

**Tenth Intergovernmental Committee on Intellectual Property and Genetic  
Resources, Traditional Knowledge and Folklore,  
Geneva, November 30-December 8, 2006 (WIPO)**

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

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Before the actual meeting of the Intergovernmental Committee, representatives of indigenous peoples shared their views and experiences regarding different aspects of genetic resources, traditional knowledge and folklore during a half-day panel. In the framework of the Committee, and like in preceding sessions, additional non-governmental organisations were accredited as *ad hoc*-observers in sessions of the Intergovernmental Committee (WIPO docs. GRTKF/IC/10/2 Rev. and GRTKF/IC/10/2 Add.). Thereby, the number of accredited non-governmental organisations within this Committee has risen to 150.

In respect of the participation of indigenous and local communities, a short report on the recent implementation of the WIPO Voluntary Fund and on received and pledged contributions was given and it was confirmed that beneficiaries under the fund should receive in future terminal expenses at the rate currently applied under the UN system. In addition, the Committee elected on the proposal of the Chair eight new members of the Advisory Board of the Voluntary Fund from Member States and accredited observers representing indigenous and local communities or other customary holders or custodians of TK or TCEs. The Chair also nominated the Deputy Chair of the Advisory Board.

**Opening Statements and General Discussion underlying the Topic of Folklore**

From the outset, the Chair, the Ambassador of Thailand, reminded the Committee that the mandate will end after the eleventh session of the Intergovernmental

Committee in July 2007, and that in this context, discussions should already focus on how to achieve a concrete outcome in the Committee. The need to draw up a roadmap for future work was also stressed by many delegations. These calls must be understood against the background of the current situation of discussions in the Intergovernmental Committee: The discussion documents submitted by the Secretariat on Folklore (and, likewise, traditional knowledge) which contain lists of general objectives and principles of protection as well as of provisions which could be used as a model for national, regional or international law-making, have not been changed after the Eighth Session; only important new, written submissions by Member States and non-governmental organisations on these texts have been compiled and distributed by the Secretariat (WIPO docs. GRTKF/IC/10/INF/2 and GRTKF/IC/10/INF/2 Add., GRTKF/IC/10/INF/2 Add. 2 as well as GRTKF/IC/10/INF/3).

Already in the proceeding sessions, the potential for an upcoming deadlock could be perceived and was now, in the Tenth Session, explicitly addressed by many participants. It is caused by the clear split of positions between most industrialised countries on the one hand which object to the work on a possible treaty on the protection of folklore (and traditional knowledge) and are ready only to work on non-binding measures, and the position of developing countries on the other hand which urge for the elaboration and adoption of a treaty or similar binding international instrument.

The discussions on substance reflected this split. In particular, industrialised countries wished to limit the discussion in the first place to the general objectives and principles and to proceed only later, after agreement on them, to the discussion of concrete provisions. Developing countries however may have felt that such a procedure would be capable of delaying discussion on provisions far into the future and proposed to split the available time at 50 % for the discussion of objectives and principles on the one hand and of the articles on the other hand. Similarly, discussions on the further development of the documents prepared by the Secretariat reflected this split of positions: Industrialised countries preferred the least up-dating and integration of new comments into the existing documents as possible, while developing countries wanted to advance work by integrating the comments by

delegations into the documents on objectives, principles and articles as submitted originally by the Secretariat. At the same time, all delegations expressed their readiness to engage constructively in future work and confirmed their appreciation of the Secretariats' work.

In this situation, the Chair very skilfully managed to avoid a possible, complete deadlock by proposing to first discuss a new list of very basic issues concerning the protection of folklore (and traditional knowledge) while maintaining the existing documents (including the article provisions) as relevant documents on the table and leaving unaffected also the existing positions in relation to these documents. Finally, the following list of issues to be discussed in numerical order was adopted in respect of folklore:

1. Definition of traditional cultural expressions (TCEs)/expressions of folklore (EoF) that should be protected.
2. Who should benefit from any such protection or who [should] hold the rights to protectable TCEs/EoF?
3. What objective is sought to be achieved through according intellectual property protection (economic rights, moral rights)?
4. What forms of behaviour in relation to the protectable TCEs/EoF should be considered unacceptable/illegal?
5. Should there be any exceptions or limitations to rights attaching to protectable TCEs/EoF?
6. For how long should protection be accorded?
7. To what extent do existing IPRs already afford protection? What gaps need to be filled?
8. What sanctions or penalties should apply to behaviour or acts considered to unacceptable/illegal?
9. Which issues should be dealt with internationally and which nationally, or what division should be made between international regulation and national regulation?
10. How should foreign rightholders/beneficiaries be treated?

Indeed, this list is a compromise in that these issues summarise the main points already contained in the objectives and principles and, at the same time, cover also substance, though no longer in form of precise articles. In the end of the entire session, the following roadmap for future work was then decided by the Intergovernmental Committee:

- (i) “Discussion will comment on the Issues (attached as Annex I [see the above mentioned list of ten issues]) in numerical order, if possible, during the current session and will continue on that basis at the next session.
- (ii) The existing documents of WIPO/GRTKF/IC/10/4, WIPO/GRTKF/IC/10/5 and WIPO/GRTKF/IC/10/6 remain on the table in their existing form and existing positions in relation to them are noted.
- (iii) The discussion on the Issues is complementary to and without prejudice to existing positions in relation to the existing documents.
- (iv) Delegations and indigenous representatives are invited to submit comments on the Issues by end of March 2007. The Secretariat will collate the comments under each of the issues and distribute them by end of April. All comments will be posted on the internet on receipt.
- (v) In relation to existing comments on documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5, the Secretariat will produce two tables (one for traditional knowledge and one for traditional cultural expressions/expressions of folklore) each containing two columns. In the first column, the titles of provisions in documents WIPO/GRTKF/IC/9/4 or WIPO/GRTKF/IC/9/5, as the case may be, will be reproduced, together with titles ‘general’, under the heading ‘Issues’. In the second column, the comments made by delegations and observers in relation to the titles in question will appear under the name of each delegation or observer.

...”

Although the aspirations of developing countries thereby seem to – at least preliminary – be frustrated to some extent, this outcome of the session was probably the only compromise possible and brings about the advantage of having re-established a principally positive working atmosphere with a focus on substance, and a certain dynamics which had been severely threatened by the possible deadlock.

## **Folklore**

In substance, different opinions were expressed again regarding the approaches proposed by the Secretariat's document WIPO/GRTKF/IC/10/4. For example, Japan clearly objected to the protection of folklore in particular through a rights-based approach or prior informed consent. Developing countries which discussed the proposed provisions mainly objected to the system of registration which has been proposed by the Secretariat for expressions of folklore with a particularly high value. They did so in view of the practical problems of registration, the cost and the difficulties in determining a "particularly high value". Many other, similar remarks were made in detail. Some statements also reflected the tension between a proper interest of the Governments in a protection system and the interest of the indigenous peoples; some of the latter claimed the need for protection of the communities against state-related forces and more than minimum participation of indigenous peoples within national task forces on that topic. Indigenous representatives also again stressed that the separation of Issues into those of folklore, traditional knowledge and genetic resources would look artificial to them and not correspond to their holistic view of the matter. In addition, information on latest developments at the national and regional levels were given by a number of delegates.

It was decided that the next session would be extended to eight working days and take place in July.

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