



Statement by His Excellency Archbishop Silvano Tomasi, Permanent Observer of the Holy See to the United Nations and Other International Organizations in Geneva at the Trade Related Intellectual Property Rights (TRIPs) Council at the World Trade Organization  
Geneva, 8 June 2010

Mr. President,

I join previous speakers and congratulate you on your election.

On the issue of article 27.3(b), *Patentable subject matter*, the Delegation of the Holy See wishes to provide some comments and raise some additional concerns.

Article 27.3(b) allows Members to exclude from patentability plants and animals, but not micro-organisms, and allows Members to exclude from patentability biological processes which are essential for the production of plants and animals, but not non-biological or microbiological ones. The rationale behind this provision is to reinforce the international protection of patents and other Intellectual Property Rights (IPR) on non-biological and microbiological life developments by linking such protection to the general legal framework on trade of other goods and services. Such protection, however, should be promoted fairly and in full accord with the development objectives established by article 7 of TRIPS, with the provisions of article 8 related to the political freedom of States to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, and with provisions of article 27.2, which allows members to “*exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect order public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment*”.

The patenting of life forms could sometimes serve as a tool to support biotechnologies that are problematic both from an ethical point of view and from the point of view of a “development-friendly” intellectual property system.

In relation to human life, article 4 of the Universal Declaration on the Human Genome and Human Rights states that “*The human genome in its natural state shall not give rise to financial gains*”<sup>1</sup> while article 21 of the Council of Europe Convention for the protection of human rights and dignity of the human being with regard to the application of

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<sup>1</sup> United Nations, A/53/152 of 9 December 1998; United Nations Educational, Scientific and Cultural Organization (UNESCO), Records of the General Conference, 29th Session, Paris, 21 October-12 November 1997, Resolution 6.

*biology and medicine, that: "The human body and its parts shall not, as such, give rise to financial gains."*<sup>2</sup> In the same regard, the *United Nations Declaration on Human Cloning*<sup>3</sup> acknowledges the *ethical concerns that certain applications of rapidly developing life sciences may raise with regard to human dignity, human rights and the fundamental freedoms of individuals*, and calls States to *adopt all measures necessary to protect adequately human life in the application of life sciences*. Thus, the TRIPS agreement, other WTO rules, and all other international, regional and bilateral trade and IPR agreements should not reduce ability of States to govern the aspects of IPR related to human life and dignity.

Mere commercial control of production and distribution of new life forms could affect both food security and development prospects of poor countries. Private monopolistic rights should not be imposed over those biological resources, from which the basic food and medicine requirements of human life are derived. An inclusive approach to IPR should not ignore the major economic, environmental, and ethical concerns about the patenting of life, since such action would exert a negative impact on consumer rights, biodiversity conservation, environmental protection, indigenous rights, scientific and academic freedom, and, ultimately, the economic development of many developing countries insofar as it depends on new technologies.

In 2007, the United Nations adopted a Declaration on the Rights of Indigenous Peoples which recognizes, in Article 31, that "indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts" and the "right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions". When opportune and feasible, the WIPO/GTRKF developments and conclusions should be acknowledged within the context of the TRIPS rules.

Among agents of development, there is a significant concern about patenting of varieties of seeds that are genetically engineered. An unlimited application of Patent procedures to biological, scientific, and technical developments could be harmful to both traditional and modern methods of research and production, especially with regard to new varieties that are beneficial in the developing world. Concentration of seed ownership could threaten the autonomy of local farmers, who are forced to buy seeds every season from a handful of companies with whom they have little power to negotiate competitive prices. Ownership of Intellectual Property Rights to seeds could seriously jeopardize the practice of saving seeds in order to trade or replant them during

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<sup>2</sup>Council of Europe, ETS N. 164, Oviedo, 4 April 1967.

<sup>3</sup> United Nations, A/RES/59/280 of 8 March 2005.

the next season. most small and medium-scale farmers routinely save seeds, and an important portion of world population depends on the continued financial stability of farmers who do so. The International Community should render due attention to concerns about the concentration of technology and resources in food production by a small group of entities and companies that are driven by purely commercial goals. Special attention also should be given to intellectual property protection of seeds discovered by individual farmers – both from developed or developing countries – and to the rights of indigenous people to the traditional use and ownership of those plants that are essential to their livelihoods and cultures.

The main goal of the international community should be to promote the common good. Moreover, international trade rules and negotiations should aim toward the good of all, especially of those people who are poor and vulnerable, should ensure both the means for human sustenance, such as food, water, medicines, health environment, etc., and the means for the cultural, social and spiritual development of people.

Discussions about the international protection of intellectual property rights and about the scope and consequences of article 27, 3.b, also should be guided, in all sincerity, by the promotion of the common good and of human dignity, as it is rightly stated in the Declaration, the Final Act, the Preamble and the Annex 1C of the Agreement of Marrakech.