

**Chair's Notes
following IGC 52
(March 4 to 13, 2026)**

As prepared by the IGC Chair, Mr. Laine Fisher

Final Document

1. This note sets out a description of the work completed in a summarized manner to support the work of the Committee. It only reflects the perspective of the Chair and is a 'non-paper'.¹

General discussions on the texts on TK and TCEs

2. Groups and Member States were invited to consider key matters for prioritization in informal sessions to assist with the scheduling and focus of these sessions. Groups were encouraged to coordinate within and across groups to identify areas of convergence.
3. The exercise reinforced the focus of the different Groups within IGC, but importantly, gave the Chair a steer as to how the articulation of these key matters can be connected through informals.
4. The recording of this session in Plenary is the best reference for what Groups, Participants and Member States proposed. Nonetheless, the Chair determined that based on the connection between the range of matters raised, informals would initially focus on:
 - a. Beneficiaries – who are the beneficiaries of the instrument(s) and how can we define them to provide legal certainty while allowing for adaptability at national levels? (Article 4 in both texts);
 - b. Eligibility criteria – what is the knowledge or cultural expression(s) that is covered by the instrument(s) and how can we define this to provide legal certainty while allowing for breadth of applicability at national levels? (Article 3 in both texts);
 - c. Objectives – why is the instrument(s) necessary and how does it conceptualise the interaction with other instruments/systems? (Article 2 in both texts); and
 - d. Scope – how is the knowledge or cultural expression(s) recognized and through what mechanisms? (Article 5 in both texts).
5. A tentative agenda was provided to Groups and Member States to support their engagement and coordination. The schedule was organized in the sequence above. The tentative agenda continued to be revised based on the Committee's work.

¹ It does not, in any way, reflect the views of WIPO, the Bureau, or the IGC Secretariat who remain neutral and apolitical. Further, this note does not reflect the views of any specific Member State or interest group. Lastly, this note has been prepared personally by the Chair, and no artificial intelligence has been used in writing this document.

Beneficiaries – who is to benefit from the instrument(s)?

6. The informal discussion on beneficiaries was the first time putting the methodology for IGC 52 into practice and it enjoyed some success with clear articulation of the examples, concepts, principles and questions that facilitated a constructive and improved understanding of the key matters relating to beneficiaries. This is a methodology that the Chair intends to build on in future IGCs.
7. The inherent tension on beneficiaries, as heard by the Chair, is that:
 - a. For some Member States the terms 'Indigenous Peoples' and 'Local Communities' are an effective way to describe the collectives of people in their Member State for whom they consider to be the beneficiaries of the instrument(s) as they are the legitimate holders of the traditional knowledge and/or traditional cultural expressions. Or, where the Member State does not have collectives for whom the definition applies, they recognize this terminology, as it is found within other international instruments, and something they have been able to support.
 - i. Problem: For these Member States, the existing intellectual property system, in many cases, does not provide for effective recognition of collective knowledge and/or cultural expressions of the Indigenous Peoples and Local Communities leading to erroneous recognition of IP rights and/or hindering the ability for these collectives to innovate and benefit from their knowledge.
 - ii. Solution: For these Member States, the focus is on ensuring Indigenous Peoples and Local Communities are the focus of the instrument(s). There is often a concern that opening the instrument(s) to other beneficiaries will mean that they as a Member State/Contracting party would be required to recognize other groups or institutions as having the same rights and interests as Indigenous Peoples or Local Communities. The concern is that this could create undue administrative burden and constitutional issues for these Member States.
 - b. In some Member States, different from those above, the terms 'Indigenous Peoples' and 'Local Communities' do not align with their national understanding or articulation of the collective(s) of people for whom they consider to be the beneficiaries of the instrument(s) and legitimate holders of traditional knowledge and/or traditional cultural expressions.
 - i. Problem: For these Member States, this means that the existing IP system, in many cases, does not provide for the effective recognition of traditional knowledge and/or cultural expressions of certain collectives and this can lead to erroneous recognition of IP rights and/or a hindering of their ability to innovate and benefit from their knowledge.

- ii. Solution: For these Member States, they need to be able to define the different groups at a national level. This is because creating a definition at an international level may lead to complexity in their national circumstances and apply to too few or too many groups within their jurisdiction. As such, there is often a concern that without having the ability to define in their national law who the instrument(s) applies to, they will not be able to utilize the instrument(s).
8. The discussion, by focusing on the holder rather than the knowledge, led to a difference in views as to who can legitimately hold traditional knowledge and traditional cultural expressions. This difference in views was not something that could be reconciled within that setting nor in the scheduled contact group. However, there were some commendable efforts to do so with the following suggestions for the Committee to continue to build off:
 - a. Referring to other international instruments and their description for these groups, for example the UNDRIP;
 - b. Linking the holders to the knowledge and cultural expression (Article 3 in both texts) that is covered by the instrument(s); and
 - c. Linking the holders to customary and national laws, as well as the holders of knowledge and cultural expression (Article 3 in both texts).
9. From the Chair's position, the differences in views appear reconcilable. The trade-off is clear: providing legal certainty at an international level with guardrails for who the beneficiaries are, while being balanced with providing national level flexibility to determine who the beneficiaries are.
10. The Chair surmises, at this time, that Member States should have further discussions on a conceptual scope for other beneficiaries and, potentially, reach a textual solution. This discussion and text appear to be needed to assure and confirm to some Member States that the inclusion of other beneficiaries would not lead to the unintended recognition of a broad range of collectives that then increase administration costs and hinder innovation. Further, the Chair notes that any textual construction will need to provide national flexibility to recognize the constitutional rights that some of these groups have in their respective Member States and ensure these are not impacted by the inclusion of 'other beneficiaries'.
11. National administration of the rights/interests on behalf of a beneficiary is also a matter that emerged. It is commonplace across many regions for States to administer rights/interests, at the request of Indigenous Peoples and Local Communities, to remove the administrative burden upon those collectives (e.g. the custodian role may be conducted by Trusts or Institutions, or knowledge/cultural expressions may be held in archival services or museums). From the Chair's position, there needs to be a clear delineation between the beneficiaries and those who administer the rights/interests, (as outlined in Article 8 in the TK text and Article 6 in the TCE text). These 'administration' articles are a useful way to address this issue at this time. As such, discussions on administration should remain separate to the discussion of 'other beneficiaries' to improve clarity in how beneficiaries are described and reduce complexity of the discussion.

12. Nonetheless, mandates within some Member States means that views around the binding and non-binding nature of this issue will ultimately dictate how much space there is within mandates to negotiate around beneficiaries.
13. The Chair encourages Member States and Groups to continue to form, and as appropriate, share their views amongst and across Groups on these matters ahead of the next IGC.

Terminology – Indigenous Peoples and Local Communities

14. Member States have made notable progress in building comfort and understanding of the term Indigenous Peoples and Local Communities. It has now reached a point where, from the Chair's position, there is support for the use of the term.
15. The subsequent matter relating to the term is how Member States with complex constitutional settings can ensure they are able to utilize the instrument(s). This matter is, also, now all but resolved thanks to commendable work by key Member States. One Member State is still working through what textual formulation is needed and has shown flexibility and proposed solutions to assist.
16. The Chair considers it is now time for the Committee to resolve the matter relating to the terminology of Indigenous Peoples and Local Communities within the draft instrument(s). This will allow Member States to focus on other matters and improve the working relationship within the Committee.
17. The Chair encourages key Member States and the Indigenous Caucus to work together to find solution(s) ahead of the next IGC.

Key questions for Committee to consider ahead of the next session(s):

Can the Committee:

- Taking note of the separate article(s) on the administration of rights/interests, outline a concept of whom 'other beneficiaries' are intended to be?
- Provide textual proposals outlining this concept of 'other beneficiaries', while providing Member States with sufficient flexibility to apply it in their national circumstances?
- Find a textual solution to address the remaining need around the term Indigenous Peoples and Local Communities?

Eligibility criteria – what is the knowledge or cultural expression that is covered by the instrument(s)?

18. The informal discussion then moved to eligibility criteria to determine what knowledge or cultural expression is covered by the instrument(s) (Article 3 in both texts). Based on the discussion, the Chair surmises that the areas where the Committee seems to have some convergence on (which are also concepts found in many of the alternatives within Article 3 of both instruments):
- a. Relationship - Indigenous Peoples and Local Communities (and yet to be determined other beneficiaries) have an ongoing relationship with the traditional knowledge or traditional cultural expression.
 - b. Identity & heritage - The traditional knowledge or traditional cultural expression is part of the Indigenous Peoples' and Local Communities' (and yet to be determined other beneficiaries') identity and heritage.
 - c. Intergenerational - The traditional knowledge or traditional cultural expression is passed across generations.
19. The informal discussion highlighted that, while the structure of each alternative is similar, there are differing perspectives on one key concept. Namely:
- a. Enduring versus temporal – should the criteria cover the knowledge or cultural expression from its understood time of 'creation' regardless of how recent it was (enduring) or only once it has reached a certain 'age' or 'time' can it be considered to meet the criteria (temporal).
20. The Chair recognizes that this discussion can be difficult across cultural understandings and frames of reference. Some progress was made in understanding through examples given to the Committee. Nonetheless, the Chair would encourage the Committee to continue the discussion to address the following questions (regardless of perspective):
- a. *Statement:* Traditional knowledge and traditional cultural expressions are part of Indigenous Peoples' and Local Communities' cultures, and these cultures continue to exist today in accordance with their customary protocols/laws. *Question:* How can we describe the difference between a legitimate innovation that is created by and belongs to an individual who is from an Indigenous People or Local Community, as opposed to an innovation by that same person that belongs to the Indigenous People or Local Community?
 - b. *Statement:* The IP system tends to protect 'recent' innovations for a period of time before they form part of the public domain for all to benefit from. Traditional knowledge and traditional cultural expressions are now present in the public domain and, for example, taught at and greatly benefit mainstream schools in some Member States. *Question:* How can we ensure that as Indigenous Peoples and Local Communities continue to develop cultural expressions and knowledge that they, as the holders, are able to determine how and when they are used within 50 years?

21. A further outstanding question for participants is: why is it foreseen that there is a need to be able to add further criteria at a national level? This is a useful short discussion to be had to provide examples for the Committee as to the type of additional criteria that might be needed. This will assist with understanding as to why a 'floor' or minimum standard is preferred in some alternatives.

Key questions for Committee to consider ahead of the next session(s):

Can the Committee:

- Carefully acknowledging differences, consider the questions (within their context above):
 - How can we describe the difference between a legitimate innovation that is created by and belongs to an individual who is from an Indigenous People or Local Community, as opposed to an innovation by that same person that belongs to the Indigenous People or Local Community?
 - How can we ensure that as Indigenous Peoples and Local Communities continue to develop cultural expressions and knowledge that they, as the holders, are able to determine how and when they are used within 50 years?
- Discuss examples around why there is a need to be able to add further criteria for protection at a national level?

Objectives – why is the instrument(s) necessary and how does it conceptualise the interaction with other instruments/systems?

22. The informal discussion next moved to objectives (Article 2 in both texts). The conceptual discussion on objectives was useful and identified the following concepts for inclusion within the article(s):
- a. Positive protection – recognition that Indigenous Peoples and Local Communities (and yet to be determined other beneficiaries) should be able to innovate and commercialize with their traditional knowledge and cultural expressions in a way that aligns with their culture(s). This includes through partnerships with other commercial entities.
 - b. Defensive protection – recognition that the intellectual property system will benefit from improved identification of traditional knowledge and cultural expressions when intellectual property rights are sought or established.
 - c. Interaction with the intellectual property system – recognition that the intellectual property system will interact with the instrument(s) and it is useful to state how this is to occur.
 - d. Direct outcomes of the instrument(s) – recognition that the instrument(s) will directly lead to other outcomes, such as improved recognition of rights holders, or the ability for Indigenous Peoples and Local Communities (and yet to be determined other beneficiaries) to maintain and control their traditional knowledge and traditional cultural expressions.
23. From the Chair's perspective, all four areas seemed to provide useful concepts to investigate for the Committee. The differences in views and difficulties in articulating these in text are as follows:

Positive Protection

24. The concept around positive protection was not discussed in depth, nor were there many proposals to improve the text around positive protection. From the Chair's perspective, there seems to be value in further discussing the possibility for the instrument(s) to better facilitate innovation and commercialization by Indigenous Peoples and Local Communities (and yet to be determined other beneficiaries) with their traditional knowledge and traditional cultural expressions. This could lead to a discussion on whether there is any fine tuning of the text around positive protection.
25. Such a discussion may also be aided by a more focused information sharing session where experts can provide their insights (henceforth known as Evidence-based Sharing Sessions) into the barriers to innovation and commercialization prior to this discussion.
26. Such an Evidence-based Sharing Session could provide further understanding as to why some research has shown that businesses who self-identify as Indigenous (or as part of a Local Community), despite having high innovation rates, comparatively register fewer intellectual property applications, face higher intellectual property-related costs and identify intellectual property as a major barrier to export. This is something the Chair will discuss with the Secretariat ahead of the next IGC.

Defensive Protection

27. The concept that the instrument(s) are to assist in the prevention of erroneous granting or vesting of intellectual property rights seems to enjoy the broadest understanding and support of the objectives. The defensive protection against erroneous granting or vesting of intellectual property rights usefully also articulates an interaction with the intellectual property system that has well understood benefits.
28. The discussions on this concept, therefore, focused on whether there was an improved way to articulate that instrument(s) would prevent erroneous recognition of different types of intellectual property rights (e.g., patents, trademarks, and copyrights). The productive discussion identified it was necessary to broaden the terminology from 'grant' as this technically does not relate to copyright which do not require registration. However, no terminology was agreed on at that time due to the need for some participants to take further advice on the comfort of technical versus general terms.
29. The Chair surmises that technical or general terminology would work and encourages the Committee to work together to determine terminology they have comfort with.

Interaction with the intellectual property system

30. The general recognition of how the instrument(s) interact with the intellectual property system remains a point of contention. While the defensive protection shows a useful connection to the intellectual property system, the broader question of how to articulate whether the mechanism sits 'within', 'alongside', 'connected to', or 'to some degree overlapping' with the intellectual property system remains an open one.
31. From the Chair's perspective, the conceptual divide at this stage appears to be an unproductive discussion to progress given the variety of alternatives and perspectives that reside within the draft instrument(s). Instead, the negotiations should continue to focus on the design of the instrument(s). Following this, negotiations could then determine whether there is a need to further clarify how the instrument(s) interact with the intellectual property system.

Direct outcomes of the instrument(s)

32. This concept is the most contentious as it provides an area for participants to outline their aspirations for the instrument(s). This has led to a wide variety of ways to describe the impact of the instrument.
33. The Chair is mindful of the need for guardrails within articles to ensure that articles are not overloaded with concepts and text that best sit elsewhere in the draft instrument(s). As such, the Chair surmises that, at this time, there is benefit in participants assessing any 'direct outcome' based concepts within the objectives article(s) to determine whether they better reside in the Preamble of the instrument(s).
34. The Preamble provides a way to discuss the importance of key aspirations for the instrument(s). This, however, would then move the text from an operative part of the instrument(s) to a contextual section. As such, the Chair accepts that the continued inclusion of 'direct outcomes' may be something that participants will want to continue to negotiate within the objectives article(s). This is because the removal of 'direct outcomes' within the objectives article(s) may be seen as giving up necessary negotiating space.

35. Nonetheless, the Chair recommends that the Committee *continue* to consider whether any 'direct outcome' based concepts can be moved to the Preamble to improve the instrument(s).

Key questions for Committee to consider ahead of the next session(s):

Can the Committee:

- Following an 'Evidence-based Sharing Session', develop a deeper conceptual understanding of the positive protection of traditional knowledge and traditional cultural expressions. With this, determine if there is a need for textual fine tuning of the positive protection within the objective article(s)?
- Within the defensive protection objective, identify and agree on a technical or general term to replace or add to the "erroneous *grant* of intellectual property rights" to broaden its meaning to intellectual property rights that are not 'granted'.
- Move any text relating to 'direct outcomes' of the instrument(s) to the Preamble, at this time, or in the future.

Scope of protection – how

36. The informal sessions concluded with discussions on the scope of protection (Article 5 in both texts). The discussion on scope of protection was notably productive. The session allowed participants to start working through key questions around the type of approaches and their similarities and differences.
37. The main concepts raised within Article 5 of both texts were:
 - a. A rights-based approach
 - b. A measures-based approach, and
 - c. A tiered approach.
38. The main part of the discussion was on the relationship between a rights-based approach and a measures-based approach. There seemed to be a significant number of participants suggesting that the concepts are either compatible, overlapping, or not mutually exclusive.
39. From the Chair's perspective, a common theme within these perspectives was that measures are, in some cases, a means to recognize rights. For example, if the instrument(s) states the Indigenous Peoples' and Local Communities' rights, it could also provide for the corresponding measures that Member States/Contracting Parties would then put in place. The relationship between rights and measures then logically leads to consideration of a hierarchy of recognition, which has led to the tiered approach.
40. The Chair's view is that more conceptual discussions are needed to develop potential avenues for alignment and ways to narrow gaps. As a result, there needs to be more negotiating room created for the Committee by making the choices less binary relating to the scope of protection. This means that if the Committee is to continue to use a rights and measures-based framework, the maximum measures-based concept needs to have greater overlap with the minimum rights-based concept.
41. Nonetheless, the Chair is realistic and recognizes the amount of work needed here. The Chair notes that because of the way the instrument(s) are drafted it means that scope of protection articles are the determinative features for the nature of the instrument(s). The Chair will continue to work with participants to find avenues for progression in thinking around these concepts.

'Safeguarding'

42. The discussion on the use of the terminology 'safeguard' was also a productive part of the negotiations on scope of protection. There appeared to be general acknowledgement that the term 'safeguard' does not neatly fit within the IGC context and sits better in other international fora.
43. The participants offered useful alternatives that are used in other parts of the texts, such as 'protect'. Improvements to the terminology 'safeguard' is something the Committee should consider ahead of the next IGC to better align the concepts in the alternatives with their intention.

Key questions for Committee to consider ahead of the next session(s):

Can the Committee:

- Further explore ways to conceptualise the relationship between measures and rights-based approaches, noting the existing role of the tiered approach.
- Develop choices for the Committee that are less binary in nature to create more negotiating room relating to scope of protection.
- Consider and amend the terminology 'safeguard' in Article 5 of both texts.

[ENDS]