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### SUBSIDIARY BODY ON IMPLEMENTATION

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### **SPECIALIZED INTERNATIONAL ACCESS AND BENEFIT-SHARING INSTRUMENTS IN THE CONTEXT OF ARTICLE 4, PARAGRAPH 4, OF THE NAGOYA PROTOCOL**

*Note by the Executive Secretary*

#### **INTRODUCTION**

1. At its second meeting, the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol requested the Executive Secretary, in the context of [Article 4](#), paragraph 4, of the Protocol to conduct a study into criteria that could be used to identify what constitutes a specialized international access and benefit-sharing instrument, and what could be a possible process for recognizing such an instrument, and to refer the study for further consideration by the Subsidiary Body on Implementation before consideration by the Conference of the Parties serving as the meeting of the Parties at its third meeting (decision NP-2/5, para. 3).
2. Accordingly, and with financial support from the European Union, the Executive Secretary commissioned a research team at the Strathclyde Centre for Environmental Law and Governance, University of Strathclyde, to carry out the study.
3. Section I of the present document presents an overview of the study, and section II contains suggested elements for a draft recommendation. The full study is provided in an information document ([CBD/SBI/2/INF/17](#)).

#### **I. OVERVIEW OF THE STUDY INTO CRITERIA TO IDENTIFY A SPECIALIZED INTERNATIONAL ACCESS AND BENEFIT-SHARING INSTRUMENT AND A POSSIBLE PROCESS FOR RECOGNITION OF SUCH AN INSTRUMENT**

4. The objective of the study was to explore criteria that could be used to identify what constitutes a specialized international access and benefit-sharing (ABS) instrument in the context of Article 4(4) of the Nagoya Protocol, and what could be a possible process for recognizing such an instrument.
5. The study analyses Article 4(4) from textual, contextual (in the context of relevant provisions of the Protocol, in particular the other provisions of Article 4) and teleological (in the context of the objective and purpose of the Protocol) points of view, in line with the general rules of treaty interpretation contained in the Vienna Convention on the Law of Treaties.<sup>1</sup> It then discusses the relevance of the concept of “*lex specialis*” in general international law and of the work of the International Law Commission on fragmentation of international law, and of mutual supportiveness as a broader concept that applies beyond international treaties. These considerations substantiate a series of possible criteria to identify a specialized international ABS instrument. The study then explores relevant international practices and

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\* [CBD/SBI/2/1](#).

<sup>1</sup> United Nations, *Treaty Series*, vol. 1155, [No. 18232](#).

academic theories on regime interaction, with a view to providing elements of a possible process to recognize such instruments. Finally, it explores three scenarios involving the recognition of a specialized international ABS instrument and proposes an optimal process in this regard. The study relies on general international law, including the law of treaties, general principles of international law, and theories on international law-making and regime interaction.

#### A. Analysis of Article 4(4) and identification of criteria

6. Article 4 of the Nagoya Protocol addresses the relationship of the Protocol with other international agreements and instruments. Paragraph 4 of the Article provides that:

“This Protocol is the instrument for the implementation of the access and benefit-sharing provisions of the Convention. Where a specialized international access and benefit-sharing instrument applies that is consistent with, and does not run counter to the objectives of the Convention and this Protocol, this Protocol does not apply for the Party or Parties to the specialized instrument in respect of the specific genetic resource covered by and for the purpose of the specialized instrument.”

7. The first sentence of Article 4(4) indicates that the Nagoya Protocol is the general framework that addresses ABS issues for the purposes of the Convention. The second sentence indicates that the Nagoya Protocol does not subsume other ABS agreements but, rather, functions as a residual regime operating in the absence of specialized ABS instruments that meet certain conditions. The objectives of the Convention on Biological Diversity and the Nagoya Protocol can therefore provide a basis for the development of criteria for the identification of specialized ABS instruments.

8. Thus, specialized ABS instruments that are consistent with the objectives of the Convention and the Protocol will be considered *lex specialis* vis-à-vis the Protocol for those Parties that are Party to both instruments. In such an instance, the provisions of the specialized ABS instruments will apply, rather than the more general ones of the Nagoya Protocol, in respect of the specific genetic resources covered by, and for the purpose of, the specialized instrument. The *lex specialis* doctrine establishes that a special rule prevails over a general rule. The doctrine is widely accepted because a special rule is considered to regulate the subject matter more effectively.

9. Article 4(4) refers to “instruments”, thus covering (binding) treaties as well as other, formally non-legally binding international agreements that have been intergovernmentally approved in the context of a treaty framework (for instance, under the aegis of an international organization created by treaty). The term “instrument” is not a term of art in international law, but it can be argued that such a term can cover both binding and non-binding instruments of an intergovernmental nature. The references to “Parties” to an instrument and to instruments being “applied” seem to support the argument about intergovernmental adoption. This is further supported by the fact that the Nagoya Protocol addresses stakeholder instruments in its Articles 19 and 20.

10. The preamble to the Protocol provides a few indications of the areas that could be relevant for the purposes of Article 4(4), although it should not be considered to provide an exhaustive list. The preamble recognizes the special nature of agricultural biodiversity, its distinctive features and the need for distinctive solutions, acknowledges the fundamental role of the International Treaty on Plant Genetic Resources for Food and Agriculture and recalls that its Multilateral System was developed in harmony with the Convention on Biological Diversity. Decision [X/1](#), by which the Nagoya Protocol was adopted, further recognizes the Treaty as part of the international regime on ABS. In addition, the preamble acknowledges the fundamental role of the Commission on Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations (FAO), which is continuing work to support national law-making activities in relation to ABS for different subsectors of genetic resources for food and agriculture. In addition, the preamble refers to the International Health Regulations (2005) under the World Health Organization (WHO) and to the importance of ensuring access to human pathogens for public health preparedness and response purposes.

11. Paragraph 4 of Article 4 should be understood in the context of the other provisions of that Article. Article 4(2) provides that Parties may develop other relevant international agreements, including specialized ABS agreements, “provided that they are supportive of and do not run counter to the objectives of the Convention and of the Protocol.” Thus, Parties need to ensure not only that specialized ABS agreements do not undermine these objectives, but also that they contribute to their realization. This is in line with the understanding of the emerging general principle of mutual supportiveness which, in effect, underpins the operation of the whole of Article 4.

12. Further, Article 4(3) mandates Parties to implement the Protocol in a mutually supportive manner with other “relevant” international instruments. Article 4(3) further encourages, “due regard...to useful and relevant ongoing work or practices under such international instruments and relevant international organizations, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol” in implementing the Protocol.

13. Mutual supportiveness builds upon the idea of international law as a “system” so that international rules should be applied and more generally understood as supporting each other. It has two implications for the conduct of States. First, it guides States’ interpretation so that States “disqualify” solutions to tensions between competing regimes involving the subordination of one regime to the other. Second, it requires that States exert good-faith efforts to negotiate and conclude instruments clarifying the relationship between potentially competing regimes. Mutual supportiveness is a broad concept that addresses law-making as well as interpretation and is not limited to treaties, but can apply to international “instruments” other than treaties.

14. In line with general international law, the object and purpose of a treaty is one of the main criteria for interpretation. Article 1 of the Nagoya Protocol clarifies that “fair and equitable sharing” of benefits arising from the utilization of genetic resources is the objective – the “essential goal” – of the Protocol. It further indicates three means for its realization – access to genetic resources, technology transfer, and funding. Article 1 also establishes an explicit link established between benefit-sharing and the other two objectives of the Convention – conservation and sustainable use.

15. The preamble confirms that the Protocol aims to implement the third objective of the Convention by spelling out the steps for the operationalization of Article 15 of the Convention, on access to genetic resources, with a view to further supporting the effective implementation of the ABS provisions of the Convention. The preamble also points to providing legal certainty with regard to ABS and promoting equity and fairness in negotiations between users and providers of genetic resources. A broad notion of sustainable development can also be identified as part of the object and purpose of the Nagoya Protocol, with several references in the preamble.

16. Although traditional knowledge is not mentioned in Article 1 of the Protocol, it is a key component of the regime created by the Protocol. As the object and purpose of a treaty are also to be deduced from its preamble and other programmatic articles, attention should be drawn to several substantive provisions of the Protocol that are wholly or significantly devoted to traditional knowledge associated with genetic resources, as well as to several references to traditional knowledge in the preamble, including its importance for the conservation and sustainable use of biodiversity.

17. The analysis outlined above can provide a basis upon which to develop criteria for the identification of international specialized ABS instruments under Article 4(4). In broad terms, to qualify as a specialized international ABS instrument, the instrument under question should:

- (a) Be agreed through an intergovernmental process (it may be binding or non-binding);
- (b) Be specialized:
  - (i) The instrument would apply to a specific set of genetic resources and/or traditional knowledge associated with genetic resources, which would otherwise fall under the scope of the Nagoya Protocol;

- (ii) The instrument would apply to specific uses of genetic resources and/or traditional knowledge associated with genetic resources, which would require a differentiated and hence specialized approach;
  - (c) Be mutually supportive with the Convention on Biological Diversity and the Nagoya Protocol, meaning an instrument that is consistent with and supportive of the objectives of the Convention and the Nagoya Protocol and does not run counter to those objectives, including with respect to the following:
    - (i) Consistency with biodiversity conservation and sustainable use objectives;
    - (ii) Fairness and equity in the sharing of benefits;
    - (iii) Legal certainty with respect to access to genetic resources or traditional knowledge associated with genetic resources and with respect to benefit-sharing;
    - (iv) Contribution to sustainable development, as reflected in internationally agreed goals;
    - (v) Other general principles of law, including good faith, effectiveness and legitimate expectations.
18. The full study provides further information on how these criteria may be understood and applied.

#### **B. Facilitating cooperation and interaction among instruments**

19. With a view to providing elements on a possible process to recognize specialized ABS instruments, the study explores different aspects of international regime interaction. The analysis indicates that international law does not offer clear-cut solutions to the relationship between international agreements. Application of the above criteria would require reasoned discussion in the context of each specific case, calling for pragmatic solutions based upon increased cooperation. In addition, the analysis shows that regime interaction may provide opportunities for continuous learning and fruitful collaborations which are mutually beneficial to the implementation of various international instruments.

20. The recognition of specialized instruments under Article 4(4) would be but one step in an ongoing management process to ensure the continuing supportiveness of relevant instruments with the Convention and Protocol objectives. It would not exhaust the need to consider the management of interactions with other international instruments, which generally require ongoing information-sharing and cooperation efforts to ensure synergistic outcomes. Attention should thus be devoted to maximizing opportunities for mutual learning among regimes.

21. There are several practical examples of institutional interaction that can provide inspiration for the implementation of Nagoya Protocol Article 4(4), including in other areas of international law.

22. First, the negotiations of a new instrument can be managed from the start in a mutually supportive manner by, for example, setting a negotiating mandate that seeks coherence with an existing instrument, keeping the governing body of an existing instrument informed of progress in negotiations, and/or drafting the provisions of a new instrument that will specifically cater to mutually supportiveness. Such was the case of the International Treaty on Plant Genetic Resources for Food and Agriculture. Cooperation between the two instruments was already envisioned at the negotiation and drafting stage of the Treaty and is explicitly reflected in its provisions. In addition to the law-making dimension of mutual supportiveness, cooperation has been further facilitated via administrative arrangements between the Secretariats, opportunities for information-sharing during the meetings of the governing bodies of the respective instruments, and operationally, through, for example, joint capacity-building initiatives.

23. Examples of other regimes speaking to the Conference of the Parties to the Convention on Biological Diversity, and vice versa, include the World Intellectual Property Organization in the context of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, and the ongoing negotiations on marine biodiversity in areas beyond national jurisdiction under the United Nations General Assembly.

24. Other examples of regime interaction can be found in processes of periodic joined-up stocktaking or reporting, deliberative strategies designed to foster learning and information-sharing and facilitation of regular dialogue between intergovernmental regimes. An example of the latter can be found in the [Inter-agency Liaison Group on Invasive Alien Species](#), an initiative of the Secretariat of the Convention on Biological Diversity with membership extending to 10 secretariats of intergovernmental organizations including FAO, the International Maritime Organization (IMO), the International Civil Aviation Organization (ICAO) and the World Trade Organization (WTO). The regular opportunity for dialogue provided for by the Inter-agency Group is intended to “address the gaps and inconsistencies in the international regulatory frameworks for the prevention, control and eradication of invasive alien species,” and aims to facilitate the development of norms and standards, and to promote information-sharing and capacity-building.

25. In practical terms, the above examples illustrate a variety of ways (more or less formal) in which the existence of regime overlaps can be carefully managed, to provide for synergistic outcomes, even when membership is not congruent between the relevant regimes.

### **C. Scenarios for the process of recognizing an international specialized ABS instrument**

26. A process for recognition of specialized agreements is not foreseen or called for under Article 4(4) of the Nagoya Protocol. However, the above analysis indicates that, in considering a process for recognizing a specialized instrument, one should bear in mind that: (a) initiatives on the recognition, or (otherwise) the interaction, of specialized instruments could be taken at different levels, with different actors and bodies playing different roles; (b) recognition itself would not eliminate the need to consider the management of interactions with other international instruments, which generally require ongoing information-sharing and cooperation efforts; and (c) attention should be devoted to ensuring that opportunities for mutual learning among regimes are maximized.

27. On the basis of the analysis, three scenarios can be envisaged for the recognition (or other form of regime interaction management) of the Nagoya Protocol and specialized instruments. These scenarios are not mutually exclusive, but could overlap and ideally complement each other.

28. *Recognition by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol* — A determination would arguably be more authoritatively, transparently and systematically done by Parties collectively in the context of the Conference of the Parties serving as the meeting of the Parties. The criteria identified above would benefit from a multilateral setting to gauge the views of different Parties to the Nagoya Protocol and the search for a widely accepted approach. Furthermore, the need to ensure consistency with the objectives of the Convention and of the Nagoya Protocol related to biodiversity conservation, which is considered a common concern of humankind, points to the Conference of the Parties serving as the meeting of the Parties as the forum for transparent and inclusive decision-making to discuss cooperation on matters of common concern that should prevail over individual State interests.

29. The fact that a decision by the Conference of the Parties serving as the meeting of the Parties on this issue would be adopted by consensus would confer enhanced legitimacy to the recognition of a specialized agreement, promoting consistent State practice. In addition, the Conference of the Parties serving as the meeting of the Parties would be well placed to consider the will of all Parties to the Nagoya Protocol, and to discuss the nature of the instruments under consideration. It would also be well placed to take different views into account with regard to what would be a reasonable way to apply the instruments with minimal disturbance to the operation of the legal system. The existing powers of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol would already allow it to exercise such a function, notably the power to make recommendations on matters necessary for the implementation of the Protocol, as part of its overall overview and promotion of effective implementation.

30. The drawbacks of this approach would include a potential lack of expertise within the Conference of the Parties serving as the meeting of the Parties on specialized subject matters and the diplomatic sensitivity surrounding the need to respect the mandate of other international organizations and the

autonomy of other international regimes. Differences in State membership may pose additional challenges for decision-making in different forums.

31. In the light of the above considerations, Parties to the Nagoya Protocol would be well advised to ensure, at the international level, a dialogue specifically geared towards mutual supportiveness and mutual learning between the Conference of the Parties serving as the meeting of the Parties and the forum in which a new instrument may be discussed. In addition, at the domestic level, it would then rest with Parties' relevant authorities (potentially in different sectors) to ensure that the mutually supportive approach proposed by the Conference of the Parties serving as the meeting of the Parties is followed in the context of interpretation and implementation efforts in other forums and under other specialized international instruments.

32. *Recognition by another international forum* — Another scenario would be for other international forums to take the initiative. This would still provide a multilateral approach that would need to follow the criteria adopted by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol in order to substantiate the claim that the specialized instrument is in line with the objectives of the Protocol and the Convention. The main advantage of this approach would be that the more specialized forum would be well-placed to decide on a specialized ABS instrument on the basis of its mandate and the expertise of its membership. Issues of legal certainty may, however, arise from the fact that not all Parties to the Protocol are part of discussions in other forums.

33. In the light of these legal considerations and uncertainties, Parties to the Nagoya Protocol or other Governments involved in other forums or the intergovernmental organization under which the instrument is being developed would be well advised to bring the proposed recognition to the attention of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol for its information and to establish arrangements to facilitate cooperation. If information is exchanged and collaboration undertaken between the two forums from an early stage of negotiations, this should facilitate the relationship between the Nagoya Protocol and the other instrument, once the latter has been concluded, and assist in avoiding difficulties. Notably, a dialogue specifically geared towards mutual learning between the Conference of the Parties serving as the meeting of the Parties to the Protocol and the other forum for the purpose of applying the criteria adopted by the Conference of the Parties serving as the meeting of the Parties to the Protocol would provide the best opportunity to ensure mutual supportiveness. This dialogue could ideally start from the early stages of the negotiations, including a negotiating mandate to seek coherence between the two.

34. Even in the absence of objections from Parties to the Nagoya Protocol, it would remain under the purview of the Conference of the Parties serving as the meeting of the Parties to the Protocol to take note of the initiative in another forum and consider the implication(s) of the recognition under Article 4(4), namely the disapplication of the Protocol for the genetic resource and the purposes of the specialized agreement in respect of Parties to the Protocol that are Party to the specialized instrument.

35. *Initiative of a Party or group of Parties* — It may be possible that a Party or group of Parties to the Nagoya Protocol may recognize particular specialized international instruments pursuant to Article 4(4) of the Nagoya Protocol. This approach has the disadvantage that it is the least conducive to systematically and structurally improving inter-institutional regime coordination. It is also the most likely to undermine legal certainty among Parties to the Nagoya Protocol. On the other hand, initiatives by a Party or group of Parties may prove useful for contributing to a future multilateral initiative by providing "a laboratory" for exploring how regimes may cohere in practice; they may even advance implementation of the Nagoya Protocol by creating ABS-related decision-making networks at the regional or subregional level. In this vein, the Conference of the Parties serving as the meeting of the Parties to the Protocol could perform an important information-sharing and diffusion-type role, thereby providing guidance for further action either plurilaterally or multilaterally.

36. Similarly to that noted under the second scenario above, the Party or Parties taking a decision to recognize a specialized international instrument would be expected to follow the criteria adopted by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol to substantiate the

claim that the specialized instrument is in line with the objectives of the Protocol and of the Convention. Issues related to legal uncertainty could arise, as discussed under the second scenario. Parties would thus be well advised to bring the recognition to the attention of the Conference of the Parties serving as the meeting of the Parties to the Protocol for its consideration and to establish arrangements to facilitate cooperation. The Conference of the Parties serving as the meeting of the Parties to the Protocol would need to consider the implication of the recognition under Article 4(4), namely the disapplication of the Protocol for the genetic resources and the purposes of the specialized agreement in respect of Parties to the Protocol that are Party to the specialized instrument.

**D. Elements for an optimal process concerning a specialized international access and benefit-sharing instrument**

37. The following elements can be considered for a process concerning international ABS instruments that could potentially be considered specialized for the purposes of Nagoya Protocol Article 4(4), drawing upon the advantages of each of the scenarios discussed in the previous subsection.

38. Assuming that the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol has agreed to criteria for the recognition of a specialized instrument pursuant to Article 4(4), an optimal process to maximize the opportunities for mutual supportiveness and mutual learning between the Protocol and a specialized ABS instrument could take the following steps:

(a) The Conference of the Parties serving as the meeting of the Parties to the Protocol would consider necessary information (including receiving or requesting advice from its own subsidiary bodies, and receiving or requesting information on potential or actual initiatives by other regimes or Parties) under its agenda item on international cooperation;

(b) The Conference of the Parties serving as the meeting of the Parties to the Protocol would encourage other intergovernmental forums and/or Parties or other Governments planning to develop an international instrument that could be recognized as a specialized international ABS instrument: (i) to create a negotiating mandate that seeks coherence with the Nagoya Protocol in the light of the criteria for recognition adopted pursuant to Article 4(4); (ii) to keep the Conference of the Parties serving as the meeting of the Parties to the Protocol informed of progress in negotiations; (iii) to draft provisions in a new instrument that will specifically cater to mutual supportiveness; and (iv) to establish/strengthen inter-secretariat cooperation (such as information-sharing, and joint capacity-building initiatives);

(c) The Conference of the Parties serving as the meeting of the Parties to the Protocol would consider the implications of the recognition made by other forums or Parties to the Nagoya Protocol on the basis of the criteria adopted and/or decide whether to recognize an international instrument as a specialized ABS agreement;

(d) The Conference of the Parties serving as the meeting of the Parties would decide to set up a systematic and ongoing process for regime interaction to ensure coherence and synergy at the decision-making, institutional and implementation levels. Various options could be considered, including the establishment of a permanent platform for dialogue and coordination (see examples in section 5.3 of the study). The rationale for pursuing such options would be to allow for the harnessing of the benefits of learning as well as ensuring the ongoing effectiveness of the ABS regime complex.

39. For this process to be effective, Parties to the Nagoya Protocol should ensure, at the domestic level, that relevant authorities (potentially in different sectors) follow the mutually supportive approach proposed by the Conference of the Parties serving as the meeting of the Parties in the context of negotiations as well as interpretation and implementation efforts in other forums and under other specialized international instruments. This would require Parties' efforts (a) to bring the criteria to the attention of relevant authorities that may be negotiating, interpreting or implementing a specialized ABS instrument, and (b) to establish a regular dialogue geared towards mutual supportiveness and mutual learning at the domestic level.

## II. SUGGESTED ELEMENTS OF A DRAFT RECOMMENDATION

40. In the light of the criteria and the elements for an optimal process identified through the analysis above, the Subsidiary Body on Implementation may wish to consider recommending that, at its third meeting, the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol:

(a) Adopt the criteria for specialized international access and benefit-sharing instruments in the context of Article 4, paragraph 4, of the Nagoya Protocol as set out in the annex below;

(b) Refer the criteria to other intergovernmental organizations and to Parties and other Governments to apply in the development and/or recognition of potential specialized international access and benefit-sharing instruments;

(c) Invite other intergovernmental organizations, Parties and other Governments planning to develop an international instrument that could be recognized as a specialized international access and benefit-sharing instrument to seek coherence with the Nagoya Protocol in the light of the criteria for recognition adopted in paragraph (a) above;

(d) Invite other intergovernmental organizations and/or Parties or other Governments to share information with the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on steps taken towards the development and/or recognition of specialized international access and benefit-sharing instruments;

(e) Request the Executive Secretary to continue to follow developments in relevant international forums;

(f) Agree to include a standing item on “cooperation with other international organizations” on the agenda of its future meetings to take stock of developments in relevant international forums;

(g) Agree to consider, note or endorse the recognition of a specialized international access and benefit-sharing instrument by another intergovernmental body and/or by a Party or group of Parties;

(h) Request the Executive Secretary to invite the secretariats of other relevant intergovernmental organizations to form a liaison group on access and benefit-sharing to facilitate and enhance information exchange and coordination;

(i) Encourage Parties and other Governments to coordinate at the national level regarding access and benefit-sharing issues addressed in different international forums in order to support a coherent international regime on access and benefit-sharing;

(j) Encourage Parties and other Governments which are or may become Parties to the Nagoya Protocol and to a specialized international access and benefit-sharing instrument to take steps to implement both instruments in a mutually supportive manner.

### *Annex*

#### **CRITERIA FOR SPECIALIZED INTERNATIONAL ACCESS AND BENEFIT-SHARING INSTRUMENTS IN THE CONTEXT OF ARTICLE 4, PARAGRAPH 4, OF THE NAGOYA PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION**

1. *Intergovernmentally agreed* — The instrument would be developed and agreed through an intergovernmental process. The instrument may be binding or non-binding.

2. *Specialized* — The instrument would:

(a) Apply to a specific set of genetic resources and/or traditional knowledge associated with genetic resources which would otherwise fall under the scope of the Nagoya Protocol;



(b) Apply to specific uses of genetic resources and/or traditional knowledge associated with genetic resources which require a differentiated and hence specialized approach.

3. *Mutually supportive* — The instrument would be consistent with, supportive of, and not run counter to the objectives of the Convention on Biological Diversity and the Nagoya Protocol, including with respect to:

- (a) Consistency with biodiversity conservation and sustainable use objectives;
  - (b) Fairness and equity in the sharing of benefits;
  - (c) Legal certainty with respect to access to genetic resources or traditional knowledge and to benefit-sharing;
  - (d) Contribution to sustainable development, as reflected in internationally agreed goals;
  - (e) Other general principles of law, including good faith, effectiveness and legitimate expectations.
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