

First Annual Conference on South-South Cooperation on Intellectual Property (IP) and Development

Conference
Geneva, September 28, 2012

SUMMARY OF THE REPORT

prepared by the Secretariat

The First Annual Conference on South-South Cooperation on IP and Development was held in Geneva as part of the implementation of the Development Agenda Project on *Enhancing South-South Cooperation on IP and Development among Developing Countries and Least Developed Countries (LDCs)*.

1. Held at the World Intellectual Property Organization (WIPO) headquarters, the meeting was opened by Mr. Geoffrey Onyeama, Deputy Director General, Development Sector, WIPO, who pointed out the fact that South-South cooperation, an important stream of international cooperation running in parallel, rather than as a substitute, to North-South and triangular cooperation, had been a long-standing priority of the United Nations (UN) since the adoption, in 1978, of the *Buenos Aires Plan of Action for Promoting and Implementing Technical Cooperation among Developing Countries*, and the adoption of the UN General Assembly Resolution 33/134 relating to the key role to be played by the UN and its specialized agencies as promoters and catalysts of such cooperation. The First WIPO Interregional Meeting on South-South Cooperation held in Brasilia, Brazil, from August 8 to 10, 2012, he highlighted, had focused on exchanges of national and regional experiences in the fields of traditional knowledge, traditional cultural expressions or folklore, genetic resources, IP governance, and copyright and related rights, and a number of areas with great potential for enhanced South-South cooperation, as highlighted in the report of the meeting, had been identified. These types of exchanges of knowledge, experiences and lessons learned, he added, were particularly relevant for countries facing similar challenges and at similar levels of development. In this regard, the recent signature of a Memorandum of Understanding (MoU) between the Government of Brazil and WIPO for the promotion of South-South cooperation in the field of IP

through concrete projects and partnerships with other developing countries and LDCs was a particularly important new initiative to highlight.

2. Presenting the work undertaken in the framework of the First Interregional Meeting on South-South Cooperation in the field of traditional knowledge (TK), traditional cultural expressions (TCEs) and genetic resources (GRs), Mrs. Natasha Pinheiro Agostini, Secretary, Intellectual Property Division (DIP), Ministry of External Relations, Brazil, highlighted, in a nutshell, the main points that had been discussed in Brasilia. For a long time, she stressed, international discussions had been centered on the preservation and safeguarding of TKs, TCEs, and GRs. Today however, countries were facing a different challenge, namely the development of appropriate models of protection. In Brasilia, representatives from developing countries had mostly focused their exchanges on the use of IP tools to prevent the unauthorized or inappropriate use of TK and TCEs by third parties, acknowledging the importance to enable holders and communities to acquire and assert their rights and to exploit their TK and TCEs commercially for their economic development. The issue of trans-boundary TK, TCEs and GRs had also been extensively discussed with regard, in particular, to the difficulty of protecting shared TK, TCEs and GRs. To the extent that contract-based solutions were largely domestic strategies and that IP rights were traditionally territorial rights, TK, TCEs and GRs with an international dimension called for sui generis and innovative solutions, including for instance the development of an international access scheme which would impose responsibilities on the provider and the user countries or the application of the principle of reciprocity in the context of Mutual Recognition Agreements (MRAs). Regional cooperation initiatives such as the Caribbean Community (CARICOM) Revised Treaty of Chaguaramas and the African Regional Intellectual Property Organization (ARIPO) 2010 Swakopmund Protocol on Traditional Knowledge and Expressions of Folklore defining TK, folklore and beneficiaries and establishing positive and exclusive rights for holders were also discussed.

The discussions in Brasilia also made it clear that most of the participants supported the view that an international instrument(s) with clear provisions on the protection of TK, TCEs and GRs was strongly needed and that there was indeed an urgent need for well-established, culturally appropriate and predictable rules at the international level. With this objective in mind, it was paramount to strengthen coordination efforts between developing countries and LDCs in the context of the negotiations at the IGC. With regard to the protection of GRs, exchanges had focused mainly on the implementation of obligations derived from the Convention on Biological Diversity (CBD) related to prior informed consent, mutually agreed terms, fair and equitable benefit-sharing, and the disclosure of origin. Many developing countries, Mrs. Agostini stressed, had created institutional bodies responsible for elaborating and executing public policies for the protection of GRs such as, for instance, the Peruvian Biopiracy Prevention Commission, the Indian Biodiversity Commission or the Brazilian Genetic Resources Council. A number of developing countries had also put into place mechanisms providing for a defensive protection of GRs based on the IP system, including countries such as Costa Rica, India, Indonesia, China, Panama, or Brazil. Taking into account the fact that some of the most modern schemes for access and benefit-sharing (ABS) and some of the comprehensive and innovative legislations on the protection of TK, TCEs and GRs had been elaborated by developing countries, she concluded, it made no doubt that enhanced South-South cooperation in this field would be particularly valuable.

3. In the context of the general discussion on this topic, Mrs. Agostini underlined the fact that the issue of benefit-sharing, trans-boundary GRTKF, and the question of how various national legislations and mechanisms had been put into place and how communities had benefited from these mechanisms to date had been identified as important areas for future South-South cooperation. The importance of South-South cooperation was also reiterated by a number of Delegates who emphasized the need to identify and put into action concrete projects. Given the fact that technical cooperation resources at world-level had been reduced, it was also stressed that South-South cooperation and triangular cooperation were becoming increasingly relevant

and necessary. Last but not least, the suggestion was put forward that WIPO prepare a comparative legal study of current national laws relating to GRTKF to ensure that developing countries and LDCs have access to the various opportunities and options available to them. In this regard, the Secretariat pointed out the fact that there was already, on the WIPO website, a database of all national laws dealing with GRs, TK and folklore which all countries could access and search freely, but that the summaries comparing these laws across various topics, prepared some years ago, could indeed be updated if there was no opposition to that idea.

4. Mr. Mihály Ficsor, Chairman of the Central and Eastern European Copyright Alliance (CEECA), Budapest, and Mr. Joseph Fometeu, Professor at the Faculty of Legal and Political Sciences, University of Ngaoundéré, Cameroon, then took the floor to present the work undertaken in the framework of the First Interregional Meeting on South-South Cooperation in the field of copyright and related rights. Reiterating the fact that South-South cooperation was an important stream of international cooperation but not a substitute to multilateral and North-South cooperation, Mr. Ficsor underlined the fact that IP could only serve development if the IP system itself was development-oriented, which implied that developing countries and LDCs should receive special treatment, as recognized in the Appendix to the Berne Convention and the WIPO Internet Treaties. A development-oriented IP system should not only guarantee sustainable creation and production but also ensure well-balanced access. The discussions in Brasilia, Mr. Ficsor pointed out, had clearly highlighted the fact that there were, in the field of copyright, significant differences both from the viewpoint of levels of development as well as with regard to areas of special conditions and interests. Nevertheless, some areas had been identified as particularly important from the point of view of future South-South cooperation, including collective management and exceptions and limitations in the field of copyright and related rights. The Beijing Treaty, which, Mr. Ficsor stressed, had been both a success of multilateralism and a success of a spirit of compromise, included many principles of the Development Agenda and guaranteed flexibility with the application of the “three-step test” with regard to exceptions and limitations. The three-step test, he added, had been introduced for the first time in Stockholm in 1967 with regard to the right of reproduction and had been extended in the TRIPS Agreement (Article 13), in the WPPT, as well as for industrial design and patent rights. While Articles 7 and 8 of the TRIPS Agreement relating to flexibilities concerned mainly industrial property rights, the basic principles such as the fact that the IP system should be well-balanced were also very much applicable to copyright. Mr. Ficsor also pointed out to the fact that there were currently some debates in the academic world with regard to how the three-step test should be applied, with one position advocating that the three conditions should be mixed together and another position advocating that they should be applied step by step. In this regard, the discussions in Brasilia had highlighted the fact that what was in fact important was not whether the three conditions of the test were considered, in principle, step by step or together, but the fact that the three conditions should be applied appropriately, in other words in accordance with the purpose of the test to establish appropriate balance.

5. With regard to the protection of broadcasting organizations, Prof. Fometeu highlighted the fact that several countries in the South had put in place mechanisms to protect broadcasting organizations such as Kenya with its Copyright Act of 2001 protecting content, or Ghana with its Copyright Act of 2005 protecting both the content and the signal. A review of various national legislations in the field however had drawn attention to the fact that different terminologies were being used. This diversity in the terms of protection in the various national laws and the different legislative approaches, he stressed, made it difficult to foresee further cooperation in this area. In order to close the gap and reduce disparities, there was an urgent need to clarify and harmonize concepts in this field. The protection of broadcasting organizations, he pointed out, included three important aspects, namely the signal that carries the program, the program carried by the signal, and the content of the program which is at the same time the content of the signal and which includes both protected and non-protected works. Discussions in Brasilia had led to the conclusion that it was not possible to separate content and signal and that a poor protection of the signal ultimately led to poor protection of the content. In this regard, it had also

become clear that an international legally binding instrument to protect the rights of broadcasters was needed. With regard to copyright limitations and exceptions for libraries, archives, educational and research institutions, and visually impaired persons (VIPs), exchanges on this topic had highlighted the fact that most countries did not have exceptions and limitations for libraries and that even in countries with exceptions for libraries, libraries were often subjected to the payment of royalties for the use of protected works. It was also noted that certain topics that had been discussed in the negotiations for a treaty for libraries and archives had not been addressed in national legislations, which had resulted in a situation whereby some libraries were not covered by appropriate limitations and exceptions. In this context, he stressed, the draft treaty currently under negotiation was an important opportunity to overcome these gaps. In the field of limitations and exceptions for educational and research institutions, it was noted that most national laws provided for this type of exceptions and limitations and that it would in fact be useful to analyze how these exceptions and limitations were being implemented in practice at the national level. As far as VIPs were concerned, it had become clear that VIPs did not currently benefit adequately from exceptions and limitations as the large majority of countries did not provide for any exceptions for the visually impaired, which had led to the conclusion that an international instrument would be truly a step forward. South-South cooperation in this area in particular, he noted, could bring many benefits and it was in the interest of developing countries and LDCs to drive the process forward.

6. Presenting the third topic relating to IP governance, Mr. Ahmed Abdel Latif, Senior Programme Manager, Programme on Innovation, Technology and Intellectual Property at the International Centre for Trade and Sustainable Development (ICTSD), Geneva, recalled the importance of South-South cooperation as a well established principle and priority in the UN, pointing out the fact that most UN agencies had established specific units and activities for the enhancement of South-South cooperation in their respective areas of work. The sharing, among developing countries and LDCs, of common realities and challenges in the field of IP made South-South cooperation in this area particularly relevant and a fertile ground for sharing experiences. With regard to IP governance and development, Mr. Latif pointed out the fact that there were two distinct but complementary dimensions that had to be taken into account, namely the concept of using IP for development and the concept of development-oriented IP. South-South cooperation had to embrace these two dimensions. The first dimension, he stressed, related to issues including IP policies, domestic IP coordination mechanisms, the use of IP rights, in particular patents, for economic development and innovation, collective management of copyright and related rights, as well as IP administration. Many developing countries had interesting experiences to share in these areas and the PROSUR initiative, for instance, was a particularly interesting initiative and a promising example of South-South cooperation between nine South American countries in the field of IP administration. Development-oriented IP on the other hand referred to the idea that IP should be supportive of public policy objectives in areas such as health, education, or culture, and included the concept of flexibilities, limitations and exceptions. Many developing countries, he pointed out, had reformed or were in the process of reforming their IP laws, and in this regard, South-South exchanges of experiences and best practices would clearly make a positive contribution in the field of IP governance. Mr. Latif concluded his presentation by stressing the fact that while the sharing of experiences and best practices was indeed an important and necessary first step, subsequent initiatives to strengthen South-South cooperation and add value to such a mechanism could include, for instance, the consolidation of these lessons learned into specific case studies and other types of publications and tools.

7. In the context of the general discussion, it was underlined that developing countries and LDCs had indeed a lot to learn from each other's experiences and that the development of an online portal showcasing such experiences and best practices would be particularly valuable not only as a platform to share experiences, but also to identify possible partnerships and concrete projects. In view of the challenges facing developing countries and LDCs in generating IP, it was also stressed that an important question to address was how to draw on the experiences of

emerging countries such as India or China to leverage IP for economic, social and economic development, and that regional initiatives, as highlighted by ARIPO and by a cooperation initiative in the Maghreb region, could provide an adequate basis for fostering South-South cooperation in the field of IP in a gradual manner.

8. With regard to the evaluation of the First Interregional Meeting on South-South Cooperation (topic 4), the Secretariat presented a brief overview of the feedback gathered through an evaluation questionnaire which had been distributed to the participants at the end of the meeting, including some statistics and figures summarizing the results of the evaluation exercise. The meeting, the Secretariat highlighted, was attended by 85 participants from 32 developing countries and LDCs, in addition to representatives from five developed countries, three intergovernmental organizations and two non-governmental organizations. Publicized on the WIPO website and Twitter and webcasted live, the video recording of all discussions had been made available to ensure an as wide dissemination as possible of the meeting. An analysis of 47 completed evaluation questionnaires had confirmed the usefulness and added value of the meeting and the Secretariat had recorded a large satisfaction with regard to the contribution of the meeting to some of the project's main objectives including: "a better understanding of IP and its potential contribution to development in developing countries and LDCs", "identifying priorities and special needs of developing countries and LDCs", "raising awareness of the strategic use of IP to foster domestic creations and creativity in developing countries and LDCs", and "increasing the capacity of developing countries and LDCs to share their knowledge, experiences and best practices".

9. As the host of the First Interregional Meeting on South-South Cooperation, the Government of Brazil was then given the floor to share and present its own perspective. Mr. José Estanislao do Amaral, Deputy Permanent Representative of Brazil to the WTO and other economic organizations in Geneva, recalling the fact that the meeting had indeed provided an invaluable opportunity for developing countries and LDCs to exchange experiences, as a reading of the full report of the meeting confirmed, also pointed out to the fact that some participants had expressed dissatisfaction with regard to the fact that the meeting had not had a concrete outcome, in particular no concrete recommendations. Several of the participants had expressed the view that future meetings should be more results-oriented and focused; a view which the Government of Brazil also supported. For the South-South cooperation initiative to be sustainable it had to become a priority for WIPO and concrete actions were needed. In this regard, he added, the Second Interregional Meeting should provide a space, in addition to the exchange of experiences, for identifying key areas where cooperation could be further strengthened and turned into concrete projects, and developing countries had to take responsibility for ensuring the success of this process. Emphasizing the importance of guaranteeing that adequate human and financial resources were being dedicated to the promotion of South-South cooperation in WIPO, Brazil, he highlighted, had been actively engaged in the development of South-South cooperation in WIPO, including by committing resources, and it was important that other developing countries in a position to do so also contributed adequate resources. Under the recently signed MoU for the promotion of triangular technical cooperation in developing countries, the Government of Brazil, he pointed out, would invest 1.1 million US dollars in the next four years to finance concrete projects in the field of IP in a spirit of South-South cooperation.

10. Under topic 5, the Secretariat presented a brief overview of the implementation of the Development Agenda Project, referring, in particular, to the project delivery strategy approved by Member States and pointing out the main activities undertaken to date. In addition to the organization of the Second Interregional Meeting on South-South Cooperation which would focus on patents, trademarks, industrial designs, geographical indications, and enforcement, and which would be held in spring 2013, the Secretariat highlighted the fact that it would next focus on the development of a dedicated webpage on South-South cooperation for which a

questionnaire would be circulated to all concerned countries in due course with a view to gathering initial information to populate the webpage.

11. With regard to the Second Interregional Meeting on IP and Development and the proposed Terms of Reference (TORs) and provisional agenda (topic 6), the Secretariat, after briefly introducing the main topics and proposed TORs, opened the floor for comments and suggestions. In this regard, it was noted that future exchanges in the framework of the South-South project should concentrate on concrete examples and good practices and that the Second Interregional Meeting should focus on concrete national, sub-regional and regional experiences to ensure added value and avoid duplicating political discussions held in Geneva. Confirming the interest of the Government of Egypt to host the Second Interregional Meeting, the Delegate of Egypt pointed out that it had no reservations on the proposed TORs and that a transparent and inclusive process would be followed in the organization of the meeting, in cooperation with the Secretariat. In response to a number of comments referring to this issue, the Secretariat further confirmed that the usual consultative process would be followed, including consultations with Regional Coordinators, as it had been the case for the first meeting. A full-fledged program would be developed on that basis and made available in due course.

12. In his concluding remarks, Mr. Yoshiyuki Takagi, Assistant Director General, Global Infrastructure Sector, WIPO, reiterated the importance of the WIPO South-South initiative and, looking back at WIPO's experience in the area of infrastructure building, recognized the fact that such exchanges of views, experiences and best practices were indeed the right way forward. Taking into account the fact that there was no "one size fits all" model, customized solutions had to be explored and the best way to do so was through the exchange of experiences and lessons learned. Welcoming the Government of Egypt's offer to host the Second Interregional Meeting on South-South Cooperation, Mr. Takagi concluded by pointing out the fact that the report and video recording of the conference would be made available to Member States in due course and thanked all the participants for their inputs.

[End of document]