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INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

Fifth Session

Geneva, July 7 to 15, 2003

ISFAHAN DECLARATION

Documents submitted by the Delegation of the Islamic Republic of Iran

1. In a letter dated July 7, 2003, the Permanent Mission of the Islamic Republic of Iran to the United Nations Office and other International Organizations in Geneva submitted a document entitled "Isfahan Declaration."
2. The document is reproduced in the Annex.
3. *The Intergovernmental Committee is invited to take note of this document, and to take decisions on the proposals contained in the Annex to it.*

[Annex follows]

ANNEX

ISFAHAN DECLARATION

ADOPTED BY THE
WIPO INTERREGIONAL SEMINAR ON INTELLECTUAL PROPERTY AND GENETIC
RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

Isfahan, Islamic Republic of Iran
June 16 to 18, 2003

Reflecting the wish of participants in the seminar to express some shared perspectives that arose during their discussions, the participants developed the following declaration:

1. The WIPO Interregional Seminar on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, took place in Isfahan, the Islamic Republic of Iran, from June 16 to 18, 2003. Participants and speakers came together from Bangladesh, Bhutan, Cambodia, Colombia, Fiji, Ghana, India, Indonesia, the Islamic Republic of Iran, Jamaica, Kenya, Lao People's Democratic Republic, Malaysia, Nepal, Nigeria, Pakistan, the Philippines, Qatar, the Republic of Korea, Serbia and Montenegro, Sri Lanka, Sweden, Syria, Tajikistan, Trinidad and Tobago, and Viet Nam, as well as from the Economic Cooperation Organization and the United Nations Permanent Forum on Indigenous Issues. The host government and the World Intellectual Property Organization (WIPO) provided the meeting secretariat. Participants have agreed on the following as an expression of key themes that emerged in the discussion at the Seminar:

Appreciation for the host country and for the authorities and people of Isfahan

2. Participants expressed their deep gratitude and appreciation for the Government of the Islamic Republic of Iran, in particular the State Organization for Registration of Deeds and Properties and the Iranian Handicrafts Organization, for the positive initiative and the contribution to international debate and cooperation represented by the Seminar. The participants appreciated the participation and support of high dignitaries and senior officials of the Islamic Republic of Iran, including:

- H.E. Mr. Akbar Hashemi Rafsanjani, former President of the Islamic Republic of Iran, and the Head of the Expediency Council;
- H.E. Mr. Mohammad Reza Alizadeh, Deputy Head of the Judiciary and Head of the State Organization for Registration of Deeds and Properties;
- H.E. Seyed Reza Zavareie, Deputy Head of the Council of Guardians;
- Mr. Seyed Mahmud Hosseini, Governor of Isfahan; and,
- Mr. Yadollah Tahernejad, Deputy Minister of Industry and President, Iranian Handicrafts Organization.

3. The participants also expressed special thanks to the authorities and the people of the historic and beautiful city of Isfahan, for the warm hospitality and practical support provided, and paid tribute to the remarkable achievement of preserving the historic treasures of the city of Isfahan. This heritage is at once a powerful expression of the distinctive culture of Iran and an important component of the common cultural and intellectual heritage of humankind. Isfahan accordingly proved to be an inspiring venue for a productive and wide-ranging discussion on the preservation and protection of traditional cultural heritage.

4. This visit to Isfahan, and the warm cooperation and stimulating dialogue that took place, will remain a pleasant and abiding memory for all participants. The cultural and intellectual riches of Isfahan were an eloquent testimony of the importance and value of showing respect for traditional cultures and for distinct intellectual traditions, including through appropriate legal protection and preservation.

5. Reinforcing this observation, the experience of a number of countries reported to the Seminar was that the craft sector, and other traditional industry sectors based on traditional cultural expressions, traditional knowledge and genetic resources, made a significant contribution to the national economy. Accordingly, effective IP protection of this material was an important aspect of ensuring the economic development and social well-being of these countries.

Contribution of WIPO

6. Participants also expressed appreciation for the role of WIPO in initiating and undertaking the Seminar, and for its continuing engagement with the issues concerning intellectual property (IP) and genetic resources (GR), traditional knowledge (TK) and traditional cultural expressions (TCEs) or folklore. The commitment of WIPO to finding legal and practical solutions for the protection of TK and TCEs was noted with appreciation, and, in welcoming the re-election of Dr. Kamil Idris as Director General of WIPO, participants expressed the hope that this would lead to continued strong support for work in this area. Participants urged the Member States and Secretariat of WIPO to step up their activities to find effective and practical forms of intellectual property protection for TK and TCEs, and IP aspects of GR.

Future directions for WIPO activities

7. Noting that the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) and the WIPO General Assembly were due shortly to make fundamental decisions concerning the future work of WIPO in this area, participants noted with appreciation the work already achieved by the IGC, and recommend:

- that work on GR, TK and TCE issues continue to be covered within WIPO by a dedicated, high-level body such as the IGC;
- that this work should build on the detailed information assembled by the IGC, and move decisively towards clarifying the policy options for protection and expressing those policy options in the form of clear, concrete outcomes; such outcomes may take the form of models, principles, guidelines and recommendations, as the basis for the consensus

development of effective international legal mechanisms for the protection of TK and TCEs, and IP aspects of GR;

- that this work should be based on the active and extensive consultation with all stakeholders, especially the owners and custodians of TK, TCEs and GR and Indigenous and local communities, and that Member States, civil society organizations and representatives of Indigenous and local communities should play a key role in facilitating this consultation;
- that capacity-building activities should be increased, based on the development of information and practical materials, and information and technical support made widely available to owners and custodians of TK, TCEs and GR, as well as for cultural heritage documentation and recording institutions, museums and archives, as far as possible in national and community languages; that such capacity-building should focus both on increasing practical capacity to protect TK and TCEs and to negotiate IP-related access conditions concerning GR, but also to engage actively in policy debate and to put forward community-based proposals for legal and policy initiatives;
- that the United Nations Permanent Forum on Indigenous Issues should act as a focal point for coordination within the United Nations system on IP issues concerning Indigenous people, and WIPO should work in cooperation with the Permanent Forum to promote understanding of these issues and to ensure that WIPO's continuing work takes full account of Indigenous perspectives;
- that WIPO should aim at delivering tangible outcomes in this area as an immediate objective, and these outcomes should comprise an integrated package of capacity-building tools, policy statements, and legal mechanisms; the necessary resources should be provided to ensure that this can be achieved as a priority.

Substantive issues: policy objectives and scope of protection

8. Participants underscored that greater clarity concerning the various policy objectives for IP protection of TK and TCEs, and of IP aspects of GR, would promote more effective protection, would focus the policy debate and would help strengthen international recognition of the IP protection of TK and TCEs and IP aspects of GR. Similarly, greater clarity concerning public policy objectives for such protection would promote more effective policymaking at the national level, and would help decision-making on such IP at the regional, inter-regional and international level. The discussion highlighted distinctions and interdependencies between IP forms of protection and the notions of preserving or safeguarding of cultural heritage, as well as the distinction between an approach based on private rights (including collective rights) and a public-law approach, in which state authorities had a more direct role in ensuring protection. Participants also noted the need to give due weight to collective rights and the broader public interest when applying IP protection to TK, TCEs and GR.

9. For example, the options for IP protection of TCEs was a particular theme at the seminar, and the objectives for protection identified included protection against:

- copying, reproduction, distortion and adaptation of TCEs without authorization;
- commercial use of TCEs without authorization;
- culturally offensive or degrading use of TCEs, including violation of customary laws and protocols governing the use of TCEs; and
- misleading or deceptive commercial behaviour suggesting a connection with or authorization by a local or indigenous community.

The development of positive rights to prevent such unauthorized or illegitimate use of TCEs would form a strong basis for custodians of TCEs actively to exercise their interest in their TCEs. A common theme for the protection of TK, TCEs and GR was that in each case it should aim especially to create a framework for equitable benefit -sharing and the exercise of prior informed consent concerning access to and use of such material.

Substantive issues: national and international mechanisms for protection

10. In considering the legal framework for IP protection of TK, TCEs and GR, participants stressed that it was necessary to explore the full range of possible legal mechanisms at the national level, including *suigeneris* approaches where appropriate to national needs. Participants also noted the need for the development of an international framework for recognition of these national legal systems. In view of the urgency of taking steps to safeguard the interests of holders and custodians of TK, TCEs and GR, participants stressed that all available IP mechanisms should be used to the fullest extent in the immediate term, even where policy goals included development of *suigeneris* systems, especially given the likely time -frame for the development and implementation of new legal mechanisms. For example, the forms of legal protection for TCEs that were analyzed during the Seminar and had been successfully used by some communities included geographical indications, collective and certification marks, copyright and related rights (including moral rights aspects and *suigeneris* approaches within copyright law), and other industrial property rights. The strategies for protection included both positive strategies (through the active exercise of IP rights on TCE, TK or GR subject matter) and defensive strategies (measures to prevent or invalidate third parties' illegitimate IP rights), and it was noted that these strategies could operate in conjunction. Participants also proposed that the WIPO Secretariat prepare an analysis of the full range of protection of TK, TCEs and GR that is available in the context of the IP treaties administered by WIPO.

Substantive issues: holistic approach to subject matter, and need for consensus

11. Participants stressed that the subject matter of TK, TCEs and GR is integrally inter-related, and should be seen in an holistic context, so that any form of protection that is developed or applied takes account of the relationship between these different aspects of traditional heritage. This especially entails giving due consideration to the values and customs of the societies and communities that identify with and have developed TK, TCEs and GR. Even if distinct forms of legal protection may be employed to protect particular aspects of TK, TCEs and GR, the policy debate and the development and adaptation of new forms of protection should respond to this need for an holistic approach and sensitivity to the needs and expectations expressed by custodians of TK, TCEs and GR. Participants accordingly stressed the need for WIPO to continue its approach of using one distinct, dedicated forum to advance its work in this area, with the full and effective participation of the traditional holders and custodians of TK, TCEs and related GRs.

12. Participants observed that concerns about unauthorized or illegitimate use of TK, GR and TCEs, and the need for enhanced protection of this material, are not limited to any particular region or jurisdiction, but represent a common challenge for the international community. The active involvement of the wide range of countries in international developments in this area should therefore remain a high priority, and participants urged that every effort should be made to develop solutions that attract consensus support, as the basis for effective implementation internationally. Participants urged WIPO to extend every effort

to develop and build upon international consensus in this important area, so that equitable and effective solutions are available for traditional and Indigenous communities world-wide.

[End of Annex and of document]