



Statement by Dr. Sophia Twarog
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I would like to make some comments regarding document WIPO/GRTKF/IC/6/4/ Rev.1

I agree with the general approach taken in this document, namely to start with identification of objectives and guiding principles and then to identify possible tools that could help to meet these objectives. This is a logical approach when discussing the protection of traditional knowledge, innovations and practices (TK), both at national and international levels. At the national level, each country can choose the measures to take based on national priority objectives identified. At the international level, there would have to be some agreement on common objectives that international measures or instruments would seek to address.

Paragraph 53 of this document sets out the objectives explicitly identified in the 10 *sui generis* TK regimes studied. These objectives cover a very broad range of TK related concerns. The document categorizes them as objectives related: directly to TK and TK holders; to biodiversity and genetic resource policy; indigenous peoples rights; and sustainable development and capacity building.

I would note that the objective to promote development of indigenous peoples and local communities might more logically be included under the category of objectives related to sustainable development and capacity building.

The question then is what tools can be used to meet each of these objectives. And further, how do these objectives and tools interact? What are the interlinkages?

IPRs are one part of a country's potential toolkit. We must examine both the potential of IPRs, (conventional and *sui generis*) to meet this broad range of TK-related objectives, as well as the limitations of IPRs.

The work of this Committee, focused as it is on considering IPR dimensions, could come up with solutions to help solve some of the TK-related concerns and problems. But this forum alone cannot solve all of the issues. I would therefore emphasize the importance of partnerships with other forums and organizations, such as CBD, UNESCO, FAO, WHO, WTO, the Commonwealth Secretariat, the World Bank and UNCTAD. Only through concerted, multi-dimensional and holistic efforts can we hope to find the types of broad-based, rational and well-coordinated solutions that are needed to address the complex set of issues, concerns and aspirations revolving around TK.

And TK is an extraordinarily complex subject, the most complex that I personally have worked on in my 10 years with the UNCTAD secretariat.

This conviction of the need for a holistic, multi-dimensional approach and the need to match tools with objectives led the UNCTAD and Commonwealth secretariats to join forces to hold a workshop on 4-6 February 2004 in Geneva.

Some 90 participants with a range of perspectives and expertise (trade, environment, intellectual property, indigenous issues, enterprise development, etc.) participated in their personal capacities as experts. They examined Elements of National *Sui Generis* Systems for the Preservation, Protection and Promotion of Traditional Knowledge, Innovations and Practices and Options for an International Framework.

The meeting examined in turn three broad categories of objectives, namely preservation, protection, and promoting TK for development, and identified menus of possible actions and measures that could be taken, particularly at the national or regional level, to meet these objectives.

To preserve TK, a number of actions were identified for the *ex situ* preservation, notably TK registries and museums, as well as, more importantly, for the *in-situ* preservation of TK as a dynamic, constantly evolving body of knowledge in living diverse communities. National actions aimed at the latter included media transmissions in local languages, including TK in formal education, training youth, preservation of the natural environment, secure land rights, and enhancing livelihoods.

Both defensive and positive TK protection were discussed. Possible national level actions included disclosure of source of origin of genetic resources and related TK in patent applications, recognition of the ownership of TK-holding communities of their TK, recognition of customary law (stressed by many), and use of conventional IP instruments such as geographical indications. Many felt that non-IPR options should also be explored, for example the use of treaties.

TK plays a key role in development, as TK is the main resource of the poor. To promote TK for development, the importance of sharing experiences among communities as well as countries was emphasized. Supporting the development of local and indigenous community-run ventures aimed at sustainable livelihoods requires actions that are similar to supporting any small enterprises, including capacity building in entrepreneurial skills, access to finance and markets, and facilitating partnerships with larger enterprises. Means of promoting and scaling up TK-based innovations were discussed. Value addition by and benefit sharing with TK holders were emphasized.

Participants greatly appreciated the holistic approach to the issue, as several noted that the objectives of preservation, protection and promotion are inter-linked. To pursue one objective in isolation could have undesired impacts in another area.

For example, concerns about protection, especially actions to establish exclusive rights or efforts to keep knowledge secret so as to fit into the box of trade secrets can have devastating effects on the free flow and exchange that allows this knowledge to continuously grow, adapt, expand and be used by local and indigenous communities. Efforts to document TK in order to preserve it or to serve the cause of defensive IP protection (i.e. preventing inappropriate IPRs by third parties), if not done in a carefully considered manner, could facilitate its inappropriate use, commercial or otherwise, by third parties or destroy any possibility the community might have to exert positive IP rights and ownership of their TK in the future.

It is therefore very important to always bear in mind the whole puzzle, while at the same time working intensively on any one piece of it.

At national level, given the broad range of TK-related concerns and objectives, a good way forward would be to address these issues in a multi-stakeholder committee, comprising representatives of all relevant government ministries and departments (including environment, trade, culture, intellectual property, agriculture, tourism, indigenous affairs, etc.) as well as representatives of interested civil society and, critically, representatives of local and indigenous communities.

It is important that the participation of the latter group in particular be full and effective. South Africa's example, where indigenous representatives comprised half of the teams drafting TK-related legislation, could be a good one to follow.

It is at the same time important to designate within the government a TK focal point or "champion". This department would play a coordinating and catalytic role, bringing together the other relevant ministries and stakeholders, including TK-holding communities.

On international dimensions, a main concern expressed at the workshop was preventing misappropriate or unauthorized use or patenting of TK. The disclosure of origin issue was debated, as were the relative merits of voluntary guidelines, MOUs and soft law approaches, versus binding international instruments. An international framework for mutual recognition of national *sui generis* systems received special attention. There was some debate as to whether to try to reach global consensus on international agreement or whether the interested TK-rich countries and communities should start with an agreement among themselves initially. Establishing a Global Biocollecting Society that could deal with TK-related patent applications and using fairtrade channels to market TK-based products were two other avenues that could be further explored. There were also many calls for a reevaluation or redefinition of the concepts of public domain, prior art and novelty in relation to TK.

The draft workshop report is not a consensus document but rather reflects the diversity of views and ideas expressed during the meeting. It and the four draft discussion papers prepared for the workshop--two on national systems and two on international dimensions--are available just outside this room, as well on the UNCTAD Web site www.unctad.org/trade_env/TK2.htm.

At the international level, identification of common objectives and principles followed by tools to meet those objectives is a good way to proceed. The objectives and principles in the African Group submission, document WIPO/GRTKF/IC/6/12, could be a good point of departure for this discussion.

In this context, the links with other forums are of vital importance. In particular, the CBD will be developing an international instrument or instruments on access and benefit sharing, which will have definite implications for TK. The FAO Treaty on Plant Genetic Resources for Food and Agriculture, expected to enter into force this year, also has major implications for TK related to food and agriculture. The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage was adopted by consensus last year. It is very important that these various international actions complement and mutually reinforce one another to ensure that at the international level, the carefully crafted pieces fit seamlessly together to form a complete picture and holistic solution.

Thank you.