

Ninth Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Geneva, April 24-28, 2006 (WIPO)

Report on the Discussions on General Questions and on the Protection of Folklore

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After a pre-Committee panel on different aspects of genetic resources, traditional knowledge and folklore, presented by representatives of indigenous peoples, further non-governmental organisations were accredited to be granted observer status in sessions of this Intergovernmental Committee (WIPO docs. GRTKF/IC/9/2 and GRTKF/IC/9/2Add.).

In respect of the participation of indigenous and local communities, the WIPO General Assembly, at its session in 2005, had formally established a voluntary fund for accredited indigenous and local communities in order to allow their participation in the meetings of the Intergovernmental Committee (WIPO doc. GRTKF/IC/9/3 in particular on the structure and procedure regarding the fund, and WIPO doc. GRTKF/IC/9/INF/8 regarding the state of applications and contributions). The Committee elected the nine members of the Advisory Board of the Voluntary Fund. Sweden announced that the Swedish International Biodiversity Program contributed 53.600 € to the Fund and France announced to contribute the amount of 20.000 €.

Opening Statements

This was the first session after the mandate of the IGC had been renewed for another two years. As decided by the General Assembly of 2005, the mandate did not exclude any possible outcome of the IGC's work and therefore also did not exclude a possible international instrument. One of the main issues coming up during

the opening statements but also underlying the entire discussion at this ninth session of the IGC was the question whether or not the work should strive towards the elaboration of an international treaty, as claimed by the developing countries but opposed by industrialised countries. Both developing and industrialised countries stressed their wish to make progress on the substance and confirmed their opinion that WIPO was the most appropriate forum to deal with this subject matter.

Folklore

The relevant document submitted for this Session (GRTKF/IC/9/4, supplemented by WIPO doc. GRTKF/IC/9/INF/4 as an information document in particular on the implementation of different ways of protection of folklore under different instruments and existing laws), mainly consisted of the unchanged doc. 8/4 of the preceding session, annexed to introductory paragraphs which clarified the current situation as follows: given the renewed mandate which did not exclude any outcome, the Committee was asked to consider the content or substance of any outcome, the form or legal status of any outcome and the consultative and other working procedures necessary to achieve any agreed outcome. While principal and broad support for the work of the Committee had been expressed at the preceding session and the General Assembly, the direction of the work remained controversial. In the ninth session, the Committee was invited to consider possibilities for advancing its work, commenting on the draft provisions in the light of new experiences made, consider an appropriate process to develop materials for the next session and develop options for further enhancing the Committee's role.

In substance, the basis of discussion continued to be a list of objectives, a list of general guiding principles and a list of substantive principles drafted in the form of articles with related explanations. A lot of time was spent on the procedural question of how to discuss these elements. Certain industrialised countries proposed to discuss each of the listed objectives, principles and articles one by one; this was opposed by Brazil and other developing countries to the extent that time would not allow to even start discussions on the individual proposed articles. The USA openly stated that it was not ready to discuss these articles, so that no doubt was left that they were not ready to discuss on anything which could look like a treaty provision, and that any such concrete discussion should not take place before consensus was

reached on the individual policy objectives and core principles. The USA made many detailed amendment proposals regarding these objectives and principles, some of which were of a drafting nature and others of a substantive one, such as the deletion of the words “the protection of” in the title of the document.

To the contrary, developing countries stated that the discussion only of the objectives and principles would be unnecessary and meaningless without the parallel discussion of the articles. Accordingly, after the chairman had proposed, as a middle way for a procedure, to discuss the objectives, followed by the principles and the articles, in clusters of three each, the developing countries nevertheless included in their comments also the proposed articles, when it became clear that otherwise, the time would not be sufficient to talk about the articles. Many comments were quite detailed, such as the opposition to the choice of the word “misappropriation” which might better be replaced by “misuse” or other terms.

When the chairman announced the need to proceed to the next item on the agenda (traditional knowledge) although discussion on the document on folklore had not been completed, a new debate about the procedure arose. For example, it was proposed to discuss the elements which were similar in both documents (9 (4) and 9 (5) on folklore and traditional knowledge) only once in order to save time or to give the possibility to submit written statements. The pressure of developing countries to have a more complete and substantive discussion on folklore resulted in the decision of the chair to continue discussion on this agenda item.

Several statements by developing countries reflected the diversity of interests of indigenous peoples on the one hand and of the governments of the relevant countries on the other hand. For example, Indonesia claimed that a principle should be added according to which the application of customary laws of indigenous peoples should be subject to national laws; also, the Bolivian delegation alluded to the fact that the new Bolivian government allowed now, for the first time, to act in favour of indigenous peoples.

In general, the principal positions have not changed: The developing countries continue to urge for a binding legal instrument protecting folklore, while industrialised countries either object even to the discussion and updating of the list of articles, irrespective of their – national, regional or international – purpose (such as the USA), or simply consider any discussion on a legal binding instrument as premature but are ready to work on recommendations or other forms of soft law (such as the European

Community). Also the proposal of Norway (WIPO doc. GRTKF/IC/9/12) to focus on trying to find areas where consensus has been established or is emerging was broadly welcome.

In the end, the only decision which was possible to achieve regarding the conclusions on the topic of folklore was as follows:

“The Committee took note of the extensive comments made on the contents of document WIPO/GRTKF/IC/9/4, and the indications of a number of delegations that they would be submitting written comments to the Secretariat. It was agreed that the question of subsequent steps would be taken up under Agenda Item 11, Future Work.

The Committee also took note of documents WIPO/GRTKF/IC/9/12 and WIPO/GRTKF/IC/9/INF/4.”

Developing countries were able to avoid the exclusion of the proposed articles from future discussion (i.e. a wish of industrialised countries), so that discussion on all elements of the already submitted documents, including the articles, will remain possible, in accordance with the mandate given by the General Assembly in 2005.

In addition, it was decided that written comments on doc. 9/4 (and 9/5 on traditional knowledge) could be submitted to the Secretariat before July 31, 2006 for circulation prior to the tenth session of the IGC. The Committee also requested that the next (tenth) session should be extended to seven rather than five working days.

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