

# WIPO IGC 40 “OBJECTIVES”

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# OBJECTIVES

- What are objectives?
- “Objectives are fundamental to the development of the operative text of any instrument as they detail the **purpose(s) and intent of the instrument..**”
- “... protection of TK and TCEs should not be undertaken for its own sake ... but as a **tool for achieving the goals and aspirations** of relevant peoples and communities...”
- “The way in which an **international legal instrument(s) is shaped** and defined will **depend to a large extent on the objectives** it is intended to serve Traditional Cultural Expression ...”

# INDIGENOUS PEOPLES

- What is the role of the UNDRIP within objectives?
- Why is it so important?
- Fundamental human rights e.g. Right to culture
- Preamble
- ‘Acknowledging the UN Declaration on the Rights of Indigenous Peoples and the aspirations of indigenous peoples and local communities.’

# UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

- Article 31 provides:
- “1. Indigenous peoples have the right to **maintain, control, protect and develop** their cultural heritage, **traditional knowledge** and **traditional cultural expressions**, as well as the manifestations of their sciences, technologies and cultures, including human and **genetic resources**, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. **They also have the right to maintain, control, protect and develop their intellectual property** over such cultural heritage, traditional knowledge, and traditional cultural expressions.
- 2. In conjunction with indigenous peoples, **States shall take effective measures** to recognize and protect the exercise of these rights.”

# UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

- Reorientate
- UNDRIP sets the framework
- UNDRIP as a benchmark
- Which of the alternatives satisfy or meet the UNDRIP?

# OBJECTIVES

- Traditional Knowledge Draft and Traditional Cultural Expression Text – three alternatives for Article 2 – Objectives:
- **Alt 1** - “The objective of this instrument is to provide effective, balanced and adequate protection relating to intellectual property against:
  - a. unauthorized and/or uncompensated uses of traditional knowledge; and
  - b. the erroneous grant of intellectual property rights over traditional knowledge, [while supporting the appropriate use of traditional knowledge].”
- **Alt 2** - The objective of this instrument is to support the appropriate use and effective, balanced and adequate protection of traditional knowledge within the intellectual property system, in accordance with national law, recognizing the rights of [indigenous [peoples] and local communities] [beneficiaries].]

# OBJECTIVES

- **Alt 3** - The objective of this instrument is to support the appropriate use of traditional knowledge within the patent system, in accordance with national law, respecting the values of traditional knowledge holders, by:
  - (a) contributing 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) recognizing 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) preventing the erroneous grant of patent rights over non-secret traditional knowledge.]]

# IGC

- Work of the IGC – relevant and important
- Shield and a Sword
- Examples
- Xacriaba - Brazil
- Māori Aotearoa – Aotearoa, New Zealand



# IGC



# IGC



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# CONCLUSIONS

- Objectives – purpose and intent
- Remember and re-orientate - UNDRIP
- Fundamental human rights