

INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

The first session of the World Intellectual Property Organization's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore was held at WIPO Headquarters in Geneva, Switzerland from 30 April to 3 May 2001. Participants included representatives from 102 Governments, 18 Intergovernmental Organizations and 15 Non-Governmental Organizations. CITES was represented by the Chair of the Animals Committee and the Chief of the Legislation and Compliance Unit of the Secretariat.

The Committee was established during the 26th session of the WIPO General Assembly (Geneva, 26 September – 3 October 2000) in response to growing international concern that the current intellectual property rights (IPR) regime was not designed for dealing with traditional knowledge and that a new *sui generis* instrument or system might be needed for protection of IPR associated with genetic resources, traditional knowledge and folklore.

Work undertaken by WIPO leading up to the Committee's first session included fact-finding missions, country surveys and consultations. A number of countries indicated these activities were quite useful.

The Convention on Biological Diversity (CBD) remains the proper forum for reaching international consensus on the non-IPR aspects of genetic resources and traditional knowledge, particularly issues related to access and benefit sharing. In this connection, several countries warned of the potential overlap among WIPO, CBD, the Food and Agriculture Organization of the United Nations (FAO) and UNEP and suggested that cooperation mechanisms be developed similar to the one already agreed between WIPO and the WTO.

During the session, many participating countries spoke of the need to use their own genetic resources to achieve socioeconomic development and to ensure that they benefit from the commercialization of their natural resources or traditional knowledge. The strong link between genetic resources and traditional knowledge was highlighted. Many countries pointed out the need to scientifically document traditional knowledge and incorporate it into a searchable database linked to the granting of patents. A patent granted by the European Patent Office on a process of extracting oil from the neem tree, and subsequently revoked following opposition, shows the importance of reliable databases to facilitate patent examination.

Quite a few countries urged the Committee to adopt a broad definition of genetic resources, traditional knowledge and folklore and a liberal interpretation of IPR. Several countries pointed out that the concept of "common heritage" does not mean free access to and use of genetic resources wherever they are found. It also was noted that private rights could call into question the sovereign rights of States over the exploitation of their resources. Mention frequently was made of the need to find protection for collective property rights and the importance of prior informed consent in relation to accessing and using genetic resources or traditional knowledge. A number of countries described relevant policy and law initiatives at

the regional, subregional and national level (e.g. the ASEAN framework Agreement on Access to Biological and Genetic Resources, Decrees 361 and 486 of the Andean Community of Nations, and the OAU African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources).

UNCTAD described its work to assist indigenous and local communities in exploring policies to harness traditional knowledge for trade and development. Mention also was made by other participants of "bio-business" and "biotrade".

In general, the work of CITES has links to genetic resources, traditional knowledge (e.g. traditional medicine) and folklore (i.e. artifacts). During its oral presentation to the Committee, the Secretariat described the essential purpose and operation of the Convention noting that Appendix III provides a practical mechanism for Parties to list specific species for specific purposes (e.g. the protection of IPR). Used judiciously, Appendix III allows the Convention to complement other mechanisms for managing biological and genetic resources. It advised the Committee that CITES is one of the actors/forums that should be taken into account in order to avoid duplication and to make use of existing practical and powerful legal mechanisms, expertise and experience. In this connection, it noted that CITES provides the only global, legally-binding mechanism available to sovereign States that enables them to certify that their regulated wildlife trade is sustainable.

The Committee discussed a number of specific proposed tasks related to: (1) access to genetic resources and benefit-sharing; (2) protection of traditional knowledge; and (3) protection of expressions of folklore. General support was expressed, among other things, for the development of "guide contractual practices" and clauses for contractual agreements on access to genetic resources or benefit-sharing, clarification of the term "traditional knowledge" and an evaluation of experience with the UNESCO-WIPO Model Provisions on the Protection of Expressions of Folklore.

Participants did not reach clear consensus on whether to create separate working groups on each of the three main subject areas or to address all three in an integrated fashion at subsequent meetings. Mention was made of the need to develop Terms of Reference for the Committee's work.

The second session of the Committee will take place in Geneva during 10-14 December 2001.