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ORGANIZATION

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

Thirty-Seventh Session
Geneva, August 27 to 31, 2018

DRAFT DECISIONS OF THE THIRTY-SEVENTH SESSION OF THE COMMITTEE

Prepared by the Secretariat

DECISION ON AGENDA ITEM 2:

ADOPTION OF THE AGENDA

The Chair submitted the draft agenda circulated as WIPO/GRTKF/IC/37/1 Prov. 2 for adoption and it was adopted.

DECISION ON AGENDA ITEM 3:

ACCREDITATION OF CERTAIN ORGANIZATIONS

The Committee unanimously approved the accreditation of the following nine organizations as *ad hoc* observers: Cross River Biodiversity, Marine Protection and Conservation (CRBMPC); ILEX-*Acción Jurídica*; Indo-OIC Islamic Chamber of Commerce and Industry (IICCI); *Inspiración Colombia; Red Mujeres Indígenas sobre Biodiversidad* (RMIB); *Regroupement des mamans de kamituga* (REMAK); San Youth Network; University of Rosario; and *Union des peuples autochtones pour le réveil au développement* (UPARED).

DECISION ON AGENDA ITEM 4:

PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES

The Committee took note of documents WIPO/GRTKF/IC/37/3, WIPO/GRTKF/IC/37/INF/4 and WIPO/GRTKF/IC/37/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.

The Chair proposed, and the Committee elected by acclamation, the following eight members of the Advisory Board to serve in an individual capacity: Ms. Patricia Adjei, Representative, Arts Law Centre, Australia; Mr. Martin Devlin, Assistant Director, International Policy and Cooperation, IP Australia, Australia; Ms. María del Pilar Escobar Bautista, Counsellor, Permanent Mission of Mexico, Geneva; Mr. Frank Ettawageshik, Representative, Native American Rights Fund, United States of America; Mr. Ashish Kumar, Senior Development Officer, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, India; Mr. Evžen Martínek, Lawyer, International Department, Industrial Property Office, Czech Republic; Mr. Lamine Ka Mbaye, First Secretary, Permanent Mission of Senegal, Geneva; and Mr. Manuel Orantes, Representative, CAPAJ, Peru.

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

DECISION ON AGENDA ITEM 5:

TRADITIONAL KNOWLEDGE/TRADITIONAL CULTURAL EXPRESSIONS

The Committee developed, on the basis of document WIPO/GRTKF/IC/37/4, a further text, "The Protection of Traditional Knowledge: Draft Articles Rev. 2", and on the basis of document WIPO/GRTKF/IC/37/5, a further text, "The Protection of Traditional Cultural Expressions: Draft Articles Rev. 2". The Committee decided that these texts, as at the close of this agenda item on August 31, 2018, be transmitted to the Thirty-Eighth Session of the Committee, in accordance with the Committee's mandate for 2018-2019 and the work program for 2018, as contained in document WO/GA/49/21.

The Committee took note of and held discussions on documents WIPO/GRTKF/IC/37/6, WIPO/GRTKF/IC/37/7, WIPO/GRTKF/IC/37/8, WIPO/GRTKF/IC/37/9, WIPO/GRTKF/IC/37/10, WIPO/GRTKF/IC/37/11, WIPO/GRTKF/IC/37/12, WIPO/GRTKF/IC/37/13, WIPO/GRTKF/IC/37/14, WIPO/GRTKF/IC/37/15, WIPO/GRTKF/IC/37/16 and WIPO/GRTKF/IC/37/INF/7.

DECISION ON AGENDA ITEM 6:

ESTABLISHMENT OF AN *AD HOC* EXPERT GROUP(S)

The mandate of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC or Committee) for the biennium 2018/2019 provides that the IGC "may establish *ad hoc* expert group(s) to address a specific legal, policy or technical issue", and "the results of the work of such group(s) will be submitted to the IGC for consideration". The mandate also notes that the "expert group(s) will have a balanced regional representation and use an efficient working methodology", and "work during the weeks of the sessions of the IGC".

With this background, the Committee agreed that an *ad hoc* expert group on traditional knowledge and traditional cultural expressions be organized as follows:

Mandate

The IGC plenary is the negotiating and decision-making body. The *ad hoc* expert group is to support and facilitate the negotiations of the IGC.

The *ad hoc* expert group will provide advice and analysis on legal, policy or technical issues. Member States, through the Regional Coordinators, will be invited to suggest the specific issues to be considered by the *ad hoc* expert group. The IGC Chair and Vice-Chairs will identify the list of specific issues from the suggestions made by Member States. The list should be balanced and as short and focused as possible. The draft list will be provided by the IGC Chair to the Regional Coordinators for comments and the experts in advance of the group's meeting.

The *ad hoc* expert group will report to the IGC plenary at IGC 38 on the outcomes of its work.

The agenda for IGC 38 will make provision for such a report by the *ad hoc* expert group, which will be presented by the Chair or co-Chairs of the *ad hoc* expert group and will be included in the report of IGC 38.

Composition

Each Regional Group will be represented by a maximum of five experts. The European Union (EU) and the Like-Minded Countries will be invited to nominate two experts, without additional funding requirements. The Indigenous Caucus will be invited to nominate two indigenous experts to participate. The experts, who should preferably be subject-matter specialists, shall participate in their personal capacities.

The Regional Groups, the EU, the Like-Minded Countries, and Indigenous Caucus will be invited by the Secretariat to nominate their experts by a date to be advised, so that the necessary arrangements can be made.

The Secretariat is authorised to invite up to three experts from academia, civil society, industry or other constituencies to assist in the *ad hoc* expert group, such as by making presentations and answering technical questions. They will also participate in their personal capacities.

The Chair and Vice-chairs of the IGC will be invited to attend the *ad hoc* expert group meeting.

Date and venue

The *ad hoc* expert group on traditional knowledge and traditional cultural expressions will meet on Sunday, December 9, 2018, at WIPO Headquarters in Geneva, in Room NB 0.107, from 09h00 to 16h30.

Funding

According to the agreed funding formula for the IGC process, one participant each from 36 countries (seven countries from each region and China) will be funded for the 38th session of the IGC. Regional Coordinators will be invited, as usual, to provide the names of the countries to be funded. Funded countries will then be invited to nominate the funded participants to the IGC.

For those experts from each Regional Group attending the *ad hoc* expert group who are the funded participants to the IGC, one more daily subsistence allowance at the usual IGC rate will be provided by WIPO. WIPO will not cover the expenses of other experts or any other additional expenses.

This funding arrangement for the *ad hoc* expert group does not constitute a precedent for other WIPO meetings.

If the indigenous experts to participate in the *ad hoc* expert group are funded by the Voluntary Fund as decided by the Advisory Board or are the panellists for the Indigenous Panel at the 38th session of the IGC, WIPO will provide one daily subsistence allowance at the usual IGC rate. WIPO will not cover the expenses of other indigenous experts or any other additional expenses.

Languages

The working languages of the *ad hoc* expert group will be English, French and Spanish.

Chair or co-Chairs of the ad hoc *expert group*

The Chair or co-Chairs will be identified by the Chair of the IGC from among the participating experts before the meeting of the *ad hoc* expert group so that they have adequate time to prepare.

Informality

The *ad hoc* expert group will not be webcasted, or reported on in the same manner as the IGC plenary.

All participants are requested to respect the informality of the *ad hoc* expert group, and not to communicate to the public, whether 'live' or at any future time, the content or nature of the discussions taking place in the *ad hoc* expert group, whether in general terms or by way of quoting specific experts. This includes restrictions on tweeting, blog posts, news stories and email list-serves.

Secretariat services

The WIPO Secretariat will facilitate the conduct of the meeting and provide secretariat services.

DECISION ON AGENDA ITEM 7:

POSSIBLE RECOMMENDATIONS TO THE 2018 GENERAL ASSEMBLY

The Committee agreed on the following recommendations to the 2018 General Assembly:

"The 2018 WIPO General Assembly is invited to **consider** the "Report of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

(IGC)" (document WO/GA/50/8), and to **call upon** the IGC, based on progress made, to **expedite** its work in accordance with the mandate of the IGC for the biennium 2018/2019:

(a) **Noting** that at the conclusion of the 37th session all members of the IGC reaffirmed their commitment, based on the progress made, to expedite the Committee's work, with the objective of reaching an agreement on an international 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); and to work in a constructive and open way using sound working methods.

(b) **Acknowledging** the progress made at the 35th and 36th sessions on GRs, reflected in the report and draft report of the sessions respectively (WIPO/GRTKF/IC/35/10 and WIPO/GRTKF/IC/36/11 Prov.).

(c) **Noting** that GRs will next be considered at the "stocktaking" during the 40th session, where the Committee will consider next steps in relation to GRs, as well as TK and TCEs, including whether to recommend convening a diplomatic conference and/or continue negotiations.

(d) **Noting** progress made at the 37th session on TK and TCEs as reflected in the draft report of the session (WIPO/GRTKF/IC/37/17 Prov.).

(e) **Noting** that during the 38th, 39th and 40th sessions, the Committee will continue its work relating to TK and TCEs.

(f) **Recognizing** the importance of the participation of Indigenous peoples and local communities in the work of the IGC, **noting** that the WIPO Voluntary Fund is depleted, and **encouraging** Member States to consider contributing to the Fund and consider other alternative 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 24 to October 2, 2018, 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 August 31, 2018. 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 November 5, 2018.

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 Thirty-Eighth Session of the Committee.

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