

A new binding international instrument/treaty

It is felt by many developing countries that a new binding instrument/treaty is required to protect indigenous genetic resources, traditional knowledge and intellectual property (IP) rights. This view is not supported by more developed countries for several reasons. Many countries, including Canada, believe either that existing IP regimes provide adequate protection for indigenous property, or that existing IP instruments have not been adequately tested in this context. These countries would support continued discussions on standards setting, and continued research, particularly on indigenous customary law.

Future Mandate and Plan of Work

It was generally felt that the Committee should continue, although no decisions were reached on a plan of work. This will be referred to the WIPO General Assembly in September 2003.

Links to other UN Agencies and Processes

Work on these questions is closely linked to discussions and activities underway in relation to the Convention on Biological Diversity (CBD), the Food and Agriculture Organization (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Permanent Forum on Indigenous Issues (Permanent Forum), and the World Trade Organization (WTO). It was stressed, particularly by indigenous representatives, that WIPO's work should be coordinated with that of these other agencies. A recommendation will be made to the WIPO General Assembly that seats be provided for two representatives of the Permanent Forum at future meetings of the IGC. (See below for additional information.)

Participation of indigenous and local communities

The IGC Secretariat in WIPO prepared a paper for the meeting outlining several options for indigenous participation. (There are more than seventy indigenous and non-governmental organizations currently accredited as observers to the IGC, although relatively few have been able to attend meetings.) It was agreed by all states that there is a need to ensure the participation of indigenous representatives, although no consensus was reached on the mechanisms or funding for participation. Two options for funding were presented for consideration by member states:

that funding for indigenous representation be provided through the regular WIPO budget; or that a voluntary fund be established for this purpose.

Neither option received consensus support. (Concerns were expressed about creating an additional structure and costs within WIPO to administer a voluntary fund, selection of indigenous participants by either WIPO or states, and so on.) Other options put forward included states' inclusion of indigenous participants on delegations, and the creation of a voluntary fund within the Permanent Forum. None of these additional options were supported. The Secretariat will develop an expanded proposal for a voluntary fund with transparent selection criteria.

The regular budget of the Permanent Forum does not provide for attendance at the increasing number of meetings it is being called upon to attend. The WIPO IGC Secretariat will prepare a proposal for funding for representatives of the Permanent Forum to the IGC.

Experts Panel on Sui Generis legislation

A panel of experts presented on national experiences with existing *sui generis* (of its own kind; something that is unique or special) legislation intended to protect indigenous traditional knowledge and cultural expressions. The countries represented included Panama, Peru, the Philippines and the African Union. A comparative summary was prepared by the WIPO Secretariat, which will assist NAHO and other Aboriginal organizations within Canada in an analysis of potential *sui generis* legislation in the Canadian context.

Canada's Position

It is Canada's position that the IGC is already engaged in a process of norm-building, and does not support beginning negotiation of a new international treaty or binding instrument. It encourages the continuation of the Committee and its work, including further identification and analysis of related issues including customary laws. Canada also supports continued work that provides "guidance and capacity-building at the regional, national and community level in order to facilitate the development of appropriate courses of action."

Canadian Indigenous NGO Representation

Organizations from Canada represented at the fifth session of the IGC were the Assembly of First Nations, the Métis National Council, Pauktutit Inuit Women's Association, the Inuit Circumpolar Conference Canada and NAHO.

NAHO Outcomes and Future Activities

In addition to directly enhancing NAHO's knowledge and capacity to address issues related to the protection of indigenous knowledge and property, including genetic resources and traditional medicine, attendance at the IGC meeting provided an excellent opportunity for networking and relationship-building. Links were made with numerous international indigenous organizations, including:

- The Foundation for Aboriginal and Islander Research Action (FAIRA), Australia
- The Aboriginal and Torres Strait Islander Commission (ATSIC), Australia
- Tebtebba Foundation, Philippines
- Health and Environment Program, Cameroon
- Indigenous Peoples' Biodiversity Program, Samoa
- Tulalip Tribes, Washington State, USA
- Inuit Circumpolar Conference (Canada and Greenland)
- Saami Council, Norway
- Permanent Forum on Indigenous Issues
- Greenland Home Rule Government
- United Nations University, Tokyo.

Many of these organizations have a lengthy history of involvement in international indigenous human rights and environmental issues, including the protection of indigenous traditional knowledge and IPR. There has not been, however, a concerted effort at networking and capacity building in relation to the work at WIPO. An initial email group has been established to enhance our individual and collective knowledge, capacity, analysis and participation in the ongoing work of the IGC.

Participation in the Inter-Governmental Committee process will also inform and enhance NAHO's work on issues related to the Convention on Biological Diversity, and new or potential relationships with the World Health Organization and the UN Permanent Forum on Indigenous Issues.

Upcoming related meetings include:

- WIPO Experts Workshop on Genetic Resources, Traditional Knowledge and Folklore, Ottawa, September 2003;
- Access and Benefit Sharing Workshop, Ottawa, September 2003
- International Symposium on Traditional Medicine, Ottawa, October 2003
- Convention on Biological Diversity Article 8(j) Meeting, Montreal, December, 2003
- International Indigenous Caucus meeting, in conjunction with Article 8(j) meeting, Montreal, December 2003

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