



Recent developments in WIPO: the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions

10th Pan-African Workshop on Access and Benefit-sharing

Claudio Chiarolla
Legal Officer, TK Division, WIPO

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WIPO Intergovernmental Committee on IP and Genetic Resources, Traditional Knowledge and Folklore (IGC)



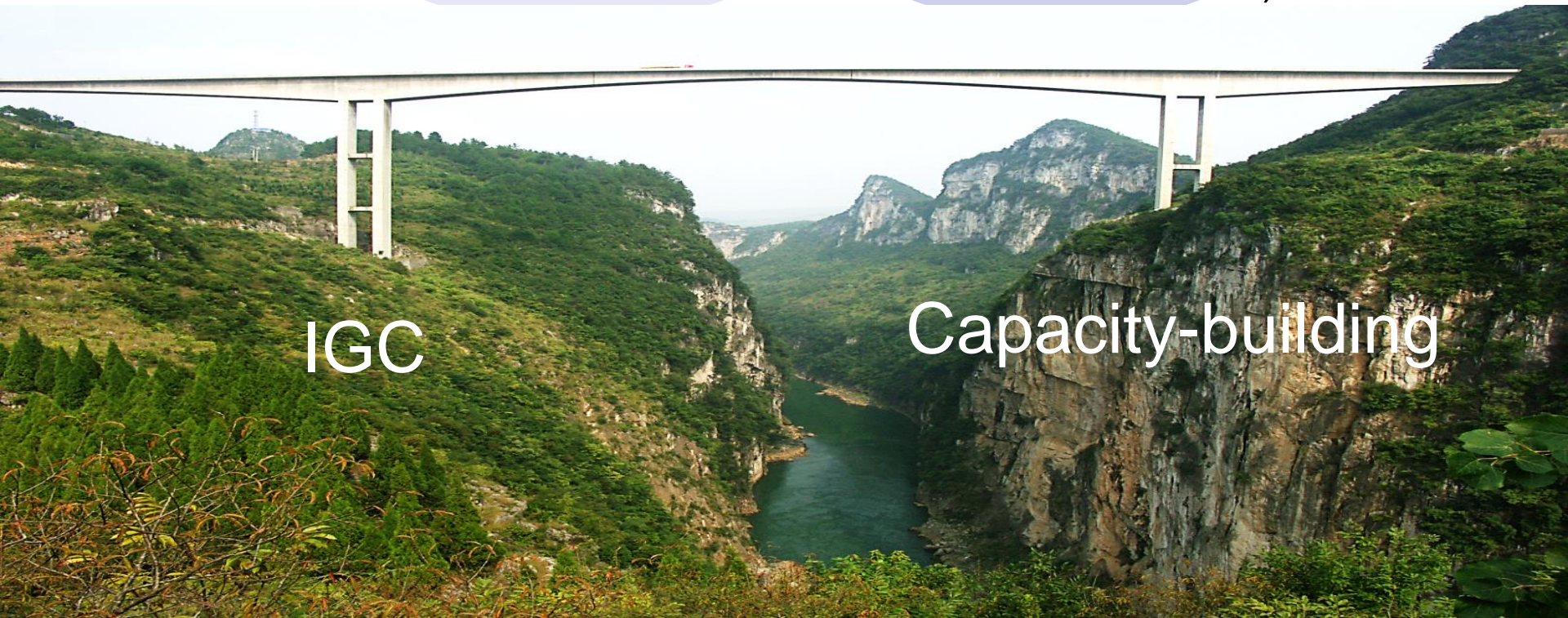
TK Division

Facilitation of
IGC, including
cooperation with
other fora

Provision of
capacity-building
(training,
workshops,
publications,
information, etc.)

IGC

Capacity-building



Evolutions of the IGC: 2001 to 2017

From “non-normative” (2001 to 2009) to “normative” (from 2010), including “binding” and “non-binding” issue

Tri-angulating “objectives and principles”,
“substance/content” and “process”

Balancing “separate but equal” treatment and “cross-cutting issues”



IGC mandate 2016-2017: “. . . reaching 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). . .”

What are the intellectual property issues related to TK and TCEs?

- Innovations and creations based on TK/TCEs can be protected using patents and copyright (“works inspired by folklore”)
- But the ‘underlying’ TK/TCEs are unprotected, despite the fact that they are valuable and important
- Should underlying TK/TCEs be “protected” in the intellectual property sense?
... and, if so, what does “protected” mean?

Protect? How?

■ Positive protection ... granting of rights that empower communities / nations to promote their TK/TCEs, control their uses by third parties and benefit from their commercial exploitation.

■ Defensive protection ... to stop people outside the community / nation from acquiring intellectual property rights over TK/TCEs.

Work on Sui Generis Instrument(s) at the International Level

- Should underlying TK/TCEs be “protected” in the intellectual property sense?
- What is needed at the international level?
- Which issue(s) could be dealt with an international legal instrument at WIPO?
- How would such an instrument relate to the access and benefit-sharing (ABS) frameworks as set out in the Convention on Biological Diversity (1992), the Nagoya Protocol (2010) and the FAO International Treaty (2001)?



- **Legislative vs. practical options**
- **IP vs. non-IP options**
- **‘Positive’/‘Defensive’**
- **More effective use of existing IP system vs. new *sui generis* norms**
- **National vs. international**

IGC 29
GRs

Sem.
GRs

IGC 30
GRs

IGC 31
TK

Sem.
TK

IGC 32
TK

IGC 33
TCEs

Sem.
TCEs

IGC 34
TCEs



Significance

- For indigenous peoples, local communities and other beneficiaries:

New collective rights

- For international IP policy development:

A profound re-imagining of the IP system

First developing country-led normative process of this breadth and complexity

...in line with Development Agenda

Consolidated Document on IP and GRs

- Second Revision of the Consolidated Document Relating to Intellectual Property and Genetic Resources

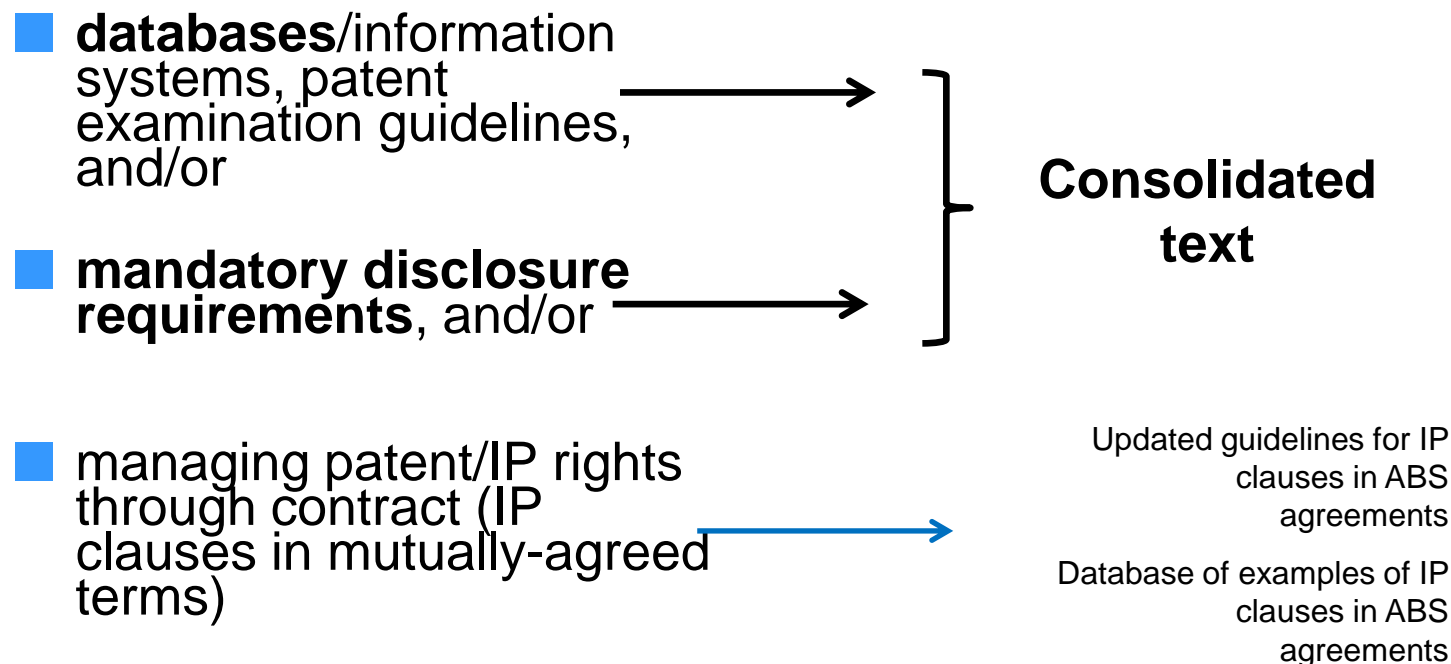
(as at the close of IGC 30 on June 3, 2016)

http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=340736

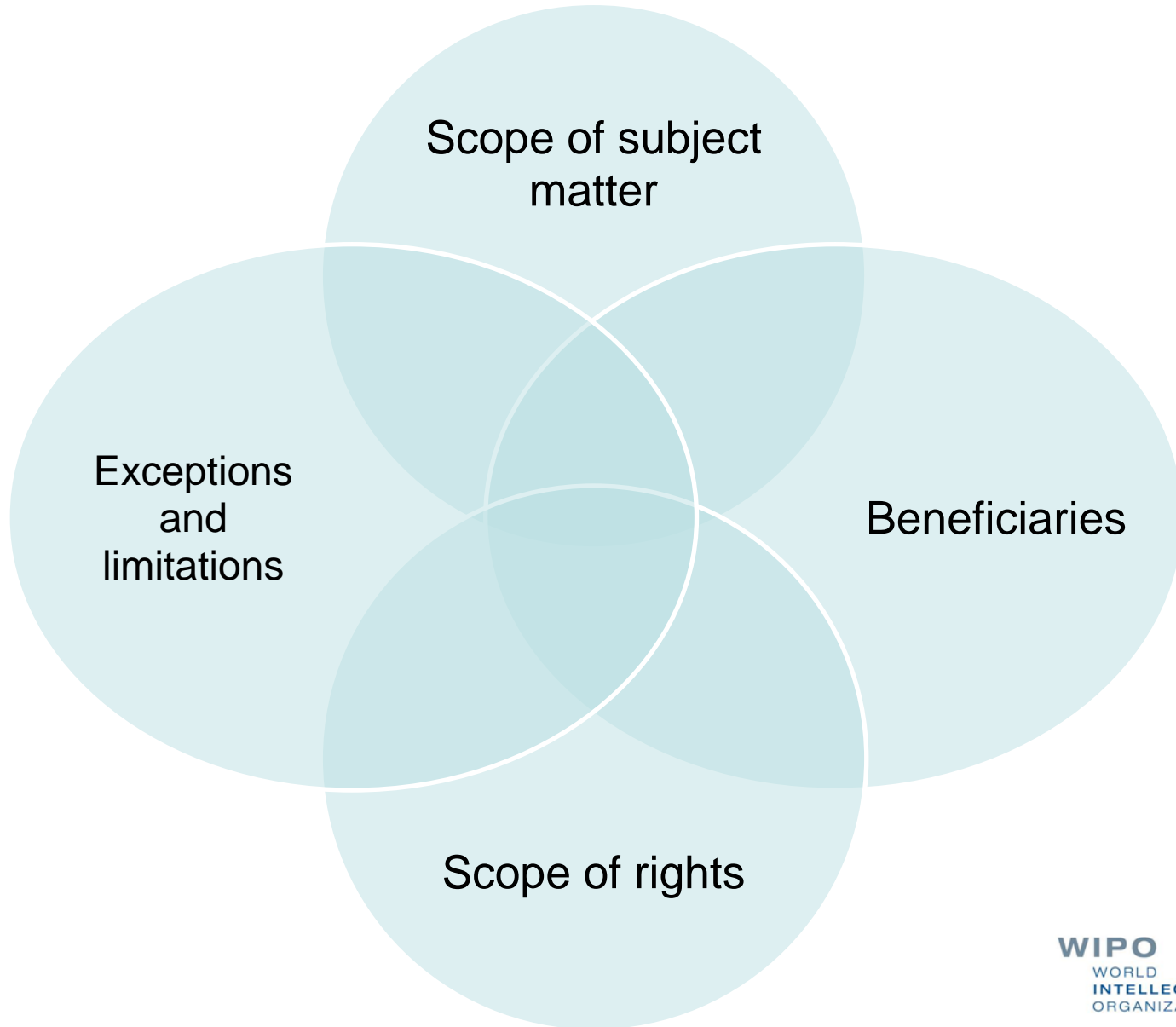
- Inventions based on or derived from GRs may be patentable*. This raises two main issues:
 - ‘defensive protection’ of GRs: prevention of erroneous patents
 - *“quality of patent examination” issue*
 - promoting and tracking compliance with ABS systems in national laws established pursuant to the CBD, Nagoya Protocol, FAO International Treaty
 - *“transparency/mutual supportiveness” issue*
- How patent/IP rights are managed can determine the nature of the benefits and how they are shared

* or be subject to other forms of IP rights

Proposed responses/solutions include:



Current texts on TK and TCEs



Conclusions

- Progress is being made
- Issues are complex
- Divergence persists
- All delegations are engaged in the process in a respectful and friendly manner



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