

DRAFT ARTICLES ON THE PROTECTION OF TRADITIONAL KNOWLEDGE AS PREPARED
AT IGC 18

WORK IN PROGRESS

Wednesday, May 11, 2011

11.00 am

ARTICLE 1

SUBJECT MATTER OF PROTECTION

Definition of traditional knowledge

Option 1

- 1.1 Traditional knowledge means knowledge NORWAY, USA, SWITZERLAND, GUATEMALA: including know-how, skills, innovations, practices, and learning which is collectively generated, preserved and transmitted in a ISLAMIC REPUBLIC OF IRAN: [traditional] and intergenerational ISLAMIC REPUBLIC OF IRAN: [context] within an indigenous or local community. [resulting from intellectual activity in a traditional context including the know-how, skills, innovations, practices and learning that form part of the traditional knowledge systems of an [indigenous people or local community]¹.]

Option 2

- 1.1 (a) Traditional knowledge is dynamic and evolving. It is the result of the INDIA: [intellectual activities] in ISLAMIC REPUBLIC OF IRAN: [diverse traditional contexts], including knowledge, skills, SRI LANKA: competencies, innovations, practices and teachings in a collective framework INDIA: including codified knowledge systems, continuously developed, evolved and widely used, following any changes in the environment, geographical conditions and other factors. [of [indigenous peoples INDONESIA: or [and] local communities].]
- (b) Traditional knowledge is part of a collective, ancestral, territorial, spiritual, cultural, intellectual and material heritage;
- (c) Traditional knowledge is transmitted from generation to generation in diverse forms and is inalienable, indivisible and imprescriptible;
- (d) Traditional knowledge is intrinsically linked to biodiversity INDIA: natural resources and sustains cultural, social and human diversity embodied in traditional lifestyles.

Option 3

EUROPEAN UNION: 1.1 For the purpose of these provisions, traditional knowledge refers to the know how, skills, innovations, practices, and learning resulting from intellectual activity in a traditional context.

Criteria for eligibility

Option 1

- 1.2 NEW ZEALAND, INDIA: [Protected traditional knowledge is knowledge that is:] / [Protection extends to traditional knowledge that is:] Protection extends to traditional knowledge ("protected TK") that is:

¹ The term "indigenous people and local community" is used as a place holder. This term will be addressed by the group considering beneficiaries of protection.

(a) INDIA: [the unique product of or is [distinctively]]associated with [an indigenous people or local communities]; EUROPEAN UNION, AUSTRALIA, SWITZERLAND: and

Alternative

(a) distinctively associated with NEW ZEALAND: an indigenous people or local community [and customarily recognized as belonging to a [local or traditional community] INDONESIA: or nations;] EUROPEAN UNION, AUSTRALIA, SWITZERLAND: and

(b) INDIA: [collectively NEW ZEALAND, AUSTRALIA: developed, expressed, held and maintained in a traditional and intergenerational context [generated, preserved and transmitted [from generation to generation] OR [in a traditional and intergenerational context].] EUROPEAN UNION, AUSTRALIA, SWITZERLAND: and]

Alternative

(b) generated and collectively shared, preserved and transmitted [from generation to generation] OR INDIA: [in a traditional and intergenerational context]; EUROPEAN UNION, AUSTRALIA, SWITZERLAND: and INDIA: or

(c) INDIA: [integral to the cultural identity of [an indigenous people or local community] INDONESIA: or nations ISLAMIC REPUBLIC OF IRAN: family or individuals.]

Alternative

(c) INDIA: identified with [integral to] the cultural identity of a [local, indigenous or traditional peoples or communities INDONESIA: or nations] that is recognized as the owner through a form of custodian or collective and cultural ownership responsibility. Such a relationship may be established formally or informally by customary practices, laws or protocols.

Option 2

INDIA: [(a) to (c) above, plus;

(d) GUATEMALA: [JAPAN: not made widely known outside that community;]

(e) not the application of principles, rules, skills normally, and generally, well known]

Option 3

INDIA: [(a) to (c) above, plus;

(d) [the property of the [indigenous peoples INDONESIA: or [and] local communities]];

(e) not made widely known outside that community with their free prior and informed consent of the [indigenous peoples INDONESIA: or [and] local communities] on mutually agreed terms;

(f) [traditional knowledge may have diverse qualities and are viewed in the collective and are shared within the community. They are traditional in nature, often sacred or holy, and are often secret.];

(g) [this traditional knowledge is part of the identity of one or more peoples [indigenous and local] given that sometimes this is shared knowledge more than one peoples and/or communities];

(h) [this traditional knowledge is recognized by the [indigenous and local peoples and communities] so that they may exercise this knowledge and that they may exercise the custody of this knowledge and conserve it. There is a cultural responsibility that is recognized within customary law and practice.]]

NORWAY, USA: Protection shall be extended to traditional knowledge which:

a) is the unique product of or is distinctively associated with an indigenous or local community;

b) is integral to the cultural identity of an indigenous or local community;

c) has not been widely known outside that indigenous or local community for a reasonable period of time USA: with prior informed consent; NORWAY: and

d) is not the application of principles, rules, skills, know-how, practices, and learning normally and generally well-known.

NORWAY: [Secret traditional knowledge

- 1.3 [AFRICAN GROUP: [Protected] secret GUATEMALA: or sacred traditional knowledge is knowledge that is kept secret by the beneficiary group and is not shared, and has not been shared, by those outside of the beneficiary group.]

ARTICLE 2

BENEFICIARIES OF PROTECTION

Beneficiaries of protection are holders of traditional knowledge INDIA: [who generate, SRI LANKA: promote and preserve and transmit knowledge in a traditional CANADA, RUSSIAN FEDERATION: and [or] intergenerational context. Holders of traditional knowledge] include, but are not limited to, indigenous IPCB: [CANADA: and] [peoples,] local communities MEXICO: [[INDONESIA, OMAN, ALGERIA, SRI LANKA, BARBADOS, INDIA, THAILAND, CHINA, TRINIDAD AND TOBAGO, SAINT-KITTS AND NEVIS: and nations] USA: [ISLAMIC REPUBLIC OF IRAN: family or individuals.]] and other particular names contained in the domestic legislation of the parties. USA: [ISLAMIC REPUBLIC OF IRAN: and where the traditional knowledge holders are unknown, state as their legal representative.]

Alternatives

ISLAMIC REPUBLIC OF IRAN: [AUSTRALIA, NEW ZEALAND, USA, CANADA: Measures for the protection of traditional knowledge should be for the benefit of the indigenous peoples and local communities who develop, express, hold and maintain the traditional knowledge.]

NORWAY: Beneficiaries of protection are those indigenous and local communities who
EUROPEAN UNION: are holders of [have generated, preserved and transmitted] traditional knowledge that is covered by Article 1.

COLOMBIA: Beneficiaries of protection are indigenous and local communities that create, generate, protect and preserve and transmit knowledge in inter-generational context in accordance with Article 1.

REPUBLIC OF KOREA: Beneficiaries of protection are indigenous and local communities who generate, preserve and transmit knowledge in accordance with Article 1.

ARTICLE 3

SCOPE OF PROTECTION

Option 1

- 3.1 The beneficiaries of traditional knowledge protected under this instrument shall INDIA, CISA, SRI LANKA, INDONESIA, GUATEMALA, PERU, PANAMA: [/should] have the exclusive INDIA: collective rights to:

(a) CAPAJ, GUATEMALA, PANAMA, AZERBAIJAN: enjoy and IPCB: exclusively control and INDONESIA: [exploit] utilize their traditional knowledge;

(b) authorize or deny the access and use of their traditional knowledge;

(c) have a fair and equitable share of benefits arising from the use of their traditional knowledge based on mutually agreed terms;

(d) prevent misappropriation and misuse, including any acquisitions, appropriation, use or INDONESIA: [exploitation] utilization of their traditional knowledge, without their prior and informed consent and establishment of mutually agreed terms;

EUROPEAN UNION, CAPAJ: [(e) IPCB: require, in [prevent] the granting of IP rights involving the use of their traditional knowledge, IPCB: [without] the mandatory disclosure of traditional knowledge holders and their country of origin as well as evidence of compliance with prior and informed consent and benefit-sharing requirements;];

(f) prevent the use of traditional knowledge INDIA: [beyond its traditional context] without acknowledging the source CAPAJ: and origin of that traditional knowledge; acknowledging and attributing the traditional knowledge holders where known; and respecting the cultural norms and practices of its holders.

- 3.2 USA, EUROPEAN UNION, CANADA: [Contracting parties] Member States shall INDIA, GUATEMALA, PERU, PANAMA: [/should] provide adequate and effective legal means/measures to ensure the application of these rights taking into account relevant customary laws and practices.

- 3.3 For the purposes of this instrument, the term INDONESIA: "utilization" ["exploitation"] in relation to traditional knowledge shall refer to any of the following acts:

i. Where the traditional knowledge is a product:

(a) manufacturing, importing, offering for sale, selling, stocking or using the product beyond the traditional context; or

(b) being in possession of the product for the purposes of offering it for sale, selling it or using it beyond the traditional context;

ii. Where the traditional knowledge is a process:

(a) making use of the process beyond the traditional context;

(b) carrying out the acts referred to under sub clause (i) with respect to a product that is a direct result of the use of the process.

iii. Research and development leading to profit making or commercial purposes.

INDIA, INDONESIA, PANAMA, MOROCCO: [Option 2]

3.1 The beneficiaries of ALGERIA: [protected] traditional knowledge, shall/should have adequate and effective legal means/measures to exercise control and exploit their traditional knowledge, to authorize the access and use of their traditional knowledge, to have a fair and equitable share of benefit arising out of the use of their traditional knowledge and to prevent any unauthorized disclosure, use, or other exploitation
EUROPEAN UNION: [and in particular any acquisitions, appropriation, or use that fails to meet the prior and informed consent of the traditional knowledge holders or infringes the mutually agreed terms.]

3.2 In respect of traditional knowledge there should/shall be measures to require that those using traditional knowledge beyond its traditional context:

(a) acknowledge the source of traditional knowledge and attribute the traditional knowledge holder where known, unless the traditional knowledge holders decide otherwise; and

(b) use traditional knowledge in manner that respect the EUROPEAN UNION: reputation and integrity of traditional knowledge. [cultural norms and practices of its holders.]]

INDIA, INDONESIA, PANAMA, MOROCCO: [Option 3]

3.1 In respect of traditional knowledge which has not been disclosed by traditional knowledge holders outside the traditional/cultural context the beneficiaries of protected traditional knowledge shall/should have adequate and effective legal means /measures to prevent any unauthorized disclosure, use or other exploitation. Measures should be put in place with the aim of ensuring prior and informed consent is obtained for use of the traditional knowledge, and that any benefits arising from that use are shared in a fair and equitable way with the relevant traditional knowledge holders based on mutually agreed terms.

Alternative

JAPAN, USA: Protected traditional knowledge, which has not been disclosed by traditional knowledge holders outside the traditional/cultural context, should be protected from unauthorized disclosure, use or other exploitation in an appropriate way. Prior and informed consent should be obtained for use of the traditional knowledge, and that any benefit arising from that use should be shared in a fair and equitable way with the relevant traditional knowledge holders based on mutually agreed terms.

3.2 Measures should/shall also be put in place to ensure prior and informed consent is obtained for the commercial or industrial use of traditional knowledge and any benefits arising from that use are shared in a fair and equitable way where a user would not have reasonably been expected to know that the traditional knowledge had been previously disclosed.

Alternative

JAPAN, USA: Prior and informed consent should be obtained for the commercial or industrial use of traditional knowledge and any benefits arising from that use should be shared in a fair and equitable way where a user would not have reasonably be expected to know that traditional knowledge had been previously disclosed.

- 3.3 In respect of protected traditional knowledge including that which has been disclosed outside the traditional context there should/shall be measures to require that those using traditional knowledge beyond its traditional context:

Alternative

JAPAN, USA: In respect of protected traditional knowledge including that which had been disclosed outside of traditional context, those using such traditional knowledge beyond its traditional context should, as appropriate, be required to:

- (a) acknowledge the source of traditional knowledge and attribute the traditional knowledge holder where known, unless the traditional knowledge holders decide otherwise; and
- (b) use traditional knowledge in manner that respect the cultural norms and practices of its holders

Alternative

CISA: [NEW ZEALAND: Adequate and effective legal CANADA: policy or administrative measures should be provided CANADA: as appropriate and according to domestic legislation, to:

- 1) prevent the disclosure, use or other exploitation of secret traditional knowledge
- 2) where traditional knowledge is knowingly used outside the traditional context
 - a) acknowledge the source of traditional knowledge and attribute the traditional knowledge holder where known, unless the traditional knowledge holders decide otherwise
 - b) encourage use of traditional knowledge in a manner that does not disrespect the cultural norms and practices of its holders
- 3) ensure, where the traditional knowledge is secret or not widely known, prior and informed consent is obtained and any benefits arising from commercial use are shared in a fair and equitable way with the relevant traditional knowledge holders based on mutually agreed terms.]

Alternative

CANADA: 3) Encourage, where the traditional knowledge is secret or is not widely known, traditional knowledge holders and users to establish mutually agreed terms agreements with respect to the sharing of benefits arising from commercial use.]

ARTICLE 4

SANCTIONS, REMEDIES AND EXERCISE OF RIGHTS

4.1 JAPAN: States should / EUROPEAN UNION, USA: Member States [Contracting Parties PANAMA, INDIA, IPCB, AZERBAIDJAN: shall [undertake to]] adopt, IPCB: [INDIA: [as appropriate and] in accordance with their legal systems], the measures necessary to ensure the application of this instrument.

JAPAN: *[Option 1]*

4.2 EUROPEAN UNION, USA: Member States [Contracting parties] [INDONESIA, INDIA: shall [/should] ensure that INDIA: adequate [appropriate] enforcement procedures are available under their laws against the REPUBLIC OF KOREA, USA: [INDONESIA, CAPAJ, INDIA: willful or negligent] infringement of EUROPEAN UNION: protected traditional knowledge INDIA: protection accorded to [INDONESIA: the economic and/or moral interests] of the beneficiaries sufficient to constitute a deterrent to further infringements.

AFN: Contracting parties should ensure criminal and appropriate civil and administrative enforcement procedures.

Option 2

4.2 Accessible, appropriate and adequate enforcement and dispute resolution mechanisms, border measures, sanctions and remedies, NIGER, AFRICAN GROUP, PANAMA: shall [should] be available in cases of breach of the protection of the traditional knowledge so as to permit effective action against any act of THAILAND, SRI LANKA: infringement [misappropriation or misuse] of traditional knowledge, including expeditious remedies which would constitute a deterrent to further THAILAND, SRI LANKA: infringement [misappropriation or misuse].

4.3. These procedures should be accessible, CAPAJ: effective, fair, equitable, INDIA: adequate [appropriate] and not burdensome for holders of traditional knowledge. ISLAMIC REPUBLIC OF IRAN, AFRICAN GROUP, COLOMBIA, CISA, IPCB: [They should also provide safeguards for legitimate third party interests and the public interests.]

4.4 Where a dispute arises between beneficiaries or between beneficiaries and users of a traditional knowledge CANADA: the parties may agree to [each party INDIA: may [shall] be entitled] to refer the issue to an INDIA: [EUROPEAN UNION: independent] alternative dispute resolution mechanism recognized by international, regional or national law INDIA: that is most suited to the holders of traditional knowledge. ISLAMIC REPUBLIC OF IRAN: The dispute resolution mechanism between beneficiaries and users should be assigned to national law when beneficiaries and users are from one country.

MEXICO, AFRICAN GROUP, PANAMA: 4.5 To promote relevant measures to carry out cultural expertise that would take into account customary laws, protocols and community procedures, so as to settle disputes.

AUSTRALIA, NEW ZEALAND, CANADA, USA:
Option 3

- 4.1 Appropriate legal CANADA: , policy and CANADA: /or administrative measures should be provided to ensure the application of this instrument, including measures to prevent willful or negligent harm to the economic and/or moral interests of the beneficiaries sufficient to constitute a deterrent. USA: Where appropriate, sanctions and remedies should reflect the sanctions and remedies that indigenous people and local communities would use.
- 4.2 The means of redress for safeguarding or protection granted by the this instruments should be governed by the legislation of the country where the protection is claimed.
- 4.3 Where a dispute arises between beneficiaries or between beneficiaries and users of a traditional knowledge each party shall be entitled to refer the issue to an [independent] alternative dispute resolution mechanism recognized by international, regional or national law.]

ARTICLE 5

ADMINISTRATION OF RIGHTS

- 5.1 A USA, CANADA, EUROPEAN UNION, SWITZERLAND: Member State [AFRICAN GROUP, CISA: contracting party] CISA, GUATEMALA: shall [may] free prior informed consent of [, in consultation with] the holders of traditional knowledge ISLAMIC REPUBLIC OF IRAN, INDONESIA: in accordance with its national law, INDONESIA: may establish INDONESIA: or appoint an appropriate national or regional competent authority or authorities. The functions may include, but need not be limited to, the following:
- NEW ZEALAND, AUSTRALIA, SWITZERLAND: Where so requested by traditional knowledge holders a competent authority (regional, national or local) may to the extent authorized by the holders:
- (a) NEW ZEALAND, AUSTRALIA: disseminate [disseminating] information SRI LANKA: and promoting practices about traditional knowledge and its protection MEXICO, EL SALVADOR: under protection of its beneficiaries;
- (b) ascertaining whether COLOMBIA: free, prior informed consent has been obtained;
- NEW ZEALAND, AUSTRALIA: With the appropriate prior, informed consent, negotiate mutually agreed terms.
- REPUBLIC OF KOREA: [(c) supervising fair and equitable benefit-sharing; and]
- CANADA, SWITZERLAND: b) Providing advice to traditional knowledge holders and users on the establishment of mutually agreed terms.
- (d) NEW ZEALAND, AUSTRALIA: assist [assisting], where possible and appropriate, the holders of traditional knowledge in the use, exercise and enforcement of their rights over their traditional knowledge CANADA, AFRICAN GROUP, IPCB: [, including assisting in the maintenance of traditional knowledge databases].
- AFRICAN GROUP: e) determine whether an act pertaining to traditional knowledge constitutes an infringement or another act of unfair competition in relation to that knowledge.
- 5.2 Where traditional knowledge fulfills the criteria under Article 1, and is not specifically attributable to or confined to a community, the authority may, with the consultation COLOMBIA: and approval of the traditional knowledge holders where possible, administer the rights of that traditional knowledge.
- 5.3 The identity of the INDONESIA: [competent] national or regional authority or authorities [INDONESIA: shall/ INDONESIA: [should] be communicated to the World Intellectual Property Organization.
- 5.4 The establishment of a national or regional authority or authorities under this article is without prejudice to ISLAMIC REPUBLIC OF IRAN, EL SALVADOR: the national law and the right of traditional knowledge holders to administer their rights according to their customary protocols, understandings, laws and practices.

ARTICLE 6

EXCEPTIONS AND LIMITATIONS

Option 1

6.1 Measures for the protection of traditional knowledge IPCB: should [shall] / AFRICAN GROUP, INDIA, ALGERIA, SRI LANKA: shall:

(a) not restrict the generation, creation, customary use, transmission, exchange and development of traditional knowledge within and among communities in the traditional and customary context by the beneficiaries INDONESIA, IPCB: [as determined by customary laws and practices] consistent with domestic USA: law of the Member State [laws of Member States]; and

(b) extend only to utilization of traditional knowledge taking place [outside the membership of beneficiary community or] outside traditional or customary context.

ZIMBABWE, AFRICAN GROUP, ZAMBIA, NIGERIA: c) In the interpretation of this article the provisions of Article 3.1 (e) and (d) with regard to prior informed consent shall apply mutatis mutandis.

INDONESIA: 6.2 Secret and sacred traditional knowledge shall not be subjected to exceptions and limitations.

Option 2

6.1 The application and implementation of protection of traditional knowledge should not [adversely affect] be prejudicial to continued availability of traditional knowledge for the customary practice, exchange, use and transmission of traditional knowledge by traditional knowledge holders.

Option 1

6.2 USA: It shall be a matter of national law to permit [Parties may adopt] appropriate limitations or exceptions, provided that the use of traditional knowledge is compatible with VENEZUELA: free, prior and informed consent [fair practice], acknowledges the indigenous and local community where possible, AUSTRALIA, NEW ZEALAND, NORWAY: and does not unreasonably conflict with the cultural norms and practices of the traditional knowledge holders. [and is not offensive to the indigenous or local community.]

TUPAJ AMARU: [Option 2]

6.2 USA: It shall be a matter of national law to permit [Parties may adopt] appropriate limitations or exceptions, provided such exceptions are limited and do not conflict with the normal use of the traditional knowledge by the beneficiaries and do not unreasonably prejudice the legitimate interests of the beneficiaries, ISLAMIC REPUBLIC OF IRAN, CISA, TULALIP TRIBES, AFN: [taking into account the legitimate interests of third parties].]

INDONESIA, EUROPEAN UNION, CANADA: [EL SALVADOR, CAPAJ, GUATEMALA:

6.3 Secret and sacred traditional knowledge CISA, AFN, [may/] / VENEZUELA:

[GUATEMALA: shall] not be subjected to exceptions and limitations.]

INDIA, VENEZUELA, ALGERIA, AFRICAN GROUP, CISA, IPCB, INCOMINDIOS, SRI LANKA:

[USA, CANADA, NORWAY, ICC: Member States shall ensure that the protection of traditional knowledge shall neither hinder nor encumber the independent discovery or independent invention of the same knowledge.]

ARTICLE 7

TERM OF PROTECTION

CANADA, USA: *[Option 1]*

Protection of traditional knowledge ALGERIA, NIGERIA, MBOSCUDA: shall [should] last as long as the traditional knowledge fulfills the criteria of eligibility for protection according to Article 1.]

CANADA, USA: *[Option 2]*

Duration of protection of traditional knowledge varies based upon the characteristics of traditional knowledge.]

ARTICLE 8

FORMALITIES

Option 1

- 8.1 The protection of traditional knowledge JAPAN: should [INDIA: shall] not be subject to any formality.

Option 2

- 8.1 The protection of traditional knowledge requires some formalities.

BRAZIL, AFRICAN GROUP, GUATEMALA, EGYPT, USA: [8.2 In the interests of transparency, certainty and the conservation of traditional knowledge, relevant national authorities CANADA: may [should/shall] maintain registers or other records of traditional knowledge.]

JAPAN: [ARTICLE 9

TRANSITIONAL MEASURES

- 9.1 These provisions apply to all traditional knowledge which, at the moment of the provisions coming into force, fulfills the criteria set out in Article 1.

Option 1

- 9.2 The state should ensure the necessary measures to secure the rights INDONESIA: [acknowledged by national [or] domestic law,] already acquired by third parties
INDONESIA: in accordance with its national law USA: and its international legal obligations.

Option 2

- 9.2 Continuing acts in respect of traditional knowledge that had commenced prior to the coming into force of these provisions and which would not be permitted or which would be otherwise regulated by these provisions, should be brought into conformity with these provisions within a reasonable period of time after they entry into force MEXICO: [, subject to respect for rights previously acquired by third parties in good faith.]]

ARTICLE 10

CONSISTENCY WITH THE GENERAL LEGAL FRAMEWORK

Option 1

JAPAN: [10.1 Protection under this instrument TULALIP TRIBES:

as appropriate, shall take account of, and operate consistently with, other international
ISLAMIC REPUBLIC OF IRAN: [and regional OMAN: and national] instruments ISLAMIC
REPUBLIC OF IRAN: [and processes] USA, IPCB, CISA, RUSSIAN FEDERATION
[BRAZIL: in particular the Nagoya Protocol on Access and Benefit-Sharing of Genetic
Resources.]

Option 2

JAPAN: [10.1 NIGER: [Protection under this instrument should leave intact] and should in no way
affect the USA, RUSSIAN FEDERATION: rights or the protection provided for in
international legal instruments USA, IPCB, CISA, RUSSIAN FEDERATION: [BRAZIL: in
particular the Nagoya Protocol on Access and Benefit-Sharing of Genetic Resources.]

EUROPEAN UNION: [10.2 Nothing in this instrument may be construed as diminishing or
extinguishing the rights that indigenous IPCB, CISA: peoples [people] FAIRA:
[INDONESIA, THAILAND, SRI LANKA, RUSSIAN FEDERATION: or local communities or
nations] / ISLAMIC REPUBLIC OF IRAN: beneficiaries have now or may acquire in the
future.]

ARTICLE 11

NATIONAL TREATMENT AND OTHER MEANS OF RECOGNIZING FOREIGN RIGHTS AND INTERESTS

Comments

A prior basic question is whether or not domestic entitlements on traditional knowledge should be extended to foreign right holders or beneficiaries. Further consideration shall be given to existing choices for recognizing the rights of foreign right holders or beneficiaries including reciprocity and mutual recognition (See WIPO/GRTKF/IC/8/6 for a fuller discussion).

A secondary core question is whether existing domestic arrangements for protecting traditional knowledge, and the subsequent entitlements, would be extended to foreign right holders or beneficiaries. Certainly foreign traditional knowledge holders and beneficiaries who experience an abuse of their rights should be entitled to protection of their rights, as set out in this instrument. The issue is the extent to which they could gain access to entitlements recognized in the domestic regimes. For example, in country X, the unique situation of forest dwellers is recognized with specific domestic traditional knowledge protections. Should that unique concession be extended to foreign right holders as they would not apply beyond the particular group for which the protections were designed?

Discussion on conflicts of law is also encouraged by the group in the terms included in article 8.3 of the TCE's text (WIPO/GRTKF/IC/18/4).

USA: [MEXICO, AFRICAN GROUP: 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 be available to all eligible beneficiaries who are nationals or residents of a USA: Member State [prescribed country] as defined by international obligations or undertakings. Eligible foreign beneficiaries should enjoy the same rights and benefits as enjoyed by beneficiaries who are national of the country of protection, as well as the rights and benefits specifically granted by these international provisions.]

AUSTRALIA: National treatment.

USA: National treatment as to all domestic law or national treatment as to laws specifically identified to fulfill these principles.

AUSTRALIA: Reciprocity.

AUSTRALIA: An appropriate means of recognizing foreign rights holders.

ARTICLE 12

TRANS-BOUNDARY COOPERATION

In instances where traditional knowledge is located in territories of different JAPAN, USA, CANADA: States / EUROPEAN UNION: Member States [contracting Parties], those JAPAN, USA, CANADA: States / EUROPEAN UNION: Member States [contracting Parties] JAPAN: should [shall] co-operate by taking measures that are supportive of and do not run counter to the objectives of this instrument. This cooperation JAPAN: should [shall] be done with the participation CANADA: [MEXICO: and consent] / CANADA: [INDONESIA, AFRICAN GROUP, VENEZUELA, NIGERIA, NIGER: and prior informed consent] of the traditional knowledge VENEZUELA: owners [holders].

Alternative

TUPAJ AMARU: Restitution and Reparation

The indigenous peoples and local communities claim the rights to compensation, restitution and restoration of their cultural heritage, in particular their traditional knowledge, traditional cultural expressions usurped without their free and informed consent and, in violation of their traditional customary laws.

ALTERNATIVE OPTIONS BY EXPERTS

Carla Michely Yamaguti Lemos proposed alternative text for this article:

"Parties shall consider the need for modalities of a global mutual benefit sharing mechanism to address the fair and equitable sharing of benefits derived from the use of traditional knowledge that occurs in transboundary situations for which it is not possible to grant or obtain prior informed consent."