

WIPO General Assembly

Forty-Seventh (22nd Ordinary) Session Geneva, October 5 to 14, 2015

MATTERS CONCERNING THE INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE (IGC): PROPOSAL OF THE HOLY SEE, KENYA, MOZAMBIQUE, NEW ZEALAND, NORWAY AND SWITZERLAND TO THE WIPO GENERAL ASSEMBLY

Document prepared by the Secretariat

1. In a communication dated September 7, 2015, a copy of which is set out in the Annex, the Delegation of Switzerland, on behalf of the delegations of the Holy See, Kenya, Mozambique, New Zealand, Norway and Switzerland, requested that its submission entitled "Proposal for a renewed mandate of the IGC for the biennium 2016-2017 submitted to the Fifty-Fifth Series of Meetings of the WIPO Assemblies by the Holy See, Kenya, Mozambique, New Zealand, Norway and Switzerland" be made available as a working document for discussion under Agenda Item 17 "Matters Concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)" of the Forty-Seventh (22nd Ordinary) Session of the WIPO General Assembly.

2. *The WIPO General Assembly is invited to consider the communication in the Annex to this document.*

[Annex follows]



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Proposal for a renewed mandate of the IGC for the biennium 2016-2017 submitted to the Fifty-Fifth Series of Meetings of the WIPO Assemblies by the Holy See, Kenya, Mozambique, New Zealand, Norway and Switzerland

Dear Madam, Dear Sir,

On behalf of the delegations of the Holy See, Kenya, Mozambique, New Zealand, Norway and Switzerland, I have the pleasure to submit to the Fifty-Fifth Series of Meetings of the WIPO Assemblies of October 5 to 14, 2015, a proposal for a renewed mandate and work program for the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) for the upcoming 2016/2017 biennium, as a proposal to be considered under Agenda Item 17. Attached, for information purposes, is an explanatory note on this proposal.

I would be grateful if you would circulate these items.

Yours sincerely,


Martin Girsberger

Enclosures

PROPOSAL FOR A DECISION ON AGENDA ITEM 17 ON MATTERS CONCERNING THE INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE (IGC)

Proposal for a renewed mandate of the IGC for 2016-2017 submitted to the fifty-fifth series of meetings of the WIPO Assemblies by the Holy See, Kenya, Mozambique, New Zealand, Norway and Switzerland

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

(a) The Committee will, during the next budgetary biennium 2016/2017, and without prejudice to the work pursued in other fora, continue to expedite its work with open and full engagement on text-based negotiations with the objective of reaching an agreement during the 2016/17 biennium on a text(s) of an international legal instrument(s) on intellectual property, and which will ensure the effective and balanced protection of GRs, TK and TCEs.

(b) The Chair of the Committee, or a facilitator nominated by the Chair of the General Assembly, together with the Member States, will finalize, before the end of 2015, a work program, based on sound working methods, for the 2016/17 biennium. A general work program is set out in the table below to guide its development. The Committee will adopt this work program at its first session in the new biennium. This work program will make provision for six sessions of the Committee, which may include thematic, cross-cutting and stocktaking discussions, and ambassadorial/senior capital based officials meetings. The total number of days for the sessions of the Committee shall not be more than 36 days.

(c) The Committee is requested to submit to the 2016 General Assembly the text(s) of an international legal instrument(s) as at that time for information purposes and commenting.

(d) The Committee is requested to make a recommendation to the GA 2017 on the future work, including on convening a diplomatic conference, continuing negotiations, or otherwise concluding the negotiations, on an international legal instrument(s) on intellectual property and GR, TK and TCEs.

(e) The focus of the Committee's work in the 2016/2017 biennium will build on the existing work carried out by the Committee and use all WIPO working documents, including WIPO/GRTKF/IC/28/4, WIPO/GRTKF/IC/28/5 and WIPO/GRTKF/IC/28/6, which are to constitute the basis of the Committee's work on text-based negotiations, as well as any other textual contributions by members.

(f) 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.

The General Assembly takes note of the possibility for members of the Committee to request studies or to provide examples to inform the discussion of objectives and principles, and each proposed article, including examples of protectable subject matter and subject matter that is not intended to be protected, and examples of domestic legislation. However, examples and studies are not to delay progress or establish any preconditions to the text-based negotiations.

Work Program for the Committee for 2016-2017

Indicative Dates	Activity
February 2016	<p data-bbox="646 327 727 354">IGC 29</p> <ul data-bbox="691 390 1312 625" style="list-style-type: none"><li data-bbox="691 390 1312 506">• Discuss the subject matter as prescribed following the agreement reached between the Chair, or the Facilitator nominated by the Chair, with the Member States.<li data-bbox="691 506 1312 625">• Members to decide whether this session should be thematic, cross-cutting or stocktaking, or whether to convene an ambassadorial/senior capital-based officials meeting. <p data-bbox="646 659 737 686">5 Days*</p>
April 2016	<p data-bbox="646 747 727 774">IGC 30</p> <ul data-bbox="691 810 1312 1045" style="list-style-type: none"><li data-bbox="691 810 1312 926">• Discuss the subject matter as prescribed following the agreement reached between the Chair, or the Facilitator nominated by the Chair, with the Member States.<li data-bbox="691 926 1312 1045">• Members to decide whether this session should be thematic, cross-cutting or stocktaking, or whether to convene an ambassadorial/senior capital-based officials meeting. <p data-bbox="646 1079 737 1106">5 Days*</p>
July 2016	<p data-bbox="646 1167 727 1194">IGC 31</p> <ul data-bbox="691 1230 1312 1465" style="list-style-type: none"><li data-bbox="691 1230 1312 1346">• Discuss the subject matter as prescribed following the agreement reached between the Chair, or the Facilitator nominated by the Chair, with the Member States.<li data-bbox="691 1346 1312 1465">• Members to decide whether this session should be thematic, cross-cutting or stocktaking, or whether to convene an ambassadorial/senior capital-based officials meeting. <p data-bbox="646 1499 737 1526">5 Days*</p>
October 2016	<p data-bbox="646 1587 850 1614">General Assembly</p> <ul data-bbox="691 1650 1328 1738" style="list-style-type: none"><li data-bbox="691 1650 1328 1738">• The Committee is requested to submit the text(s) of a legal instrument to the General Assembly for informational purposes and commenting.

February 2017	<p>IGC 32</p> <ul style="list-style-type: none"> • Discuss the subject matter as prescribed following the agreement reached between the Chair, or the Facilitator nominated by the Chair, with the Member States. • Members to decide whether this session should be thematic, cross-cutting or stocktaking, or whether to convene an ambassadorial/senior capital-based officials meeting. <p>5 Days*</p>
April 2017	<p>IGC 33</p> <ul style="list-style-type: none"> • Discuss the subject matter as prescribed following the agreement reached between the Chair, or the Facilitator nominated by the Chair, with the Member States. • Members to decide whether this session should be thematic, cross-cutting or stocktaking, or whether to convene an ambassadorial/senior capital-based officials meeting. <p>5 Days*</p>
July 2017	<p>IGC 34</p> <ul style="list-style-type: none"> • Discuss the subject matter as prescribed following the agreement reached between the Chair, or the Facilitator nominated by the Chair, with the Member States. • Members to decide whether this session should be thematic, cross-cutting or stocktaking, or whether to convene an ambassadorial/senior capital-based officials meeting. <p>5 Days*</p>
October 2017	<p>General Assembly</p> <ul style="list-style-type: none"> • The Committee is requested to make a recommendation on the future work, including on convening a diplomatic conference, continuing negotiations, or otherwise concluding the negotiations, on an international legal instrument(s) on intellectual property and GR, TK and TCEs.

*The remaining 6 days can be added to any session and are to be allocated by the Committee as required.

Explanatory note regarding the proposal for a renewed mandate of the IGC for 2016-2017 submitted to the fifty-fifth series of meetings of the WIPO Assemblies by the Holy See, Kenya, Mozambique, New Zealand, Norway and Switzerland

A. Introduction

The WIPO General Assembly 2015 will have to decide on the renewal of the mandate for the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) for 2016-2017. The attached draft mandate is intended to facilitate the elaboration of this renewed mandate, as it contains a possible way forward. This draft mandate was elaborated by an informal group of countries and consulted with numerous other delegations.

To the extent feasible, the draft mandate retains the wording of the current mandate for 2014-2015. The provisions of the draft mandate and the changes vis-à-vis the current mandate are explained below.

B. Comments on Draft Mandate

1) Chapeau

The chapeau of the current mandate 2014-2015 was included in the draft mandate 2016-2017 verbatim.

2) Paragraph (a)

The wording of paragraph (a) of the draft mandate for 2016-2017 is very similar to paragraph (a) of the Mandate of the IGC for 2014-2015. "Intellectual Property" was introduced to this paragraph in order to focus Member States' attention on the subject matter. It is necessary to recall that it is the World Intellectual Property Organization (WIPO) that is the competent forum to discuss and regulate issues with regard to intellectual property. This should not be seen, however, as a dismissal of other concerns and the different dimensions of the topics at hand in other fora. In addition, "balanced" was introduced so that the paragraph now reads, "effective and balanced protection" in order to ensure that all points of view are taken into account.

3) Paragraph (b)

Compared to paragraph (b) of the mandate for 2014-2015, paragraph (b) of the mandate for 2016-2017 was restructured in order for the IGC to function in a more efficient and streamlined manner. The new mandate does not include a detailed Work Program; instead, it requires the Chair of the Committee or a facilitator that was nominated by the Chair, along with the Member States, to decide on the topics of negotiation and the type of sessions to be held before the end of 2015. This approach would allow the Committee itself to dictate its own schedule, and would remove potentially contentious issues from the General Assembly's agenda. Additionally, this approach leaves as much as possible to be decided on the level of the IGC, thereby avoiding overburdening the GA.

A further reason for not having an overly prescriptive Work Program is the amount of flexibility that could be introduced into the negotiations: the proposed mandate provides several options for discussions and/or meetings to be had during the biennium without dictating in advance a schedule of what types of discussions should be had or how long they should be. The new approach would allow the IGC to have the flexibility to utilize its time in the most efficient way possible by using each of the 36 prescribed days so as to have the sorts of discussions that have the potential to move the process toward a conclusion. If necessary, the IGC could thus decide to change its schedule and/or the type of discussions during the course of the biennium 2016-17, whereas such changes would not be possible if the WIPO General Assembly would include a detailed Work Program in the mandate.

4) Paragraph (c)

Paragraph (c) is a new addition, not found in the mandate 2014-2015. In order to save time and efforts, this Paragraph requires the Committee to submit the results of its work, up to that point, to the General Assembly in 2016. This removes the need to draft any report or make any recommendations, let alone would a stocktaking exercise or other action be necessary. In the past, these documents have been contentious and forced the Committee to take considerable time away from substantive discussions in order to draft these documents. With no reports or recommendations required, the Committee can concentrate on only its substantive work.

5) Paragraph (d)

This paragraph asks the IGC to make a recommendation to the WIPO General Assembly 2017 on the future work, and leaves the IGC several options on how to proceed at the end of the biennium. While the objective of the IGC is clearly stated in paragraph (a), "...with the objective of reaching an agreement during the 2016/2017 biennium on a text(s)..." the choices expressly mentioned in paragraph (d) include convening a diplomatic conference, continuing negotiations or otherwise concluding the negotiations. Giving the IGC these choices should give Member States the necessary flexibility required to decide how to proceed at the conclusion of the biennium, while at the same time introducing some degree of finality with regard to the efforts of the IGC.

6) Paragraph (e)

The wording of paragraph (e) of the draft mandate for 2016-2017 remains unchanged compared to paragraph (c) of the Mandate of the IGC for 2014-2015, with the exception of the updated references of the mentioned documents.

7) Paragraph (f)

The wording of paragraph (f) of the draft mandate for 2016-2017 remains unchanged compared to paragraph (e) of the Mandate of the IGC for 2014-2015.

8) Final, unnumbered paragraph

The wording of the final, unnumbered paragraph of the draft mandate for 2016-2017 remains unchanged compared to the same paragraph in the Mandate of the IGC for 2014-2015.

[End of Annex and of document]