

Notes

- The method used by facilitators was to merge options where possible, and explicitly identify elements of convergence and divergence.
- Some of the articles are merged into one option which includes elements of divergence; in those cases, elements of divergence are in **[bold, in square brackets]**. Those can be considered to be the main policy issues. Other issues (should/shall) are in [regular text in square brackets].
- New language added by delegations during the current session is underlined; the fact that any new language is not square-bracketed does not necessarily indicate that it represents an element of convergence.
- Square brackets that were present in WIPO/GRTKF/IC/21/4 were not removed.
- Series of terms separated by slashes (for example, [holders]/[owners]) indicate that either of those terms is supported generally by at least one delegation and/or that the choice of terms is a matter of terminology, or depends on the type of instrument or on outstanding policy issues being resolved.
- The facilitators suggest that the Plenary consider how to address these and other drafting issues ([may]/[should]/[shall], [intend]/[undertake]/[endeavor], [Member States]/[Contracting Parties], [holders]/[owners]), and the use of the active voice as opposed to the passive voice.
- The facilitators did not work on the objectives and principles for this revision due to a lack of time.

Additional Observations

- Some delegations made proposals for new definitions. Facilitators propose that the Plenary consider whether and how to include those.
- A number of delegations made proposals for new objectives but without providing language for these beyond the title. Facilitators invite delegations that have made such proposals to provide language for those proposals.

Summary of Changes from Rev. 1

- This revision (Rev. 2) includes the following changes from Rev. 1 (version of as April 18, 2:15 pm):
 - The sections on objectives and principles now reflect the current session's Plenary discussions
 - Elements that the facilitators had inadvertently omitted from Rev. 1 are now included; this includes new language as Article 3 bis, Article 4 bis, as well as in Articles 5 and 12, in addition to changing "indigenous and local communities" to "indigenous peoples and local communities" where this had not yet been done
 - Facilitators have systematically replaced iterations of "should" or "shall" with "[should]/[shall]"; "Member State" or "Contracting Party" with "[Member State]/[Contracting Party]"; and "holders" or "owners" with "[holders]/[owners]" to indicate that the issues behind those terms are still outstanding
 - Facilitators have added two comments comparing the traditional knowledge text's article on the subject matter of protection to that of the traditional cultural expressions text

THE PROTECTION OF TRADITIONAL KNOWLEDGE: DRAFT ARTICLES

POLICY OBJECTIVES (to be discussed at a later stage)

The protection of traditional knowledge should aim to:

Recognize value

(i) *recognize the [holistic] distinctive nature of traditional knowledge and its intrinsic value, including its social, spiritual, [economic],¹ intellectual, scientific, ecological, technological, [commercial],² educational and cultural value, and acknowledge that traditional knowledge systems are frameworks of ongoing innovation and distinctive intellectual and creative life that are [fundamentally] intrinsically important for indigenous peoples and local communities and have equal scientific value as other knowledge systems;*

Promote respect

(ii) *promote respect for traditional knowledge systems; for the dignity, cultural integrity and intellectual and spiritual values of the traditional knowledge [holders]/[owners] who conserve, develop and maintain those systems; for the contribution which traditional knowledge has made in sustaining the livelihoods and identities of traditional knowledge [holders]/[owners]; and for the contribution which traditional knowledge [holders]/[owners] have made to the [conservation of the environment]³ conservation and sustainable use of biodiversity, to food security and sustainable agriculture, and to the progress of science and technology;*

Meet the [actual] rights and needs of holders of traditional knowledge

(iii) *be guided by the aspirations and expectations expressed directly by traditional knowledge [holders]/[owners], respect their rights as [holders]/[owners] and custodians of traditional knowledge, contribute to their welfare and economic, cultural and social benefit and [reward] recognize the value of the contribution made by them to their communities and to the progress of science and socially beneficial technology, taking into account the fair and legitimate balance which must be struck between the relevant and different interests that have to be taken into consideration;*

Promote [conservation and] preservation of traditional knowledge

(iv) *promote and support the [conservation and] preservation of traditional knowledge by respecting, preserving, protecting and maintaining traditional knowledge systems [and providing incentives to the custodians of those knowledge systems to maintain and safeguard their knowledge systems];*

Empower [holders]/[owners] of traditional knowledge and acknowledge the distinctive nature of traditional knowledge systems

(v) *be undertaken in a manner that empowers traditional knowledge [holders]/[owners] to protect their knowledge by fully acknowledging the distinctive nature of traditional knowledge systems and the need to tailor solutions that meet the distinctive nature of such systems, bearing in mind that such solutions should be balanced and equitable, should ensure that conventional intellectual property regimes operate in a manner supportive of the protection of traditional knowledge against misuse and misappropriation, and should effectively empower associated⁴*

¹ A delegation has requested that the square brackets around this word ("economic") be removed.

² A delegation has requested that the square brackets around this word ("commercial") be removed.

³ A delegation has requested that the square brackets around this phrase ("conservation of the environment") be removed.

⁴ A delegation has noted that the analogous word ("asociado") is missing from the Spanish language version.

traditional knowledge [holders]/[owners] to exercise due rights and authority over their own knowledge;

Support traditional knowledge systems

(vi) respect and facilitate the continuing customary use, development, exchange and transmission of traditional knowledge by and between traditional knowledge [holders]/[owners]; and support and augment customary custodianship of knowledge and associated genetic resources, and promote the continued development of traditional knowledge systems;

Contribute to safeguarding traditional knowledge

(vii) while [recognizing the value of a vibrant public domain], contribute to the preservation and safeguarding of traditional knowledge and the appropriate balance of customary and other means for their development, preservation and transmission, and promote the conservation, maintenance, application and wider use of traditional knowledge, in accordance with relevant customary and community practices, norms, laws and understandings of traditional knowledge [holders]/[owners], for the primary and direct benefit of traditional knowledge holders in particular, and for the benefit of humanity in general on the basis of prior informed consent and the mutually agreed terms with the [holders]/[owners] of that knowledge;

[Repress] Prevent [unfair and inequitable uses]⁵ misappropriation and misuse

(viii) repress the misappropriation of traditional knowledge and other unfair commercial and non commercial activities, recognizing the need to adapt approaches for the repression of misappropriation of traditional knowledge to national and local needs;

Respect for and cooperation with relevant international agreements and processes

(ix) take account of, and operate consistently with, other international and regional instruments and processes, in particular regimes that regulate access to and benefit sharing from genetic resources which are associated with that traditional knowledge;

Promote innovation and creativity

(x) encourage, reward and protect tradition based creativity and innovation and enhance the internal transmission of traditional knowledge within indigenous peoples and [traditional] local communities, including, subject to the consent of the traditional knowledge [holders]/[owners], by integrating such knowledge into educational initiatives among the communities, for the benefit of the holders and custodians of traditional knowledge;

Alternative

(x) safeguard and promote innovation, creativity and the progress of science, and promote the transfer of technology on mutually agreed terms;

[End of alternative]

⁵ A delegation has requested that the square brackets around this phrase ("unfair and inequitable uses") be removed.

Ensure prior informed consent and exchanges based on mutually agreed terms

(xi) ensure the [use] safeguarding of traditional knowledge on the basis of customary laws, protocols and community procedures [with] through prior informed consent and exchanges based on mutually agreed terms, in [coordination] line with existing international and national regimes governing access to genetic resources in a fair and equitable manner;

Promote equitable benefit sharing

(xii) [promote] guarantee the fair and equitable sharing and distribution of monetary and non monetary benefits arising from the use of traditional knowledge, in consistency with other applicable international regimes, the principle of prior informed consent [and including through [fair and equitable compensation in special cases where the individual holder is not identifiable or the knowledge has been disclosed] the establishment of mutually agreed conditions];

Promote community development and legitimate trading activities

(xiii) [if so desired] where requested by the [holders]/[owners] of traditional knowledge, promote the use of traditional knowledge for community based development, recognizing the rights of [traditional] indigenous peoples⁶ and local communities over their knowledge; and promote the development of, and the expansion of marketing opportunities for, authentic products of traditional knowledge and associated community industries, where traditional knowledge [holders]/[owners] and custodians seek such development and opportunities consistent with their right to freely pursue economic development;

Preclude the grant of [improper] IP rights to unauthorized parties

(xiv) [curtail] impede the grant or exercise of [improper] intellectual property rights over traditional knowledge and associated genetic resources, by requiring [the creation of digital libraries of publicly known traditional knowledge and associated genetic resources], [in particular, as a condition for the granting of patent rights, that patent applicants for inventions involving traditional knowledge and associated genetic resources disclose the source and country of origin of those resources, as well as evidence of prior informed consent and benefit sharing conditions have been complied with in the country of origin];

Alternative

(xiv) [curtail] impede the grant or exercise of [improper] intellectual property rights over traditional knowledge and associated genetic resources, by requiring each [Member States]/[Contracting Parties] [could]/[to] consider, with the prior informed consent of its indigenous peoples⁷ and local communities, the creation of digital libraries of publicly-known traditional knowledge and associated genetic resources;

[End of alternative]

Enhance transparency and mutual confidence

(xv) enhance certainty, transparency, mutual respect and understanding in relations between traditional knowledge [holders]/[owners] on the one hand, and academic, commercial, educational, governmental and other users of traditional knowledge on the other, including by promoting adherence to ethical codes of conduct [and the principles of free and prior informed consent];

⁶ The facilitators inserted the word "peoples" in square brackets following the insertion by a delegation of the word "indigenous" for terminological consistency.

⁷ The facilitators inserted the word "peoples" in square brackets following the insertion by a delegation of the word "indigenous" for terminological consistency.

Complement protection of traditional cultural expressions

(xvi) operate consistently with protection of traditional cultural expressions and expressions of folklore, respecting that for many traditional communities their knowledge and cultural expressions form an indivisible part of their [holistic identity].

(i) recognize the holistic nature of traditional knowledge, including its social, spiritual, economic, intellectual, educational and cultural importance;

(ii) promote respect for traditional knowledge systems; for the dignity, cultural integrity and intellectual and spiritual values of the traditional knowledge holders who conserve and maintain those systems;

(iii) meet the actual needs of [holders]/[owners] and users of traditional knowledge;

(iv) promote conservation, application and preservation of traditional knowledge;

(v) support traditional knowledge systems;

(vi) repress [unfair and inequitable uses] illicit appropriation of traditional knowledge;

(vii) operate consistently with relevant international agreements and instruments [and processes];

(viii) promote the fair and equitable sharing of benefits arising from the use of traditional knowledge;

(ix) enhance transparency and mutual confidence in relations between traditional knowledge [holders]/[owners] on the one hand, and academic, commercial, educational, governmental and other users of traditional knowledge on the other, including by promoting adherence to ethical codes of conduct and the principles of free and prior informed consent;

Alternative⁸

Promote conservation and preservation of traditional knowledge

(xviii) promote the conversation and the preservation of traditional knowledge and support traditional knowledge systems;

[End of alternative]

Alternative⁹

Promote community development

(xviv) promote community development;

[End of alternative]

Utilization of traditional knowledge by third parties

(xx) enable the utilization of traditional knowledge by third parties;

Promote access to knowledge and safeguard the public domain

⁸ This merges subobjectives (iv) and (v) of Objective (xvi) to create a new Objective.

⁹ This merges subobjectives (vi) and (vii) of Objective (xvi) to create a new Objective.

(xxi) promote access to knowledge and safeguard the public domain.

GENERAL GUIDING PRINCIPLES

These principles should be reviewed to ensure that the specific substantive provisions concerning protection and equitable treatment, effective and consistent and appropriately promote the objectives of protection.

(a) Principle of responsiveness in the interests and expectations of rights and needs regarding the protection of traditional knowledge identified by traditional knowledge holders/holders.

Alternative

(a) Principle of responsiveness to the interests of traditional knowledge holders/holders and those who make use of traditional knowledge.

[End of alternative]

(b) Principle of recognition of rights regarding the protection of traditional knowledge of indigenous peoples as enshrined within the United Nations Declaration on the Rights of Indigenous Peoples and ILO 169.

Alternative

(b) Principle of recognition of the interests of traditional knowledge holders/holders.

[End of alternative]

(c) Principle of effectiveness and accessibility of protection.

(d) Principle of flexibility and comprehensiveness.

(e) Principle of equity and benefit sharing.

(f) Principle of consistency with existing legal systems governing access to traditional knowledge and associated genetic resources.

(g) Principle of respect for and cooperation with Principle of cooperative interests among international and regional institutions and negotiation processes.

(h) Principle of respect for customary use and transmission of traditional knowledge.

Alternative

(h) Principle of recognition of respect for indigenous knowledge, cultures and traditional practices and the contribution to sustainable development and social management of the environment.

[End of alternative]

Alternative

(i) Principle of respect for use and transmission of traditional knowledge.

[End of alternative]

(j) Principle of recognition of the specific characteristics of traditional knowledge.

(k) Principle of providing assistance to address the needs of traditional knowledge holders.

(l) Principle of recognizing that knowledge that is in the public domain is the common heritage of mankind.

GENERAL GUIDING PRINCIPLES

These principles should be respected to ensure that the specific substantive provisions concerning protection are equitable, balanced, effective and consistent, and appropriately promote the objectives of protection:

- (a) *Principle of responsiveness to the [needs and expectations of] rights and needs regarding the protection of traditional knowledge identified by traditional knowledge [holders]/[owners]**

Alternative

- (a) *Principle of responsiveness to the interests of traditional knowledge [holders]/[owners] and those who make use of traditional knowledge*

[End of alternative]

- (b) *Principle of recognition of rights regarding the protection of traditional knowledge of indigenous peoples as enunciated within the United Nations Declaration on the Rights of Indigenous Peoples and ILO 169*

Alternative

- (b) *Principle of recognition of the interests of traditional knowledge [holders]/[owners]*

[End of alternative]

- (c) *Principle of effectiveness and accessibility of protection*

- (d) *Principle of flexibility and comprehensiveness*

- (e) *Principle of equity and benefit sharing*

- (f) *[Principle of consistency with existing legal systems governing access to traditional knowledge and associated genetic resources]*

- (g) *[Principle of respect for and cooperation with] Principle of cooperative interface [other] among international and [regional instruments and] negotiation processes*

- (h) *Principle of respect for customary use and transmission of traditional knowledge*

Alternative

- (h) *Principle of recognition of respect for indigenous knowledge, cultures and traditional practices and the contributions to sustainable development and proper management of the environment*

[End of alternative]

Alternative

- (h) *Principle of respect for use and transmission of traditional knowledge*

[End of alternative]

- (i) *Principle of recognition of the specific characteristics of traditional knowledge*

- (j) *Principle of providing assistance to address the needs of traditional knowledge holders*

- (k) *Principle of recognizing that knowledge that is in the public domain is the common heritage of mankind*

- (l) Principle of protecting, preserving and expanding the public domain
- (m) Principle of the necessity for new incentives to share knowledge and to minimize restrictions on access
- (n) Principle that any monopoly on the right to use certain information should be for a limited time
- (o) Principle of protecting and supporting the interests of creators