract) for the physical and spiritual well-being of the indigenous peoples of the Pacific. The nature and use of such knowledge and expressions are transmitted from one generation to the next to enhance, safeguard and perpetuate the identity, well-being and rights of the indigenous peoples of the Pacific. This knowledge and these expressions include and are not limited to:

- spirituality, spiritual knowledge, ethics and moral values,
- social institutions (kinship, political, traditional justice),
- dances, ceremonies and ritual performances and practices,
- games and sports,
- music,
- language,
- names, stories, traditions, songs in oral narratives,
- land and sea and air,
- all sites of cultural significance and immovable cultural property and their associated knowledge,
- cultural environmental resources,
- traditional resource management including traditional conservation measures,
- all material objects and moveable cultural property,
- all traditional knowledge and expressions of indigenous cultures held in *ex situ* collections,
- indigenous peoples' ancestral remains, human genetic materials,
- scientific, agricultural, technical and ecological knowledge, and the skills required to implement this knowledge (including those pertaining to resource use practices and systems of classification),
- the delineated forms, parts and details of visual compositions (designs),
- permanently documented aspects of traditional indigenous cultures in all forms (including scientific and ethnographic research reports, papers and books, photographs and digital images, films and sound recordings).

THE PACIFIC POSITION IN THE INTERNATIONAL DEBATE ON THE PROTECTION OF TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF INDIGENOUS CULTURES AND APPROPRIATE ACTION REQUIRED

In order to achieve a regional position in the international debate on the protection of traditional knowledge and expressions of indigenous cultures, the Pacific countries and territories and regional organisations agree to the following:

- *Acknowledge* and build on the recommendations of the Mataatua Declaration on the Cultural & Intellectual Property Rights of Indigenous Peoples (1993) and the principles of the Treaty for a Life-forms Patent Free Pacific & Related Protocols (1995);
- *Recognise* the intrinsic role of indigenous cultures in planning and development and include indigenous representatives in future relevant regional and international negotiations and meetings;

- *Develop and enhance* existing cultural and intellectual property laws, including Copyright, Trademarks and Patents to ensure that procedures are in place to protect traditional cultural heritage from being wrongfully misappropriated;
- *Request* the declaration of a moratorium in the Pacific region on the patenting of life-forms until such time that sufficient national and regional protection mechanisms are in place;
- *Encourage* local-level systems of protection, management and monitoring of traditional knowledge and expressions of indigenous cultures as a means of assisting states to develop and enforce legislative and administrative measures to prevent wrongful exploitation;
- *Encourage* institutions, governments and the industrial sector to work with indigenous peoples to develop voluntary mechanisms to protect traditional knowledge and cultural expressions of indigenous peoples of the Pacific, *inter alia*, Memorandum of Understanding, Code of Ethics and Research protocols;
- *Request* as a priority SPC, UNESCO, WIPO and FORSEC to coordinate regional seminars to develop Model *sui generis* Laws on the protection of traditional knowledge and expressions of indigenous cultures of the Pacific;
- *Accept and endorse* the recommendations of the Regional Seminar on the Application of the UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore in the Countries of the Pacific (Noumea, 11–12 February 1999); *
- *Request* UNESCO to support and promote a greater awareness of customary systems of ownership, management and transmission of indigenous peoples' cultural heritage through undertaking national and regional research and seminars drawing on the expertise of traditional experts as a dedicated regional activity towards the International Decade for the World's Indigenous Peoples;
- *Urge* regional and relevant inter-governmental agencies and the industrial sector to develop and strengthen closer co-operation on projects and activities relating to traditional knowledge and expressions of indigenous cultures.

RECOMMENDATIONS FOR A POLICY OF REGIONAL HARMONISATION OF THE PROTECTION OF TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF INDIGENOUS CULTURES

1. Any approach to harmonise the protection of traditional knowledge and expressions of indigenous culture must take into account different needs of Pacific countries and territories;
2. Common goals for the protection, preservation, conservation, promotion and/or enhancement of traditional knowledge and expressions of indigenous cultures through legal and non-legal means can be conceived despite these differences;
3. The regional goal's approach should reflect the cases of inappropriateness of conventional intellectual property rights regimes for the protection of traditional knowledge and expressions of indigenous cultures;
4. appropriate model / *Sui generis* law for the region for intellectual property rights must be developed to ensure protection for heritage and environment while promoting reciprocity amongst Pacific countries and territories;
5. The development of an effective Pacific/regional block to negotiate at the international arena must be fostered.

To ensure the viability of such a regional policy, countries and territories must adopt the following measures:

- Develop, enact and implement appropriate legislation useful for the protection of traditional knowledge and expressions of indigenous cultures that are consistent with the regional goals;
- Develop non-legal mechanisms specific to the needs of individual sustainable Pacific countries and territories;
- Develop sustainable mechanisms in the political, social, scientific, economic, educational and structural areas in line with the legal regimes for the “protection” of traditional knowledge and expressions of indigenous cultures.

RECOMMENDATIONS FOR TECHNICAL ASSISTANCE AND SUPPORT OF A HOMOGENOUS SYSTEM OF LEGAL PROTECTION, IDENTIFICATION, CONSERVATION AND CONTROL OF EXPLOITATION, OF INDIGENOUS CULTURE IN THE COUNTRIES AND TERRITORIES WHICH ARE MEMBERS OF THE PACIFIC ARTS COUNCIL

Pacific countries and territories have different levels of development and therefore different needs, which include, but are not limited to:

1. Legal protection and administration

- drafting of legislation related to copyright, trademarks, biodiversity and *sui generis* protection;
- formulation of a code of ethics for researchers in the region;
- setting-up of mechanisms for collective management;
- creation of a regional network for the exchange of technical personnel and information.

2. Training

- public awareness programs;
- training of local experts;
- recognised outside experts;
- licence negotiations and access arrangements.

3. Collection

- identification of property rights and their owners;
- training of collectors;
- creation of databases.

Recognising the right of the different countries to meet their needs in their own way, the Symposium adopts the following priority recommendations:

1. **Recommendation 1:** Assisting Pacific Island countries and territories on drafting of legislation that shall include:
 - copyright and trademark laws;
 - environmental laws;
 - collective management systems;
2. **Recommendation 2:** That as a priority SPC, UNESCO, WIPO and FORSEC coordinate regional seminars to develop Model *sui generis* Laws on the protection of traditional knowledge and expressions of indigenous cultures of the Pacific;
3. **Recommendation 3:** The recruitment of a (bilingual) regional legal adviser position for intellectual property at SPC, in collaboration with members;

4. **Recommendation 4:** Establishment of an ongoing training programme on legal drafting skills at the earliest opportunity (2000), under the SPC programme;
5. **Recommendation 5:** The training of local experts:
 - legal,
 - conservation,
 - implementation of local protection;
6. **Recommendation 6:** The establishment of university chairs on intellectual property rights in the region with proposed funding from UNESCO and others;
7. **Recommendation 7:** That priority be given to local experts in the area of technical assistance.

The Symposium also encouraged countries which are members of UNESCO and WIPO to submit national proposals for technical assistance from those organisations.

** The recommendations of the Regional Seminar on the Application of the UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore in the Countries of the Pacific (Noumea, 11–12 February 1999) and the UNESCO Recommendation itself are included in The Technical Document of the Symposium).*

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