

Speech by Mr. Francis Gurry  
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and Genetic Resources and Traditional Knowledge*  
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TRADITIONAL KNOWLEDGE AND GENETIC RESOURCES:  
CONSIDERATIONS FROM AN INTELLECTUAL PROPERTY PROSPECTIVE

Distinguished guests.

It is an honour to say a few words about the process for the development of the international instrument for the protection of traditional knowledge, traditional cultural expressions, and intellectual property in relation to genetic resources at the World Intellectual Property Organization (WIPO).

I would like to reiterate how timely this conference is, because the process is at a very critical stage. Just to remind you, discussions have been underway internationally since the year 2000, which is a very long period of time, even when one considers international time.

It is very important that we reach some positive outcomes. At present, the mandate of the WIPO Committee which looks after this question, the Intergovernmental Committee, is to expedite its work so as to present results to the General Assembly of WIPO in October 2017 (in some 18 months' time), which we hope will lead to the conclusion of an international instrument. While most states favour a treaty, not all Member States have yet reached the stage where they agree to the conclusion of a treaty. We have a very intensive work program; it involves six meetings in the course of these two years, two on genetic resources, two on traditional knowledge, and two on traditional cultural expressions.

My colleague, Mr. Wend Wendland, who is the Director of our Traditional Knowledge Division and the Secretary of our Intergovernmental Committee, will be speaking later today on this subject and will give you many more details of the process. I would confine my remarks to rather general remarks in view of the time available. I would like to acknowledge the work that has been done by Mr. Wendland and his colleagues in bringing us to the stage where we are at the moment.

Now the central problem, as you know, is that the universe of traditional knowledge and traditional cultural expressions has been, let us say, underdeveloped in the international intellectual property system, if not neglected. There are two developments that have occurred in the course of the last twenty years which make that neglect increasingly an anomaly. Those developments have been mentioned this morning by Mr. Asan.

First of all, I think in the world of globalisation and standardization, diversity develops an increased value, not just culturally and socially, but also economically. Diversity, the need for diversity and the preservation of diversity are more highly appreciated in an age of globalisation. Mr. Asan has also referred to the enormous development in the field of life sciences, which bears special significance to genetic resources. In addition, globalisation has also brought with it increased vulnerability for traditional knowledge and traditional culture expressions.

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The possibility of misappropriation of the specificities of particular cultures is vastly increased in a world in which we have 24-hour connectivity, communications and the widespread travel and movement of persons. So both the need and the urgency of the need are there awaiting action.

When we approach this universe I think my first remark would be to say that we should not forget that the existing intellectual property system does provide some protection for traditional knowledge and traditional cultural expressions. It is very important to remember this. Particularly, when we see around the world that enterprises and economic agents engines are increasingly using cumulative protection, to protect the competitive advantage that is conferred by innovation and creativity. We see, for example, in the field of films that, whereas once copyright only was used, now branding and merchandising are used very much in association with copyrights for the protection and commercialization of films. In the field of agriculture, both geographical indications and trademarks are used. There are important applications of all of these forms of protection to traditional knowledge, including geographical indications, trademarks, branding, designs, copyright, and the protection of confidential information.

In the discussions and negotiations, there are two major orientations to the question of protection. The first orientation is really concerned with managing the interface between traditional knowledge systems, on the one hand, and western or other knowledge systems, on the other hand. This is sometimes referred to as negative protection. Its aim is to prevent the misappropriation of traditional knowledge by others and to ensure that traditional knowledge, and traditional cultural expressions, are not used without consent of the traditional owners in other knowledge systems. For that purpose, one of the instruments foresees that there should be a compulsory international obligation in the patent system to disclose the source of any genetic resources that are used in an invention for which patent protection is applied.

It is a defensive measure, a measure which will enable or facilitate better tracing of the use of genetic resources in the fields of, in particular, biotechnology and life sciences. That is foreseen, it is not yet agreed, in the instrument. In addition, other instruments for this negative protection or the management of the interface of different knowledge systems around the world, consist of databases. We will hear in the course of this symposium, of the very successful experience that India has had in the construction of a traditional knowledge digital library, which has prevented the patenting of forms of traditional knowledge that have been known and managed for generations and centuries. The other major orientation in the discussions is to establish a positive right of control over traditional knowledge and traditional cultural expressions on the part of the originators. That positive right of control is envisaged both in moral terms and economic terms: both in terms of the right of attribution of authorship and the right of integrity of the works and in terms of the economic right to control the exploitation.

I would like to make four general comments about the process. The first is that of course the process that is under way amongst the Member States at WIPO fits into a much larger picture. The universe, as I said at the beginning, of traditional knowledge and traditional cultural expressions is a vast universe and we are dealing with only one part of it. It is very important to contextualize the contribution that can be made by an international instrument for the protection of traditional knowledge and traditional cultural expressions and intellectual property in relation to genetic resources.

Let me give you just one example of that and it concerns the very important field of genetic resources. The measures envisaged in the international instrument of WIPO concern essentially, as I said, the disclosure requirement, as well as the use of ancillary tools such as databases and guidelines. These must fit into a comprehensive policy at the national level for the preservation and management of genetic resources which includes access, management and also exploitation.

There are not measures that, in isolation, can deal alone with the whole problem or challenges posed by genetic resources. I think it is very important that a comprehensive approach be adopted at the national level. There is already a reasonably well developed international framework in the *Convention on Biological Diversity* (the CBD), the *International Treaty on Plant Genetic Resources for Food and Agriculture*, and now the Nagoya Protocol. So the WIPO instrument has to fit into that context, which is a larger context. In the management of this context at the national level, a very important question and a very difficult question is the relationship between private property and public policy measures. Many of you who are owners, for example, of houses or land and exercise your private rights of ownership over the genetic resources that are found on that property. The interface between the public system and the private system is an extremely important system.

My second comment is that I would like to make a plea to you that the time has now come for political negotiations in order for us to reach a conclusion. This process has been underway for 16 years now. The experts have done an extremely fine job in developing drafts of texts that are under consideration by the Intergovernmental Committee, but now choices need to be made in respect of those texts. If you look at the texts concerning genetic resources, as it stands at the moment, it is full of what is typical in an international instrument in its draft stages: square brackets which represent alternative approaches, things that are accepted by some and not accepted by others. Now the Member States have to make choices. That is a difficult exercise and an exercise that involves compromise. But, I would like to underline that the experts' task is reaching an end and difficult choices now need to be made.

In those political choices, there are a number of extremely important tactical or methodological choices that need to be confronted by the Member States. One of those is whether this should be a single comprehensive instrument or whether there should be several instruments. That depends, of course, on the relative maturity of the discussions in each of the areas of genetic resources, traditional knowledge, and traditional cultural expressions. Some Member States favour a single comprehensive instrument. They favour that in part because of the lack of trust that prevails and the feeling that we, if we do only one thing, then the other things may not ever get done. Others feel that a pragmatic approach of taking those things which are more mature and more ripe is better. This is a choice which must be faced in the course of the coming years and it is not an easy one.

I would like to say also that another very important strategic choice is to take the texts at the moment, as they exist, which are very good expositions of the theoretical questions that surround the protection of traditional knowledge and traditional cultural expressions and to

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make them applicable to practical situations. One of the resistances to the conclusion of an international instrument in this area is the repeated statement on the part of the industry that industry needs certainty. Industry needs to be able to know what it can and cannot do, it needs to know that, if it makes investments, particularly in the important field of life sciences, where there are huge investments being made, those investments will not be undone at a later stage by the unforeseen consequences of generalised positions that were adopted. That means that there is a need to address this concern and to address it in such a way that we are able to achieve measurable and quantifiable outcomes.

Let me give you just one or two examples. Some of the questions that are outstanding in the field of traditional knowledge and traditional cultural expressions are the definition of traditional knowledge and traditional cultural expressions, the description of the beneficiary community, who is going to benefit from this, whether it will be the State or indigenous peoples or different collectivities, the scope of protection and possible limitations. I think, if you apply those general questions to a specific subject matter, the questions become more manageable. When one tries to apply the questions as theoretical questions to the whole universe of traditional knowledge and traditional cultural expressions, it is not so manageable. When you apply it to specific subject matters; such as sacred names or designs; scientific or technical knowledge or traditional knowledge of the scientific or technical variety; culturally specific objects; then these questions that are outstanding on the theoretical level, become more quantifiable, more measurable and more manageable.

I will say finally, in this regard, and it is another practical example, that one needs to look at what the contribution of traditional knowledge is in the whole innovation ecosystem and life cycle. I will give you an example from a case study that was conducted some years ago by WIPO and the United Nations Environment Programme (UNEP). It was found in Mali that one traditional people, the Bella people, noticed that a form of wild rice was resistant to blight, or disease affecting rice in circumstances when cultivated varieties of rice were succumbing to blight. What occurred with that original observation was, first, an Indian scientist took the variety of wild rice to the International Rice Institute in the Philippines and bred the resistance characteristics into varieties of cultivated rice. Thereafter, a scientist from the University of California at Davis isolated the particular gene that was responsible for the characteristic of blight resistance.

The traditional intellectual property system recognises the second and the third contributions. It recognises the second contribution by way of plant variety protection and it recognises the third by way of patent protection. But it does not recognise the first contribution, which is actually an observation of cause and effect, which is fundamental to the scientific method. So defining very clearly what is the problem here will help us to achieve an answer which is manageable. I am now going to leave the details and the hard work to my colleagues and I will conclude my remarks this stage. Once again it is a great pleasure to have been able to participate in this conference and to be present in Ankara.

Thank you very much.