



**Intergovernmental Committee on Intellectual Property and Genetic Resources (GR),  
Traditional Knowledge (TK) and Folklore  
Second Intersessional Working Group, February 21 to 25, 2011 (TK)  
Third Intersessional Working Group, February 28 to March 4, 2011 (GR)**

**Report by Konrad Becker, Chairman Q166**

The second and third intersessional Working Group Meetings of the Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (GRTKF) were held from February 21 to 25, 2011 and February 28 to March 4, 2011, respectively, at the WIPO headquarters in Geneva. Each WIPO member state, the international intergovernmental organisations and each international non-governmental organisation could send an expert.

Based on a mandate of the 16<sup>th</sup> Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (GRTKF), the experts started text-based discussions preparing a legal international instrument on the topics, centred on the objectives and principles, but also on articles of a possible agreement.

The discussions were quite constructive, both in the plenary and the sub-groups, although vast differences in opinion could not be overlooked.

Main topic in TK discussions were the definition of traditional knowledge and the criteria for protection eligibility, which resulted in a text comprising different options. Scope of protection and the proposed article on sanctions, remedies and exercise of rights also gave rise to options with substantial differences in content, whereas proposed articles concerning beneficiaries of protection, administration of rights, exceptions and limitations, term of protection, formalities, transitional measures, relations with other IP agreements, and trans-boundary cooperation were less controversial. The core question of national treatment and other means of recognizing foreign rights and interests could not be solved.

The discussion concerning IP and Genetic Resources was limited to objectives and principles, and did not reach the level of an article-based legal instrument. The objectives deal with access and use of genetic resources, requiring prior informed consent and fair and equitable sharing of benefits, prevention of erroneous patents for subject matter not being

novel, support for patent offices in the determination of patentability, relations with other IP agreements, and the role of IP in promoting innovation, and transfer and dissemination of technology. Other options were likewise discussed, such as a mandatory requirement of source disclosure, databases to support the patent granting process, and possible content of agreements on access and equitable benefit sharing.

The texts elaborated for TK and GR will now be submitted to the next IGC on GRTKF, which meets from May 9 to 13, 2011 in Geneva. It is doubtful whether the IGC will find the texts to be ready for further action, and controversial debates are expected. A further session of the IGC is planned for July of this year, in order to meet the goal of submitting an agreed text to the WIPO General Assembly in the fall. The General Assembly will then have to decide, whether a diplomatic conference should be convened, or the mandate of the IGC extended.

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