

## **19th Session of the Intergovernmental Committee on IP and Genetic Resources, Traditional Knowledge and Folklore**

Report by Benedetta Ubertazzi  
Member of AIPPI Q166

### **Preliminary Remarks**

The 19th Session of the Intergovernmental Committee (IC) on IP and Genetic Resources (GRs), Traditional Knowledge (TK) and Folklore (F) was held from July 18 to 22, 2011 at the WIPO headquarters in Geneva. In addition to the Member States delegations, several representatives of indigenous groups as well as nongovernmental organizations involved with intellectual property matters and indigenous rights also participated in the plenary sessions.

The discussions based on the Agenda prepared by the WIPO Secretariat began with several formal items and were followed by a panel presented by the representatives of indigenous groups.

The substantive discussion on TK, traditional cultural expressions (TCEs) and GRs began on Monday afternoon and lasted until Friday. The main focus of these discussions was the renewal of the IC's mandate on IP and GRs, TK and F, as well as the texts prepared in the previous intersessional working groups.

### **Renewal of the IC mandate**

As for the renewal of the IC's mandate, the Chair directed the "friends of the Chair" to prepare the renewal text which was to be agreed upon and transmitted to the Fortieth Session of the WIPO General Assembly, taking place from September 26 to October 5, 2011 (hereinafter: GA). With this purpose in mind with the help of the friends of the Chair the IC adopted a decision according to which i.a. (i) the IC will, during the next budgetary biennium (2012/2013), "expedite its works on text based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs". (ii) The IC will follow a clearly defined work program making initial provision for four sessions in the year 2012, three of which will be designated by theme (February on GRs, April/May on TK, July on TCEs). (iii) The IC will submit to the 2012 GA the text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs. The GA "will take stock of and consider the text(s), progress made and decide on convening a Diplomatic Conference, and will consider the need for additional meeting".

### **Working Method for the Texts on TCEs, TK and GRs**

As for the texts on TCEs, TK and GRs, an introductory debate took place during the plenary session on Monday afternoon during which participants experienced some difficulty in simplifying the complex documents transmitted to the 19<sup>th</sup> session of the IC by the previous session with the aim of further evaluation. (i) In view of this, informal open-

ended drafting groups worked on these texts in the evenings as well, with the aim of reducing the number of options available and preparing more concise texts for the approval of this IGC. (ii) Furthermore, with the same aim of reducing the number of options and of preparing for the approval of this IC more concise texts (for example, by avoiding the frequent use of internal brackets), the Chair named as “facilitator” a delegate from New Zealand responsible for the replacement of Articles 1, 2, 3 and 5 of the current document on TCEs on “Subject Matter of Protection”, and respectively “Beneficiaries”, “Scope of Protection” and “Exceptions and Limitations” with the options for those Articles together with their associated comments and policy consideration. (iii) Also, the Chair named as facilitators two delegates of Canada and respectively of Colombia, responsible for the replacement of Articles 1, 2, 3 and 6 of the current document on TK on “Subject Matter of Protection”, and respectively “Beneficiaries”, “Scope of Protection” and “Exceptions and Limitations” with the options for those articles together with their associated comments and policy consideration. (iv) Finally, the Chair named as facilitators two delegates of India and respectively of Australia, responsible for the partial replacement of the current document on “Draft Objectives and Principles Relating to Intellectual Property and Genetic Resources” with the text presented by the facilitators. (vi) The different States were able to address the facilitators throughout their work whereas the indigenous peoples were prevented from doing so, rather, needing the support of at least one Member State in order to present a proposal.

Beginning Thursday afternoon and running throughout Friday the texts prepared by the facilitators on TCEs, TK and GRs were discussed in the plenary session. In line with the suggestions of the Chair, the discussion was not aimed at the drafting of the text nor at proposing new changes to the texts presented by the facilitators. Rather, the discussion was aimed at presenting general comments on the structure and content of the texts prepared by the facilitators. During the debates in the plenary session, instead of proposing general amendments to the texts the delegations congratulated the facilitators for their work (see, however, the specific points addressed already in the plenary by member States in relation to the GRs text). However, delegations indicated they would require more time to study the texts and propose amendments in the next session of the IC. In contrast, the indigenous people in attendance mostly demonstrated their dissatisfaction with the texts already in the plenary.

### **Text on TCEs**

Regarding TCEs, the IC decided the following. (i) First, that the document on “the Protection of Traditional Cultural Expression: Draft Articles” will be transmitted as a working document to the next session of the IC in the same form as it was from the eighteenth session to this session with regards to: “Objectives”, “General Guiding Principles”, Article 4 on “Collective Management of Rights”, Article 6 on the “Term of Protection”, Article 7 on “Formalities”, Article 8 on “Sanctions, Remedies and Exercise of Rights”, Article 9 on “Transitional Measures”, Article 10 on the “Relationship with Intellectual Property Protection and Other Forms of Protection, Preservation and Promotion”, and Article 11 on “National Treatment”. (ii) Second, Articles 1, 2, 3 and 5 of this document on “Subject Matter of Protection”, and respectively “Beneficiaries”, “Scope of Protection” and “Exceptions and Limitations” will be replaced by the options for those Articles together with their associated comments and policy consideration prepared by the facilitator. (iii) Third, the Committee also decided that the document as amended will be included as part of the IC report to the WIPO GA. (iv) Fourth, the IC decided that the document on “Like Minded Countries Contribution to the Draft Articles on the Protection of

Traditional Cultural Expression” prepared by the Representatives of Algeria, Angola, Bangladesh, Colombia, Egypt, India, Indonesia, Malaysia, Myanmar, Namibia, Pakistan, Peru, South Africa, Tanzania, Thailand, Zimbabwe (hereinafter: like minded countries) in Bali on June 30, 2011, will also be transmitted as a working document to the next session of the IC.

Structurally, the text on TCEs presented by the facilitators is in a schedule format. (i) The first two sessions of the schedule present the options of each relevant Article, which have been reduced to only two in number with efforts made to eliminate all other options as well as almost all brackets. The third session of the schedule is dedicated to the facilitators’ comments. (ii) During the plenary session the delegations congratulated the facilitators for their work, although indicated that they required more time to study the texts and propose amendments at the next IC session after its eventual renewal of the mandate by the GA. (iii) In contrast, the indigenous people demonstrated their dissatisfaction with the texts on two main points. Firstly, where the text includes among beneficiaries ‘individuals’, as well as ‘families’ and ‘nations’, rather than only ‘communities’ (the terminology supported by the indigenous people). Secondly, where the text refers to ‘national law’ rather than recalling ‘customary law’.

### **Text on TK**

Regarding TK, the IC decided the following. (i) First, that the document on “the Protection of Traditional Knowledge: Draft Articles” will be transmitted as a working document to the next session of the IC in the same form as it was from the eighteenth session to this session with regards to: Article 4 on “Sanctions, Remedies and Exercise of Rights”, Article 5 on “Administration of Rights”, Article 7 on “Term of Protection”, Article 8 on “Formalities”, Article 9 on “Transitional Measures”, Article 10 on “Consistency with the General Legal Framework”, Article 11 on “National Treatment and Other Means of Recognising Foreign Rights and Interests” and Article 12 on “Trans-boundary Cooperation”. (ii) Second, Articles 1, 2, 3 and 6 of this document on “Subject Matter of Protection”, and respectively “Beneficiaries”, “Scope of Protection” and “Exceptions and Limitations” will be replaced by the options for those articles together with their associated comments and policy consideration prepared by the facilitators. (iii) Third, the Committee also decided that the document as amended will be included as part of the IC report to the WIPO GA. (iv) Fourth, the IC decided that the document on “Like Minded Countries Contribution to the Draft Articles on the Protection of Traditional Knowledge” prepared by the like minded countries in Bali on June 30, 2011, will also be transmitted as a working document to the next session of the IC.

Structurally, the text on TK presented by the facilitators is in a schedule format. (i) The first two sessions of the schedule present the options of each relevant Article, which have been reduced to only two in number with efforts made to eliminate all other options as well as almost all the brackets. The third session of the schedule is dedicated to the facilitators’ comments. (ii) During the plenary session the delegations congratulated the facilitators for their work, meanwhile indicating that they required more time to study the texts and propose amendments at the next IC session after its eventual renewal of the mandate by the GA. (iii) The indigenous people did not demonstrate any particular strong feeling with regard to this text.

## Text on GRs

Regarding GRs, the IC decided the following. (i) First, that the document on “Draft Objectives and Principles Relating to Intellectual Property and Genetic Resources” will be transmitted as a working document to the next session of the IC. In its present form, as transmitted to this session from the eighteenth, the document is not yet structured quite as clearly as the texts for TCEs or TK, and currently lacks an explicit body of Articles beyond the general principles. (ii) Second, this document will be presented as a working document to the next session of the IC as amended by the text brought before the IC by the facilitators and incorporating the amendments thereto made by the IC in the plenary. Amendments by the facilitators were made only with regard to the general objectives due to the continued omission of Articles. (iii) The Committee also decided that the document as amended will be included as part of the IC report to the WIPO GA. (iv) Furthermore, as for the document on “Options for future Work on Intellectual Property and Genetic Resources”, the IC requested the Secretariat finalise the activities referred to in “Cluster C” on “Options on Mutually-Agreed Terms for Fair and Equitable Benefit-Sharing”. At the same time the IC requested the Secretariat re-issue the parts of the same document related to “options on defensive protection of genetic resources” (Cluster A) and, respectively, “options on disclosure requirement” (Cluster B). (v) Moreover, the IC decided that the document on “Like Minded Countries Contribution to the Objectives and Principles on the Protection of Genetic Resources and Preliminary Draft Articles on the Protection of Genetic Resources” prepared by the like minded countries in Bali on June 30, 2011, will also be transmitted as a working document to the next session of the IC.

Structurally, the text on GRs presented by the facilitators is in a schedule format albeit one that is slightly different from the schedule format for TCEs and TK. (i) The first session of the schedule concerns the “original text analysis” whereas the second session of the schedule is dedicated to the “revised text” as proposed by the facilitators. (ii) During the plenary session the delegations congratulated the facilitators for their work, whilst at the same time highlighted their need for more time in order to study the texts and propose amendments at the next IC session after its eventual renewal of the mandate by the GA. (iii) Furthermore, the Member States regretted the fact that due to the difficult negotiations of the text on GRs, the resulting text is now at a more preliminary stage than that of the texts on TCEs and TK. In truth, the three texts should have advanced at the same speed. Thus, Member States suggested the next session of the IC dedicate some effort to enabling the GRs text to advance to the same level as the TCEs and TK texts. (iv) Moreover, Member States during this time entered into specific points regarding the drafting of the text by highlighting the fact that its format was less clear than that of the texts delivered by the facilitators on TCEs and TK, therefore suggesting that at the next IC session the format of the text on GRs should be adapted to correspond with the model of the texts on TCEs and TK. (v) Also, several Member States criticised the text’s adoption of the notion of “country providing”, rather than of “country of origin”. The reference to country providing is accompanied by a footnote clarifying that “country providing is the country of origin or [country] that has acquired the genetic resources/with traditional knowledge in accordance with the CBD”. However, the several Member States that criticised the notion of country providing highlighted the fact that the notion of country of origin should be inserted directly in the text rather than appearing in a footnote, and at the same time should be adopted in place of country providing. Indigenous peoples also expressed their concern in this regard. (vi) Yet, the indigenous people expressed their satisfaction in relation to the part of the text that refers to national law as also being inclusive of

“customary norms”. (vii) In sum, the resulting text refers only to objectives and principles regarding GRs. Relevant aspects still to be discussed in connection with this topic, prior to reaching a finalised document with explicit definitions and Articles, include: the actual role of intellectual property in the protection of genetic resources, the mandatory disclosure of genetic resources in patent applications, prior access authorizations and benefit sharing.

### **Final Remarks**

A copy of the report with the decisions adopted by the 19th ICG is enclosed for prompt reference.

Finally, it is noted that AIPPI engaged in informal consultations with the various delegations in attendance, as well as contributed to the promotion of AIPPI's 2011 Hyderabad Forum & Exco, with special attention given to its Workshop IV on the topic of how to reconcile indigenous rights with the protection of intellectual property rights.

Upon renewal of the IC mandate by the GA, the next thematic IC session on IP and GRs, TK and F is scheduled to take place on the theme of GRs during February 2012.

July 2011

**WIPO General Assembly  
Forty-Ninth Session  
September 26 to October 5, 2011**

**Matters Concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore**

**Agenda Item 26**

**DECISION**

Bearing in mind the Development Agenda recommendations, the WIPO General Assembly agrees that the mandate of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore be renewed as follows:

(a) The Committee will, during the next budgetary biennium (2012/2013), and without prejudice to the work pursued in other fora, expedite its work on text-based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs.

(b) The Committee will follow, as set out in the Annex, a clearly defined work program, based on sound working methods, for the 2012/2013 biennium. This work program will make provision initially for four sessions of the IGC, three of which will be thematic, as detailed in the future work program of the IGC, taking into account sub paragraph (d) with regard to the possible consideration by the General Assembly in 2012 of the need for additional meetings.

(c) The focus of the Committee's work in the 2012/2013 biennium will build on the existing work carried out by the Committee and use all WIPO working documents, including *WIPO/GRTKF/IC/19/4*, *WIPO/GRTKF/IC/19/5*, *WIPO/GRTKF/IC/19/6* and *WIPO/GRTKF/IC/19/7*, which are to constitute the basis of the Committee's work on text-based negotiations, as well as any other textual contributions by Members.

(d) The Committee is requested to submit to the 2012 General Assembly the text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs. The General Assembly in 2012 will take stock of and consider the text(s), progress made and decide on convening a Diplomatic Conference, and will consider the need for additional meetings, taking account of the budgetary process.

(e) The General Assembly requests the International Bureau to continue to assist the Committee by providing Member States with necessary expertise and funding, in the most efficient manner, of the

participation of experts from developing countries and LDCs, taking into account the usual formula.

(f) With a view to enhancing the positive contribution of observers, the General Assembly invites the Committee to review its procedures in this regard. To facilitate this review, the General Assembly requests the secretariat to prepare a study outlining current practices and potential options.

[Annex follows]

Date	Activity
February 2012	IGC 20 (GRs). Undertake text based negotiations with a focus on considering options for a draft legal text as detailed in WIPO/GRTKF/IC/19/7. In developing this text the IGC should also carefully consider texts already submitted by Members. Duration 8 days, including Saturday.
April/May 2012	IGC 21 (TK) Focus on 4 key Articles viz Subject matter of Protection, Beneficiaries, Scope of Protection and Limitations and Exceptions.
July 2012	IGC 22 (TCEs) Focus on 4 key Articles viz Subject matter of Protection, Beneficiaries, Scope of Protection and Limitations and Exceptions
September 2012	WIPO General Assembly
2013	IGC 23 Consider decision of General Assembly and take stock of further work required to finalize the text/s.