

Information Note¹

for IGC 34

Prepared by Mr. Ian Goss, the IGC Chair

Introduction

The current IGC work program includes two sessions on Traditional Cultural Expressions (TCEs): IGC 33 and 34. IGC 33 took place from February 27 to March 3, 2017. After an almost three year break in discussions on the topic of TCEs, good progress was made during that session on a number of issues. IGC 33 also elaborated an indicative list of outstanding/pending issues to be tackled/solved at IGC 34 (document WIPO/GRTKF/IC/34/7).

To assist Member States' preparations for IGC 34, I have prepared this short information note, which includes:

- A reminder of past IP-related work undertaken on TCEs at the international level;
- A summary of the work undertaken by the IGC on TCEs since text-based negotiations began in 2010;
- Key elements of the 2016-2017 mandate;
- A summary of the core issues I believe Member States should consider during IGC 34;
- A summary of other issues that IGC 34 could consider, noting they are, in my view, secondary to resolution of the core issues; and
- A number of useful resources on TCEs.

As an Annex, I have prepared a table which sets in two parallel columns the texts of the draft articles on TCEs (document WIPO/GRTKF/IC/34/6) and TK (document WIPO/GRTKF/IC/34/5), listed by issue, for ease of reference and comparison. I hope this will be a useful tool to help delegations compare the texts and identify areas where progress made in the TK text may also benefit the TCEs text.

This note is factual, informal and has no status. **I emphasize that any views that may be expressed in this note are mine alone and are without prejudice to any Member States' positions on the issues discussed.**

Past IP-related work undertaken on TCEs at the international level

Considerable IP-related work has been undertaken in the past at the international level on TCEs. For example:

- Article 15.4 of the Berne Convention, 1967, which deals with the protection of unpublished works by unknown authors was intended to enable protection of "expressions of folklore";
- The Tunis Model Law on Copyright, 1976, which contains *sui generis* provisions for the legal protection of TCEs;
- The WIPO-UNESCO Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and other Forms of Prejudicial Action, 1982, which provides a *sui generis* model of protection for TCEs;

¹ Note from the WIPO Secretariat: The Chair of the IGC, Mr. Ian Goss, has prepared this information note to assist Member States in their preparations for IGC 34.

- The WIPO Performances and Phonograms Treaty (WPPT) of 1996 and the Beijing Treaty of 2012, which provide that performers of expressions of folklore are entitled to the same moral and economic rights as other performers, including rights of reproduction, distribution, rental and making available.

It is worth recalling that IP protection is distinct from the concepts of “preservation”, “safeguarding” and “promotion” of cultural heritage, which refer generally to the identification, documentation, transmission and revitalization of tangible and intangible cultural heritage in order to ensure its maintenance and viability.

In this context, a number of international declarations and agreements outside of WIPO and beyond IP deal with aspects of preservation, safeguarding and promotion of TCEs within their specific policy contexts. They include:

- The UNESCO Recommendation for the Safeguarding of Traditional Culture and Folklore, 1989;
- The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, 2003; and
- The UNESCO Convention for the Promotion and Protection of the Diversity of Cultural Expressions, 2005.

When considering past IP-related work undertaken on TCEs at the international level, a number of past IGC documents are worth noting. They include The Protection of Traditional Cultural Expressions: Draft Gap Analysis (document WIPO/GRTKF/IC/13/4(b))², the Final Report on National Experiences with the Legal Protection of Expressions of Folklore (document WIPO/GRTKF/IC/3/10) and the Consolidated Analysis of the Legal Protection of Traditional Cultural Expressions (document WIPO/GRTKF/IC/5/3)³.

TCEs text-based negotiations

Since 2010, the IGC has undertaken text-based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of TCEs (as well as GRs and TK).

The 2010/2011 biennium, commencing with IGC 16, built on the existing work carried out by the IGC so far.⁴ The work program for that biennium included an intersessional working group on TCEs which took place in July 2010 and established the framework for TCEs discussions. The output of this work was reviewed and amended at subsequent IGC meetings (IGC 17, 18 and 19).

The 2012/2013 biennium included two thematic sessions on TCEs: IGC 22 and 25. Pursuant to the then-prevailing mandate, these sessions focused on four key articles: subject matter of protection, beneficiaries, scope of protection and limitations and exceptions.⁵

² The “Gap Analysis”, prepared for the IGC in 2008, identified the gaps that existed at the international level with respect to the protection of TCEs; set out considerations relevant to determining whether those gaps needed to be addressed; and described options that existed or might be developed to address any identified gaps. The document also contained an analysis of the concept of “protection”.

³ The “Consolidated Analysis” reviewed the policy framework for protection of TCEs, and surveyed the available forms of IP protection for TCEs, through conventional or general IP regimes, through adapted or extended IP regimes, and through new *sui generis* systems or laws.

⁴ Document WIPO/GRTKF/IC/9/4 constituted the basis for this work.

⁵ Document WIPO/GRTKF/IC/19/4 constituted the basis for this work.

The 2014/2015 biennium included an Ambassadorial/Senior Capital-Based Officials meeting, aimed at sharing views on key policy issues relating to the negotiations to further inform/guide the process. It also included cross-cutting sessions which focused on key issues relevant to all three subject matters, a stocktaking session and one session, IGC 27, the second part of which specifically addressed TCEs.⁶

The mandate for the 2016/2017 biennium

In considering the focus of our work for the next session, Member States should note the following key elements in the current IGC mandate:

- “focus on narrowing existing gaps”;
- “with the objective of reaching an agreement on an international legal instrument(s) [...] relating to intellectual property which will ensure the balanced and effective protection of [...] traditional cultural expressions (TCEs)”;
- “a primary focus on reaching a common understanding on core issues, including definition of misappropriation, beneficiaries, subject matter, objectives, and what TK/TCEs subject matter is entitled to protection at an international level, including consideration of exceptions and limitations and the relationship with the public domain”;
- “using an evidence-based approach”; and
- “inter-sessional seminars and workshops to build regional and cross-regional knowledge and consensus on issues related to IP and GRs, TK and TCEs with a focus on unresolved issues”.

IGC 34 will be the second of two sessions in this biennium on TCEs. As detailed in the work program, IGC 34 should:

- Undertake negotiations on TCEs with a focus on addressing unresolved issues and considering options for a draft legal instrument; and
- Take stock and make a recommendation.

Core issues

Based on the core issues detailed in the mandate, on the discussions that took place in IGC 33, on the list of outstanding/pending issues to be tackled/solved and on past work, I propose to prioritize the following issues for discussion at IGC 34: policy objectives, subject matter, beneficiaries, scope of protection, exceptions and limitations, the relationship with the public domain and the definition of misappropriation.

Some general remarks

<i>Distinct proposals in alternatives</i>	I note that distinct proposals are presented in alternatives in the articles that were discussed at IGC 33. This brings clarity to the text and I recommend following this practice during this session.
<i>International v. national levels</i>	Where relevant, Member States are encouraged to reflect on whether, for some concepts, the international instrument should simply provide a policy framework or possible minimum standards and allow the more detailed articulation of those concepts as well as issues of implementation to be determined at the national level.

⁶ Document WIPO/GRTKF/IC/25/4 constituted the basis for this work.

Policy objectives (Article 1)

Purpose	Objectives are fundamental to the development of the operative text of any instrument as they detail the purpose and intent of the instrument. This could result in simple, direct and efficient wording and bring clarity to the text.
IP-related objectives only	<p>In reviewing the objectives, consideration should be given to which IP-related objectives need to be dealt with at an international level at WIPO, noting that the mandate of the IGC is to “reach an agreement on an international legal instrument(s) [...] relating to intellectual property which will ensure the balanced and effective protection of [...] traditional cultural expressions”.</p> <p>In identifying IP-related objectives, Member States could consider and reflect on the type of harm(s) that an IP instrument on TCEs would seek to address and on the gaps that may currently exist and that ought, from a policy perspective, to be filled.</p>
Objectives v. substantive provisions	In identifying objectives, care should also be taken to distinguish between objectives and operative language (mechanisms as opposed to objectives), which should be dealt with in the substantive provisions of the text. That being said, there should be a direct link between the objectives and the substantive provisions of the instrument, in that stated objectives should find corresponding implementing provisions in the substantive provisions.
Redundancies	I note that there are a number of redundancies between the principles/preamble/introduction and the objectives as some text appears in both sections (see, for example, Article 1, Alt 2 (d) and paragraph 12 of the principles/preamble/introduction section).

Subject matter (Articles 2 and 3)

Placement of definition	It should be noted that while Article 3 provides that the instrument applies to TCEs or that the subject matter of the instrument is TCEs, a definition of this term is provided for in Article 2 on Use of Terms, as in the TK text.
Eligibility criteria	<p>Article 3 Alts 2 and 3 set out substantive eligibility criteria that specify which of the TCEs that fall under the definition in the Use of Terms section would be protectable. This means that only the TCEs that satisfy the criteria of eligibility would be protected under the instrument.</p> <p>There are still divergent views as to what the substantive eligibility criteria should be and proponents of such criteria might wish to consider other ways to reflect the concepts expressed that would address the concerns of supporters and opponents of specific wording.</p>
Necessity of having criteria of eligibility	There is also the question as to whether criteria for eligibility are necessary at all in Article 3, since, in the view of some delegations, in elaborating rights it could be left to the scope of protection and to the exceptions and limitations to define what is ultimately to be protected.

Beneficiaries (Article 4)

Elements of convergence	The three alternatives under Article 4 state that the beneficiaries of the instrument are indigenous peoples and local communities. Alts 2 and 3 also provide for the possibility of other beneficiaries being determined under national law.
Beneficiaries beyond IPLCs	The IGC has in past sessions considered the definition of “beneficiaries”. However, there is no agreement on the extent to which the instrument should extend beyond indigenous peoples and local communities, so as to include other beneficiaries.

Scope of protection (Article 5)

Current alternatives	<p>Article 5 currently contains four alternatives. Some of these contain elements of the so-called tiered approach or differentiated protection. A summary of the main elements of the alternatives is provided below:</p> <ul style="list-style-type: none"> - Alt 1 provides that the economic and moral interests of beneficiaries concerning their <u>protected TCEs</u> should be safeguarded. Protection should not extend to TCEs that are <u>widely known, in the public domain or protected by IP rights</u>. - Alt 2 provides that the economic and moral rights and interests of beneficiaries in <u>secret and/or sacred TCEs</u> should be protected, and that beneficiaries should have the exclusive right of authorizing the use of their TCEs to third parties. It also grants beneficiaries the right to be identified as the owners of their TCEs and to object to distortions/mutilations/modifications of their TCEs that would be prejudicial to their integrity. - Alt 3 provides that the economic and moral rights and interests of beneficiaries in <u>secret and/or sacred TCEs</u> should be protected, and that beneficiaries should enjoy the exclusive right of authorizing the use of their TCEs. Where TCEs are <u>still held/maintained/used in a collective context, but made publicly accessible without authorization</u>, measures should be taken to protect against false, misleading, or offensive uses, to provide a right of attribution, and to provide for appropriate usage of TCEs. In case of commercial exploitation of such TCEs, best endeavors shall be used to facilitate remuneration. Finally, if TCEs are <u>neither secret/sacred, nor still held/maintained/used in a collective context</u>, best endeavors should be used to protect their integrity. - Alt 4 contains two options: <ul style="list-style-type: none"> Option 1 provides that where protected TCEs are <u>sacred/secret/closely held</u>, measures shall be provided to create, maintain, control and develop the TCEs, prevent unauthorized disclosure and fixation as well as the unlawful use of secret TCEs, authorize or deny access to and use based on prior informed consent, protect against false or misleading uses and prevent uses that distort, mutilate or diminish the cultural significance of TCEs. Users shall also be encouraged to attribute TCEs to the beneficiaries, use best efforts to enter into agreements with
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	<p>beneficiaries to establish terms of use, and use the knowledge in a respectful way. Where protected TCEs are <u>still held/maintained/used/developed, and are publicly available</u>, users shall be encouraged to/measures shall be provided to, encourage users to attribute and acknowledge the beneficiaries as the source, use best efforts to enter into an agreement to establish terms of use, use the knowledge in a respectful way, and refrain from false or misleading uses. Where the protected TCEs are <u>publicly available/widely known/in the public domain</u>, users shall be encouraged to attribute the TCEs to the beneficiaries, use the knowledge in a respectful way, refrain from false or misleading uses and where applicable deposit any user fee into a fund.</p> <p>Option 2 provides that the economic and moral interests of beneficiaries concerning their <u>protected TCEs</u> should be safeguarded. Protection should not extend to TCEs that are <u>widely known, in the public domain or protected by IP rights</u>. In addition, protection should not extend to uses of protected TCEs for archival, use by museums, preservation, research and scholarly uses and cultural exchanges, and uses to create literary/artistic/creative works that are inspired from/borrowed from/derived from/adapted from protected TCEs.</p> <p>I note that Alt 4, Option 2, paragraph 3 effectively constitutes an exception and I would invite the proponents to move it to Article 7 on Exceptions and Limitations.</p>
<p><i>Tiered approach or differentiated protection</i></p>	<p>IGC 27 introduced for discussion a tiered approach to scope of protection whereby different kinds or levels of rights or measures would be available to rights holders depending on the nature and characteristics of the subject matter, the level of control retained by the beneficiaries and its degree of diffusion.</p> <p>The tiered approach proposes differentiated protection along a spectrum from TCEs that are available to the general public to TCEs that are secret, sacred or not known outside the community and controlled by the beneficiaries⁷.</p> <p>This approach suggests that exclusive economic rights could be appropriate for some forms of TCEs (for instance, secret and sacred TCEs), whereas a moral rights-based model could, for example, be appropriate for TCEs that are publicly available or widely known but still attributable to specific indigenous peoples and local communities.</p>

⁷ In this context, it might be worth recalling a couple of comments noted in the Non-Paper prepared by the then IGC Chair for IGC 27:

- The characteristics of TK (and TCEs) throughout the world vary greatly, hence the importance of identifying those high-level and universal characteristics that belong in an international instrument.
- In more general terms, one view is that the definition should be broad enough to cover all kinds of TK and TCEs, while another view is that the definition should be precise and limited for clarity and transparency purposes. If the definition is broad, then other elements, such as the criteria for eligibility and/or the exceptions and limitations, would probably need to act as a limiting filter, otherwise, this would have an impact on the scope of protection (the extent of the rights), which may need to be more limited, in order to reach agreement. Thus, there is interplay between the key issues of definition of subject matter, scope of rights and exceptions and limitations. This interplay may relate also to the balance that is inherent in all types of IP protection systems (and that underlies all four cross-cutting issues), i.e. the balance between private rights and public interests.

	<p>Whilst it is for the IGC to decide, I consider that the differentiated protection in the tiered approach offers an opportunity to reflect the balance referred to in the mandate of the IGC and the relationship with the public domain, as well as the rights and interests of owners and users.</p>
<p>Appropriate determination of the tiers</p>	<p>The TCEs text determines tiers according to the quality, level of control and, as in the TK text, the degree of diffusion of the TCEs. The IGC should carefully consider what criteria are appropriate and should be used in the TCEs context, in order to determine the tiers. In doing so, consideration should be given to the practicality and legal implications of the proposed tiers. Also, it should be noted that criteria that may be relevant in the TK context may not necessarily apply in the TCEs context.</p> <p>It is worth recalling that a tiered approach was followed in earlier versions of the TCEs text, going back to document “The Protection of Traditional Cultural Expressions/Expressions of Folklore: Revised Objectives and Principles” (WIPO/GRTKF/IC/9/4). The categories of TCEs in that document were: TCEs of particular spiritual or cultural value or significance; other TCEs (the negative of the first category, so to speak), and secret TCEs. I encourage Member States to consult this document as it also contains a commentary explaining the proposed approach on the matter of tiers.</p> <p>If a tiered approach is agreed upon, I believe that the IGC should move quickly to find convergence on core elements that will define each tier.</p>

Exceptions and limitations (Article 7)

<p>Current alternatives</p>	<p>Article 7 currently contains three alternatives. A summary of the main elements of the alternatives is provided below:</p> <ul style="list-style-type: none"> - Alt 1 provides that Member States may in special cases adopt justifiable exceptions and limitations necessary to protect the public interest, provided that they do not unreasonably conflict with the interests of beneficiaries. - Alt 2 provides that Member States may adopt exceptions and limitations. In particular, acts protected by intellectual property law should not be prohibited by the protection of TCEs. In addition, exceptions should be provided for learning/teaching/research, preservation/display/research/presentation in archives, libraries, museums or cultural institutions, and the creation of literary, artistic, or creative works inspired by/based on/borrowed from TCEs. - Alt 3 is divided into General Exceptions and Specific Exceptions: <ul style="list-style-type: none"> Under <u>General Exceptions</u>, the text articulates a test (conditions to be fulfilled) that would be applied at the national level when developing limitations and exceptions. There seems to be an understanding that the test could include elements of the “classic” three-step test and moral-rights components (concepts of acknowledgement, non-offensive use and compatibility with fair practice). The text currently contains two alternative sets of conditions, and I suggest that the proponents should aim to reconcile both views.
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	The <u>Specific Exceptions</u> cover the kind of exceptions and limitations that should be included/allowed. This part contains a number of redundancies, in particular, in paragraphs 7.3 and 7.4, and the proponents could carefully study and streamline them.
<i>A tiered approach to exceptions?</i>	Based on the possible introduction of a tiered approach to defining the scope of protection in Article 5, some delegations have asked whether the provisions on exceptions and limitations should not also follow this approach, i.e., that various degrees of excepted acts would mirror the various kinds of subject matter and the tiered rights applied to them.
<i>Incidental use</i>	At IGC 27, the concept of “incidental use” was introduced in the provision dealing with sanctions (Article 10). As this may be considered to fall within exceptions and limitations, I suggest that the IGC consider moving this to the article on exceptions and limitations.

Relationship with the public domain

<i>Current alternatives</i>	There are currently two alternatives related to the use of the term “public domain” in Article 2. While the first alternative proposes a definition for the term public domain, the second one refers to the meaning of the term as defined by national law.
<i>The concept of the public domain</i>	IGC 27 introduced into the TCEs text a definition of the term “public domain.” This concept is integral to the balance inherent in the IP system. Exclusive rights are balanced against the interests of users and the general public, including third party creators, with the intent to foster, stimulate and reward innovation and creativity. This concept also links to the understanding of the related concept of “publicly available” ⁸ referred to in Article 5 on scope of protection.
<i>“Publicly available” in the TCEs context</i>	The term “publicly available” is defined in the Use of Terms section. The IGC could reflect upon whether this definition is relevant in the TCEs context.
<i>Challenges of trying to define the “public domain”</i>	While the public domain concept is relevant to understanding the IP/TCEs interface and to the design of a balanced and effective IP-like system of protection for TCEs, the merits of developing and including a specific definition of the public domain within the TCEs instrument are unclear. I believe that defining the “public domain” is a challenging exercise with significant and wide-reaching policy ramifications going beyond the scope of the IGC.

⁸ This concept is discussed notably in document WIPO/GRTKF/IC/17/INF/8 (Note on the Meanings of the Term “Public Domain” in the Intellectual Property System with Special Reference to the Protection of Traditional Knowledge and Traditional Cultural Expressions/Expressions of Folklore). See also document WIPO/GRTKF/IC/33/INF/7 (Glossary of key terms related to intellectual property and genetic resources, traditional knowledge and traditional cultural expressions).

Definition of “misappropriation”

Definition of misappropriation in Use of Terms	The IGC mandate calls for a common understanding on a definition of misappropriation. While the TCEs text makes reference to the concept of “misappropriation”, it does not, unlike the TK and GRs texts, carry a definition of that term in the Use of Terms section. The IGC could reflect on the necessity of such a definition in the TCEs text or consider providing an appropriate definition of misappropriation in the Use of Terms section.
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Other issues

Principles/Preamble/Introduction

Nature of the provision	A preamble does not form part of the legally binding or operative text of a multilateral instrument, though it does aid in interpretation of the operative provisions by providing context to the instrument and to the intent of the drafters. The language is usually reflected as principles whether the instrument is declaratory or legally binding.
Relevance and redundancies	The principles/preamble/introduction section includes 13 paragraphs. The IGC could verify their relevance and reflect on which of the concepts featuring in that section are most directly related to IP, since its mandate is to reach an agreement on an international legal instrument relating to IP for the balanced and effective protection of TCEs. The IGC should also try to prevent redundancies, in particular with the Objectives section, as highlighted above.

Use of terms (Article 2)

General	The definitions included in this section would need to be revisited. In my view, IGC 34 could readily address the following terms: TCEs and Use/Utilization. As indicated above, the IGC could also reflect on whether having a definition of “publicly available” is relevant in the TCEs context.
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Administration of rights/interests (Article 6)

Current alternatives	Article 6 deals not with “beneficiaries”, but with how and by whom rights or interests should be administered. This could include, for example, assistance with the management and enforcement of the beneficiaries’ rights. Article 6 currently includes two alternatives. There appears to be no agreement on the extent of participation of TCEs holders in the establishment/appointment of the authority.
Flexibility at the national level	A possible way forward for Member States to consider, would be to leave flexibility at the national level to implement arrangements relating to competent authorities, rather than attempt to establish a one size fits all solution.

Term of protection (Article 8)

Current options	<p>Article 8 contains three options:</p> <ul style="list-style-type: none"> - Options 1 provides a term of protection related to the eligibility criteria in Article 3 and provides an indefinite term for moral rights. - Option 2 links the term of protection to the continuous enjoyment of the scope of protection. - Option 3 is only concerned with the duration of the economic aspects of TCEs, which are limited in time.
Suggested way forward	<p>The IGC could consider whether the options could be merged and whether time limits should be imposed on the periods of protection for the economic aspects of TCEs.</p>

Formalities (Article 9)

Current options	<p>Article 9 contains two options:</p> <ul style="list-style-type: none"> - Option 1 provides that protection should not be subject to formalities. In this option, there are brackets around the opening phrase “as a general principle”. In this context, these words are used to cover the situation where formalities could be an optional requirement, but would not stand in the way of protection being offered. - Option 2 gives the possibility to Member States to require formalities except for secret TCEs.
Link with scope	<p>When discussing formalities, the IGC could consider how the tiered approach in Article 5 could affect possible formalities. For example, it might be envisaged to establish formalities only for some kinds of TCEs. Formalities could also differ according to the type of rights to be granted.</p>

Sanctions, remedies and exercise of rights (Article 10)

Current options	<p>The article on sanctions currently contains two options:</p> <ul style="list-style-type: none"> - Option 1 provides States with the flexibility to determine appropriate sanctions based on national law. - Option 2 is more prescriptive and provides sanctions in case of breach of the protection of TCEs.
Suggested approach	<p>The IGC could reflect on possible ways to merge Options 1 and 2. Perhaps the article could provide a general framework at the international level, leaving the details to national legislation. This approach would, in my view, be worth considering.</p>
Alternative dispute mechanism	<p>Member States could try and reach agreement on whether States should be obliged to provide parties to a dispute the possibility to use alternative dispute resolution mechanisms (Article 10.2).</p>

Transitional measures (Article 11)

Scope of application	There seems to be consensus that the instrument should apply to all TCEs which, at the moment of entry into force, fulfill the criteria of protection (paragraph 1).
Acquired rights of third parties	In paragraph 2, there is disagreement as to how the rights of third parties acquired prior to the entry into force of the instrument should be treated. Option 1 protects the existing rights of third parties, whereas Option 2 provides for continuing uses by third parties to be brought into conformity with the provisions of the instrument. More discussion is needed on paragraph 2 to reconcile the different views.
Recovery of TCEs	Paragraph 3 deals with the issue of the recovery of TCEs. It is not clear whether this provision is aimed at the recovery of rights in TCEs, or the recovery of the TCEs themselves, as objects of cultural property, in which case it may not fall within the IP scope of the IGC's work and it may be in conflict with other international instruments, notably the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970. This will have to be clarified by the IGC.

Relationship with other international agreements (Article 12)

General	As the TK and GRs texts, the TCEs text contains an article on the relationship with international agreements. I note that this article still contains a number of brackets and I invite the IGC to reflect on ways to reach convergence on this article.
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National treatment (Article 13)

Link with status of the instrument	The content of this article is tied to the question of the status of the instrument and the options available for addressing international enforceability issues. These questions will have to be addressed by the IGC.
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Transboundary cooperation (Article 14)

Reference to customary laws and protocols	Article 14 deals with the very important issue of TCEs shared across borders. I note that the GRs text makes reference to customary laws and protocols. The IGC might reflect on whether such a reference would be suitable or useful in the TCEs context.
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Capacity building and awareness raising (Article 15)

General	The IGC is invited to reflect on ways to reach convergence on the bracketed elements of this article.
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Non-derogation (Article 16)

<i>New article</i>	Article 16 on non-derogation is new. At IGC 33, the non-derogation clause was moved from being paragraph 2 of the article on relationship with other international agreements to a stand-alone article, as in the TK text.
<i>Redundancies</i>	I note that a non-derogation clause is also present in paragraph 13 of the principles/preamble/introduction section. I would invite the IGC to consider removing it from that section to avoid duplications and redundancies.

Other useful resources

I note that there are some useful resources available on the WIPO website which Member States may wish to use as reference materials in their preparations for IGC 34, such as:

- WIPO/GRTKF/IC/17/INF/8, Note on the Meanings of the Term “Public Domain” in the Intellectual Property System with Special Reference to the Protection of Traditional Knowledge and Traditional Cultural Expressions/Expressions of Folklore, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=149213;
- Regional, National, Local and Community Experiences, http://www.wipo.int/tk/en/resources/tk_experiences.html;
- Lectures and presentations on the selected topics, http://www.wipo.int/tk/en/resources/tk_experiences.html#4
 - Presentations on legislation or legal frameworks for protection of TCEs;
 - Presentations on the uses of TCEs;
 - Presentations on the public domain;
 - Presentations on cross-border protection; and
 - Presentations on transboundary (shared) TK.

[Annex follows]

<p style="text-align: center;">The Protection of Traditional Cultural Expressions: Draft Articles</p> <p style="text-align: center;">WIPO/GRTKF/IC/34/6</p>	<p style="text-align: center;">The Protection of Traditional Knowledge: Draft Articles</p> <p style="text-align: center;">WIPO/GRTKF/IC/34/5</p>
<p style="text-align: center;">[ARTICLE 1</p> <p style="text-align: center;">POLICY OBJECTIVES</p> <p><i>Alt 1</i></p> <p>This instrument should aim to:</p> <ol style="list-style-type: none"> 1. Provide beneficiaries with the means to: <ol style="list-style-type: none"> (a) prevent the misappropriation and misuse/offensive and derogatory use of their traditional cultural expressions; (b) control ways in which their traditional cultural expressions are used beyond the traditional and customary context, as necessary; (c) promote the equitable compensation/sharing of benefits arising from their use with free prior informed consent or approval and involvement/fair and equitable compensation, as necessary; and (d) encourage and protect tradition-based creation and innovation. <p><i>Option</i></p> <ol style="list-style-type: none"> (d) encourage and protect creation and innovation. <ol style="list-style-type: none"> 2. Aid in the prevention of the grant of erroneous intellectual property rights over traditional cultural expressions. <p><i>Alt 2</i></p> <p>This instrument should aim to:</p> <ol style="list-style-type: none"> (a) [prevent the [misuse]/[unlawful appropriation] of protected traditional cultural expressions]; (b) encourage creation and innovation; (c) promote/facilitate intellectual and artistic freedom, research [or other fair] practices and cultural exchange; and 	<p style="text-align: center;">[ARTICLE 1</p> <p style="text-align: center;">POLICY OBJECTIVES</p> <p><i>Alt 1</i></p> <p>This instrument should aim to:</p> <ol style="list-style-type: none"> 1. Provide beneficiaries with the means to: <ol style="list-style-type: none"> (a) prevent the [misappropriation/illegal appropriation, misuse, and unauthorized use], of their traditional knowledge; (b) [control ways in which their traditional knowledge is used beyond the traditional and customary context;] (c) achieve the fair and equitable sharing of benefits arising from the use of their traditional knowledge, with prior informed consent or approval and involvement and taking customary law into consideration as appropriate; and (d) encourage and protect tradition-based creation and innovation, whether or not commercialized. <p><i>Alternative</i></p> <ol style="list-style-type: none"> (d) encourage and protect creation and innovation, whether or not commercialized. <ol style="list-style-type: none"> [2. Aid in the prevention of the grant of erroneous intellectual property/[patent rights] over [traditional knowledge and [[traditional knowledge] associated [with] genetic resources].] <p><i>Alt 2</i></p> <p>This instrument should aim to prevent the [misuse]/[unlawful appropriation] of protected traditional knowledge and encourage creation and innovation.</p> <p><i>Alt 3</i></p> <p>The objective of this instrument is to [ensure][support] the [appropriate use] [protection] of traditional knowledge within the intellectual property system, in accordance with national law, recognizing the rights of [traditional knowledge holders][beneficiaries].</p>

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<p>(d) secure/recognize rights already acquired by third parties and secure/provide for legal certainty and a rich and accessible public domain.</p> <p><i>Alt 3</i></p> <p>The objective of this instrument is to support the appropriate use and protection of traditional cultural expressions within the intellectual property system, in accordance with national law, recognizing the rights of [beneficiaries] [indigenous peoples and local communities].]</p>	<p>Alt 4</p> <p>The objectives of this instrument are to:</p> <ul style="list-style-type: none"> (a) contribute toward the protection of innovation and to the transfer and dissemination of knowledge, to the mutual advantage of holders and users of protected traditional knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligations; (b) recognize the value of a vibrant public domain, the body of knowledge that is available for all to use and which is essential for creativity and innovation, and the need to protect, preserve and enhance the public domain; and (c) prevent the erroneous grant of intellectual property rights [over traditional knowledge and traditional knowledge associated with genetic resources][that are directly based on protected traditional knowledge obtained by unlawful appropriation].

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<p style="text-align: center;">[ARTICLE 2</p> <p style="text-align: center;">USE OF TERMS</p> <p>For the purposes of this instrument:</p> <p>Traditional cultural expression means any form of [artistic and literary], [<i>other</i> creative, and spiritual,] [creative and literary or artistic] expression, tangible or intangible, or a combination thereof, such as actions¹, materials², music and sound³, verbal⁴ and written [and their adaptations], regardless of the form in which it is embodied, expressed or illustrated [which may subsist in written/codified, oral or other forms], that are [created]/[generated], expressed and maintained, in a collective context, by indigenous [peoples] and local communities; that are the unique product of and/or directly linked with and the cultural [and]/[or] social identity and cultural heritage of indigenous [peoples] and local communities; and that are transmitted from generation to generation, whether consecutively or not. Traditional cultural expressions may be dynamic and evolving.</p> <p><i>Alternative</i></p> <p>Traditional cultural expressions comprise the various dynamic forms which are created, expressed, or manifested in traditional cultures and are integral to the collective cultural and social identities of the indigenous local communities and other beneficiaries.</p> <p>[Public domain refers, for the purposes of this instrument, to tangible and intangible materials that, by their nature, are not or may not be protected by established intellectual property rights or related forms of protection by the legislation in the country where the use of such material is carried out. This could, for example, be the case where the subject matter in question does not fill the prerequisite for intellectual property protection at the national level or, as the case may be, where the term of any previous protection has expired.]</p>	<p style="text-align: center;">ARTICLE 2</p> <p style="text-align: center;">USE OF TERMS</p> <p>For the purposes of this instrument:</p> <p>[Misappropriation means</p> <p>Alt 1</p> <p>Any access or use of the [subject matter]/[traditional knowledge] without prior informed consent or approval and involvement and, where applicable, without mutual agreed terms, for whatever purpose (commercial, research, academic and technology transfer).</p> <p>Alt 2</p> <p>The use of protected traditional knowledge of another where the [subject matter]/[traditional knowledge] has been acquired by the user from the holder through improper means or a breach of confidence and which results in a violation of national law in the provider country, recognizing that acquisition of traditional knowledge through lawful means such as [independent discovery or creation], reading books, receiving from sources outside of intact traditional communities, reverse engineering, and inadvertent disclosure resulting from the holders' failure to take reasonable protection measures is not [misappropriation/misuse/unauthorized use/unfair and inequitable uses.]</p> <p>Alt 3</p> <p>Any access or use of traditional knowledge of the beneficiaries in violation of customary law and established practices governing the access or use of such traditional knowledge.</p>

¹ [Such as dance, works of mas, plays, ceremonies, rituals, rituals in sacred places and peregrinations, games and traditional sports/sports and traditional games, puppet performances, and other performances, whether fixed or unfixed.]

² [Such as material expressions of art, handicrafts, ceremonial masks or dress, handmade carpets, architecture, and tangible spiritual forms, and sacred places.]

³ [Such as songs, rhythms, and instrumental music, the songs which are the expression of rituals.]

⁴ [Such as stories, epics, legends, popular stories, poetry, riddles and other narratives; words, signs, names and symbols.]

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<p><i>Alternative</i></p> <p>Public domain means the public domain as defined by national law.</p> <p>[Publicly available means [subject matter]/[traditional knowledge] that has lost its distinctive association with any indigenous community and that as such has become generic or stock knowledge, notwithstanding that its historic origin may be known to the public.]</p> <p>[["Use"]/["Utilization"] means</p> <ul style="list-style-type: none"> (a) where the traditional cultural expression is included in a product: <ul style="list-style-type: none"> (i) the manufacturing, importing, offering for sale, selling, stocking or using the product beyond the traditional context; or (ii) being in possession of the product for the purposes of offering it for sale, selling it or using it beyond the traditional context. (b) where the traditional cultural expression is included in a process: <ul style="list-style-type: none"> (i) making use of the process beyond the traditional context; or (ii) carrying out the acts referred to under sub-clause (a) with respect to a product that is a direct result of the use of the process; or (c) the use of traditional cultural expression in research and development leading to profit-making or commercial purposes.]] 	<p>Alt 4</p> <p>Any access or use of traditional knowledge of the [beneficiaries] indigenous [peoples] or local communities, without their free prior and informed consent and mutually agreed terms, in violation of customary law and established practices governing the access or use of such traditional knowledge.</p> <p>[Misuse may occur where the traditional knowledge which belongs to a beneficiary is used by the user in a manner that results in a violation of national law or measures endorsed by the legislature in the country where the use is carried out; the nature of the protection or safeguarding of traditional knowledge at the national level may take different forms such new forms of intellectual property protection, protection based on principles of unfair competition or a measures-based approach or a combination thereof.]</p> <p>[Protected traditional knowledge is traditional knowledge that satisfies the criteria for eligibility under Article 1 and the scope and conditions for protection under Article 3.]</p> <p>[Public domain refers, for the purposes of this instrument, to intangible materials that, by their nature, are not or may not be protected by established intellectual property rights or related forms of protection by the legislation in the country where the use of such material is carried out. This could, for example, be the case where the subject matter in question does not fill the prerequisite for intellectual property protection at the national level or, as the case may be, where the term of any previous protection has expired.]</p> <p>[Publicly available means [subject matter]/[traditional knowledge] that has lost its distinctive association with any indigenous community and that as such has become generic or stock knowledge, notwithstanding that its historic origin may be known to the public.]</p> <p>[Alt 1</p> <p>Traditional knowledge for the purposes of this instrument, is knowledge that is created, maintained, and developed by indigenous [peoples], local communities, [and nations/states], and that is linked with, or is an integral part of, the national or social identity and/or cultural heritage of indigenous [peoples], local communities,[and</p>

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	<p>nations/states] ; that is transmitted between or from generation to generation, whether consecutively or not; ^{which} subsists in codified, oral, or other forms; and which may be dynamic and evolving, and may take the form of know-how, skills, innovations, practices, teachings or learnings.]</p> <p>[Alt 2</p> <p>Traditional knowledge for the purposes of this instrument, is knowledge that is created, maintained, controlled, protected and developed by indigenous [peoples], local communities, [and nations] and that is directly linked with the social identity and/or cultural heritage of indigenous [peoples] and local communities; that is transmitted from generation to generation, whether consecutively or not; which subsists in codified, oral, or other forms; and which may be dynamic and evolving, and may take the form of know-how, skills, innovations, practices, teachings or learnings.]</p> <p>[Secret traditional knowledge is traditional knowledge that is held by beneficiaries under certain measures of secrecy, in accordance with customary law, and under the common understanding that the traditional knowledge is to be used and known only within the specific group.]</p> <p>[Sacred traditional knowledge is traditional knowledge that in spite of being secret, narrowly diffused, or widely diffused, constitutes part of the spiritual identity of the beneficiaries.]</p> <p>[Narrowly diffused traditional knowledge is traditional knowledge that is shared by beneficiaries amongst whom measures to keep it secret are not taken, but is not easily accessible to non-group members.]</p> <p>[Widely diffused traditional knowledge is traditional knowledge which is easily accessible by the public but is still culturally connected to its beneficiaries' social identity.]</p> <p>[Unlawful appropriation is the use of protected traditional knowledge that has been acquired by a user from a traditional knowledge holder through improper means or a breach of confidence which results in a violation of national law in the traditional knowledge holder's country. Use of protected traditional knowledge that has been acquired by lawful means such as independent</p>

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	<p>discovery or creation, reading publications, reverse engineering, and inadvertent or deliberate disclosure resulting from the traditional knowledge holders failure to take reasonable protective measures, is not unlawful appropriation.]</p> <p>[Unauthorized use is use of protected traditional knowledge without the permission of the right holder.]</p> <p>[[“Use”]/[“utilization”] means</p> <ul style="list-style-type: none"> (a) where the traditional knowledge is included in a product [or] where a product has been developed or obtained on the basis of traditional knowledge: <ul style="list-style-type: none"> (i) the manufacturing, importing, offering for sale, selling, stocking or using the product beyond the traditional context; or (ii) being in possession of the product for the purposes of offering it for sale, selling it or using it beyond the traditional context. (b) where the traditional knowledge is included in a process [or] where a process has been developed or obtained on the basis of traditional knowledge: <ul style="list-style-type: none"> (i) making use of the process beyond the traditional context; or (ii) carrying out the acts referred to under sub-clause (a) with respect to a product that is a direct result of the use of the process; (c) the use of traditional knowledge in non-commercial research and development; or (d) the use of traditional knowledge in commercial research and development.]

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<p style="text-align: center;">[ARTICLE 3</p> <p style="text-align: center;">ELIGIBILITY CRITERIA FOR [PROTECTION]/[SAFEGUARDING]/SUBJECT MATTER OF THE INSTRUMENT</p> <p><i>Alt 1</i></p> <p>This instrument applies to traditional cultural expressions.</p> <p><i>Alt 2</i></p> <p>The subject matter of [protection]/[this instrument] is traditional cultural expressions:</p> <ul style="list-style-type: none"> (a) that are [created]/[generated], expressed and maintained, in a collective context, by indigenous [peoples] and local communities; (b) that are the unique product of, and directly linked with, the cultural [and]/[or] social identity and cultural heritage of indigenous [peoples] and local communities; (c) that are transmitted from generation to generation, whether consecutively or not; (d) that have been used for a term as has been determined by each [Member State]/ [Contracting Party] but not less than 50 years/or a period of five generation; and (e) that are the result of creative and literary or artistic intellectual activity. <p><i>Alt 3</i></p> <p>This instrument applies to traditional cultural expressions. In order to be eligible for protection under this instrument, traditional cultural expressions must be distinctively associated with the cultural heritage of beneficiaries as defined in Article 4, and be created, generated, developed, maintained, and shared collectively, as well as transmitted from generation to generation, and which may be dynamic and evolving.]</p>	<p style="text-align: center;">[ARTICLE 3</p> <p style="text-align: center;">SUBJECT MATTER OF THE INSTRUMENT</p> <p><i>Alt 1</i></p> <p>This instrument applies to traditional knowledge.</p> <p><i>Alt 2</i></p> <p>The subject matter of this instrument is traditional knowledge, which is knowledge that is created and maintained in a collective context, that is directly linked with the social identity and[/or] cultural heritage of indigenous [peoples] and local communities [and nations]; that is transmitted between generations or from generation to generation, whether consecutively or not; which subsists in codified, oral, or other forms.</p> <p><i>Alt 3</i></p> <p>This instrument applies to traditional knowledge.</p> <p>Criteria for Eligibility</p> <p>In order to be eligible for protection under this instrument, traditional knowledge must be distinctively associated with the cultural heritage of beneficiaries as defined in Article 4, and be created, generated, developed, maintained, and shared collectively, as well as transmitted from generation to generation for a term as has been determined by each Member State, but not less than for 50 years or a period of five generations.</p> <p><i>Alt 4</i></p> <p>This instrument applies to traditional knowledge. In order to be eligible for protection under this instrument, traditional knowledge must be distinctively associated with the cultural heritage of beneficiaries as defined in Article 4, and be created, generated, developed, maintained, and shared collectively, as well as transmitted from generation to generation.]</p>

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<p style="text-align: center;">[ARTICLE 4</p> <p style="text-align: center;">BENEFICIARIES OF</p> <p style="text-align: center;">[PROTECTION]/[SAFEGUARDING]</p> <p><i>Alt 1</i></p> <p>Beneficiaries of this instrument are indigenous [peoples] and local communities who hold, express, create, maintain, use, and develop protected traditional cultural expressions.</p> <p><i>Alt 2</i></p> <p>The beneficiaries of this instrument are indigenous peoples, local communities, [and]/[and where there is no notion of indigenous peoples], other beneficiaries as may be determined under national law.</p> <p><i>Alt 3</i></p> <p>The beneficiaries of this instrument are indigenous peoples, local communities, and other beneficiaries as may be determined under national law.]</p>	<p style="text-align: center;">[ARTICLE 4</p> <p style="text-align: center;">BENEFICIARIES OF PROTECTION</p> <p><i>Alt 1</i></p> <p>Beneficiaries of this instrument are indigenous [peoples] and local communities who hold protected traditional knowledge.</p> <p><i>Alt 2</i></p> <p>The beneficiaries of this instrument are indigenous [peoples], local communities, and other beneficiaries, [such as states [and/or nations]], as may be determined under national law.]</p>

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<p style="text-align: center;">[ARTICLE 5</p> <p style="text-align: center;">SCOPE OF [PROTECTION]/[SAFEGUARDING]</p> <p><i>Alt 1</i></p> <p>5.1 [Member States]/[Contracting Parties] [should]/[shall] safeguard the economic and moral interests of the beneficiaries concerning their [protected] traditional cultural expressions, as defined in this [instrument], as appropriate and in accordance with national law, in a reasonable and balanced manner.</p> <p>5.2 Protection under this instrument does not extend to traditional cultural expressions that are widely known or used outside the community of the beneficiaries as defined in this [instrument], [for a reasonable period of time], in the public domain, or protected by an intellectual property right.]</p> <p><i>Alt 2</i></p> <p>5.1 Member States should/shall protect the economic and moral rights and interests of beneficiaries in secret and/or sacred traditional cultural expressions as defined in this instrument, as appropriate and in accordance with national law, and where applicable, customary laws and in consultation with the beneficiaries.</p> <p>5.2 Beneficiaries shall enjoy the exclusive rights of authorizing the use of their traditional cultural expressions to third parties on such terms as may be determined under national laws, and where applicable, customary laws.</p> <p>5.3 Independently of the economic rights and even after the transfer of those rights, beneficiaries shall, as regards their traditional cultural expressions, have the right to be identified as the owners of those traditional cultural expressions and object to any distortion, mutilation or other modification of their traditional cultural expressions that would be prejudicial to the integrity of their traditional cultural expressions.</p>	<p style="text-align: center;">[ARTICLE 5</p> <p style="text-align: center;">SCOPE OF [AND CONDITIONS OF] PROTECTION</p> <p>[Alt 1</p> <p>Member States [should/shall] safeguard the economic and moral interests of the beneficiaries concerning [protected] traditional knowledge as defined in this instrument, as appropriate and in accordance with national law, in a reasonable and balanced manner.]</p> <p>[Alt 2</p> <p>Member States [should/shall] safeguard the economic and moral interests of the beneficiaries concerning traditional knowledge as defined in this instrument, as appropriate and in accordance with national law, in a reasonable and balanced manner, and in a manner consistent with Article 14, in particular:</p> <p>(a) Where the traditional knowledge is secret, whether or not it is sacred, Member States [should/shall] take legislative, administrative and/or policy measures, as appropriate, with the aim of ensuring that:</p> <p>i. Beneficiaries have the exclusive and collective right to maintain, control, use, develop, authorize or prevent access to and use/utilization of their traditional knowledge; and receive a fair and equitable share of benefits arising from its use.</p> <p>ii. Beneficiaries have the moral right of attribution and the right to the use of their traditional knowledge in a manner that respects the integrity of such traditional knowledge.</p> <p>(b) Where the traditional knowledge is narrowly diffused, whether or not it is sacred, Member States [should/shall] take legislative, administrative and/or policy measures, as appropriate, with the aim of ensuring that:</p>

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<p><i>Alt 3</i></p> <p>5.1 Member States should/shall protect the economic and moral rights and interests of beneficiaries in secret and/or sacred traditional cultural expressions as defined in this instrument, as appropriate and in accordance with national law, and where applicable, customary laws. In particular, beneficiaries shall enjoy the exclusive rights of authorizing the use of such traditional cultural expressions.</p> <p>5.2 Where the subject matter is still held, maintained, and used in a collective context, but made publicly accessible without the authorization of the beneficiaries, Member States should/shall provide administrative, legislative, and/or policy measures, as appropriate, to protect against false, misleading, or offensive uses of such traditional cultural expressions, to provide a right to attribution, and to provide for appropriate usages of their traditional cultural expressions. In addition, where such traditional cultural expressions have been made available to the public without the authorization of the beneficiaries and are commercially exploited, Member States should/shall use best endeavors to facilitate remuneration, as appropriate.</p> <p>5.3 Where the subject matter is not protected under 5.1 or 5.2 Member States should/shall use best endeavors to protect the integrity of the subject matter in consultation with beneficiaries where applicable.</p> <p><i>Alt 4</i></p> <p><i>Option 1</i></p> <p>5.1 Where the protected traditional cultural expression is [sacred], [secret] or [otherwise known only] [closely held] within indigenous peoples or local communities, Member States should/shall:</p> <p style="margin-left: 40px;">(a) provide legal, policy and/or administrative measures, as appropriate and in accordance with national law that allow beneficiaries to:</p> <p style="margin-left: 80px;">i. [create,] maintain, control and develop said protected traditional cultural expressions;</p>	<p style="margin-left: 40px;">i. Beneficiaries receive a fair and equitable share of benefits arising from its use; and</p> <p style="margin-left: 40px;">ii. Beneficiaries have the moral right of attribution and the right to the use of their traditional knowledge in a manner that respects the integrity of such traditional knowledge.</p> <p style="margin-left: 40px;">(c) Where the traditional knowledge is not protected under paragraphs (a) or (b), Member States [should/shall] use best endeavors to protect the integrity of traditional knowledge, in consultation with beneficiaries where applicable.</p> <p>[Alt 3]</p> <p>5.1 Where the protected traditional knowledge is secret, whether or not it is sacred, Member States [should/shall] ensure that:</p> <p style="margin-left: 40px;">(a) Beneficiaries have the exclusive and collective right to maintain, control, use, develop, authorize or prevent access to and use/utilization of their protected traditional knowledge; and receive a fair and equitable share of benefits arising from its use.</p> <p style="margin-left: 40px;">(b) Users attribute said protected traditional knowledge to the beneficiaries, and use the knowledge in a manner that respects the cultural norms and practices of the beneficiaries as well as the inalienable, indivisible and imprescriptible nature of the moral rights associated with the traditional knowledge.</p> <p>5.2 Where the protected traditional knowledge is narrowly diffused, whether or not it is sacred, Member States [should/shall] ensure that:</p> <p style="margin-left: 40px;">(a) Beneficiaries receive a fair and equitable share of benefits arising from its use; and</p> <p style="margin-left: 40px;">(b) Users identify clearly-discernable holders of the traditional knowledge when using said traditional knowledge, and use the knowledge in a manner that respects the cultural norms and practices of the beneficiaries as well as the inalienable, indivisible and imprescriptible nature of the moral rights associated with the</p>

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<p>ii. [discourage] prevent the unauthorized disclosure and fixation and prevent the unlawful use of secret protected traditional cultural expressions;</p> <p>iii. [authorize or deny the access to and use/[utilization] of said protected traditional cultural expressions based on prior and informed consent or approval and involvement and mutually agreed terms;]</p> <p>iv. protect against any [false or misleading] uses of protected traditional cultural expressions, in relation to goods and services, that suggest endorsement by or linkage with the beneficiaries; and</p> <p>v. [prevent] prohibit use or modification which distorts or mutilates a protected traditional cultural expression or that otherwise diminishes its cultural significance to the beneficiary.</p> <p>(b) encourage users [to]:</p> <p>i. attribute said protected traditional cultural expressions to the beneficiaries;</p> <p>ii. use best efforts to enter into an agreement with the beneficiaries to establish terms of use of the protected traditional cultural expressions]; and</p> <p>iii. use/utilize the knowledge in a manner that respects the cultural norms and practices of the beneficiaries as well as the [inalienable, indivisible and imprescriptible] nature of the moral rights associated with the protected traditional cultural expressions.</p> <p>5.2 [Where the protected traditional cultural expression is still [held], [maintained], used [and]/[or] developed by indigenous [peoples] or local communities, and is/are publicly available [but neither widely known, [sacred], nor [secret]], Member States should/shall encourage that users]/[provide legal, policy and/or administrative measures, as appropriate and in accordance with</p>	<p>traditional knowledge.</p> <p>5.3 Member States should use best endeavors [, in consultation with indigenous and local communities,] to protect the integrity of protected traditional knowledge that is widely diffused [and sacred].]</p>

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<p>national law to encourage users [to]]:</p> <ul style="list-style-type: none"> (a) attribute and acknowledge the beneficiaries as the source of the protected traditional cultural expressions, unless the beneficiaries decide otherwise, or the protected traditional cultural expressions is not attributable to a specific indigenous people or local community[; and][.] (b) use best efforts to enter into an agreement with the beneficiaries to establish terms of use of the protected traditional cultural expressions; (c) [use/utilize the knowledge in a manner that respects the cultural norms and practices of the beneficiaries as well as the [inalienable, indivisible and imprescriptible] nature of the moral rights associated with the protected traditional cultural expressions[; and][.]] (d) [refrain from any [false or misleading uses] of protected traditional cultural expressions, in relation to goods and services, that suggest endorsement by or linkage with the beneficiaries.] <p>5.3 [Where the protected traditional cultural expressions is/are [publicly available, widely known [and in the public domain]] [not covered under Paragraphs 1 or 2], [and]/or protected under national law, Member States should/shall encourage users of said protected traditional cultural expressions [to], in accordance with national law:</p> <ul style="list-style-type: none"> (a) attribute said protected traditional cultural expressions to the beneficiaries; (b) use/utilize the knowledge in a manner that respects the cultural norms and practices of the beneficiary [as well as the [inalienable, indivisible and imprescriptible] nature of the moral rights associated with the protected traditional cultural expressions; (c) [protect against any [false or misleading] uses of traditional cultural expressions, in relation to goods and services, that suggest endorsement by or linkage with the beneficiaries[;]] [and] 	

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<p>(d) where applicable, deposit any user fee into the fund constituted by such Member State.]</p> <p><i>Option 2</i></p> <p>5.1 Member States should/shall safeguard the economic and moral interests of the beneficiaries concerning their protected traditional cultural expressions, as defined in this [instrument], as appropriate and in accordance with national law, in a reasonable and balanced manner.</p> <p>5.2 Protection under this instrument does not extend to traditional cultural expressions that are widely known or used outside the community of the beneficiaries as defined in this [instrument], [for a reasonable period of time], in the public domain, or protected by an intellectual property right.</p> <p>5.3 Protection/safeguarding under this instrument(s) does not extend to uses of protected traditional cultural expressions: (1) for archival, uses by museums, preservation, research and scholarly uses, and cultural exchanges; and (2) to create literary, artistic, and creative works that are inspired by, borrowed from, derived from, or adapted from protected traditional cultural expressions.]</p>	

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<p style="text-align: center;">[ARTICLE 6</p> <p style="text-align: center;">ADMINISTRATION OF [RIGHTS]/[INTERESTS]</p> <p><i>Alt 1</i></p> <p>[Member States]/[Contracting Parties] may establish, or designate, a competent authority, or authorities, in accordance with national law, to administer the rights provided for by this instrument.</p> <p><i>Alt 2</i></p> <p>6.1 [Member States]/[Contracting Parties] may establish or designate a competent authority, in accordance with national law, with the explicit consent of the beneficiaries, to administer the rights/interests provided for by this [instrument].</p> <p>6.2 [The [identity] of any authority established under Paragraph 1 [should]/[shall] be communicated to the International Bureau of the World Intellectual Property Organization.]]</p>	<p style="text-align: center;">[ARTICLE 8</p> <p style="text-align: center;">ADMINISTRATION [OF RIGHTS]/[OF INTERESTS]</p> <p><i>Alt 1</i></p> <p>[Member States]/[Contracting Parties] [may]/[shall] [establish]/[appoint] a competent authority or authorities, with the [direct involvement and approval of] [free, prior and informed consent of] [in consultation with] [beneficiaries] [traditional knowledge holders], in accordance with their national law [to administer the rights/interests provided for by this instrument] [and without prejudice to the right of [beneficiaries] [traditional knowledge holders] to administer their rights/interests according to their customary protocols, understandings, laws and practices].</p> <p><i>Alt 2</i></p> <p>[Member States]/[Contracting Parties] may establish, or designate, a competent authority, or authorities, in accordance with national law, to administer the rights/interests provided for by this [instrument].</p> <p><i>Alt 3</i></p> <p>Member States may establish competent authorities, in accordance with national and customary law, that are responsible for the national traditional knowledge databases provided for by this [instrument]. Responsibilities may include the receipt, documentation, storage and online publication of information relating to traditional knowledge.]</p>

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<p style="text-align: center;">[ARTICLE 7</p> <p style="text-align: center;">EXCEPTIONS AND LIMITATIONS</p> <p>Alt 1</p> <p>In complying with the obligations set forth in this instrument, Member States may in special cases, adopt justifiable exceptions and limitations necessary to protect the public interest, provided such exceptions and limitations shall not unreasonably conflict with the interests of beneficiaries, [and the customary law of indigenous peoples and local communities,] nor unduly prejudice the implementation of this instrument.</p> <p>Alt 2</p> <p>7.1. In complying with this instrument, Member States may adopt exceptions and limitations as may be determined under national legislation including incorporated customary law.</p> <p>7.2. To the extent that any act would be permitted under national law for works protected by copyright, signs and symbols protected by trademark law, or subject matter otherwise protected by intellectual property law, such acts [shall/should] not be prohibited by the protection of TCEs.</p> <p>7.3. Regardless of whether such acts are already permitted under paragraph (1), Member States [shall/should] have exceptions for:</p> <ul style="list-style-type: none"> (a) learning teaching and research; (b) preservation, display, research, and presentation in archives, libraries, museums or other cultural institutions; (c) the creation of literary, artistic, or creative works inspired by, based on, or borrowed from traditional cultural expressions. <p>Alt. 3</p> <p>General Exceptions</p> <p>7.1 [[Member States]/[Contracting Parties] [may]/[should]/[shall] adopt appropriate limitations</p>	<p style="text-align: center;">[ARTICLE 9</p> <p style="text-align: center;">EXCEPTIONS AND LIMITATIONS</p> <p>Alt 1</p> <p>In complying with the obligations set forth in this instrument, Member States may in special cases, adopt justifiable exceptions and limitations necessary to protect the public interest, provided such exceptions and limitations shall not unreasonably conflict with the interests of beneficiaries nor unduly prejudice the implementation of this instrument.</p> <p>Alt 2</p> <p>General Exceptions</p> <p>9.1 [Member States]/[Contracting Parties] may adopt appropriate limitations and exceptions under national law [with the prior informed consent or approval and involvement of the beneficiaries] [in consultation with the beneficiaries] [with the involvement of beneficiaries][, provided that the use of [protected] traditional knowledge:</p> <ul style="list-style-type: none"> (a) [acknowledges the beneficiaries, where possible;] (b) [is not offensive or derogatory to the beneficiaries;] (c) [is compatible with fair practice;] (d) [does not conflict with the normal utilization of the traditional knowledge by the beneficiaries; and] (e) [does not unreasonably prejudice the legitimate interests of the beneficiaries taking account of the legitimate interests of third parties.]] <p>9.2 [When there is reasonable apprehension of irreparable harm related to [sacred] and [secret] traditional knowledge, [Member States]/[Contracting Parties] [may]/[shall]/[should] not establish exceptions and limitations.]</p>

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<p>and exceptions under national law [in consultation with the beneficiaries] [with the involvement of beneficiaries][, provided that the use of [protected] traditional cultural expressions:</p> <ul style="list-style-type: none"> (a) [acknowledges the beneficiaries, where possible;] (b) [is not offensive or derogatory to the beneficiaries;] (c) [is compatible with fair use/dealing/practice;] (d) [does not conflict with the normal utilization of the traditional cultural expressions by the beneficiaries; and] (e) [does not unreasonably prejudice the legitimate interests of the beneficiaries taking account of the legitimate interests of third parties.]] <p>Alternative</p> <p>7.1 [[Member States]/[Contracting Parties] [may]/[should]/[shall] adopt appropriate limitations or exceptions under national law [, provided that [those limitations or exceptions]:</p> <ul style="list-style-type: none"> (a) are limited to certain special cases; (b) [do not [conflict] with the normal [utilization] of the traditional cultural expressions by the beneficiaries;] (c) [do not unreasonably prejudice the legitimate interests of the beneficiaries;] (d) [ensure that the [use] of traditional cultural expressions: <ul style="list-style-type: none"> i. is not offensive or derogatory to the beneficiaries; ii. acknowledges the beneficiaries, where possible;] and iii. [is compatible with fair practice.]]] <p>[End of Alternative]</p> <p>7.2 [When there is reasonable apprehension of irreparable harm related to [sacred] and [secret] traditional cultural expressions, [Member</p>	<p>Specific Exceptions</p> <p>9.3 [[In addition to the limitations and exceptions provided for under Paragraph 1,] [Member States]/[Contracting Parties] may adopt appropriate limitations or exceptions, in accordance with national law, for the following purposes:</p> <ul style="list-style-type: none"> (a) teaching, learning, but not research resulting in profit-marking or commercial purposes; (b) for preservation, display, research and presentation in archives, libraries, museums or cultural institutions, for non-commercial cultural heritage or other purposes in the public interest; and (c) in the case of a national emergency or other circumstances of extreme urgency, to protect public health or the environment [or in cases of public non-commercial use]; (d) [the creation of an original work of authorship inspired by traditional knowledge]; <ul style="list-style-type: none"> a. to exclude from protection diagnostic, therapeutic and surgical methods for the treatment of humans or animals. <p style="text-align: center;">This provision, with the exception of Subparagraph (c), [should]/[shall] not apply to traditional knowledge described in Article 5(a)/5.1.]</p> <p>9.4 Regardless of whether such acts are already permitted under Paragraph 1, the following shall be permitted:</p> <ul style="list-style-type: none"> (a) the use of traditional knowledge in cultural institutions recognized under the appropriate national law, archives, libraries, museums for non-commercial cultural heritage or other purposes in the public interest, including for preservation, display, research and presentation should be permitted; and

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<p>States]/[Contracting Parties] [may]/[should]/[shall] not establish exceptions and limitations.]</p> <p>Specific Exceptions</p> <p>7.3 [[Subject to the limitations in Paragraph 1,]/[In addition,] [Member States]/[Contracting Parties] [may]/[should]/[shall] adopt appropriate limitations or exceptions, in accordance with national law or, as appropriate, of the [holders]/[owners] of the original work:</p> <ul style="list-style-type: none"> (a) [for learning, teaching and research, in accordance with nationally established protocols, except when it results in profit-making or commercial purposes;] (b) [for preservation, [display], research and presentation in archives, libraries, museums or other cultural institutions recognized by national law, for non-commercial cultural heritage or other purposes in the public interest;] (c) [for the creation of an original work [of authorship] inspired by, based on or borrowed from traditional cultural expressions;] <p>[This provision [should]/[shall] not apply to [protected] traditional cultural expressions described in Article 5.1.]</p> <p>7.4 [Regardless of whether such acts are already permitted under Paragraph 1, the following [should]/[shall] be permitted:</p> <ul style="list-style-type: none"> (a) [the use of traditional cultural expressions in cultural institutions recognized under the appropriate national law, archives, libraries and museums, for non-commercial cultural heritage or other purposes in the public interest, including for preservation, [display], research and presentation;] (b) the creation of an original work [of authorship] inspired by, based on or borrowed from traditional cultural expressions;] (c) [the use/utilization of a traditional cultural expression [legally] derived from sources other than the beneficiaries; and] 	<p>(b) the creation of an original work of authorship inspired by traditional knowledge.]</p> <p>9.5 [[There shall be no right to [exclude others] from using knowledge that:]/[The provisions of Article 5 shall not apply to any use of knowledge that:]</p> <ul style="list-style-type: none"> (a) has been independently created [outside the beneficiaries' community]; (b) [legally] derived from sources other than the beneficiary; or (c) is known [through lawful means] outside of the beneficiaries' community.] <p>9.6 [Protected traditional knowledge shall not be deemed to have been misappropriated or misused if the protected traditional knowledge was:</p> <ul style="list-style-type: none"> (a) obtained from a printed publication; (b) obtained from one or more holders of the protected traditional knowledge with their prior informed consent or approval and involvement; or (c) mutually agreed terms for [access and benefit sharing]/[fair and equitable compensation] apply to the protected traditional knowledge that was obtained, and were agreed upon by the national contact point.]] <p>9.7 [National authorities shall exclude from protection traditional knowledge that is already available without restriction to the general public.]</p> <p>Alt 3</p> <p>In complying with the obligations set forth in this instrument, Member States may adopt exceptions and limitations as may be determined under national and customary law.]</p>

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<p>(d) [the use/utilization of a traditional cultural expression known [through lawful means] outside of the beneficiaries' community.]]</p> <p>7.5 [[Except for the protection of secret traditional cultural expressions against disclosure], to the extent that any act would be permitted under the national law, for works protected by [intellectual property rights [including]]/[copyright, or signs and symbols protected by trademark, or inventions protected by patents or utility models and designs protected by industrial design rights, such act [should]/[shall] not be prohibited by the protection of traditional cultural expressions].]</p>	

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<p style="text-align: center;">[ARTICLE 8]</p> <p style="text-align: center;">[TERM OF [PROTECTION]/[SAFEGUARDING]</p> <p><i>Option 1</i></p> <p>8.1 [Member States]/[Contracting Parties] may determine the appropriate term of protection/rights of traditional cultural expressions in accordance with [this [instrument]/[which may] [should]/[shall] last as long as the traditional cultural expressions fulfill/satisfy the [criteria of eligibility for protection] according to this [instrument], and in consultation with beneficiaries.]]</p> <p>8.2 [Member States]/[Contracting Parties] may determine that the protection granted to traditional cultural expressions against any distortion, mutilation or other modification or infringement thereof, done with the aim of causing harm thereto or to the reputation or image of the beneficiaries or region to which they belong, [should]/[shall] last indefinitely.</p> <p><i>Option 2</i></p> <p>8.1 [Member States]/[Contracting Parties] shall protect the subject matter identified in this [instrument] as long as the beneficiaries of protection continue to enjoy the scope of protection in Article 3.</p> <p><i>Option 3</i></p> <p>8.1 [[Member States]/[Contracting Parties] may determine that the term of protection of traditional cultural expressions, at least as regards their economic aspects, [should]/[shall] be limited.]]</p>	<p style="text-align: center;">ARTICLE 10</p> <p style="text-align: center;">TERM OF PROTECTION/RIGHTS</p> <p>[Member States]/[Contracting Parties] may determine the appropriate term of protection/rights of traditional knowledge in accordance with [Article 5/[which may] [should]/[shall] last as long as the traditional knowledge fulfills/satisfies the [criteria of eligibility for protection] according to Article [3]/[5].]]</p>

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<p style="text-align: center;">[ARTICLE 9]</p> <p style="text-align: center;">FORMALITIES</p> <p><i>Option 1</i></p> <p>9.1 [As a general principle,] [Member States]/[Contracting Parties] [should]/[shall] not subject the protection of traditional cultural expressions to any formality.</p> <p><i>Option 2</i></p> <p>9.1 [[Member States]/[Contracting Parties] [may] require formalities for the protection of traditional cultural expressions.]</p> <p>9.2 Notwithstanding Paragraph 1, a [Member State]/[Contracting Party] may not subject the protection of secret traditional cultural expressions to any formality.</p>	<p style="text-align: center;">ARTICLE 11</p> <p style="text-align: center;">FORMALITIES</p> <p>Alt 1</p> <p>[Member States]/[Contracting Parties] [should]/[shall] not subject the protection of traditional knowledge to any formality.</p> <p>Alt 2</p> <p>[[Member States]/[Contracting Parties] [may] require formalities for the protection of traditional knowledge.]</p> <p>Alt 3</p> <p>[The protection of traditional knowledge under Article 5 [should]/[shall] not be subject to any formality. However, in the interest of transparency, certainty and the conservation of traditional knowledge, the relevant national authority (or authorities) or intergovernmental regional authority (or authorities) may maintain registers or other records of traditional knowledge to facilitate protection under Article 5.]</p>

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<p style="text-align: center;">[ARTICLE 10]</p> <p style="text-align: center;">[SANCTIONS, REMEDIES AND EXERCISE OF RIGHTS]/[INTERESTS]</p> <p>10.1 <i>Option 1</i> [[Member States]/[Contracting Parties] [should]/[shall] provide appropriate legal, policy, administrative and/or other measures, in accordance with national law, to ensure the application of this instrument.]</p> <p>10.1 <i>Option 2</i> [Member States]/[Contracting Parties] [should]/[shall], in accordance with their national law, provide the necessary legal, policy or administrative measures to prevent willful or negligent harm to the economic and moral rights of the beneficiaries, as well as provide accessible, appropriate and adequate enforcement and dispute resolution mechanisms, [border measures], sanctions and remedies, including criminal and civil remedies, to ensure the application of this instrument.</p> <p>10.2 [Where a dispute arises between beneficiaries, or between beneficiaries and users of traditional cultural expressions, [each party [may]/[shall be entitled to]] the parties may mutually agree to refer the issue to an [independent] alternative dispute resolution mechanism recognized by international, regional or [, if both parties are from the same country, by] national law [, and that is most suited to the holders of traditional cultural expressions].]</p> <p>10.3 [The means of redress for safeguarding the protection granted by this instrument [should]/[shall] be governed by the national law of the country where the protection is claimed.]</p> <p>10.4 [[Member States]/[Contracting Parties] [should]/[shall], where a third party has misleadingly or unfairly acquired intellectual property rights over traditional cultural expressions without the prior informed consent of the beneficiaries, provide for the revocation of such intellectual property rights.]</p> <p>10.5 [[Member States]/[Contracting Parties] [should]/[shall] [not apply sanctions [or provide for remedies]] in cases of incidental use/utilization/inclusion of a [protected] traditional cultural expression in another work or another subject matter, or in cases where the user had no knowledge or reasonable grounds to know that the</p>	<p style="text-align: center;">[ARTICLE 6]</p> <p style="text-align: center;">SANCTIONS, REMEDIES AND EXERCISE OF RIGHTS/APPLICATION</p> <p>Alt 1</p> <p>Member States shall put in place appropriate, effective, dissuasive, and proportionate legal and/or administrative measures to address violations of the rights contained in this instrument.</p> <p>Alt 2</p> <p>6.1 [Member States [should]/[shall] ensure that [accessible, appropriate and adequate] [criminal, civil [and] or administrative] enforcement procedures[, dispute resolution mechanisms][, sanctions] [and remedies] are available under their laws against the [willful or negligent [harm to the economic and/or moral interest]] [infringement of the protection provided to traditional knowledge under this instrument] [[misappropriation/ misuse/unauthorized use/unfair and inequitable uses] or misuse of traditional knowledge] sufficient to constitute a deterrent to further infringements.]</p> <p>6.2 The procedures referred to in Paragraph 1 should be accessible, effective, fair, equitable, adequate [appropriate] and not burdensome for [holders]/[owners] of protected traditional knowledge. [These procedures should also provide safeguards for legitimate third party interests and the public interest.]</p> <p>6.3 [The beneficiaries [should]/[shall] have the right to initiate legal proceedings where their rights under Paragraphs 1 and 2 are violated or not complied with.]</p> <p>6.4 [Where appropriate, sanctions and remedies should reflect the sanctions and remedies that indigenous people and local communities would use.]</p> <p>6.5 [Where a dispute arises between beneficiaries or between beneficiaries and users of traditional knowledge, each party [may]/[shall be entitled to] refer the issue to an [independent] alternative dispute resolution mechanism recognized by international, regional or [, if both parties are from the same country, by] national law [, and that is most suited to the holders of traditional knowledge].]</p>

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<p>traditional cultural expression is protected.]]</p>	<p>6.6 [Where, under applicable domestic law, the [intentional] wide diffusion of [protected subject matter]/[traditional knowledge] beyond a recognizable community of practice has been determined to be the result of an act of [misappropriation/misuse/unauthorized use/unfair and inequitable uses] or other violation of national law, the beneficiaries shall be entitled to fair and equitable compensation/royalties.]</p> <p>6.7 If an infringement of the rights protected by this instrument is determined in the procedure established in Paragraph 6.1, the sanctions may consider the inclusion of restorative justice measures, according to the nature and effect of the infringement.]</p>

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<p style="text-align: center;">[ARTICLE 11]</p> <p style="text-align: center;">[TRANSITIONAL MEASURES]</p> <p>11.1 This [instrument] [should]/[shall] apply to all traditional cultural expressions which, at the time of the [instrument] coming into effect/force, fulfill the criteria set out in this [instrument].</p> <p>11.2 <i>Option 1</i> [[Member States]/[Contracting Parties] [should]/[shall] secure the rights acquired by third parties under national law prior to the entry into effect/force of this [instrument]].</p> <p>11.2 <i>Option 2</i> Continuing acts in respect of traditional cultural expressions that had commenced prior to the coming into effect/force of this [instrument] and which would not be permitted or which would be otherwise regulated by the [instrument], [[should]/[shall] be brought into conformity with the [instrument] within a reasonable period of time after its entry into effect/force, subject to Paragraph 3]/[[should]/[shall] be allowed to continue].</p> <p>11.3 With respect to traditional cultural expressions that have special significance for the beneficiaries and which have been taken outside of the control of such beneficiaries, these beneficiaries [should]/[shall] have the right to recover such traditional cultural expressions.]</p>	<p style="text-align: center;">ARTICLE 12</p> <p style="text-align: center;">TRANSITIONAL MEASURES</p> <p>12.1 These provisions [should]/[shall] apply to all traditional knowledge which, at the moment of the provisions coming into force, fulfills the criteria set out in Article [3]/[5].</p> <p><i>Optional addition</i></p> <p>12.2 [[Member States]/[Contracting Parties] [should]/[shall] ensure [the necessary measures to secure] the rights [acknowledged by national law] already acquired by third parties are not affected, in accordance with its national law and its international legal obligations.]</p> <p><i>Alternative</i></p> <p>12.2 [[Member States]/[Contracting Parties] [should]/[shall] provide that continuing acts in respect of traditional knowledge that had commenced prior to the coming into force of this [instrument] and which would not be permitted or which would be otherwise regulated by this [instrument], [should be brought into conformity with these provisions within a reasonable period of time after its entry into force], subject to respect for rights previously acquired by third parties in good faith]/should be allowed to continue].</p> <p><i>Alternative</i></p> <p>12.2 [Notwithstanding Paragraph 1, [Member States]/[Contracting Parties] [should]/[shall] provide that:</p> <ul style="list-style-type: none"> (a) anyone who, before the date of entry into force of this instrument, has commenced utilization of traditional knowledge which was legally accessed, may continue such utilization of the traditional knowledge[, subject to a right of compensation]; (b) such right of utilization shall also, on similar conditions, be enjoyed by anyone who has made substantial preparations to utilize the traditional knowledge. (c) the foregoing gives no right to utilize traditional knowledge in a way that contravenes the terms the beneficiary may have set out as a condition for access.]

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<p style="text-align: center;">[ARTICLE 12]</p> <p style="text-align: center;">[RELATIONSHIP WITH [OTHER] INTERNATIONAL AGREEMENTS]</p> <p>12.1 [Member States]/[Contracting Parties] [should]/[shall] implement this [instrument] in a manner [mutually supportive] of [other] [existing] international agreements.]</p>	<p style="text-align: center;">[ARTICLE 13]</p> <p style="text-align: center;">RELATIONSHIP WITH OTHER INTERNATIONAL AGREEMENTS</p> <p>13.1 This instrument [should]/[shall] establish a mutually supportive relationship [between [intellectual property [patent] rights [directly based on] [involving] [the utilization of] traditional knowledge and with relevant [existing] international agreements and treaties.]</p> <p>[13.2 Nothing in this instrument shall be interpreted as prejudicing or detrimental to the rights of indigenous [peoples] enshrined in the United Nations Declaration on the Rights of Indigenous Peoples.]</p> <p>[13.3 In case of legal conflict, the rights of the indigenous [peoples] included in the aforementioned Declaration shall prevail and all interpretation shall be guided by the provisions of the said Declaration.]</p>

<p style="text-align: center;">The Protection of Traditional Cultural Expressions: Draft Articles</p> <p style="text-align: center;">WIPO/GRTKF/IC/34/6</p>	<p style="text-align: center;">The Protection of Traditional Knowledge: Draft Articles</p> <p style="text-align: center;">WIPO/GRTKF/IC/34/5</p>
<p style="text-align: center;">[ARTICLE 13]</p> <p style="text-align: center;">[NATIONAL TREATMENT]</p> <p>Each [Member State]/[Contracting Party] [should]/[shall] accord to beneficiaries that are nationals of other [Member States]/[Contracting Parties] treatment no less favourable than that it accords to beneficiaries that are its own nationals with regard to the protection provided for under this [instrument].]</p>	<p style="text-align: center;">ARTICLE 15</p> <p style="text-align: center;">NATIONAL TREATMENT</p> <p>[The rights and benefits arising from the protection of traditional knowledge under national/domestic measures or laws that give effect to these international provisions [should]/[shall] be available to all eligible beneficiaries who are nationals or residents of a [Member State]/[Contracting Party] [prescribed country] as defined by international obligations or undertakings. Eligible foreign beneficiaries [should]/[shall] enjoy the same rights and benefits as enjoyed by beneficiaries who are nationals of the country of protection, as well as the rights and benefits specifically granted by these international provisions.]</p> <p><i>Alternative</i></p> <p>[Nationals of a [Member State]/[Contracting Party] may only expect protection equivalent to that contemplated in this instrument in the territory of another [Member State]/[Contracting Party] even where that other [Member State]/[Contracting Party] provides for more extensive protection for their nationals.]</p> <p style="text-align: right;"><i>[End of alternative]</i></p> <p><i>Alternative</i></p> <p>[Each [Member State]/[Contracting Party] [should]/[shall] in respect of traditional knowledge that fulfills the criteria set out in Article 3, accord within its territory to beneficiaries of protection as defined in Article 4, whose members primarily are nationals of or are domiciled in the territory of, any of the other [Member States]/[Contracting Parties], the same treatment that it accords to its national beneficiaries.]</p> <p style="text-align: right;"><i>[End of alternative]</i></p>

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<p style="text-align: center;">[ARTICLE 14]</p> <p style="text-align: center;">[TRANSBOUNDARY COOPERATION]</p> <p>In instances where [protected] traditional cultural expressions are located in territories of different [Member States]/[Contracting Parties], those [Member States]/[Contracting Parties] [should]/[shall] co-operate in addressing instances of transboundary [protected] traditional cultural expressions., with the involvement of indigenous [peoples] and local communities concerned, where applicable, with a view to implementing this [instrument].]</p>	<p style="text-align: center;">[ARTICLE 16]</p> <p style="text-align: center;">TRANSBOUNDARY COOPERATION</p> <p>Where the same [protected] traditional knowledge [under Article 5] is found within the territory of more than one [Member State]/[Contracting Party], or is shared by one or more indigenous and local communities in several [Member States]/[Contracting Parties], those [Member States]/ [Contracting Parties] [should]/[shall] endeavour to cooperate, as appropriate, with the involvement of the indigenous and local communities concerned, with a view to implementing the objectives of this [instrument].]</p>

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<p style="text-align: center;">ARTICLE 15</p> <p style="text-align: center;">[CAPACITY BUILDING AND AWARENESS RAISING</p> <p>15.1 [Member States]/[Contracting Parties] [should]/[shall] cooperate in the capacity building and strengthening of human resources, in particular, those of the beneficiaries, and the development of institutional capacities, to effectively implement the [instrument].</p> <p>15.2 [Member States]/[Contracting Parties] [should]/[shall] provide the necessary resources for indigenous [peoples] and local communities and join forces with them to develop capacity-building projects within indigenous [peoples] and local communities, focused on the development of appropriate mechanisms and methodologies, such as new electronic and didactical material which are culturally adequate, and have been developed with the full participation and effective participation of indigenous peoples and local communities and their organizations.</p> <p>15.3 [In this context, [Member States]/[Contracting Parties] [should]/[shall] provide for the full participation of the beneficiaries and other relevant stakeholders, including non-government organizations and the private sector.]</p> <p>15.4 [Member States]/[Contracting Parties] [should]/[shall] take measures to raise awareness of the [instrument,] and in particular educate users and holders of traditional cultural expressions of their obligations under this instrument.]</p>	

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<p style="text-align: center;">[ARTICLE 16</p> <p style="text-align: center;">NON-DEROGATION</p> <p>Nothing in this instrument may be construed as diminishing or extinguishing the rights that indigenous peoples or local communities have now or may acquire in the future.]</p>	<p style="text-align: center;">ARTICLE 14</p> <p style="text-align: center;">NON-DEROGATION</p> <p>Nothing in this [instrument] may be construed as diminishing or extinguishing the rights that indigenous [peoples] or local communities have now or may acquire in the future.</p>

[End of Annex and of Document]