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Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

**Fortieth Session
Geneva, June 17 to 21, 2019**

DECISIONS OF THE FORTIETH SESSION OF THE COMMITTEE

Adopted by the Committee

DECISION ON AGENDA ITEM 2:

ADOPTION OF THE AGENDA

The Chair submitted the draft agenda circulated as WIPO/GRTKF/IC/40/1 Prov. 2 for adoption and it was adopted.

DECISION ON AGENDA ITEM 3:

ADOPTION OF THE REPORT OF THE THIRTY-NINTH SESSION

The Chair submitted the draft report of the Thirty-Ninth Session of the Committee (WIPO/GRTKF/IC/39/18 Prov. 2) for adoption and it was adopted.

DECISION ON AGENDA ITEM 4:

ACCREDITATION OF CERTAIN ORGANIZATIONS

The Committee unanimously approved the accreditation of the Centre for International Sustainable Development Law (CISDL) and For Alternative Approaches to Addiction, Think & do tank (FAAAT) as *ad hoc* observers.

DECISION ON AGENDA ITEM 5:

PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES

The Committee took note of documents WIPO/GRTKF/IC/40/3, WIPO/GRTKF/IC/40/INF/4 and WIPO/GRTKF/IC/40/INF/6.

The Committee strongly encouraged and called upon members of the Committee and all interested public and private entities to contribute to the WIPO Voluntary Fund for Accredited Indigenous and Local Communities.

Recalling the Decisions of the Fiftieth Session of the WIPO General Assembly, the Committee also encouraged members of the Committee to consider other alternative funding arrangements.

The Chair proposed, and the Committee elected by acclamation, the following eight members of the Advisory Board to serve in an individual capacity: Mr. Reza DEHGHANI, Counsellor, Permanent Mission of the Islamic Republic of Iran, Geneva; Mr. Nelson DE LEÓN KANTULE, Representative, *Asociación Kunas Unidos por Napguana* (KUNA); Mr. Mahmud JUMAZODA, Second Secretary, Permanent Mission of Tajikistan, Geneva; Ms. Subama MAPOU, Representative, ADJMOR; Ms. Lucy MULENKEI, Representative, Indigenous Information Network (IIN); Mr. Moses PHAHLANE, Deputy Director, Multilateral Trade Issues, Department of International Cooperation, South Africa; Ms. Aurelia SCHULTZ, Counsel, Office of Policy and International Affairs, Copyright Office, United States of America; and Ms. Heidi VASCONES MEDINA, Third Secretary, Permanent Mission of Ecuador, Geneva.

The Chair of the Committee nominated Mr. Faizal Chery Sidharta, Vice-Chair of the Committee, to serve as Chair of the Advisory Board.

Acknowledging the contribution to the Committee's work made by the Indigenous Expert Workshop held in 2013, as reflected in its Report (WIPO/GRTKF/IC/25/INF/9), and with reference to the recommendation made by the United Nations Permanent Forum on Indigenous Issues (UNPFII) at its Eighteenth Session in 2019, the Committee requested the WIPO Secretariat to organize, within existing resources, an Indigenous Expert Workshop during the

biennium 2020-2021, following similar arrangements *mutatis mutandis* to those as agreed at the Twentieth Session of the Committee under Agenda Item 8.

Acknowledging the contribution to the Committee's work by the *Technical Review of Key Intellectual Property-related Issues of the WIPO Draft Instruments on Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions* (WIPO/GRTKF/IC29/INF/10) (the Technical Review), which was prepared by an indigenous expert, and with reference to the recommendation made by the UNPFII at its Eighteenth Session in 2019, the Committee requested the Secretariat to commission, within existing resources, the updating by an indigenous expert of the *Technical Review* for the Committee's consideration during the biennium 2020-2021.

DECISION ON AGENDA ITEM 6:

TRADITIONAL KNOWLEDGE/TRADITIONAL CULTURAL EXPRESSIONS

The Committee developed, on the basis of document WIPO/GRTKF/IC/40/4, a further text, "The Protection of Traditional Knowledge: Draft Articles – Facilitators' Rev.", and on the basis of document WIPO/GRTKF/IC/40/5, a further text, "The Protection of Traditional Cultural Expressions: Draft Articles – Facilitators' Rev.". The Committee decided that these texts, as at the close of this agenda item on June 19, 2019, be considered by the Committee under Agenda Item 7 (Taking Stock of Progress and Making a Recommendation to the General Assembly), in accordance with the Committee's mandate for 2018-2019 and the work program for 2019, as contained in document WO/GA/49/21.

The Committee took note of and held discussions on documents WIPO/GRTKF/IC/40/7, WIPO/GRTKF/IC/40/8, WIPO/GRTKF/IC/40/9, WIPO/GRTKF/IC/40/10, WIPO/GRTKF/IC/40/11, WIPO/GRTKF/IC/40/12, WIPO/GRTKF/IC/40/13 Rev., WIPO/GRTKF/IC/40/14, WIPO/GRTKF/IC/40/15, WIPO/GRTKF/IC/40/16, WIPO/GRTKF/IC/40/17 and WIPO/GRTKF/IC/40/INF/7.

DECISION ON AGENDA ITEM 7:

TAKING STOCK OF PROGRESS AND MAKING A RECOMMENDATION TO THE GENERAL ASSEMBLY

The Committee took stock of progress made during the 2018-2019 biennium, and confirmed that the texts contained in the annexes to documents WIPO/GRTKF/IC/40/6, WIPO/GRTKF/IC/40/18 and WIPO/GRTKF/IC/40/19 be transmitted to the 2019 WIPO General Assembly, in accordance with the Committee's mandate for 2018-2019 and the work program for 2019, as contained in document WO/GA/49/21.

The Committee decided to transmit the Chair's Text of a *Draft International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources* to the 2019 WIPO General Assembly, and to include it as a working document of the Committee as a Chair's Text.

The Committee agreed to recommend to the 2019 WIPO General Assembly that the mandate of the Committee be renewed for the 2020-2021 biennium. The Committee further agreed to recommend to the 2019 General Assembly that the terms of the mandate and work program for 2020-2021 be as follows:

"Bearing in mind the Development Agenda recommendations, reaffirming the importance of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (Committee), noting the different nature of these issues and acknowledging the progress made, the WIPO General Assembly agrees

that the mandate of the Committee be renewed, without prejudice to the work pursued in other fora, as follows:

- (a) The Committee will, during the next budgetary biennium 2020/2021, continue to expedite its work, with the objective of finalizing an agreement on an international legal instrument(s), without prejudging the nature of outcome(s), relating to intellectual property which will ensure the balanced and effective protection of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs).
- (b) The Committee's work in the 2020/2021 biennium will build on the existing work carried out by the Committee, including text-based negotiations, with a primary focus on narrowing existing gaps and reaching a common understanding on core issues¹.
- (c) The Committee will follow, as set out in the table below, a work program based on open and inclusive working methods for the 2020/2021 biennium, including an evidence-based approach as set out in paragraph (d). This work program will make provision for 6 sessions of the Committee in 2020/2021, including thematic, cross-cutting and stocktaking sessions. The Committee may establish *ad hoc* expert group(s) to address a specific legal, policy or technical issue². The results of the work of such group(s) will be submitted to the Committee for consideration.
- (d) The Committee will use all WIPO working documents, including WIPO/GRTKF/IC/40/6, WIPO/GRTKF/IC/40/18 and WIPO/GRTKF/IC/40/19, and the Chair's Text on the *Draft International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources*, as well as any other contributions of Member States, such as conducting/updating studies covering, inter alia, examples of national experiences, including domestic legislation, impact assessments, databases, and examples of protectable subject matter and subject matter that is not intended to be protected; and outputs of any expert group(s) established by the Committee and related activities conducted under Program 4. The Secretariat is requested to continue to update studies and other materials relating to tools and activities on databases and on existing disclosure regimes relating to GRs and associated TK, with a view to identify any gaps, and continue to collect, compile and make available online information on national and regional *sui generis* regimes for the intellectual property protection of TK and TCEs. Studies or additional activities are not to delay progress or establish any preconditions for the negotiations.
- (e) In 2020, the Committee is requested to provide to the General Assembly a factual report along with the most recent texts available of its work up to that time with recommendations, and in 2021, submit to the General Assembly the results of its work in accordance with the objective reflected in paragraph (a). The General Assembly in 2021 will take stock of progress made, and based on the maturity of the texts, including levels of agreement on objectives, scope and nature of the instrument(s), decide on whether to convene a diplomatic conference and/or continue negotiations.

¹ Core issues include, as applicable, inter alia, definitions, beneficiaries, subject matter, objectives, scope of protection, and what TK/TCEs are entitled to protection at an international level, including consideration of exceptions and limitations and the relationship with the public domain.

² The expert group(s) will have a balanced regional representation and use an efficient working methodology. The expert group(s) will work during the weeks of the sessions of the IGC.

- (f) The General Assembly requests the Secretariat to continue to assist the Committee by providing Member States with necessary expertise and funding, in the most efficient manner, of the participation of experts from developing countries and LDCs, taking into account the usual formula for the IGC.

WORK PROGRAM – 6 SESSIONS

Indicative Dates	Activity
February/March 2020	(IGC 41) Undertake negotiations on GRs with a focus on addressing unresolved issues and considering options for a draft legal instrument Duration 5 days.
May/June 2020	(IGC 42) Undertake negotiations on GRs with a focus on addressing unresolved issues and considering options for a draft legal instrument. Duration 5 days, plus, if so decided, a one day meeting of an <i>ad hoc</i> expert group.
September 2020	(IGC 43) Undertake negotiations on TK and/or TCEs with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s) Possible recommendations as mentioned in paragraph (e) Duration 5 days.
October 2020	WIPO General Assembly Factual report and consider recommendations
November/December 2020	(IGC 44) Undertake negotiations on TK and/or TCEs with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s). Duration 5 days, plus, if so decided, a one day meeting of an <i>ad hoc</i> expert group.
March/April 2021	(IGC 45) Undertake negotiations on TK and/or TCEs with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s) Duration 5 days, plus, if so decided, a one day meeting of an <i>ad hoc</i> expert group.

June/July 2021	(IGC 46) Undertake negotiations on TK and/or TCEs with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s). Stocktaking on GRs/TK/TCEs and making a recommendation Duration 5 days.
October 2021	WIPO General Assembly will take stock of the progress made, consider the text(s) and make the necessary decision(s).”

Recalling the decisions of the 2018 WIPO General Assembly in this regard, the Committee also recommended that the 2019 WIPO General Assembly recognize the importance of the participation of indigenous peoples and local communities in the work of the Committee, note that the WIPO Voluntary Fund for Accredited Indigenous and Local Communities is depleted, encourage Member States to consider contributing to the Fund, and invite Member States to consider other alternate funding arrangements.

DECISION ON AGENDA ITEM 8:

CONTRIBUTION OF THE INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE (IGC) TO THE IMPLEMENTATION OF THE RESPECTIVE DEVELOPMENT AGENDA RECOMMENDATIONS

The Committee held a discussion on this item. The Committee decided that all statements made on this item would be recorded in the report of the Committee and that they would also be transmitted to the WIPO General Assembly taking place from September 30 to October 9, 2019, in line with the decision taken by the 2010 WIPO General Assembly related to the Development Agenda Coordination Mechanism.

DECISION ON AGENDA ITEM 9:

ANY OTHER BUSINESS

There was no discussion under this item.

DECISION ON AGENDA ITEM 10:

CLOSING OF THE SESSION

The Committee adopted its decisions on agenda items 2, 3, 4, 5, 6, 7 and 8 on June 21, 2019. It agreed that a draft written report, containing the agreed text of these decisions and all interventions made to the Committee, would be prepared and circulated by September 6, 2019. Committee participants would be invited to submit written corrections to their interventions as included in the draft report before a final version of the draft report would then be circulated to Committee participants for adoption at the next session of the Committee.

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