

# WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION  
GENEVA

## WIPO GENERAL ASSEMBLY

### Thirty-First (15<sup>th</sup> Extraordinary) Session Geneva, September 27 to October 5, 2004

MATTERS CONCERNING THE INTERGOVERNMENTAL COMMITTEE ON  
INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL  
KNOWLEDGE AND FOLKLORE: PROGRESS REPORT

*Document prepared by the Secretariat*

1. At its Thirtieth Session, held from September 22 to October 1, 2003, the WIPO General Assembly discussed the work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, and reached the following decision:

- (i) the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) will continue its work for the next budgetary biennium on questions included in its previous mandate,
- (ii) its new work will focus, in particular, on a consideration of the international dimension of those questions, without prejudice to the work pursued in other fora, and
- (iii) no outcome of its work is excluded, including the possible development of an international instrument or instruments.

2. The General Assembly also urged the IGC to accelerate its work and to present a progress report to the session of the General Assembly in September 2004, and requested the International Bureau to continue to assist the IGC by providing Member States with necessary expertise and documentation (WO/GA/30/8, paragraphs 93 and 94).

3. The present document constitutes the 'progress report' to the General Assembly that is required in paragraph 94 of this decision.

4. The IGC has met once since the General Assembly renewed its mandate for the 2004-2005 biennium, holding its sixth session from March 15 to 19, 2004. A full report of this session is available as document WIPO/GRTKF/IC/6/14 (April 14, 2004). The seventh session of the IGC has been scheduled for November 1 to 5, 2004.

5. At its sixth session, the IGC reached the following conclusion on the question of the report to the General Assembly:

232. The Chair stated that, in the case of Committees reporting to the Assembly, normally the Secretariat, on its responsibility, prepared a factual report which was then the subject of discussion in the Assembly and suggested that this procedure to be followed also in this case. The Committee decided accordingly (WIPO/GRTKF/IC/6/14).

The present report has therefore been prepared on this basis.

6. Concerning the substantive work at its sixth session, the IGC considered the following documents:

- "Draft Agenda" (WIPO/GRTKF/IC/6/1 Prov.1),
- "Accreditation of Certain Non-Governmental Organizations" (WIPO/GRTKF/IC/6/2, WIPO/GRTKF/IC/6/2 Add),
- "Traditional Cultural Expressions/Expressions of Folklore: Legal and Policy Options" (WIPO/GRTKF/IC/6/3),
- "Traditional Cultural Expressions: Defensive Protection Measures Related to Industrial Property Classification Tools" (WIPO/GRTKF/IC/6/3 Add.),
- "Traditional Knowledge: Policy and Legal Options" (WIPO/GRTKF/IC/6/4 Rev.),
- "Genetic Resources: Draft Intellectual Property Guidelines for Access and Benefit-Sharing Contracts" (WIPO/GRTKF/IC/6/5),
- "Traditional Knowledge and Traditional Cultural Expressions: The International Dimension" (WIPO/GRTKF/IC/6/6),
- "Update on Legal-Technical Assistance and Capacity-Building Activities" (WIPO/GRTKF/IC/6/7),
- "Defensive Protection Measures relating to Intellectual Property, Genetic Resources and Traditional Knowledge" (WIPO/GRTKF/IC/6/8),
- "Genetic Resources and Patent Disclosure Requirements: Transmission of Technical Study to the Convention on Biological Diversity" (WIPO/GRTKF/IC/6/9),
- "Participation of Indigenous and Local Communities" (WIPO/GRTKF/IC/6/10),
- "Certain Decisions of the Seventh Meeting of the Conference of the Parties to the Convention on Biological Diversity" (WIPO/GRTKF/IC/6/11),
- "Submission by the African Group: Objectives, principles and elements of an international instrument, or instruments, on intellectual property in relation to genetic resources and on the protection of traditional knowledge and folklore" (WIPO/GRTKF/IC/6/12), and
- "Certain Decisions of the Seventh Conference of the Parties to the Convention on Biological Diversity" (WIPO/GRTKF/IC/6/13).

7. Taking part in the sixth session were 109 States, 22 intergovernmental organizations, and 61 non-governmental organizations. Ten additional *ad hoc* observers were accredited at

the sixth session, all representing indigenous communities or the interests of holders of folklore/ traditional cultural expressions (TCEs) or traditional knowledge (TK). This brought to 92 the total number of *ad hoc* observers specifically accredited to the IGC.

#### *Folklore/traditional cultural expressions*

8. Under Agenda Item 5 ('Folklore'), the IGC discussed the legal protection of expressions of folklore/TCEs, especially on the basis of document WIPO/GRTKF/IC/6/3. Following an extensive review of the basis and forms of protection (paragraphs 26 to 65 of document WIPO/GRTKF/IC/6/14), the IGC requested the Secretariat to prepare two draft materials:

- an overview of policy objectives and core principles for protection of TCEs; and
- an outline of the policy options and legal mechanisms for the protection of TCE subject matter, based on the full range of approaches already considered by the Committee, together with a brief analysis of the policy and practical implications of each option.

9. The required draft materials have accordingly been prepared on the basis of a wide range of positions stated in the IGC, as well as the extensive national experiences and legislative measures advised to the IGC and discussed in that forum (including a specialized panel on *sui generis* folklore/TCE protection). These materials are being issued as documents WIPO/GRTKF/IC/7/3 (policy objectives and core principles) and WIPO/GRTKF/IC/7/4 (policy options and legal elements) respectively, for the consideration and review of the IGC at its seventh session. Based on the discussion at the sixth session of the IGC and the conclusions reached on the agenda item concerning the international dimension (see the report on this agenda item below, paragraphs 19 to 21), these documents could provide materials to facilitate the elaboration of the framework proposed in document WIPO/GRTKF/IC/6/12 and the options discussed in document WIPO/GRTKF/IC/6/6.

10. The IGC was also briefed on a range of continuing capacity-building and legislative activities relating to the enhanced protection of folklore/TCEs. These included *sui generis* legislation, policy development, training and awareness and the development of new awareness-raising and capacity-building publications.

#### *Traditional knowledge*

11. Under Agenda Item 6 ('Traditional Knowledge'), the IGC discussed the legal protection of TK, especially on the basis of document WIPO/GRTKF/IC/6/4 Rev. Following an extensive review of the basis and forms of protection (paragraphs 67 to 108 of document WIPO/GRTKF/IC/6/14), the IGC requested the Secretariat to prepare two draft materials:

- an overview of policy objectives and core principles for TK protection; and
- an outline of the policy options and legal elements for the protection of TK subject matter, together with a brief analysis of the policy and practical implications of each option and element.

12. The required draft materials have accordingly been prepared on the basis of a wide range of positions stated in the IGC, as well as the extensive national experiences and legislative measures advised to the IGC and discussed in that forum. These are being issued as documents WIPO/GRTKF/IC/7/5 (policy objectives and core principles) and

WIPO/GRTKF/IC/7/6 (policy options and legal elements) respectively, for the consideration and review of the IGC at its seventh session. Based on the discussion at the sixth session of the IGC and the conclusions reached on the agenda item concerning the international dimension (see the report on this agenda item below, paragraphs 19 to 21), these documents could provide materials to facilitate the elaboration of the framework proposed in document WIPO/GRTKF/IC/6/12 and the options discussed in document WIPO/GRTKF/IC/6/6.

13. The IGC also considered specific questions relating to the defensive protection of TK. This included the continuation of the existing initiatives, notably the development of technical standards on the basis of the structure developed by the Asian Group and adopted by the IGC (WIPO/GRTKF/IC/4/14), and the survey of questionnaire on databases and registries related to TK and genetic resources (WIPO/GRTKF/IC/Q.4). An additional initiative was approved concerning the legal and practical aspects of recognition of TK as prior art in the search and examination of patent applications. This resulted from proposals put by various Member States and regional groups, and discussions in the IGC, summarized in document WIPO/GRTKF/IC/6/8. Following consideration of this document, the IGC approved future work on this issue, in particular the development of:

- a questionnaire on prior art criteria; and
- draft recommendations to authorities responsible for patent search and examination to take greater account of traditional knowledge systems.

14. The IGC was also briefed on a range of continuing capacity-building and legislative activities relating to the enhanced protection of folklore/TCEs. These included *sui generis* legislation, policy development, training and awareness and the development of new awareness-raising and capacity-building publications, as well as continuing work on a toolkit intended to equip TK holders with skills and awareness required to ensure that any documentation of their TK promotes their own interests and does not impair their custodianship responsibilities over the TK.

#### *Genetic resources*

15. In view of various linkages between TK and genetic resources, the IGC's work on TK (discussed above) also had bearing on genetic resources. These linkages included the relation between TK protection and rights and interests related to genetic resources, such as approaches to *sui generis* protection of TK within the context of laws governing access to and benefit-sharing from genetic resources (paragraphs 34(b), and 96 to 102, WIPO/GRTKF/IC/6/4 Rev). Defensive protection measures concerning TK also had bearing on the defensive protection of associated genetic resources (WIPO/GRTKF/IC/6/8).

16. In addition, under agenda item 7 ('Genetic Resources'), the IGC continued its work on the use of IP clauses in access and benefit-sharing agreements concerning genetic resources, to develop further practical understanding of the relationship between specific choices on IP and the achievement of access and benefit-sharing objectives. Building on the database of clauses it had approved and the principles it agreed at its second session, the IGC considered draft guidelines for access and benefit-sharing contracts. These guidelines were discussed in detail, but some participants questioned the priority of this matter and noted that The IGC decided "to invite further comments and input relating to the issue by June 30, 2004," so that a "revised version of the document would be published for the next session of the

Committee.” (WIPO/GRTKF/IC/6/14, paragraph 139) This revised version is now being prepared as document WIPO/GRTKF/IC/7/9 for the consideration of the Committee.

17. Also under agenda item 7, the IGC considered further steps on the question of defensive protection of TK and genetic resources through patent disclosure requirements. At its fifth session, the IGC had forwarded to the General Assembly the *WIPO Technical Study on Patent Disclosure Requirements Related to Genetic Resources and Traditional Knowledge*, which had been prepared under the aegis of the IGC and on the basis of Member State input through questionnaire WIPO/GRTKF/IC/Q.4. In line with the General Assembly’s authorization (paragraph 5 of WO/GA/30/7), this document was transmitted to the seventh Conference of Parties to the Convention on Biological Diversity (CBD). Document WIPO/GRTKF/IC/6/9 reported on this process, and made proposals for future work in this area, including the including the “continued exchange of national experience and case studies, and the development of guidelines and recommendations concerning the interaction between access to genetic resources and patent disclosure” ( WIPO/GRTKF/IC/6/9, paragraph 9, referring also to WIPO/GRTKF/IC/5/10, paragraph 12).

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18. However, immediately before the sixth session of the IGC, WIPO received from the Secretariat of the CBD a communication of a decision of the seventh COP which concerned the WIPO Technical Study and invited further work on this issue (COP Decision VII/19 on ‘Access and benefit-sharing as related to genetic resources,’ foreshadowed to the IGC in WIPO/GRTKF/IC/6/11 and then, once formally communicated, provided to the IGC in WIPO/GRTKF/IC/6/13). This decision, and the IGC discussion of it, are dealt with in a separate document (WO/GA/31/8).

#### *The international dimension*

19. Reflecting the explicit reference to the international dimension of its work in its mandate for the biennium 2004-2005, the IGC considered this issue under agenda item 8 (‘International Dimension’). Discussion focussed in particular on documents WIPO/GRTKF/IC/6/6 and WIPO/GRTKF/IC/6/12 (‘Submission by the African Group: Objectives, principles and elements of an international instrument, or instruments, on intellectual property in relation to genetic resources and on the protection of traditional knowledge and folklore’).

20. The Chair concluded the item by stating that “the discussion had shown a positive approach to the issue; that there had been a broad support for the contents of document WIPO/GRTKF/IC/6/6; and there had been a constructive debate on the issue of the international aspects, including the elements included in the African proposal (document WIPO/GRTKF/IC/6/12).” He indicated that the “some Delegations said that they needed more time to consider it and others said, for instance, that it was a valuable framework that needed to be more elaborated on.” On the Chair’s proposal, the Committee took note of document WIPO/GRTKF/IC/6/6 and of the proposal by the African Group in document WIPO/GRTKF/IC/6/12 as well as of the interventions made and, on that basis, approved the contents of the decision paragraph 69 of document WIPO/GRTKF/IC/6/6.

21. It was then clarified that the international dimension would be integrated under each of the substantive topics. In line with this approach, the international dimension is, for example, dealt with under documents WIPO/GRTKF/IC/7/3 (policy objectives and core principles on TCE protection), WIPO/GRTKF/IC/7/4 (policy options and legal elements for TCE

protection), WIPO/GRTKF/IC/7/5 (policy objectives and core principles on TK protection), and WIPO/GRTKF/IC/7/6 (policy options and legal elements for TK protection).

#### *Participation of Indigenous and local communities*

22. Consistent with the priority that both the General Assembly (A/37/14, paragraphs 245, and 263 to 290) and the IGC itself have in the past given to enhanced participation in the IGC by Indigenous and local communities, the IGC continued its work on proposals to enhance this participation. Discussion was focussed on document WIPO/GRTKF/IC/6/10. Building on existing consultation and communication mechanisms, an indigenous forum was convened prior to the sixth session of the IGC, and a website was established that could be used to communicate the views and positions of IGC observers. The positions on this website (<http://www.wipo.int/tk/en/igc/ngo/index.html>) now mostly represent the views of various indigenous communities and representatives. Following an extensive discussion, the IGC agreed:

(i) to note the existing informal consultative processes and voluntary funding initiatives that contribute to the enhanced involvement of Indigenous and local communities in its work;

(ii) to welcome the creation of an informal consultative forum for Indigenous and local representatives in advance of sessions of the IGC, based on the proposed elements;

(iii) to encourage voluntary donors to support the immediate participation of representatives of accredited observers in any such consultative forum and in the IGC's sessions; and

(iv) on the basis of an updated proposal, to continue its consideration and elaboration of possible establishment of formal structures for a Voluntary Fund, depending upon the overall direction set for the IGC or other bodies within WIPO.

The requested 'updated proposal' is being prepared as document WIPO/GRTKF/IC/7/12 for the consideration of the IGC at its seventh session.

#### *Consultation and coordination*

23. Both in the IGC and in the General Assembly, many Member States have stressed the need for the work of the IGC to be undertaken in consultation and coordination with a wide range of stakeholders, including respecting and supporting the mandates and processes of other international organizations, and ensuring concrete involvement and engagement with representatives of Indigenous and local communities. Beyond the active participation of many Intergovernmental Organizations (IGOs) and observers in the IGC itself, the Secretariat has consulted with many intergovernmental, regional and non-governmental organizations.

24. The intergovernmental organizations (including regional organizations) consulted and coordinated with during the current phase of the IGC's work included (but were not limited to): the African Regional Industrial Property Organization (ARIPO), the Association of South-East Asian Nations (ASEAN), the Asian-African Legal Consultative Organisation, Consultative Group on International Agricultural Research (CGIAR), Food and Agricultural Organization (FAO), International Centre for Genetic Engineering and Biotechnology (ICBEG), International Centre of Insect Physiology and Ecology (ICIPE), International Labour Organization (ILO), the International Plant Genetic Resources Institute (IPGRI), the Office of the High Commissioner for Human Rights (especially the Working Group on Indigenous Populations), *l'Organisation Africaine de la Propriété Intellectuelle* (OAPI), the

Organization of American States, the Pacific Community, the Pacific Islands Forum, the UN Permanent Forum on Indigenous Issues, the Secretariat of the Convention on Biological Diversity, the South Asian Association for Regional Cooperation (SAARC), the Southern African Development Community (SADC), the South Centre, the United Nations Conference on Trade and Development (UNCTAD), the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations University Institute of Advanced Studies (UNU-IAS), the International Union for the Protection of New Varieties of Plants (UPOV), the World Conservation Union (IUCN), the World Food Programme (WFP), the World Health Organization, and the World Trade Organization (WTO).

25. More than one hundred NGOs were consulted or coordinated with in various formal and informal settings, including many of the accredited IGC observers and many representatives of indigenous and local communities. For reasons of space, a full list is not given here. The NGOs consulted represent a wide range of sectors, interests and geographical regions, including organizations representing Indigenous and local communities, and organizations variously concerned with environmental and biodiversity issues, agricultural and genetic resources issues, sustainable development, folklore and cultural issues.

#### *Intersessional consultations*

26. In addition to a wide range of intersessional consultations on IGC issues, both within Geneva and through various regional and national meetings, it is proposed to hold an open information session concerning the specific issues and documents to be considered by the IGC at its seventh session, tentatively scheduled to be held in Geneva, on October 8, 2004.

#### *Publications and background materials*

27. As foreshadowed in document WIPO/GRTKF/IC/6/7, information and background materials developed by the IGC in the first phase of its work are now being adapted as general capacity-building publications to provide an accessible and comprehensive suite of publications, including booklets for a general audience, background papers with more detailed information for a policy and research audience, and practical case studies. These are being progressively completed and published in the course of 2004.

#### *Outline of IGC materials*

28. The Annex to this document contains an overview of current IGC materials, including various materials currently under development. This is not intended as a formal part of the report to the General Assembly, but is annexed merely to provide a supplementary guide to these various documents, publications and other materials for ease of reference. It illustrates the overall structure of the work of the IGC, and the linkages between each element of its work, as well as the relationship with various background and capacity-building materials.

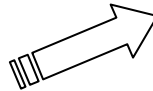
29. *The General Assembly is invited to take note of the contents of this report.*

[Annex follows]

WO/GA/31/5  
ANNEX

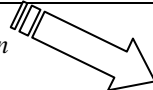
<p><u>Policy objectives &amp; core principles on protection of TCEs/folklore</u> <i>Draft for IGC consideration: WIPO/GRTKF/IC/7/3 at IGC request (WIPO/GRTKF/IC/6/14 para 66)</i></p>	<p><u>Policy objectives &amp; core principles on protection of TK</u> <i>Draft for IGC consideration: WIPO/GRTKF/IC/7/5 at IGC request (WIPO/GRTKF/IC/6/14 para 109)</i></p>
<p><i>Draw on existing principles, regional and national positions, statements to the IGC, WIPO/GRTKF/IC/6/3 &amp; WIPO/GRTKF/IC/6/4, and complement proposed frameworks such as WIPO/GRTKF/IC/6/12 (African Group proposal). Two distinct sets of principles and objectives, but the holistic aspect of traditional communities' concerns &amp; interests means some apply in parallel to both TK &amp; TCEs. Respect existing international legal and policy framework for genetic resources (notably CBD and FAO International Treaty).</i></p>	

At level of principle



Mechanisms for recognition of IP protection of TK/TCEs in foreign jurisdictions  
*based on core principles (WIPO/GRTKF/IC/6/6); included in substantive material on TK/TCEs (as agreed by IGC: WIPO/GRTKF/IC/6/14, para 231)*

At level of practical implementation



Policy options & legal mechanisms for protection of TCEs/folklore  
*Draft for IGC consideration: WIPO/GRTKF/IC/7/4 at IGC request (WIPO/GRTKF/IC/6/14 para 66). Means of giving practical effect to objectives and principles at level of national/regional laws; draws on IGC surveys, reports, panel presentations, discussion and analysis (e.g. WIPO/GRTKF/IC/6/3), and based on existing Member State experience, including national and regional laws for protection of TCEs/folklore, as well as existing international instruments.*

Policy options & legal mechanisms for TK protection  
*Draft for IGC consideration: WIPO/GRTKF/IC/7/6 at IGC request (WIPO/GRTKF/IC/6/14 para 109) Means of giving practical effect to objectives and principles at level of national/regional laws; draws on IGC surveys, reports, panel presentations, discussion and analysis (e.g. WIPO/GRTKF/IC/6/4), and based on existing Member State experience*

Defensive measures for TK protection\*

1. Guidelines & recommendations on recognition of traditional knowledge in patent examination WIPO/GRTKF/IC/7/8, work approved by IGC VI.
2. Further defensive measures under development WIPO/GRTKF/IC/7/7, WIPO/GRTKF/IC/6/8

\*: See also related work on patent disclosure under genetic resources agenda item (also relevant to TK).

**OVERVIEW OF MATERIALS FOR AN ACCELERATED IGC WORK PROGRAM 2004-2005**

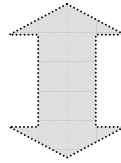
*More detailed materials, consistent with general objectives and principles, but recognizing need for some diversity of actual approaches. Contribute to general coherence and compatibility of general IGC developments, and buttress the practical attainment of principles and objectives.*

Measures on IP & genetic resources

1. Practical guidelines on IP aspects of access & benefit-sharing arrangements\* (WIPO/GRTKF/IC/7/9)  
*(based on principles agreed at earlier IGC sessions, draft considered at IGC VI - WIPO/GRTKF/IC/6/5)*
2. Disclosure mechanisms for genetic resources used in inventions\*  
*Building on existing technical study*  
*Proposals for guidelines & recommendations put to IGC V & VI; related CBD invitation pending decision.*

\*: both materials also deal with TK related to genetic resources





*IGC materials are supplemented by these background materials, which record and catalogue detailed experiences and the full range of practical options. This provides an empirical basis for IGC work on core materials. In turn, continuing IGC work gives guidance for continuing work on supplementary and capacity building materials, thus enhancing their consistency, inclusiveness and soundness.*

## Supplementary awareness-raising and capacity-building resources

*Background information materials, guided by broader IGC developments*

*These materials already produced or in development: background capacity-building and information resources to support community-level planning and decision-making and to provide background for legal and policy advisors for indigenous and local communities, other stakeholders, policymakers and legislators. Practical resources for action at the community level, for assessing and exploring in detail the options that are chosen at the policy level, and to support the elaboration or implementation of national and regional protection mechanisms. Draw extensively on the actual experiences documented in the IGC at the community, national and regional levels, as well as relevant international processes. Consistent with overall policy settings and outcomes established by IGC, but prepared as sources of technical information only and not to pre-empt or determine policy choices.*

### TCEs/folklore

Materials published or under development include:

- Practical guide on protection of TCEs/folklore
- Information booklet on TCEs/folklore
- Background paper on TCEs/folklore
- Distance learning course
- Customary law study
- Texts and comparative analysis of national and model laws on TCE/folklore protection
- Case studies (e.g. by Janke and Kutty)

(For details, see IGC documents including: WIPO/GRTKF/IC/3/10, WIPO/GRTKF/IC/4/INF/2-5, and WIPO/GRTKF/IC/6/7)

### Traditional knowledge

Materials published or under development include:

- Toolkit on safeguarding TK interests during documentation
- Information booklet on TK
- Background paper on TK
- Distance learning course
- Texts and comparative analysis of national and model laws on TK protection

(For details, see IGC documents including: WIPO/GRTKF/IC/5/5, WIPO/GRTKF/IC/6/7, and WIPO/GRTKF/IC/5/INF/2-4)

### Genetic resources

Materials published or under development include:

- WIPO-UNEP case study (by A.K. Gupta)
- WIPO Technical Study on patent disclosure mechanisms
- Database of contractual provisions dealing with IP issues in access and benefit sharing arrangements,
- Guidelines prepared using database and principles agreed by IGC II

(For details, see IGC documents including: WIPO/GRTKF/IC/4/10, and WIPO/GRTKF/IC/6/5)

[End of Annex and of document]