



**Intergovernmental Committee on Intellectual Property and Genetic Resources (GR),
Traditional Knowledge (TK) and Folklore
28th Session, July 7 to 9, 2014 (Cross-Cutting Themes)**

Report by Konrad Becker, Chairman Q166

Based on the renewed mandate of the General Assembly for the biennium 2014/2015, the Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (GRTKF) is supposed to move forward in text-based negotiations to finally produce an agreed text for an international legal instrument. After a 5-day session dealing with Genetic Resources (GR) in February and a 10-day session in April dealing with Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE), a “cross-cutting issues” and stock-taking session was convened for three days in July at the WIPO headquarters in Geneva.

Ambassador Cook from Jamaica, chairing this IGC now for some years already, had prepared a non-paper at the end of the April session to put forward some points for harmonisation of the three texts for GR, TK and TCE, namely, (1) the meaning of “traditional”, (2) the beneficiaries of protection, in particular, the role of states or “national entities”, (3) the nature of the rights, including the meanings of “misappropriation” and “misuse”, and (4) the treatment of publicly available and/or widely diffused TK and TCE. After the opening statements on Monday, the work was again performed in a small group of expert negotiators and agreed “facilitators” combining representatives of each (informal) country group and particular countries: African, Asian-Pacific, Latin American Group, “like-minded countries” (Indonesia and others), “Group B” (Japan and others), Central European and Baltic States, China, EU, US, Russia and representatives of an indigenous caucus (without decision-making power). Delegates in the main room could listen to some of the meetings but not contribute; others were held behind closed doors in smaller groups of representatives.

In parallel, a seminar chaired by indigenous groups was held, and discussions concerning further aspects of general importance were conducted in the few remaining plenary session

hours. Notably there is no more money for funding the travel costs of indigenous group representatives in the corresponding voluntary fund financed by gifts from member states, and the hope is that WIPO will finance the fund out of the general budget. No formal decision could be taken at the IGC, but the plenary took note of the proposal.

The 28th session was closed without a substantial decision. The extended negotiations had not led to any convergence of the positions, and no formal proposal could be made to the General Assembly. The result of the informal discussions in the small negotiating group will not be published since they were “informal” only, but they might be used in future talks.

There was no substantial discussion and no decision taken on some more practical aspects for IP-minded people (and tabled at the session), such as creating data bases of TK, making efficient use of generally available information on genetic resources and traditional knowledge associated therewith to avoid granting invalid patents, and defining the terms of reference for a study by the secretariat on measures related to the avoidance of the erroneous grant of patents and compliance with existing access and benefit-sharing systems.

The plenary could even not agree on a particular proposal how to shape next year's work. As a minimum consensus this means that the work of the IGC will be continued in 2015, probably again in three sessions in February, April and June 2015, with the aim of proposing a way forward to the General Assembly 2015 which will have to decide to renew (or skip) the mandate. The discussion culminated in whether or not a high-level ambassadorial meeting should be included in the program, and if a diplomatic conference should be convened. Since the difference in negotiating positions on basic questions is still substantial, any conference at a higher level is doomed to fail. A break-through would require that the main players would finally show a readiness to enter into true compromises. This did not occur during the week.

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