

**KASKA DENA COUNCIL
OPENING INTERVENTION**

ITEM 5, Document 6/3

March 16, 2004

1. Thank you Mr. Chairman, I am speaking on behalf of the Kaska Dena Council. The Kaska traditional territory encompasses some 93,000 square miles stretching from north-western British Columbia through the southeast Yukon and into the adjacent parts of the Northwest Territories, Canada. The Kaska Nation is represented by three regional groups, one in British Columbia, the Kaska Dena Council, and two in the Yukon, The Ross River Dena Council and Liard First Nation. I am speaking on behalf of the Kaska Dena Council.
2. As this is my first intervention, I would like to congratulate you on your re-election as Chair of this Committee. As you have noted and as many members that have preceded my intervention have stated, we are at a key turning point in this Committee's work. I am confident that you will continue to artfully and skillfully guide us in these challenging discussions.
3. I am also pleased to expressly thank the Secretariat for its preparation of the document on this important subject matter. It is clear from my perspective that the Secretariat is very mindful of the diversity and vastness of rights that fall under the broadly termed phrase Indigenous knowledge and, with the guidance of this Committee, are pragmatically approaching our directions forward.
4. Mr. Chairman, before I begin with my complementary intervention. I would like to state that I speak in full support with the substantive intervention of my learned colleague from the Saami Council, particularly with respect to his emphasis on the role of customary law in the protection of Indigenous knowledge. With Canada and the Saami Council, I look forward the further development of this important work by the Secretariat. It is my sincere hope that the case study on customary laws and protocols will be a substantive agenda item at the upcoming seventh meeting.
5. Mr. Chair, we have listened attentively to this substantive dialogue among States with respect to the proposed establishment of an international regime on the protection of Indigenous Knowledge and TCEs. Specifically, we are aware of the concerns of many States, that it is premature to meaningfully examine a *binding* legal regime. Mr. Chair, we do not necessarily agree. It may be premature to establish and create a binding regime but this should not prevent us from continuing our gradual steps towards an international framework. Whether it be by soft or hard legal mechanisms, our steps forward must be appropriately dynamic and recognize that the law is evolutionary. Our solutions must be as dynamic as the subject matter and nature of the rights.
6. As such, we fully support the pragmatic approach suggested in all of the documents, specifically paragraph 211, sub-para (ii). That is, we strongly support the development of core principles for the protection of TCEs. This approach allows us the flexibility and is appropriate to the diverse circumstances of Indigenous Peoples throughout the world. It would be presumptuous and

prejudicial of us to assume that one single approach will address all of our concerns. We will require both IP and Non-IP options.

7. Mr. Chairman, we are in a unique situation where we can invest our mutual efforts to design a regime or regimes that ensures minimum standards and creates some certainty, where there are deficiencies. An international regime can complement national laws. A well designed regime will not conflict with national laws and regional and international frameworks, it will complement them.
8. Regardless of whether we decide to move forward with a binding or non-binding international regime, we stress that any proposed international regime must:
 - a) Recognise, respect and fully guarantee the collective rights of Indigenous Peoples as Peoples;
 - b) Establish mechanisms for the full and effective participation of Indigenous Peoples at all stages of access and benefit sharing arrangements including capacity-building measures and the establishment of a financial mechanism(s);
 - c) Establish clear procedures to secure the prior informed consent of Indigenous Peoples to any proposed use of traditional knowledge and associated genetic resources; and
 - d) Affirm legal, policy, administrative and other measures, including *sui generis* systems and customary law, of Indigenous Peoples with respect to the protection and preservation of Traditional Knowledge and associated genetic resources.
10. Finally, Mr. Chairman, I speak in full support of the Government of New Zealand's proposal with respect to Guidelines for potential commercial users regarding appropriate and inappropriate uses of Indigenous symbols. As an indigenous lawyer that works with indigenous peoples to protect their knowledge, I see a real need for some minimum standards on appropriate commercial uses with the prior informed consent of Indigenous peoples. I have personal knowledge of the difficulties in using existing mechanisms to protect indigenous symbols with the Canadian trademark systems, contractual arrangements and indigenous protocols. Protection would be much more expedient and efficient were there clear policies and procedures to follow within intellectual property offices. I thank the delegates of New Zealand for this thoughtful suggestion. There will always be a need for best practices.
11. Thank you Mr. Chair, we look forward to further opportunities to meaningfully participate in this constructive discussion.