TECHNOLOGY FOR THE UNDERDEVELOPED WORLD — CURRENT UNITED NATIONS ACTIVITIES

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OCTOBER 21, 1981

THE UN AGENCIES WHICH APPEAR TO HAVE ACTIVITIES RELATING TO PATENTS, TRADEMARKS AND/OR TECHNOLOGY TRANSFER:

A. WIPO - GENEVA

1. PARIS CONVENTION
2. MADRID ARRANGEMENT
3. BERNE CONVENTION
4. PCT
5. TRT
6. MODEL LAW FOR DEVELOPING COUNTRIES ON INVENTIONS
7. GUIDE FOR INDUSTRIAL PROPERTY ACTIVITIES FOR ENTERPRISES IN DEVELOPING COUNTRIES
8. INDUSTRIAL PROPERTY ASPECTS OF CONSUMER PROTECTION
9. COMPUTER SOFTWARE PAPER
10. WIPO CHARACTERISTICS
    - A. LEGAL EXPERTISE
    - B. UNDERSTANDS DEVELOPED COUNTRIES' POSITION, BUT MUST BE "IMPARTIAL"
    - C. MUST SHOW LDC'S WHAT IT CAN DO FOR THEM TO COUNTERACT UNCTAD'S INFLUENCE

B. UNIDO - VIENNA

1. MODEL PETROCHEMICAL LICENSE

2. UNIDO CHARACTERISTICS

A. EDUCATIONAL AND TECHNICAL ASSISTANCE TO DEVELOPING COUNTRIES

B. EXPERTS TO HELP DRAFT PATENT LEGISLATION

C. HOLD MEETINGS AND SEMINARS

D. HAVE CO-SPONSORED MEETINGS WITH LES

C. UNCTAD - GENEVA

1. INTERNATIONAL CODE OF CONDUCT FOR TRANSFER OF TECHNOLOGY

2. UNCTAD MEETING - GENEVA - SEPTEMBER 1975, "ROLE OF THE PATENT SYSTEM IN THE TRANSFER OF TECHNOLOGY"

3. SECOND MEETING - GENEVA - SEPTEMBER 1977

4. RESTRICTIVE BUSINESS PRACTICES CODE

5. UNCTAD CHARACTERISTICS

A. MORE THEORETICAL, MORE POLITICAL, THAN WIPO OR UNIDO

B. "ECONOMIC, COMMERCIAL AND DEVELOPMENTAL ASPECTS" OF PATENTS, TRADEMARKS, AND TRANSFER OF TECHNOLOGY

II. DEFINITIONS

A. NORTH-SOUTH

B. GROUP OF 77

1. DEVELOPING COUNTRIES

C. GROUP B

1. DEVELOPED COUNTRIES

A. EEC

D. GROUP D

III. PARIS CONVENTION

A. CURRENT STATUS

1. ORIGINALLY SIGNED IN 1883
2. LAST REVISION WAS IN STOCKHOLM IN 1967
3. NUMBER OF MEETINGS IN RECENT YEARS WORKING TOWARD REVISION
4. 14 POINTS DESIRED BY DEVELOPING NATIONS IN REVISION
5. DIPLOMATIC CONVENTION FEB.-MARCH 1980 IN GENEVA
   - a. UNANIMITY
     - i. IN PAST PARIS CONVENTION AMENDED ONLY BY UNANIMITY
     - ii. CUSTOM, NOT SPECIFIED IN CONVENTION ITSELF
     - iii. MOST U.N. AGENCIES OPERATE ON 2/3 VOTE
     - iv. PRESIDENT OF CONFERENCE RULED, WITHOUT VOTE, THAT PARIS CONVENTION SHOULD BE REVISED
       - (a) BY CONSENSUS, IF POSSIBLE. IF NOT
       - (b) BY TWO-THIRDS OF THOSE VOTING
         - (i) IF NO MORE THAN 12 OPPOSE
     - v. U.S. WAS ONLY COUNTRY OPPOSING
     - vi. EEC SITUATION
6. PREPARATORY CONFERENCE WAS HELD IN GENEVA MARCH 9-30, 1981
7. RESUMED DIPLOMATIC CONFERENCE IN NAIROBI SEPT. 28-OCT. 24, 1981
8. U.S. DELEGATION

B. ISSUES BEING NEGOTIATED AT NAIROBI

1. UNANIMITY
   - a. SOME SAY U.S. DID NOT FORMALLY OBJECT FROM A TECHINCAL VIEW
   - b. U.S. STATE DEPT. SAYS U.S. OBJECTION WAS PROPER AND EFFECTIVE

2. UNIVERSAL TEXT VS. SPECIAL MEASURES FOR DEVELOPING COUNTRIES

   A. U.S. POSITION SUPPORTS UNIVERSAL TEXT

   B. IF IS TO BE SPECIAL TEXT FOR DEVELOPING COUNTRIES, "DEVELOPING COUNTRIES" SHOULD BE DEFINED WITH PERIODIC REVIEWS OF A COUNTRY'S STATUS

3. ARTICLE 5A

   A. PERMITS NATIONAL LEGISLATION TO PROVIDE FOR NON-VOLUNTARY (COMPULSORY) LICENSE UNDER PATENTS IF NOT "WORKED" (IMPORTS DON'T COUNT) WITHIN:

      I. 4 YEARS FROM FILING DATE OR

      II. 3 YEARS FROM GRANT OF PATENT

      WHICHEVER IS LAST

   B. PATENTEE CAN JUSTIFY HIS NON-WORKING

   C. COMPULSORY LICENSE CAN BE FOR (SIX) (THREE) YEARS

   D. CAN BE FORFEITED OR REVOKED FOR NON-WORKING

      I. BUT NOT FOR (ONE) (TWO) YEARS AFTER EXPIRATION OF EXCLUSIVE LICENSE

   E. U.S. POSITION SUPPORTS NON-EXCLUSIVE COMPULSORY LICENSE

   F. OTHERS SUPPORT "SOLE" LICENSE

   G. OTHERS SUPPORT "SUSPENSION" OF PATENTS

   H. POSSIBLE LESSER PERIOD FOR DEVELOPING COUNTRIES

4. ARTICLE 6 TER

   A. PROTECTION OF OFFICIAL NAMES OF COUNTRIES

      I. COULD NOT GET REGISTRATION OF OFFICIAL NAMES OF STATES AND THEIR UNAUTHORIZED USE WOULD BE PROHIBITED

   B. U.S. POSITION: IF NECESSARY, OFFICIAL NAME <u>ONLY</u> (NOT UNOFFICIAL NAMES -HOLLAND-, OR ADJECTIVES -ENGLISH) <u>WITH</u> GRANDFATHER CLAUSE MAY BE ACCEPTABLE.

c. NORGE, SUEDE, SWEDEN

5. ARTICLE 10 QUATER

A. GEOGRAPHICAL INDICATION OF SOURCE (APPELLATION OF ORIGIN)

I. DEVELOPING COUNTRY PROPOSALS:

(A) EACH COUNTRY CAN RESERVE 200 GEOGRAPHICAL NAMES IN THAT COUNTRY (PRIOR TO THEIR USE WITH SPECIFIC GOODS) WHICH CANNOT BE USED AS TRADEMARKS IN OTHER COUNTRIES

(I) U.S. POSITION: AGAINST AND SUGGEST MOVING TO ANOTHER FORUM (LISBON AGREEMENT)

(II) SOME WOULD ACCEPT 10-25 NAMES ON SPECIFIC GOODS FOR A LIMITED TIME WITH GRANDFATHER CLAUSE

(B) PROTECTION SHOULD BE GIVEN TO GEOGRAPHICAL INDICATIONS OF SOURCE WHICH HAVE ACQUIRED A REPUTATION IN THE TRADE. THEY SHOULD NOT BE PERMITTED TO BE USED ON GOODS WHICH ARE NOT FROM THAT GEOGRAPHICAL LOCATION IF THE PUBLIC IS MISLED AS TO THE TRUE COUNTRY OF ORIGIN OF THE GOODS

(I) GRANDFATHER CLAUSE

A. PROBLEM: IF USE WAS NOT STARTED IN GOOD FAITH, GRANDFATHER CLAUSE DOES NOT APPLY (FRENCH POSITION)

6. INVENTOR CERTIFICATES

A. USSR WANTS I.C TO BE TREATED SAME AS PATENTS

B. U.S.: OK ONLY IF:

I. LIFE IS SAME AS PATENT. USSR HAS AGREED

II. SUBJECT MATTER COVERAGE IS SAME AS PATENT

III. AVAILABILITY TO CITIZENS AND NON-CITIZENS IS SAME AS PATENTS

7. PREFERENTIAL TREATMENT FOR DEVELOPING COUNTRY NATIONALS

   a. PRIORITY PERIOD

      i. PROBABLY WILL GO AWAY. PCT MAY HAVE SOLVED PROBLEM

      ii. LOWER FEES

         (a) U.S.: POSSIBLY LOWER FEES FOR ALL INDIGENTS

8. APPLICATION OF NEW TEXT

   a. POSSIBLE NEW TEXT WILL PROVIDE THAT ANY COUNTRY THAT ADHERES TO IT CAN APPLY IT TO OTHER COUNTRIES, WHETHER OR NOT OTHER COUNTRY HAS ADHERED TO NEW VERSION

IV. LAW OF THE SEA TREATY

1. BACKGROUND

   A. U.N. CONFERENCE ON LAW OF THE SEA IN 1958 AND 1960

   B. DECEMBER 17, 1970 - U.N. GENERAL ASSEMBLY DECLARED "THE AREA OF THE SEA-BED AND OCEAN FLOOR AND THE SUBSOIL THEREOF, BEYOND THE LIMITS OF NATIONAL JURISDICTION, AS WELL AS ITS RESOURCES, IS THE COMMON HERITAGE OF MANKIND, THE EXPLORATION AND EXPLOITATION OF WHICH SHALL BE CARRIED OUT FOR THE BENEFIT OF MANKIND AS A WHOLE, IRRESPECTIVE OF THE GEOGRAPHICAL LOCATION OF STATES."

   C. NEGOTIATIONS BEGAN IN 1974, WITH FINAL NEGOTIATIONS BEING CONTEMPLATED IN THE SPRING OF 1981 IN NEW YORK, WITH THE FINAL DRAFT BEING PRESENTED IN CARACAS LATER IN 1981.

   D. HOWEVER, REAGAN ADMINISTRATION REPLACED U.S. NEGOTIATORS EARLY IN 1981.

   E. U.S. ANNOUNCED IT WOULD REVIEW WHOLE SITUATION AND WOULD NOT AGREE TO CONCLUDE NEGOTIATIONS UNTIL REVIEW HAD BEEN COMPLETED.

F. NEW U.S. POSITION HAS NOT YET BEEN ANNOUNCED

G. VERY BROAD - INCLUDES

NAVIGATION

WHALING

OIL AND GAS EXPLORATION

SEA-BED MINING

FISHING, ETC.

II. INTERNATIONAL SEA-BED AUTHORITY

A. COUNCIL

1. EXECUTIVE ORGAN OF THE AUTHORITY

2. 36 MEMBER COUNTRIES (SEE P. 33 SPEECH; P. 65-66 TREATY)

a. 4 OF 8 COUNTRIES HAVING LARGEST INVESTMENTS IN SEA, INCLUDING AT LEAST ONE EASTERN EUROPEAN SOCIALIST COUNTRY.

b. 4 COUNTRIES WHO HAVE CONSUMED OR IMPORTED MOST MINERALS FROM SEA INCLUDING AT LEAST ONE EASTERN SOCIALIST COUNTRY.

c. 4 COUNTRIES WHO ARE MAJOR EXPORTERS OF MINERALS FROM SEA, INCLUDING AT LEAST TWO DEVELOPING COUNTRIES.

d. 6 DEVELOPING COUNTRIES.

e. 18 GEOGRAPHICALLY DISTRIBUTED COUNTRIES INCLUDING AT LEAST ONE FROM EACH OF THE FOLLOWING GEOGRAPHICAL REGIONS: AFRICA, ASIA, EASTERN EUROPE (SOCIALIST), LATIN AMERICA, WESTERN EUROPE AND OTHERS.

3. SUMMARY

A. AT LEAST 3 EASTERN EUROPE (SOCIALIST) COUNTRIES

B. AT LEAST 8 DEVELOPING COUNTRIES

C. NO MENTION OF U.S. OR CANADA

B. THE ENTERPRISE

1. "ORGAN OF THE AUTHORITY WHICH SHALL CARRY OUT THE ACTIVITIES IN THE AREA DIRECTLY" INCLUDING "TRANSPORTATION, PROCESSING AND MARKETING OF MINERALS RECOVERED FROM THE AREA."

II. TRANSFER OF TECHNOLOGY

A. ANNEX III

1. SETS FORTH CONDITIONS OF PROSPECTING, EXPLORATION AND EXPLOITATION

2. ORGANIZATION MUST APPLY TO THE AUTHORITY FOR A CONTRACT, SIMILAR TO U.S. GOVERNMENT CONTRACTING PROCEDURES, EXCEPT THAT U.N. IS NOT GIVING YOU MONEY TO PERFORM.

B. ARTICLE 5 (ANNEX III) - TRANSFER OF TECHNOLOGY

1. READ 3, 3(A), 3(B), 3(C), 3(D), 3(E) (P. 35-6 SPEECH; P. 132, TREATY)

2. ALSO 5, (P. 37 SPEACH, P. 133-4 TREATY)

3. ALSO 8, (P. 137 TREATY)

4. ABOVE PROVISIONS APPARENTLY NEGOTIATED WITH NO CONSULTATION OR REFERENCE TO PRIVATE SECTOR TRANSFER OF TECHNOLOGY EXPERTS.

5. LES, APLA, ABA/PTC LEAPNED OF THESE CLAUSES AND EXPRESSED CONCERN.

C. ARTICLE 13 (ANNEX III) FINANCIAL TERMS OF CONTRACTS

1. ONE OBJECTIVE IS TO STIMULATE TRANSFER OF TECHNOLOGY TO THE ENTERPRISE.
2. ANOTHER OBJECTIVE IS TO ENABLE THE ENTERPRISE TO ENGAGE IN SEA-BED MINING EFFECTIVELY "AT THE SAME TIME" AS THE CONTRACTOR.
3. ADMINISTRATIVE COSTS IN PROCESSING AN APPLICATION FOR A CONTRACT IS $500,000. IF COST IS LESS, EXCESS IS REFUNDED.
4. ANNUAL FIXED FEE OF $1,000,000 TO AUTHORITY
5. ROYALTY OF 5% OF MARKET VALUE OF THE PROCESSED METALS EXTRACTED
   A. FOR FIRST 10 YEARS
   B. AFTER THAT, ROYALTY IS 12%
6. ALTERNATIVELY, CONTRACTOR CAN GIVE A SHARE OF THE PROCEEDS TO THE AUTHORITY.

D. OTHER TECHNOLOGY TRANSFER PROVISIONS

1. ARTICLE 27 "STATES, DIRECTLY OR THROUGH COMPETENT INTERNATIONAL ORGANIZATIONS, SHALL PROMOTE THE ESTABLISHMENT OF GENERALLY ACCEPTABLE GUIDELINES, CRITERIA AND STANDARDS, FOR THE TRANSFER OF MARINE TECHNOLOGY . . . TAKING INTO ACCOUNT, IN PARTICULAR, THE INTERESTS AND NEEDS OF DEVELOPING STATES." (P. 43)
2. DOES THIS MEAN ESTABLISHMENT OF A CODE OF CONDUCT SIMILAR TO THE UNCTAD CODE OF CONDUCT?

3. ARTICLE 277 STATES THAT REGIONAL MARINE SCIENTIFIC AND TECHNOLOGICAL CENTERS SHALL, AMONG OTHER THINGS, COMPILE AND SYSTEMATIZE INFORMATION ON
   A. MARKETING OF TECHNOLOGY AND
   B. CONTRACTS AND OTHER ARRANGEMENTS CONCERNING PATENTS

E. CONCLUSION

1. WILL THE COMPULSORY TECHNOLOGY TRANSFER OF THE LAW OF THE SEA TREATY BE ADOPTED FOR OTHER TREATIES TO BE NEGOTIATED?
   A. TREATY ON THE SOUTHERN POLAR REGION
   B. WORLD CONFERENCE ON RADIO TRANSMISSION

V. WHAT IS THE PROBLEM?

A. DEVELOPING COUNTRIES DO NOT HAVE ABILITY

1. TO
   A. DESIGN,
   B. BUILD, OR
   C. OPERATE

   MANUFACTURING FACILITIES FOR MANY MODERN PRODUCTS, OR

2. TO
   A. MARKET,
   B. DISTRIBUTE OR
   C. SERVICE

   THESE PRODUCTS.

B. WHY?

1. LACK OF EDUCATED OR TRAINED POPULACE.
2. LACK OF COMPONENT VENDORS.
3. LACK OF DISTRIBUTION CHANNELS.
4. LACK OF CAPITAL.
5. LACK OF ABILITY OF LOCAL SOCIETY TO USE THE PRODUCTS.
   - A. NEED ROADS FOR CARS.
   - B. NEED ELECTRICITY GENERATION AND DISTRIBUTION FOR ELCTRICALLY DRIVEN MACHINES, APPLIANCES.
   - C. NEED COMMUNICATIONS NETWORK FOR NATIONAL UTILIZATION OF INFORMATION.

V. WHAT DEVELOPING COUNTRIES SEE AS A SOLUTION.

A. FORCE TECHNOLOGY OWNING NATIONS TO TRANSFER TECHNOLOGY TO DEVELOPING COUNTRIES ON REGULATED CONDITIONS, FAVORABLE TO THE DEVELOPING COUNTRIES.

B. DO (A) BY MEANS OF INTERNATIONAL MULTI-GOVERNMENTAL NEGOTIATION OF TREATIES AND CODES OF CONDUCT, USUALLY IN A U.N. FORUM.

C. (A) & (B) INITIATED AND ENCOURAGED BY U.N. EMPLOYEES, NATIONAL GOVERNMENT EMPLOYEES AND VARIOUS CONSULTANTS, MANY WITH ACADEMIC ECONOMICS BACKGROUND, BUT RARELY WITH ANY INDUSTRIAL DEVELOPMENTAL OR TECHNOLOGY TRANSFER EXPERIENCE.

VI. IF DEVELOPING COUNTRIES GOT ALL TREATIES, CODES AND REGULATIONS THEY WANT, WOULD HAVE LITTLE, IF ANY, POSITIVE IMPACT ON THEIR ECONOMY, SOCIETY OR PEOPLE

A. INDUSTRIAL TECHNOLOGY IN MARKET-ORIENTED DEVELOPED COUNTRIES IS NOT OWNED BY GOVERNMENTS, BUT BY NON-GOVERNMENT ENTITITES.

1. EVEN WHERE GOVERNMENTS "OWN" RIGHTS, DO NOT HAVE

KNOWHOW TO MAKE TECHNOLOGY COVERED BY PATENT RIGHTS WORK AND MAKE REAL PRODUCTS.

EXAMPLE: ITEK AERIAL CAMERAS
MILITARY VEHICLES

HOW MANY PRODUCTS CAN DEVELOPED COUNTRY GOVERNMENTS MANUFACTURE AND DISTRIBUTE?

B. WHILE SOME TECHNOLOGY WILL BE TRANSFERRED IN ANY EVENT, MUCH MORE WOULD BE TRANSFERRED IF WERE MORE INCENTIVE TO DO SO.

1. PARTICULARLY FOR THE MEDIUM AND SMALLER COMPANIES WHO DO NOT HAVE LARGE INTERNAL STAFFS OF LICENSING PEOPLE, LAWYERS OR ECONOMISTS.

A. ITEK EXAMPLE

B. $15 MILLION SALES EXAMPLE

C. COMPANIES HAVE CERTAIN PRIORITIES.

1. TECHNOLOGY TRANSFER IS NOT USUALLY AMONG THEM.

2. EVEN THE BIGGEST COMPANIES CANNOT DO EVERYTHING THAT THEY SERIOUSLY CONSIDER.

3. ITEMS MEETING MOST OF COMPANY'S GOALS ARE SELECTED.

4. TOO MUCH MANPOWER REQUIRED TO TRANSFER TECHNOLOGY TO DEVELOPING NATIONS TO WARRANT ATTEMPTING TO DO SO IN FACE OF DRAWN OUT NEGOTIATIONS, RESTRICTIONS, REGULATIONS, ETC.

5. WHY SHOULD ITEK ATTEMPT TO TRANSFER TECHNOLOGY TO DEVELOPING COUNTRIES?

A. NO PATENTS IN ANY DEVELOPING COUNTRIES.

B. FEW TRADEMARKS - MERELY TO PROTECT EXPORT MARKETS IN MOST CASES.

C. DON'T HAVE THE MANPOWER TO WASTE ON LONG, EXPENSIVE NEGOTIATIONS.

D. WOULD NEED LARGE INCENTIVES TO TRANSFER TECHNOLOGY TO DEVELOPING COUNTRIES - WHICH ARE NOT THERE AT PRESENT.

E. NOT UNSYMPATHETIC TO DEVELOPING COUNTRIES.

D. PATENTS IN DEVELOPING COUNTRIES (PP. 44-47)

1. BANGLADESH (8TH MOST POPULOUS COUNTRY IN WORLD)

A. 154 PATENT APPLICATIONS FILED PER YEAR.

B. 3 PATENT APPLICATIONS FILED PER WEEK.

2. INDIA

A. 3,093 PATENT APPLICATIONS FILED PER YEAR.

B. 59 PATENT APPLICATIONS FILED PER WEEK.

3. JAPAN

A. 161,016 PATENT APPLICATIONS FILED PER YEAR.

B. 3,100 PATENT APPLICATIONS FILED PER WEEK.

4. LUXEMBOURG

A. 2,384 PATENT APPLICATIONS FILED PER YEAR.

B. 46 PATENT APPLICATIONS FILED PER WEEK.

5. IF ALL 1,000 LARGEST U.S. COMPANIES DID ALL THE PATENT APPLICATION FILING IN INDIA, WOULD BE THREE PER YEAR.

6. WHY?

A. OFFICE COPIER EXAMPLE.

I. 10 PATENTABLE INVENTIONS (P. 46)

II. $1,000 PER INVENTION PER COUNTRY.

III. 10 COUNTRIES = $100,000.

VI. CONCLUSION

A. DEVELOPING COUNTRIES WILL NOT BE HELPED SIGNIFICANTLY BY NEW TREATIES, ETC.

B. DEVELOPING COUNTRIES SHOULD DEVELOP INCENTIVES FOR TECHNOLOGY TRANSFER

1. INCLUDES STRONG PATENT SYSTEM

C. IRELAND

D. LES PROPOSALS