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

Sixth Session
Geneva, March 15 to 19, 2004

CERTAIN DECISIONS OF THE SEVENTH CONFERENCE OF THE PARTIES
TO THE CONVENTION ON BIOLOGICAL DIVERSITY

Document submitted by the Secretariat of the Convention on Biological Diversity

1. In a letter dated March 10, 2004, the Executive Secretary of the Convention on Biological Diversity (CBD) transmitted, at the request of the Conference of the Parties (COP) to the CBD, five decisions of the COP to the World Intellectual Property Organization (WIPO).
2. The decisions which are referred to in the letter are Decision VII/19 ('Access and benefit-sharing as related to genetic resources'), Decision VII/16 ('Article 8 (j) and related provisions'), Decision VII/29 ('Transfer of technology and technology cooperation'), Decision VII/2 ('Biological diversity of dry and sub-humid lands') and Decision VII/3 ('Agricultural biological diversity'). The letter is reproduced in the form received and published in the Annex to this document. For reasons of space, the full texts of the decisions referred to are not contained in the present document, but will be made available to the Committee and are available on the website of the Convention on Biological Diversity (www.biodiv.org).
3. Among the decisions which may potentially be relevant to the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ('the Committee') are Decision VII/19 and Decision VII/16.

Interrelation of access to genetic resources and disclosure requirements in intellectual property rights applications

4. Decision VII/19 is potentially relevant to the work of the Committee on the question of patent disclosure mechanisms relevant to genetic resources and traditional knowledge (see documents WIPO/GRTKF/IC/6/9 and WIPO/GRTKF/IC/5/10). It includes the following references to WIPO:

7. *[The COP] Requests the Ad hoc Open-ended Working Group on Access and Benefit-Sharing to identify issues related to the disclosure of origin of genetic resources and associated traditional knowledge in applications for intellectual property rights, including those raised by a proposed international certificate of origin/source/legal provenance, and transmit the results of this examination to the World Intellectual Property Organization and other relevant forums.*

8. *[The COP] Invites the World Intellectual Property Organization to examine, and where appropriate address, taking into account the need to ensure that this work is supportive of and does not run counter to the objectives of the Convention on Biological Diversity, issues regarding the interrelation of access to genetic resources and disclosure requirements in intellectual property rights applications, including, inter alia:*

- (a) *Options for model provisions on proposed disclosure requirements;*
 - (b) *Practical options for intellectual property rights application procedures with regard to the triggers of disclosure requirements;*
 - (c) *Options for incentive measures for applicants;*
 - (d) *Identification of the implications for the functioning of disclosure requirements in various World Intellectual Property Organization-administered treaties;*
 - (e) *Intellectual property-related issues raised by proposed international certificate of origin/source/legal provenance;*
- and regularly provide reports to the Convention on Biological Diversity on its work, in particular on actions or steps proposed to address the above issues, in order for the Convention on Biological Diversity to provide additional information to the World Intellectual Property Organization for its consideration in the spirit of mutual supportiveness;*

5. As foreshadowed in documents WIPO/GRTKF/IC/6/9 and WIPO/GRTKF/IC/6/11, the Committee may wish to take account of this invitation in considering its future work on these issues. The Committee may also wish to consider and approve an appropriate means for WIPO to report to the CBD as requested in this invitation, depending on decisions taken concerning future work on these matters (documents WIPO/GRTKF/IC/6/9 and WIPO/GRTKF/IC/5/10).

Positive and defensive protection of traditional knowledge

6. Decision VII/16 is potentially relevant to the work of the Committee in relation to traditional knowledge, both positive protection (documents WIPO/GRTKF/IC/5/8 and WIPO/GRTKF/IC/6/4) and defensive protection (documents WIPO/GRTKF/IC/5/6 and WIPO/GRTKF/IC/6/8). It includes the following invitation:

11. [The COP] Invites the World Intellectual Property Organization to make available to the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention, the results of its work on issues relevant to the implementation of Article 8(j) and related provisions of the Convention, in particular in relation to the protection of traditional knowledge and its recognition as prior art.

7. The above invitation may be in part fulfilled by the transmission of relevant Committee documents to the relevant CBD Working Group, including already existing documents and any further documents on traditional knowledge prepared following the sixth session of the Committee, on the understanding that these are background reference documents and do not reflect any formal position on the part of WIPO. Existing documents of the Committee have already been contributed by WIPO to the Composite Report on the Status and Trends Regarding Traditional Knowledge currently under preparation in the relevant CBD Working Group.

8. The Intergovernmental Committee is invited to consider the invitations issued by the Conference of the Parties to the CBD in the context of the Committee's ongoing activities, and in particular to examine and, as appropriate, address the issues set out in paragraph 8 of COP Decision VII/19 in the Committee's work on disclosure issues.

[Annex follows]

Dear Dr. Idris,

I am pleased to inform you that the seventh meeting of the Conference of the Parties to the Convention on Biological Diversity (COP 7) was held in Kuala Lumpur, Malaysia, from 9 to 20 February 2004. Representatives from 162 countries, as well as representatives from international organizations, indigenous and local community organizations and non-governmental organizations, attended the meeting. Thirty-six decisions were adopted during this meeting, all of which are available at the following address on the Secretariat website: www.biodiv.org

A number of these decisions are of relevance to the work of the World Intellectual Property Organization (WIPO) and/or the International Union for the Protection of New Varieties of Plants (UPOV) and provide opportunities for further collaboration between the Secretariat of the Convention on Biological Diversity and WIPO and/or UPOV. Please find below extracts of the decisions of specific relevance to WIPO and/or UPOV. Advanced version of the copies of the full text of these decisions are also attached for your consideration.

Decision VII/19: Access and benefit-sharing as related to genetic resources

In decision VII/19, the Conference of the Parties decided to elaborate an international regime on access and benefit-sharing as related to genetic resources. The sections and paragraphs of direct relevance to the WIPO and/or UPOV are the following:

In paragraph 5 of section D, the Conference of the Parties, *[i]nvites the United Nations Environment Programme, the Food and Agriculture Organization of the United Nations, the World Trade Organization, the World Intellectual Property Organization, the International Union for the Protection of New Varieties of Plants, to cooperate with the Ad Hoc Open-ended Working Group on Access and Benefit-sharing in elaborating the international regime;*"

In addition, in the annex containing the terms of reference for the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, under (d), the following paragraphs are relevant to WIPO and UPOV:

(d) *Elements: The following elements shall be considered by the Ad Hoc Open-ended Working Group on Access and Benefit-sharing for inclusion in the international regime, inter alia:*

....

(xxiii) Relevant elements of existing instruments and processes, including: ... World Intellectual Property Conventions and Treaties; International Convention for the Protection of New Varieties of Plants;

Under section E on "Measures, including consideration of their feasibility, practicality and costs, to support compliance with prior informed consent of the Contracting Party providing genetic resources and mutually agreed terms on which access was granted in Contracting Parties with users of such resources under their jurisdiction" of the same decision, the preamble and paragraphs 7, 8 and 9 contain the following:

The Conference of the Parties,

Noting further the ongoing activities and processes in relevant international forums such as the World Intellectual Property Organization, the TRIPs Council of the World Trade Organization, and the Commission on Plant Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations acting as the Interim Committee for the International Treaty on Plant and Genetic Resources for Food and Agriculture, regarding measures to support compliance with prior informed consent,

Noting with appreciation the Technical Study on Disclosure Requirements Concerning Genetic Resources and Traditional Knowledge prepared by World Intellectual Property Organization at the request of the Conference of the Parties in decision VI/24 C and considering the contents of the Technical Study to be helpful in the consideration of intellectual property-related aspects of user measures,

...

7. *Requests the Ad hoc Open-ended Working Group on Access and Benefit-Sharing to identify issues related to the disclosure of origin of genetic resources and associated traditional knowledge in applications for intellectual property rights, including those raised by a proposed international certificate of origin/source/legal provenance, and transmit the results of this examination to the World Intellectual Property Organization and other relevant forums.*

8. *Invites the World Intellectual Property Organization to examine, and where appropriate address, taking into account the need to ensure that this work is supportive of and does not run counter to the objectives of the Convention on Biological Diversity, issues regarding the interrelation of access to genetic resources and disclosure requirements in intellectual property rights applications, including, inter alia:*

- (a) *Options for model provisions on proposed disclosure requirements;*
 - (b) *Practical options for intellectual property rights application procedures with regard to the triggers of disclosure requirements;*
 - (c) *Options for incentive measures for applicants;*
 - (d) *Identification of the implications for the functioning of disclosure requirements in various World Intellectual Property Organization-administered treaties;*
 - (e) *Intellectual property-related issues raised by proposed international certificate of origin/source/legal provenance;*
- and regularly provide reports to the Convention on Biological Diversity on its work, in particular on actions or steps proposed to address the above issues, in order for the Convention on Biological Diversity to provide additional information to the World Intellectual Property Organization for its consideration in the spirit of mutual supportiveness;*

9. *Invites the United Nations Conference on Trade and Development and other relevant international organizations to examine the issues in, and related to, the matter specified in paragraphs 7 and 8 in a manner supportive of the objectives of the Convention on Biological Diversity and prepare a report for submission to the ongoing process of the work of the Convention on Biological Diversity on access and benefit-sharing.*

In section F on “Needs for capacity-building identified by countries to implement the Bonn Guidelines”, in the annex containing the Action Plan on Capacity-building for Access to Genetic Resources and Benefit-sharing adopted by the Conference of the Parties, the following paragraph refers to WIPO:

4. *Enhancing synergies and coordination with capacity-building initiatives carried out by the Food and Agriculture Organisation of the United Nations (FAO), and the World Intellectual Property Organisation (WIPO) and other relevant organizations.*

Decision VII/16: Article 8 (j) and related provisions

Decision VII/16 on Article 8 (j) is also of direct interest to WIPO. Under section H on “Development of elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices”, the preamble and paragraphs 6(f) and 11 contain the following provisions:

The Conference of the Parties,

Recognizing the need for continued collaboration with other relevant organizations working on issues related to the protection of traditional knowledge, innovations and practices of indigenous and local communities, such as the World Intellectual Property Organization (WIPO), the Permanent Forum on Indigenous Issues (PFII), the World Health Organization (WHO) and the Food and Agriculture Organization of the United Nations (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Conference on Trade and Development (UNCTAD) and the World Trade Organization (WTO) to ensure mutual supportiveness and avoid duplication of efforts.

6. *Requests the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention, with the collaboration of relevant international organizations and bodies such as the United Nations Permanent Forum on Indigenous Issues to:*

(f) Explore, taking into account the work of the World Intellectual Property Organization and the United Nations Permanent Forum on Indigenous Issues, the potential of and conditions under which the use of existing as well as new forms of intellectual property rights can contribute to achieving the objectives of Article 8(j) and related provisions of the Convention;

11. *Invites the World Intellectual Property Organization to make available to the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention, the results of its work on issues relevant to the implementation of Article 8(j) and related provisions of the Convention, in particular in relation to the protection of traditional knowledge and its recognition as prior art.*

Please note that other sections of this decision may also be of interest to WIPO. The full text of the decision is attached.

Decision VII/29: Transfer of technology and technology cooperation

In the Annex to Decision VII/29 on transfer of technology and technology cooperation, which contains the programme of work on technology transfer and technological and scientific

cooperation, under programme element 3 entitled “Creating Enabling Environments”, the World Intellectual Property Organization, in activity 3.1.1, is invited to carry out technical studies:

“3.1.1. Preparation of technical studies that further explore and analyse the role of intellectual property rights in technology transfer in the context of the Convention on Biological Diversity and identify potential options to increase synergy and overcome barriers to technology transfer and cooperation, consistent with paragraph 44 of the Johannesburg Plan of Implementation. The benefits as well as the costs of intellectual property rights should be fully taken into account.

Main actors: Secretariat of the Convention on Biological Diversity, WIPO, UNCTAD and other relevant organizations.

Timeline for implementation: the eighth meeting of the Conference of the Parties.”

Decision VII/2: Biological diversity of dry and sub-humid lands

In the annex to decision VII/2 containing the Synthesis Table of Expected Outcomes and Timeframes, Potential Actors, and Indicators of Progress in the Implementation of the Programme of Work on Biological Diversity of Dry and Sub-Humid Lands, under activities 5 & 6 cooperation with the World Intellectual Property Organization is addressed as follows:

Activity 5. Benefits derived from biological diversity

Expected outcomes: Case-studies on inter-linkages between biodiversity loss and poverty

Time-frame: 2006

Key actors: Parties, collaborating partners including WIPO, SCBD

Status: Planned

Progress Indicators: Submission of case-studies from Parties

Date: 2005

Activity 6. Best management practices

Expected Outcomes: Case-studies including consideration of traditional knowledge

Time-frame: 2006

Key actors: Parties, collaborating partners including WIPO, SCBD

Status: Planned

Progress Indicators: Submission of case-studies from Parties

Date: 2005”

Kindly note that the key actors are indicative and WIPO and/or UPOV might consider the implementation of other relevant activities of the programme of work. In line with decision VII/31 on the multi year programme of work of Convention up to 2010, dry and sub-humid lands will undergo in-depth review at the eighth meeting of the COP and at a preceding meeting of the Subsidiary Body for Scientific, Technical and Technological Advice (SBSTTA). WIPO is invited to actively participate in the review process.

Genetic Use Restriction Technologies

The issue of genetic use restriction technologies, also of interest to WIPO and UPOV, is addressed in two separate decisions of the Conference of the Parties.

In decision VII/16 on Article 8(j) and related provisions, under paragraph 2 of section D, the Conference of the Parties urged *“the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and related provisions of the Convention, to consider the potential socio-economic impacts of genetic use restriction technologies on indigenous and local communities, at its next meeting, on the basis of the report of the Ad Hoc Technical Expert Group on Genetic Use Restriction Technologies, the outcome of the deliberations of the tenth meeting of the Subsidiary Body on Scientific Technical and Technological Advice on this issue, and the study undertaken by the Food and Agriculture Organization of the United Nations, pursuant to decision V/5, on potential impacts of genetic use restriction technologies on agricultural biodiversity and agricultural production systems...”*.

In paragraph 3 of the same section, the Conference of the Parties invited *“Parties and indigenous and local communities to review the recommendations of the Ad Hoc Technical Expert Group on Genetic Use Restriction Technologies, as they relate to Article 8(j) and related provisions of the Convention, and provide comments thereon to the Executive Secretary, for consideration at the fourth meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and related provisions of the Convention. The Parties as well as indigenous communities may consult with other stakeholders for this purpose.”*

In addition, in decision VII/3 on agricultural biological diversity, in paragraph 3, the Conference of the Parties noted the report of the Ad Hoc Technical Expert Group on the Potential Impacts of Genetic Use Restriction Technologies on Smallholder Farmers, Indigenous and Local Communities and Farmers' Rights, established in paragraph 21 of decision VI/5, which met in Montreal from 19 to 21 February 2003 (UNEP/CBD/SBSTTA/9/INF/6); and, in paragraph 4, requested the SBSTTA to consider the report of the AHTEG on Genetic Use Restriction Technologies at its tenth meeting with a view to providing advice to the Conference of the Parties at its eighth meeting, also taking into account decision VII/16 on Article 8(j).

Finally, I would like to take this opportunity to express my appreciation for World Intellectual Property Organization's valuable contributions to the third meeting of the Ad Hoc Working Group on Article 8 (j), the second meeting of the Ad Hoc Open-ended Working Group on Access and Benefit Sharing and to the seventh meeting of the Conference of the Parties. I look forward to continued cooperation with your Organization in the coming months in the implementation of the work programmes of the Convention.

Yours sincerely,

Hamdallah Zedan
Executive Secretary

cc: National Focal Points

[End of Annex and of document]