

NOTE ON EXISTING MECHANISMS FOR PARTICIPATION OF OBSERVERS IN THE WORK OF
THE WIPO INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND
GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

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INTRODUCTION

The Member States of WIPO have repeatedly stressed the importance attached to facilitating and enhancing the participation of observers in the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). Since its inception, the IGC has undertaken a number of steps addressing both direct participation of observers in its process and their capacity-building needs for meaningful engagement in the work of the IGC.

The WIPO General Assembly, at its Fortieth (20th Ordinary) Session, held from September 26 to October 5, 2011, agreed on the mandate for the IGC for the 2011-2013 biennium. The WIPO General Assembly further invited the IGC to review its procedures with a view to “enhancing the positive contribution of observers” to the IGC process. In order to facilitate this review, the Secretariat of WIPO was requested to prepare a study on the participation of observers in the work of the IGC. According to the decision of the General Assembly, the study should outline “current practices and potential options” in this regard.

The current Note is intended to assist IGC participants to provide inputs to the WIPO Secretariat in the preparation of the study. The Note outlines and provides background information on past or existing modalities that either facilitate the direct participation of observers in the work of the IGC or strengthen their capacity to contribute effectively, and suggests certain questions that IGC participants may wish to reflect on. This is not a questionnaire, however: It is simply intended to identify practices, issues and questions that IGC participants may wish to base their comments on, if they so wish.

EXISTING MECHANISMS AND PRACTICES TO FACILITATE DIRECT PARTICIPATION OF OBSERVERS IN THE WORK OF THE IGC AND STRENGTHEN THEIR CAPACITY TO CONTRIBUTE TO THE PROCESS

Participatory capacity

WIPO’s General Rules of Procedure are applicable to the IGC, save as otherwise provided in the special Rules of Procedure adopted by the IGC at its first session in April 2001.¹ In accordance with Rule 24 of the WIPO General Rules of Procedure, observers may take part in debates at the invitation of the Chair, and they may not submit proposals, amendments or motions.²

Almost since the inception of the IGC, in practice the Chair has generally allowed observers to intervene during IGC sessions on any issue on the agenda and to make drafting proposals for consideration by Member States. Such drafting proposals are incorporated in the text under discussion if supported by at least one Member State; they are nonetheless reflected in the reports of the sessions in cases where reports of sessions do reflect drafting proposals.

Accreditation

The IGC decided, at its first session, to allow for the participation in its meetings of non-governmental and other organizations, which do not have permanent observer status at WIPO, as *ad hoc* observers.³ In

¹ See document WIPO/GRTKF/IC/1/2 at http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_1/wipo_grtkf_ic_1_2.doc

² See full text of the WIPO General Rules of Procedure (publication No. 399 Rev.3) at http://www.wipo.int/freepublications/en/general/399/wipo_pub_399.html

³ See document WIPO/GRTKF/IC/1/2 at http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_1/wipo_grtkf_ic_1_2.doc

accordance with the established procedure, decisions on accreditation are made by the Member States at the beginning of each session of the IGC based on the documentation containing biographical details of organizations requesting representation in the sessions of the IGC. Currently there are 268 organizations accredited to the IGC as *ad hoc* observers.

WIPO Voluntary Fund for Accredited Indigenous and Local Communities

In 2005, the WIPO General Assembly established the WIPO Voluntary Fund for Accredited Indigenous and Local Communities (the Fund) in order to enhance the participation in sessions of the IGC of representatives of indigenous peoples and local communities which are already accredited to the IGC.⁴ The rules of the Fund were amended by the September 2010 WIPO General Assembly to include the IWGs in its scope.⁵ Decisions on funding are made by the WIPO Director General based on recommendations of the Advisory Board which selects candidates to receive funding. The members of the Advisory Board are elected by the IGC plenary on the proposal of its Chair. They meet during the IGC session in which they are participating and are required to conclude their deliberations before the end of the session, when their mandate expires. The Advisory Board comprises nine members, including: (i) the Chair or one of the Vice-Chairs of the IGC appointed *ex officio*; (ii) five members from the delegations of WIPO Member States taking part in the IGC sessions, reflecting appropriate geographical balance; and (iii) three members from accredited observers representing indigenous or local communities.

Panel of representatives of indigenous and local communities

In November 2004, at the seventh session of the IGC, the Delegation of New Zealand proposed that the IGC consider some practical changes to the meeting procedure to enable the more effective participation of indigenous and local community observers. The proposed arrangements included, *inter alia*, the incorporation of panel presentations by members of indigenous and local communities as part of the IGC plenary.⁶ Pursuant to this proposal, the IGC decided at the session that future sessions of the IGC should be preceded by panel presentations chaired by a representative of an indigenous people or local community.⁷ The panels comprise participants from indigenous and local communities from different geo-cultural regions. These presentations are a rich source of information on the experiences, concerns and aspirations of indigenous and local communities concerning the protection, promotion and preservation of traditional knowledge, traditional cultural expressions and genetic resources. The panels do not form a formal part of the IGC sessions, but summary reports on their proceedings are included in the reports of the IGC sessions. Presentations by panel participants are made available on WIPO Traditional Knowledge, Traditional Cultural Expressions, Genetic Resources webpage.

Briefings and consultations

Specific briefings and consultations for representatives of indigenous and local communities are or have been undertaken within the framework of meetings of the IGC. For example, in the earlier years of the IGC, the Secretariat provided a briefing for observers during the lunch-break on the first day of each session. As attendance at such briefings waned, perhaps because observers became more familiar with the IGC process, these briefings were discontinued in 2009. Written guidance on the procedures of the Committee and on how to participate in Committee discussions are made available at sessions and on WIPO Traditional Knowledge, Traditional Cultural Expressions, Genetic Resources webpage.⁸

Upon invitation or on its own initiative, the Secretariat also provides briefings on the work of the IGC to representatives of NGOs and civil society in the margins of meetings of the United Nations Permanent Forum on Indigenous Issues (UNPFII), the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), the Food and Agriculture Organization of the United Nations (FAO), the United Nations

⁴ The decision of the WIPO General Assembly establishing the Fund is contained in document WIPO/GRTKF/IC/9/3 at http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_9/wipo_grtkf_ic_9_3.doc

⁵ See amended text of the Member States' decision establishing the Fund at http://www.wipo.int/export/sites/www/tk/en/ngoparticipation/voluntary_fund/amended_rules.doc

⁶ Full text of the proposal by the Delegation of New Zealand is contained in document WIPO/GRTKF/IC/7/14 at http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_7/wipo_grtkf_ic_7_14.doc

⁷ See the decisions of the seventh session of the Committee at http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_7/wipo_grtkf_ic_7_www_34905.doc

⁸ See *Practical Information for Delegates* at http://www.wipo.int/export/sites/www/tk/en/igc/documentation/info_delegates.pdf, *Facilities for Accredited Organizations Representing Indigenous and Local Communities* at http://www.wipo.int/tk/en/igc/documentation/info_ngos.pdf and *Making Your Intervention* at <http://www.wipo.int/tk/en/igc/documentation/intervention.pdf>

Convention on Biological Diversity (CBD) bodies and the United Nations Educational, Scientific and Cultural Organization (UNESCO).

Prior to the twelfth session of the IGC, in February 2008, the Swiss Federal Institute of Intellectual Property and the International Centre for Trade and Sustainable Development (ICTSD) held a two-day workshop entitled "Facilitating the Participation in the Intellectual Property and Traditional Knowledge Debate in WIPO's IGC". The workshop was attended by indigenous representatives funded by the WIPO Voluntary Fund to participate in IGC 12, representatives from national governments and from relevant international organizations, such as the World Trade Organization (WTO), FAO, WIPO and CBD Secretariat. The workshop aimed at assisting indigenous representatives to be more directly involved in the discussions of the IGC on intellectual property and traditional knowledge by introducing them to the topics addressed by the IGC and other international fora, collecting their needs, interests and expectations, clarifying relevant terminology, discussing and analysing possible approaches and proposals to resolve the issues discussed, and by allowing for new or improved contacts among the workshop participants. Besides presentations on various topics, ample time was foreseen for plenary and small group discussions that allowed for specific capacity-building, as well as free and informal exchange of views among the participants.⁹

Furthermore, each IGC session is preceded by a meeting of the Indigenous Peoples and Local Communities Consultative Forum which takes place at WIPO's premises where representatives of indigenous peoples and local communities, who chair the meeting, can prepare and meet with the WIPO Secretariat. The Consultative Forum takes place on the Sunday before a Committee session. The Committee has decided that meetings of the Forum are related to the IGC, so that funding from the Voluntary Fund extends to Forum meetings. The Secretariat facilitates the meeting and provides input on substantive and organizational issues, when required, during the meeting and throughout the sessions. On some occasions, the Forum has invited Member State delegates and the Chair of the IGC to participate. During Committee sessions themselves, observers have invited the Chair to meet with them and he has done so on several occasions.

Secretarial logistical and secretarial support

During IGC sessions, WIPO finances the logistical, secretarial and interpretation/translation support that is provided by the Indigenous Peoples' Center for Documentation, Research and Information (DoCip) for the meetings of the indigenous and local communities' representatives. DoCip is a non-profit service organization that provides documentation and information assistance to indigenous participants in United Nations meetings on indigenous issues.

Information tools and resources

All current drafts, drafting proposals, working documents, comments, papers, studies, databases, questionnaires, and other materials prepared for consideration by the IGC, as well as comprehensive reports of its sessions, are publicly available, in Arabic, Chinese, English, French, Russian and Spanish at the WIPO Traditional Knowledge, Traditional Cultural Expressions, Genetic Resources webpage. Updates concerning relevant developments and events are regularly communicated through e-mail notifications. A distinct webpage is devoted to proposals, submissions and papers of observers.¹⁰

SUGGESTED QUESTIONS

Is there any existing mechanism or practice to facilitate direct participation of observers in the work of the IGC or to strengthen their capacity to contribute to the process that has not been reflected above?

What are the options for enhancing the existing mechanisms and practices?

What draft recommendations should the twentieth session of the IGC consider with a view to enhancing the positive contribution of observers to the work of the IGC?

⁹ Information provided by the Swiss Federal Institute of Intellectual Property

¹⁰ See <http://www.wipo.int/tk/en/igc/ngo/ngopapers.html>