

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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WIPO GENERAL ASSEMBLY

Thirty-Eighth (19th Ordinary) Session Geneva, September 22 to October 1, 2009

REPORT

adopted by the General Assembly

1. The General Assembly was concerned with the following items of the Consolidated Agenda (document A/47/1): 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 35, 36, 39 and 40.
2. The reports on the said items, with the exception of items 7, 8, 9, 20, 21, 23, 24, 25, 26, 27, 28, 29, 35 and 36, are contained in the General Report (document A/47/16).
3. The reports on items 7, 8, 9, 20, 21, 23, 24, 25, 26, 27, 28, 29, 35 and 36, are contained in the present document.
4. Ambassador Alberto J. Dumont (Argentina), Chair of the General Assembly, and in his absence the two Vice-Chairs Ms. Yesim Baykal (Turkey) and Mr. Mohamed Abderraouf Bdioui (Tunisia), presided over the meeting.

ITEM 7 OF THE CONSOLIDATED AGENDA:

COMPOSITION OF THE PROGRAM AND BUDGET COMMITTEE

5. Discussions were based on document WO/GA/38/14.
6. Following informal consultations among Group Coordinators, the following States were unanimously elected by the General Assembly as members of the Program and Budget Committee for the period October 2009 to October 2011: Algeria, Angola, Bangladesh, Barbados, Belarus, Brazil, Bulgaria, Cameroon, Canada, China, Colombia, Croatia, Cuba, Czech Republic, Djibouti, Egypt, France, Germany, Greece, Guatemala, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Jordan, Kazakhstan, Mexico, Nigeria, Oman, Pakistan, Peru, Poland, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Senegal, Singapore, South Africa, Spain, Sweden, Switzerland (*ex officio*), Tajikistan, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Zambia (53).

ITEM 8 OF THE CONSOLIDATED AGENDA:

PROCESS FOR THE SELECTION OF EXTERNAL AUDITOR

7. Discussions were based on document WO/GA/38/15.
8. The Chair invited the Secretariat to introduce document WO/GA/38/15.
9. The Secretariat recalled that document WO/GA/38/15, describing the proposed procedure for the selection of an external auditor, had been submitted to the Program and Budget Committee at its fourteenth session (September 14 to 16, 2009) as a PBC document WO/PBC/14/5. In summarizing the contents of the document, the Secretariat explained that the objective before the Member States was to select an external auditor and recalled that the current external auditor, whose mandate expired at the end of 2011, was appointed by the Swiss Government. The Secretariat further said that Regulation 8.1 of the Financial Regulations and Rules (FRR) provided that the General Assembly should appoint, according to the established procedure, the External Auditor to be the Auditor General of a Member State. Article 8.2 of the FRR stated that the External Auditor was appointed for a term of office of six years, which was non-renewable consecutively. The Secretariat recalled that this was the very first time in the history of WIPO that an External Auditor was to be selected and therefore, the Secretariat had taken into account what other organizations did in terms of selecting external auditors in the preparation of the proposal submitted to Member States. The Secretariat explained that in the first phase of the process, invitations would be sent out to all Member States and applications could be submitted. Then, a Selection Panel would be set up, which would be composed of the Coordinators of each of the seven Groups of Countries of WIPO Member States. If a proposal was received from the same country as that of a Coordinator, that member should absent herself/himself from the evaluation of that particular application and be replaced by another representative of the same Group of Countries, so that there was no conflict of interest. After that first phase, following the receipt of nominations, detailed requests for a proposal would be issued to all nominees together with documentation

on WIPO relevant to the appointment. All of the nominees would then be invited to a meeting, during which representatives of the Director General could respond to the candidates' questions or requests for information. The proposals, or applications, should contain the information listed in paragraph 9 of document WO/PBC/14/15. The received proposals or applications would then be considered in the following way: in accordance with the standard procurement procedures of the Organization, they would be subject to an initial technical evaluation; the Internal Audit and Oversight Division (IAOD) and Finance Services would establish a list of criteria for the selection; the list would be given to the Selection Panel for its agreement, following which the IAOD would carry out an initial technical review; the results of the review would be transmitted to the Selection Panel and the Panel would then agree on a shortlist of candidates to be invited to make an oral presentation. The Secretariat added that the selection procedure should begin during the 2010/2011 biennium, after which the External Auditor would be appointed in 2012.

10. The Secretariat recalled that during consideration of the proposal by the Program and Budget Committee, the Member States had made a number of comments and requested a number of amendments to the proposed process. Those requests had been taken into consideration and would be reflected in the report of the Program and Budget Committee. In particular, the amendments related to the role of the Audit Committee, the review criteria and the results of the initial technical review. A number of amendments had also been made concerning the invitations for candidates and the way in which applications were to be received and considered. The Secretariat confirmed that all of those amendments had been taken into account and would be reflected in the procedure. The Secretariat stated that the PBC had made a recommendation in respect of this proposed procedure, which was recorded in document A/47/15. The recommendation read as follows: "The Program and Budget Committee recommended to the Assemblies of the Member States of WIPO and the Unions administered by WIPO, each as far as it is concerned to: (i) approve the procedure for selection of the External Auditor; (ii) establish the Selection Panel by March 2010; and (iii) authorize the Secretariat to launch the selection process."

11. The Delegation of the United Kingdom believed that it had been agreed during the PBC session that the Audit Committee would be involved purely in the selection criteria in this process and requested clarification of this point.

12. The Secretariat confirmed that in accordance with the discussion that took place during the PBC, the Audit Committee would review the selection processes that involved the selection criteria and the results of the initial preliminary technical review made by the Secretariat before it would be submitted to the Selection Panel. This was what had been discussed and agreed by the PBC and the Secretariat had taken into account all of the amendments and recommendations that had been made. The Secretariat confirmed that those recommendations and amendments would be reflected in the comprehensive report of the Program and Budget Committee's deliberations that was being drawn up.

13. The Chair invited Member States to consider paragraph 3 of document WO/GA/38/15 in which the WIPO General Assembly was invited to approve the recommendation of the Program and Budget Committee made in respect of document WO/PBC/14/5 as recorded in document A/47/15.

14. In the absence of comments, the Assemblies of the Member States of WIPO and the Unions administered by WIPO, each as far as it is concerned, decided to:
(i) approve the procedure for selection of the External Auditor; (ii) establish the Selection Panel by March 2010; and (iii) authorize the Secretariat to launch the selection process.

ITEM 9 OF THE CONSOLIDATED AGENDA:

REPORT OF THE WIPO AUDIT COMMITTEE SINCE 2008; COMPOSITION OF THE
WIPO AUDIT COMMITTEE

15. Discussions were based on documents A/47/15, WO/GA/38/2, 2 Corr., and 16.

16. Introducing Agenda Item 9, the Chair invited two members of the WIPO Audit Committee (“Audit Committee”), Mr. Geoffrey Drage, to report on the work of the Audit Committee since 2008, followed by Mr. Khalil Othman, who made a presentation on the “Assessment of the Work and Operations of the WIPO Audit Committee” (“Assessment”).

17. The Report of the Audit Committee and the presentation on the Assessment mentioned above are attached as Annexes to this report.

18. The Chair thanked Mr. Drage and Mr. Othman, respectively, for their report and presentation made on behalf of the Audit Committee, and invited the Member States to take the floor.

19. In the absence of any intervention from the Member States on this issue, the General Assembly took note of the contents of document WO/GA/38/2.

Composition of the Audit Committee (document WO/GA/38/16)

20. At the invitation of the Chair, the Secretariat informed the Member States that it had prepared only document WO/GA/38/16. The Secretariat, however, was neither a party in the discussions nor had any involvement in the decisions relating to the composition of the Audit Committee as referred to in document WO/GA/38/16.

21. It was recalled that at the informal session of the Program and Budget Committee (PBC), Member States had the opportunity to state their positions on the composition and size of the Audit Committee as well as the rotation of its members. It was also reported that the WIPO Group Coordinators continued discussions on this issue to identify solutions to be submitted today to the General Assembly.

22. The Secretariat further stated that the recommendation of the PBC was to be found in the Summary of the Recommendations of the Program and Budget Committee (document A/47/15) and the decision paragraph to be taken into account would read as follows: “The General Assembly is invited to approve the recommendations of the Program and Budget Committee made in respect of the Composition of the WIPO Audit Committee as recorded in document A/47/15.”

23. Referring to document A/47/15, the Secretariat read out the text of this recommendation (A/47/15, page 3) by which the PBC recommended to the General Assembly to “(i) renew the mandate of all members of the WIPO Audit Committee until January 2011; (ii) review the process of the rotation and the size of the Audit Committee with a view to agreeing on the relevant changes at its 2010 session; and (iii) establish a Working Group, for the purpose of paragraph (ii), composed of seven (7) group coordinators, interested Member States, the bureau of the PBC and the Chair of the Audit Committee (or the Vice–Chair, in his absence).” It also recommended that the “Working Group will submit its recommendations to the next session of the PBC (in 2010) to enable Member States to select the new members of the Audit Committee by December 2010.”

24. The Chair thanked the Secretariat for having provided the General Assembly with this information and gave the floor to Mr. Othman, who had requested in the meantime to intervene, on behalf of the Audit Committee on this issue.

25. Mr. Othman referred to the last session of the PBC and particularly to the words “take note”. He emphasized that the reports of the Audit Committee were submitted to the PBC and to the General Assembly “for action” not simply for “taking note”. He further recalled that in the past three and half years, the recommendations of the Audit Committee after being discussed, were either accepted or rejected by Member States. As in the case of its last three reports, the Audit Committee made a number of recommendations in addition to four additional and specific recommendations contained in the “Assessment”.

26. He further referred to document A/47/15, drawing attention to Agenda Item 9, the recommendation whereby “the Program and Budget Committee thanked the Chairman of the Audit Committee for his presentation and recommended that the General Assembly thoroughly examine the recommendations made by the Audit Committee for their implementation.” He suggested that, if Member States were not ready yet to comment on the Audit Committee’s recommendations then Agenda Item 9 should be left open for future discussion.

27. The Chair thanked the Audit Committee and pointed out that two documents had been submitted to the General Assembly for consideration, namely, documents WO/GA/38/2 and 16. The Chair noted document WO/GA/38/2 related to the 2008 Report submitted by the Audit Committee to the Program and Budget Committee, which had been dealt with by that Committee, as reflected in paragraph 3 of document WO/GA/38/2. The PBC recommended that the General Assembly take note of these reports. The Chair further referred to another document WO/GA/38/16, in which it was proposed that the recommendations from the PBC, concerning the Composition of the Audit Committee, be submitted to the General Assembly for its approval.

28. The Chair took note of the request made by the WIPO Audit Committee to open the floor for further discussion on this issue, and, invited the Member States to take the floor. The Chair further stated that if no delegations requested the floor, it was indeed his duty to close the discussion. The Chair, then, again asked if any delegation would have liked to take the floor on document WO/GA/38/2.

29. Since no delegation expressed such wish to take the floor on this issue, the Chair, therefore, closed the discussions and invited the Member States to consider paragraph 3 in

document WO/GA/38/16, in which the General Assembly was invited to approve the recommendations made by the PBC to the General Assembly, and asked if Member States wished to endorse such recommendations.

30. The General Assembly decided to:

- (i) renew the mandate of all members of the Audit Committee until January 2011;
- (ii) review the process of the rotation and the size of the Audit Committee with a view to agreeing on the relevant changes at its 2010 session;
- (iii) review the recommendations made by the Audit Committee for their implementation, as appropriate; and
- (iv) establish a Working Group for the purpose of (ii) and (iii) above, composed of seven (7) group coordinators, interested Member States, the bureau of the PBC and the Chair of the Audit Committee (or the Vice-Chair, in his absence). The Working Group will submit its recommendation to the next session of the PBC (in 2010) to enable Member States to select the new members of the Audit Committee by December 2010

ITEM 20 OF THE CONSOLIDATED AGENDA:

THE CARBON NEUTRALITY PROJECT

31. Discussions were based on document WO/GA/38/11.

32. The Secretariat highlighted that the present Progress Report was the first Progress Report that the Secretariat was making on the recently launched Carbon Neutrality Project. The aim of the project is to minimize the effect that the activities of WIPO may have on the environment, and, in addition to a positive impact on the environment, a number of savings are expected to be made in some cases quite rapidly and, in other cases, later on through investment in better installations and equipment. The high level Terms of Reference include an inventory of the situation in the Organization (“where do we stand today”), the establishment of a five-year strategic plan (“where do we want to be” or “where do we have to be”, depending on the subject), the selection of implementation measures, the monitoring of their implementation against baselines, and periodical reporting to the General Assembly. The Secretariat indicated that the management structure put in place was a “light structure”, including a Project Manager, a Main Working Group composed of staff members of WIPO and of UPOV, Subsidiary Working Groups on specific topics with a combination of technical and non technical members, and finally a Project Assistant carrying out all the administrative tasks. The Secretariat noted a few actions already taken both internally and within the UN context and, in addition to the specific subjects listed in document WO/GA/38/11, it mentioned the cooling systems based on the Geneva Lake water for the new building and the future new hall. Within the UN framework, activities, such as the UN Climate Week (week of September 21, 2009) were being held in WIPO as they were in all other UN Agencies: the Earth Hour, the World Environment Day, the “Seal the Deal” campaign and a number of

preparations for the UN Climate Change Conference in Copenhagen in December 2009. In connection with the latter, the Secretariat was pleased to report that it had been able to provide to the United Nations Environment Program (UNEP) information and data requested for the preparation of the Copenhagen Conference. The Secretariat concluded its presentation in noting that, as of 2010, it would be making regular progress reports to the General Assembly in accordance with the Terms of Reference included under a new dedicated subprogram on carbon neutrality under the Program and Budget for the 2010-2011 biennium.

33. The General Assembly took note of the information contained in document WO/GA/38/11 and of the additional explanations provided by the Secretariat during the presentation.

ITEM 21 OF THE CONSOLIDATED AGENDA:

SUMMARY ANNUAL REPORT OF THE DIRECTOR OF THE INTERNAL AUDIT AND OVERSIGHT DIVISION

34. Discussions were based on document WO/GA/38/1.

35. In introducing the above document, the Director of the Internal Audit and Oversight Division (IAOD) noted that the annual report was required by the Internal Audit Charter, paragraph 23 and that during the reporting period, IAOD had continued to provide the Director General and the Audit Committee with several good audits. The first evaluation report since 2004 was completed and validation of the Annual and Biannual Program Performance Reports have started.

36. He recalled that several investigations were also completed in the period which indicated that IAOD have been delivering appropriate oversight activities. He stressed that the staffing issues that have prevented Internal Oversight developing were yet to be resolved. Proposals for another auditor, investigator, evaluator and adequate permanent administrative staff have been made to the Director General. He further noted that the following audits were completed in the period: procurement, information security, IT controls, payroll, travel, and two reports on the new construction project (NCP). Audits nearly completed in the period were on review of PCT revenues and the new construction project. An audit of the Madrid and the Hague revenues will also be finished in 2009. In early 2010, audits of Internal Control Gap Assessment and follow up on various information security related matters will be completed. A very thorough, professional review of the Internal Audit Section by WIPO's External Auditors has concluded that IAOD Internal Audit Section was 80% compliant with the Institute of Internal Auditors (IIA) standards. As regards the Investigation Section, he noted that the workload was large with some very complex and difficult cases. He noted that the Director General has been proactive and generous in providing high quality short-term investigation resources for tackling the investigation workload. He reiterated the need for more posts for investigations to deal with the workload and backlog of investigation cases. He added that drafting work on the Investigation Policy and Manual would be completed before the end of 2009. He reminded Member States that IAOD would, as required, fully consult with Member States as part of the process of approving the Policy and Manual in 2010. With regard to Evaluation Section, he noted that although evaluation work had been much restricted due to the absence of staff, evaluation plans for 2008 and 2009, the 2008

Evaluation Annual Report, the Program Performance Report Validation and an evaluation of the Performance Management Framework had been delivered. A draft of some Self Evaluation Guidelines for Managers was also prepared by the section. Guidelines for the work of the Independent Evaluation Section would be updated and finalized in the next period. He noted that independent evaluation of the Development Agenda was very important and as such it would be a priority once the Evaluation Section was fully functional. In particular, this will involve evaluation and review of the Development Agenda and WIPO's technical assistance work, as set out in Recommendations 33 and 41 of the said Agenda. He mentioned that IAOD contributed to the Audit Committee's self evaluation process and made several comments and suggestions. IAOD had also provided the Committee with a copy of the UN Representatives of Internal Audit Services Position paper on Audit Committee Principles and Good Practices which contains international good practice and advice from the IIA on Audit Committee arrangements. He mentioned that the relations with the External Auditors remained very good and professional. He noted that there was information in the Summary Annual Report relating to implementation of WIPO Oversight Recommendations, including those of the Audit Committee, in paragraphs 8 to 14 of the Report. Overall, the reporting period started with 156 oversight recommendations; 266 recommendations were added in the period and 163 recommendations were implemented (including 93 of the Audit Committee). There were 259 recommendations not yet fully implemented at the end of the period. He concluded by highlighting the need for more permanent staff to develop Internal Oversight further in a professional and independent way. The interest and appreciation in the work of Internal Oversight provided by the Program and Budget Committee last week was much welcomed. He reminded Member States that audit and evaluation reports could be read and discussed in the Director's office and reports could be provided bilaterally to those Member States who were interested in a particular subject matter.

37. The Delegation of the United States of America noted that they had carefully read the report and expressed strong support for the overall work of the Internal Audit and Oversight Division. The Delegation expressed concern about the staffing situation and its impact on the ability of IAOD to carry out its mandate and work plans. The Delegation hoped the staffing situation would be remedied in the very near future and expressed hope that the next report by the Director of IAOD would be more positive on staffing and that IAOD would be able to carry out its work effectively and efficiently.

38. The General Assembly took note of the report of the Director of IAOD as contained in document WO/GA/38/1.

ITEM 23 OF THE CONSOLIDATED AGENDA:

REPORT OF THE COMMITTEE ON DEVELOPMENT AND INTELLECTUAL PROPERTY (CDIP)

39. Discussions were based on document WO/GA/38/3.

40. Before introducing the Agenda item, the Chair requested the delegations to hand over their written statements to the Secretariat rather than making lengthy statements because of time constraints.

41. The Delegation of Yemen speaking on behalf of the Asian Group and referring to the Coordinator's meeting being called by the Chair, stated that it welcomed the genuine efforts undertaken by the Assemblies in order to reach a consensus among the various Groups with regard to the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). However, the Delegation wished to express the disappointment felt within the members of the Asian Group because neither the Coordinator of the Asian Group nor the representative of Indonesia nor even of Thailand were informed that the Chair had committed to hold a meeting between the coordinating representatives. That was at a time when the Delegation's country was emphasizing once again that it did believe in the genuine interest and intents of the Organization. However, they then doubted the transparency that was required to achieve consensus. Not being informed about the date for that meeting was a shock to all the members of the Asian Group who had previously expressed their readiness to be flexible with regards to the IGC. The Delegation further stated that what had happened that day did emphasize the importance that the discussions be transparent and that they be widespread to allow the greater participation of Member States and all Groups and which allowed every member to express in complete freedom and transparency their points of view.

42. The Chair took note of the concerns expressed by the Delegation of Yemen.

43. The Delegation of Indonesia wished to strongly echo what had been stated by Yemen, the Coordinator of the Asian Group. The Delegation considered that incident as a very serious mistake and wondered whether it was done intentionally or not. In the Delegation's view, that process was not directing the meeting towards light at the end of the tunnel but was going to make it even a darker place. The Delegation heard from the colleagues of the Secretariat that it had been their mistake but it was not that simple. The Delegation had big question marks. How could the Asian Group, a Group that had existed for a long time in WIPO and its legitimate Coordinator from Yemen were not aware of a very important meeting at the Ambassadorial level? How could the Asian Group not be properly represented in that crucial meeting? The Delegation stated that it considered that matter a very, very serious incident and it could not accept the result of that day's consultation meeting.

44. The Chair invited Ambassador Clarke of Barbados to introduce this Agenda item.

45. While expressing his pleasure to report on the progress made on the development agenda process since the 2008 General Assembly Ambassador Clarke, stated that one meeting of the CDIP, the third session, was held that year from April 27 to May 1, 2009. The Draft Report of that session was contained in document WO/GA/38/3. The Development Agenda, he said, had entered the implementation phase. That phase required a renewed commitment and a collaborative effort on the part of both Member States and the Secretariat in order to give substance and meaning to the 45 adopted recommendations. The Chair of the CDIP commended the continuing goodwill of Member States again evident during the third session of the CDIP. He also commended the Secretariat for its invaluable contribution to the advancement of work and asked the General Assembly to note the personal commitment of the Director General in the overall effort to advance the implementation of the Development Agenda. The Organizational structure and the programs introduced by the Director General were in part aimed at ensuring that all sectors and divisions of the Organization contributed to implementing and mainstreaming all of the recommendations adopted by Member States. Ambassador Clarke invited the Member States to recall that during the first and second sessions of the CDIP a number of delegations had asked for the avoidance of duplication of

activities when implementing the various recommendations. Some had also expressed concerns over the lack of information on clear objectives, timeframes, monitoring and evaluation mechanisms for the activities suggested by the Secretariat. There had also been a loud call for an accelerated implementation of all of the adopted recommendations. Responding to those observations and concerns and with the aim of implementing the adopted recommendations in a cost-effective and a coherent manner, we took the initiative of proposing a thematic project approach. In that way we grouped recommendations which address the same or similar subject matter and which could be implemented jointly. Member States broadly agreed on three thematic projects at the third session of the CDIP, opening the way for the Program and Budget Committee (PBC) to approve funds to enable the implementation of those projects. Ambassador Clarke stated that as most of the delegations knew he would be leaving his post as an ambassador shortly to take up an appointment at WIPO. He considered it appropriate that he should avoid any perception of conflict of interest and had chosen to withdraw from the position of the chairmanship of the CDIP. In wishing the upcoming fourth session of the CDIP success, he expressed his sincere hope that he would continue to enjoy the support and goodwill of Member States in serving their interests in his new position. The Chair of the CDIP thanked all delegations to the CDIP. It was through their cooperation and support that the Committee had made significant progress in advancing the work of implementation of the Development Agenda recommendations, he added.

46. The Delegation of Ecuador speaking on behalf of the Group of Latin American and Caribbean States (GRULAC) congratulated the Vice-Chair on her appointment. The Delegation reiterated the Group's commitment for implementing the Development Agenda at WIPO and expressed its strong interest in continuing to work on that agenda and ensuring that it was addressed within CDIP and the other committees of the Organization. GRULAC congratulated Ambassador Clarke on his excellent work as Chair of the CDIP. His experience, knowledge and professionalism were vital in the work of the Committee. The Group also recognized and paid tribute to the work done by the Secretariat in formulating the proposals and papers for the Committee. GRULAC paid tribute to the personal commitment of the Director General, Mr. Francis Gurry, to achieving the objectives of the Development Agenda and thanked him for the guarantee that all sectors of WIPO will ensure that all of the recommendations are implemented and incorporated into the activities of the Organization through the mainstreaming of the Development Agenda. The Group shared the view expressed by the Director General in the previous meeting of the CDIP that it was vital to present those reports and review the implementation of the Development Agenda in WIPO. GRULAC also paid tribute to the Director General for his willingness to submit annual reports to the CDIP on the implementation of the recommendations and considered it vital that the CDIP moved forward in examining new coordination mechanisms, modalities for supervision and assessment of reports on implementing the recommendations. The Group remained willing to continue working on the consideration of the proposals submitted to the CDIP and welcomed the progress made with regard to some recommendations in the implementation phase. However, it was very important to accelerate the work of considering and adopting projects and plans. GRULAC supported the decision of the CDIP to consider suggestions for new modifications and additions to the recommendations on the Development Agenda in future provided they were identified as being pertinent and necessary to ensure the effective and efficient implementation of recommendations. It believed that that kind of flexibility was important in the process of learning by doing in terms of implementing the Development Agenda. Finally, GRULAC recalled the priority that the region attached to guaranteeing the necessary financial and human resources for implementing the

45 recommendations within the regular budget. It was vital that the Organization's budget allocated sufficient resources to ensure that the programs for facilitating the use of intellectual property (IP) for development and technical assistance and capacity building and for implementing the Development Agenda proposals were guaranteed.

47. The Delegation of Yemen speaking on behalf of the Asian Group thanked the WIPO Secretariat and the Officers of the Committee, especially His Excellency Ambassador Clarke of Barbados for his wise leadership. The Asian Group attached the highest importance to the realization of the Development Agenda in terms of tangible and concrete WIPO programs and projects. Against that special background, the Asian Group while welcoming the progress made at the third session of the Committee, emphasized the importance of ensuring that the allocation of the necessary human and financial resources for the implementation of the projects which will commence in 2010. The Group took note of the Draft Report of the CDIP and expressed optimism that the WIPO Secretariat will take into account and implement all the Development Agenda recommendations in all its activities. The Asian Group underscored the need for appropriate coordination mechanisms and modalities for monitoring, assessing and reporting on the implementation of the Development Agenda recommendations.

48. The Delegation of Senegal speaking on behalf of the African Group thanked and appreciated Chair Ambassador Clarke for his skillful conducting of the work of the Committee. The WIPO Development Agenda was the outcome of a laborious negotiating process which led to the adoption of the 45 recommendations and the Group believed that the efforts, energy and time, put in to achieving the adoption of those recommendations should not be in vain. That was why the Group would spare no effort and miss no opportunity to reaffirm its strong interest in the effective implementation of the Development Agenda. The Delegation noted that the activities carried out for implementation were cross-cutting in nature, which would require the setting up of coordinating mechanisms for those activities. Without such mechanisms, it would be very difficult to channel the resources and activities in an effective manner. That was the Group's first concern. The second was the increasingly budgetary nature of planning for the implementation of the Development Agenda. The Delegation felt that the Development Agenda responded, very often, to urgent and pressing needs, and that was why resource allocation for the implementation of those programs could not wait and needed to be clearly planned out in advance. The Delegation thanked the Director General for his determination, reiterated on a number of occasions, to do everything he could to ensure that the Development Agenda was implemented effectively, and hoped that he would continue to show such determination.

49. The Delegation of Sweden speaking on behalf of the European Community (EC) and its 27 Member States, stated that they continued to believe that development was one of the most important challenges facing the international community and that IP had a positive role to play in that respect. The work carried out by the CDIP was, therefore, of great importance. The Delegation reaffirmed their commitment to the implementation of the 45 recommendations in the Development Agenda. The Committee had then had three sessions. Very constructive work was taking place and as already stated in the Delegation's opening statement, that work proved their ability to work constructively and build common ground also in contentious matters. The Delegation welcomed the new thematic approach methodology adopted by the Committee, and hoped that that would speed up the implementation process. As far as the coordination mechanisms and reporting modalities were concerned, in the Delegation's view it was for the CDIP, in line with its mandate, to follow-up and assess the implementation of the Development Agenda. The Delegation found

it difficult to support, for example, the creation of any new entity for the purpose of monitoring the implementation of the Development Agenda. However, it was important that development considerations form an integral part of all work within WIPO. The European Community (EC) and its 27 Member States looked forward to the remaining work in implementing the 45 recommendations of the Development Agenda and hoped that that work could continue to be carried out in the same positive and cooperative way as we had been seen in the past.

50. The Delegation of Serbia, speaking on behalf of the Group of Central European and Baltic States, added its voice to those groups and delegations who had expressed their commitment to the implementation of the 45 recommendations. The Delegation commended the Secretariat for the introduction of the new thematic approach which, in the view of the Group, improved implementation efficiency and coherence. For some countries of the Group, a quick and practical implementation of the WIPO Development Agenda was one of the priorities in the realization of their national IP development plans.

51. The Delegation of China noted that, since it's founding, the CDIP had held three meetings with active participation from Member States and the support of the Director General and had made marked progress, in particular during the third meeting. The projects documents made by the Secretariat were a good testament to its goodwill and the Delegation wished to thank it for its hard work. It sincerely hoped that the Organization would provide sufficient human and financial resources for the implementation of the 45 recommendations, so that developing countries, and especially least-developed countries (LDCs), could benefit from their implementation. The issue of development was a major one facing the world and it was key to achieving a harmonious society. IP was conducive to promoting the development of the world, however, the protection of IP should not hinder the technical assistance to developing countries especially LDCs, particularly in the area of environmental protection, because such areas related to public interests. The Delegation noted that as a specialized organization of the United Nations (UN), WIPO had the responsibility to serve as an effective platform for countries to find solutions that were suitable to their own conditions, so that developing countries and the LDCs could really benefit from the IP system. The different levels of development should also be taken into account, in order to find a balanced solution and to achieve development goals. That was something WIPO and the CDIP should ponder upon. The Delegation supported the content of document WO/GA/38/3 and expressed its commitment to taking an active role in the discussions at the CDIP.

52. The Delegation of Pakistan appreciated the efforts made by Ambassador Clarke, in taking the Committee from where it was 2 or 3 years back, to where it stood then. It really appreciated his open style, a really relaxed style of exploring different options, and consulting with Member States on different issues, and then leading them towards a consensus. As for the performance of the Organization over the previous one year, it appreciated the progress that had been made towards the implementation of the Development Agenda recommendations. The new dynamism, openness and fresh air induced in the process, and the initiatives taken to take on board the concerns of all stakeholders. In the view of the Delegation, for the effective implementation of the Development Agenda, there needed to be a clear distinction between the Development Agenda programs and regular technical cooperation activities. There could be a degree of overlap, but it should be clearly understood that the Development Agenda recommendations were concerned with all areas of work at WIPO. That entailed a pro-development orientation of the policy and analytical work of the Organization, and pro-development outcomes of the normative discussions. The

Development Agenda should not be reduced to an array of technical assistance activities merely duplicating what had already been done, though perhaps on a larger scale, the Delegation added. On the monitoring mechanism, the Delegation understood that there were two proposals on the table, one had been proposed by Pakistan, Algeria and Brazil, a joint proposal, and the second one had been proposed by Group B. In that regard, the Delegation wished to suggest a paragraph at the end of the report that was being considered. The language of the proposed paragraph read as follows: “The Assembly urges the CDIP to finalize its discussions on a mechanism for coordination, monitoring, assessment and reporting, of the Development Agenda recommendations and report to the General Assembly at its Session in September 2010”. The rationale for that proposal was that it did not want the discussion on the monitoring and evaluation mechanism to go on forever. It was necessary to put in place mechanisms for effective and immediate implementation of the Development Agenda recommendations, across all the Committees in WIPO.

53. The Delegation of Tunisia stated that it spoke on behalf of the Arab Group and extended its gratitude to the Secretariat for all the efforts that had been deployed in preparing the documents of the CDIP and for the implementation of new projects. The Delegation also thanked Ambassador Clarke for his report and for the excellent way in which he had chaired the work of the committee over the previous two years. Delegations from the Arab States had been happy to note all the progress that had been made within the CDIP. It was happy to note the way in which events had been evolving, and invited all Delegations to redouble their efforts in order to speed up the work, and make even more progress, for which the necessary resources should be provided.

54. The Delegation of Singapore endorsed the Asian Group statement delivered by the Delegation of Yemen. The Delegation welcomed the report of the CDIP, which provided a snap shot of the progress made on the work program for the implementation of the WIPO Development Agenda’s 45 recommendations. Substantive work and discussions had taken place. Delegations needed to continue to push ahead and follow through with the implementation of the recommendations. The Delegation was of the view that implementation should be pursued in a manner that would lead to a balanced and effective international IP system. The introduction of the thematic project approach at the previous Session of the CDIP was a positive step in that direction. From the operational standpoint, the thematic project approach would reduce duplication, streamline implementation, and increase efficiency. More importantly, from the substantive angle, the project approach would deliver targeted implementation within the framework of clear, defined objectives. That would provide for tangible results and would bring greater coherence, relevance and purpose, throughout all areas of WIPO’s work. The new modus operandi epitomized the move towards mainstreaming development in WIPO. On a macro level, the Delegation agreed with the Director General’s assessment, that there was a need for a coordination mechanism that established a seamless relationship between approval of projects, budgeting and monitoring. In that regard, the Delegation believed that the thematic project approach and the role of the individual project managers were useful starting points in the deliberations on the coordination mechanism. In a manner respectful of the terms of reference and mandate of all WIPO Committees and bodies, the Delegation believed that the creation of a coordination mechanism within the broader framework of established budgetary procedures would reduce the time lap between project approval and implementation. The current international IP regime with its norms and standards already provided space for nations to establish sound national policies to promote development. Delegations should aim to build on that concurrently at the national and international levels. The work of the CDIP should focus on

reinforcing an international IP regime that was predictable and accessible to all stakeholders that fostered innovation and creativity, and took into account the interests of all members. Such an international regime served to support national development efforts and deliver benefits to all countries regardless of their level of development. As one of the core members that contributed to the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA) process, Singapore wished to reiterate its continued commitment to engaging actively and constructively at the CDIP. Finally, Singapore wished to express its appreciation and thanks to Ambassador Clarke for his sterling leadership of the CDIP.

55. The Delegation of Brazil supported the statement made by Ecuador on behalf of GRULAC. In particular, the Delegation paid tribute to Ambassador Clarke for the excellent way in which he had conducted the work, in setting up the first steps of the CDIP, and the implementation of the Development Agenda. The Delegation trusted that in his new position within the Organization, delegations would continue to benefit from his ideas, and his knowledge and skill. The Delegation believed that the central, vital element for the strengthening of WIPO, was the implementation of the Development Agenda, in particular, because its key objective was to extend the benefits of the IP system to developing countries and to communities that were on the margins of the innovation economy. That was why implementation of the Development Agenda should be given the utmost care, because of the unprecedented, multifaceted nature of its aims. The challenge was to learn as the process unfolded, so it was vital that the methodology for implementing and monitoring the Agenda remained flexible and open to change and modification in the spirit of path-finding. The Delegation recalled that during the previous Session of the CDIP, which had taken place in April, delegations had reached a consensus about the change in methodology for implementing the Development Agenda. The new system basically intended to make the process of implementation more flexible and workable. The new methodology initially gave rise to concern among developing countries which feared that the reorganization of the recommendations into projects might jeopardize the comprehensive nature of the Agenda. As far as grouping recommendations into thematic groups, the concern was that the new methodology might not allow the full discussion and comprehensive treatment of the content of each Recommendation. In order to avoid that risk, three conditions had been established on the acceptance of the new methodology, and the Chair had called those the “three golden rules”. Firstly, every recommendation would be discussed separately, prior to the discussion on the projects, to identify activities for implementation. Secondly, only recommendations corresponding to similar or identical activities would be put within the same thematic group. Thirdly, implementation would be structured around projects and other activities on the understanding that additional activities could also be proposed. On the understanding that those ‘three golden rules’ would be observed and respected, the Delegation expressed its satisfaction with the new methodology for implementation which kept the necessary flexibility, in the spirit of learning by doing, and which should help to speed up the process of drawing up and implementing the projects. Along with the efforts to accelerate the implementation of the Development Agenda, it was also necessary to develop as quickly as possible, monitoring mechanisms for assessing qualitatively and quantitatively actions already undertaken, in particular, with regard to the cultural change of the working methods of the Organization. The Delegation hoped that Member States would go further in the discussion on how to bring more transparency and accountability to the process of legislative advice and technical assistance. Furthermore, and as far as the Development Agenda must be cross-cutting across WIPO’s activities, it was essential to work on drawing up an effective monitoring system, and indeed coordinating mechanisms among Committees and other WIPO bodies. Together with the delegations of Algeria and Pakistan, the Delegation was submitting

a proposal for a mechanism to respond to that need to monitor, assess, and coordinate the work of the Committee, and how other WIPO bodies were implementing the recommendations of the Development Agenda. The Delegation also pointed out the need that the budget of the Organization provide for the necessary human and financial resources for implementing the Development Agenda recommendations. The Delegation felt that it was vital, and hoped to see the review of the budgetary mechanisms for immediate implementation of the projects adopted by the CDIP, in accordance with the decisions taken by the CDIP. Finally, the Delegation stressed the importance of not overlooking the fact that WIPO was an agency of the UN. Implementing the Development Agenda must be seen in that coordinated context of achieving the values and the methods of the UN system as a whole. The Delegation was pleased with the conference on building partnerships for mobilizing resources for development, and the fact that it was taking place, in accordance with Recommendation 2 of the Development Agenda. Brazil was willing to share its experiences of partnerships with relatively lesser developed countries in areas such as health and agriculture.

56. The Delegation of Iran (Islamic Republic of) expressed its appreciation for the efforts undertaken by the CDIP. It thanked Ambassador Clarke for his excellent work and contribution to the CDIP during the preceding years. The Delegation attached great importance to the CDIP's activities and had actively participated in its discussions. In that regard, the Delegation believed that the CDIP provided a basis for reaching the WIPO mandate for promoting creative intellectual activities and for facilitating the transfer of technology relating to industrial property to developing countries, in order to accelerate economic, social and cultural development. Therefore, the Delegation was of the view that concrete implementation of all the agreed proposals would move the national and international IP system towards a moderate IP system, which was adaptable to the development requirements of Member States. Accordingly, the CDIP should accelerate the implementation of the approved recommendations. In that regard, the creation of a coordination mechanism, as suggested by the distinguished delegations of Algeria, Pakistan and Brazil, to monitor and assess the progress in respect of recommendations under implementation was an important issue. It would facilitate and provide the Member States with a clear vision on the future work of the CDIP. The Delegation stated that in its view the Committee should use the experience of other WIPO Committees.

57. The Delegation of Cuba reiterated its commitment to implementing the Development Agenda within WIPO, a process which it believed needed to be accelerated in order to achieve the objectives set, through concrete projects, including the recommendations of the Member States. It was important to retain the content and form of the original Development Agenda recommendations, the Delegation added. It believed that the initiatives on digitization and on the development of the technology and innovation support centers in developing and LDCs were very positive. The same was true as regards the provision of access to specialized databases. The Delegation wished to reiterate that the Development Agenda went beyond the work program of the Committee and was in fact cross-cutting in nature, and extended to all of the activities of the Organization. The Development Agenda needed to be accelerated and incorporated into the work of the different Committees. The Delegation also stressed the need to ensure that the financial and human resources be made available to implement the recommendations. Finally, the Delegation supported the comments made by Ecuador, on behalf of GRULAC.

58. The Delegation of Trinidad and Tobago associated itself with the remarks made by the Coordinator of GRULAC and congratulated Ambassador Clarke for his astute leadership and careful guidance to that process. The Delegation also commended WIPO on its work with regard to the CDIP as well as the Director General for his personal commitment to the Development Agenda. It believed that the commitment of the Director General symbolized the core importance of the Development Agenda to the entire membership of WIPO. The Delegation underscored the progression towards well-structured recommendations that were more readily implementable and stated that Trinidad and Tobago, had always been optimistic about the acceptance of the Development Agenda, in spite of the conditions under which it had arisen a few years before. It added that so far as its Delegation was concerned, the recommendations themselves directly highlighted what was needed for small developing countries such as theirs, when embarking in earnest upon a comprehensive program to maximize the role and contribution of IP in national development. The Delegation encouraged WIPO to continue the good support of such a rich endeavor, as it might well inform the template for any repositioning of WIPO in future. In that regard, the Delegation of Trinidad and Tobago believed that it would neither be appropriate nor prudent to look at the Development Agenda as just another WIPO program, but rather as a core issue of immense strategic value to the Organization. With respect to the implementation of recommendations, the Delegation stated that as a Member State of WIPO, much of the responsibility for the success of the CDIP rested squarely on its shoulders. In the opinion of the Delegation, the responsibility was and could only be a shared responsibility, as one of the stakeholders of the Organization.

59. The Delegation of Guatemala supported the statement that had been made by Ecuador on behalf of GRULAC and thanked the Secretariat for the documents which had been prepared for that Agenda Item. The Delegation reiterated the fact that it very much appreciated the personal commitment of the Director General in ensuring that the Development Agenda was implemented. It welcomed the implementation plan based on a thematic approach or clustering of recommendations, which had been adopted by the Chair of the CDIP, Ambassador Clarke. The Delegation trusted that the new dynamic approach would allow Member States to ensure that the recommendations were adopted and implemented in a more effective manner. In that context, the Delegation reiterated the importance of the work of the Development Agenda Coordination Division (DACD), and stressed that the process needed to be not only an inclusive one but one that respected a geographical balance so as to ensure an effective implementation of the recommendations. The Delegation then made reference to the relevance of the statement made by the Delegation of Trinidad and Tobago, which highlighted the need for attention to also be given to small developing countries like Guatemala. The Delegation of Guatemala took the opportunity to express its interest in the recommendations related to small and medium-sized enterprises (SMEs), technology dissemination and the link between competition and IP. The Delegation reiterated its willingness to work constructively within the CDIP so as to come to a decision on a coordination and monitoring mechanism for the implementation of the recommendations and concluded by stating that Brazil and a group of countries had suggested important ideas which could constitute the basis for that work.

60. The Delegation of Turkey expressed support for the work undertaken by the CDIP and in that context thanked the Chair of the CDIP, Ambassador Clarke, for the successful way in which he had guided those negotiations. The Delegation stated that the work of the CDIP had advanced further in the previous meeting and expressed agreement with the approach taken by the Secretariat to have thematic projects. It believed that the new approach would also

facilitate the coordination, monitoring and assessing of the implementation of the recommendations on development. The Delegation further stated that it supported the idea that a coordination mechanism was needed to improve the implementation of the recommendations and, stressed the importance of understanding the differences between the already existing technical assistance provided to Member States for development and the additional measures taken under the recommendations of the CDIP.

61. The Delegation of Thailand associated itself with the statement made by the Delegation of Yemen on behalf of the Asian Group, especially as it pertained to the importance of the Development Agenda as one of the core interests of WIPO for meeting global challenges. It added that two years had passed since the formal adoption of the 45 recommendations. The Delegation thanked Ambassador Clarke for his hard efforts and leadership in making progress on the issue and expressed its satisfaction with the results that had been achieved at the three previous sessions of the CDIP, in which Thailand had actively participated. In that regard the Delegation commended the project-based approach taken by the CDIP which had helped to accelerate the work of the Committee. It added that while it was important to keep in mind the need for each of the 45 recommendations to maintain its specific aspect when using the project-based approach, the Delegation thought that the mainstreaming of the principles of the Development Agenda into all areas of WIPO's work was also extremely important. The Delegation of Thailand therefore strongly supported the setting up of appropriate coordination mechanisms so as to ensure that all WIPO Committees would actively embrace the Development Agenda into their work. It believed that such mechanisms were vital to the work of WIPO and steps needed to be taken as soon as possible. In that connection, the Delegation of Thailand welcomed the proposal which had been jointly made by Pakistan and other delegations, and stated that it would be a good point of reference. The Delegation concluded by stating that it looked forward to engaging constructively in future discussions of the CDIP with a view to expediting targeted implementation of the recommendations in a coherent and practical fashion.

62. The Delegation of Canada reiterated its commitment to the CDIP as well as its support for the Development Agenda. It also reiterated its support for all of the 45 recommendations and added that they should indeed be implemented. The Delegation believed that the thematic approach which had been decided upon would facilitate discussion and implementation.

63. The Delegation of Sri Lanka associated itself with the statement made by the Delegation of Yemen on behalf of the Asian Group and expressed its support for the joint proposal made Pakistan, Algeria, and Brazil. The Delegation thanked Ambassador Clarke for his far reaching vision and contribution made on the subject and stated that the Director General, Mr. Francis Gurry, deserved a special word of thanks for his positive approach in that area of activity. The Delegation then recalled the statement made by the Honorable Minister of Consumer Services of Sri Lanka, at the High-Level segment, which underscored the point that the allocation of resources for the implementation of the recommendations was an investment which was bound to produce desired results. It therefore reiterated the importance of the allocation of the necessary resources, for the effective implementation of the Development Agenda recommendations. The Delegation of Sri Lanka firmly believed that the mainstreaming of the Development Agenda recommendations was a core and essential need. It added that the mainstreaming of the recommendations in the work of all the Committees of WIPO would create a better environment for development oriented activities and that such processes, would help developing countries and LDCs in their efforts towards achieving Millennium Development Goals (MDGs) in areas such as health, food and environment.

64. The Delegation of Indonesia associated itself with the statements made by the Asian Group Coordinator and many delegations in the room, on the importance of the work in the CDIP to developing countries. The Delegation re-emphasized the need for the development dimension to be mainstreamed into all WIPO activities and commended the commitment of the Director General in that regard. The Delegation further expressed its desire to see concrete and speedy progress in the implementation of all recommendations that had been agreed upon and in that context, the assurance of the allocation of the necessary human and financial resources. It stressed therefore the importance of the rapid establishment of a coordination mechanism and the modalities for monitoring, assessing and reporting on the implementation of all WIPO Development Agenda recommendations. The Delegation firmly believed that the successful and concrete implementation of the program of the CDIP would prove the commitment of the WIPO as well as Member States, for the creation of effective and more balanced IP regimes.

65. The Delegation of Norway joined other delegations in thanking Ambassador Clarke for his important work in the CDIP and associated itself with the statement made by the Delegation of Sweden. The Delegation reaffirmed its commitment to the Development Agenda and the new thematic approach to the work. It believed that implementation could and should be coordinated with work in other bodies of WIPO through the existing governance structures and procedures. The Delegation of Norway reminded the Assembly that there was a Group B proposal contained in document CDIP/4/10, to which its Delegation fully subscribed. The Delegation concluded by stating that it looked forward to further discussions and hopefully finalizing discussions on monitoring and coordination mechanisms at the next session of the CDIP in November of that year.

66. The Delegation of the United Kingdom expressed support for the statement made by Sweden on behalf of the European Union (EU). The Delegation believed that the Development Agenda was an essential and vital part of the work of WIPO. It added that the mainstreaming of the Development Agenda was a welcome evolution in WIPO's work program and its strategic realignment. The Delegation further believed that the creation of the new Development Agenda Coordination Division, aligned with budgetary allocation, should ensure the achievement of the long term development goals and recommendations that the CDIP members had adopted in 2007. It was confident that the Director General and his senior team, notably the new Deputy Director General for Development, were very well placed to provide the expertise, guidance and energy required to ensure that all of the Development Agenda recommendations would be achieved in good time and with maximum efficiency and effectiveness. Regarding the coordination mechanism, the Delegation of the United Kingdom agreed with the Group B position that had been reiterated at the PBC, which was that a coordination mechanism should remain resource neutral.

67. The Delegation of Bangladesh took note of the CDIP Report. The Delegation expressed its appreciation for the work done by the CDIP in particular, its appreciation to Ambassador Clarke, for his leadership of the process that had brought Member States so far from where they had been a few years before. The Delegation also thanked the Secretariat for its useful support and commended the Director General for his role in advancing the objectives of the Development Agenda. The Delegation of Bangladesh believed that the Development Agenda was a cross-cutting issue that needed to be mainstreamed across the Organization, and as such, should be factored in to all WIPO activities and the work of the Committees. It added that the pace of implementation of the Development Agenda needed to be accelerated with a

regular assessment of the progress made. In that context, the Delegation expressed its full support for the statement made by the Delegation of Yemen, on behalf of the Asian Group, in particular as it pertained to the need for appropriate coordination mechanisms and modalities for monitoring, assessing and reporting on the implementation of the Development Agenda recommendations. The Delegation further stated that it fully agreed with delegations which had mentioned that such a mechanism should be established at the earliest possible time. It added that as the LDC Coordinator, its Delegation would have been remiss had it not mentioned the importance of the implementation of the Development Agenda to the LDCs, since many of the Development Agenda recommendations concerned LDCs directly. It believed that early implementation of recommendations would help LDCs attain capacity and institution building; poverty alleviation; and other national development objectives so as to achieve the MDGs. The Delegation elaborated that in July 2009, the Ministers participating in the WIPO High-Level Forum for LDCs had adopted a Ministerial Declaration, that emphasized the need for early implementation of the WIPO Development Agenda and called for the full implementation of the Development Agenda recommendations pertaining to the LDCs, from WIPO's regular budget and through the generation of additional resources for supporting IP-related activities in WIPO. The Delegation added that the declaration also urged all development partners to actively participate in the efforts of the Director General to establish Funds-in-Trust, for the benefit of LDCs. In that connection, the Delegation stated that LDCs would call for full and early implementation of the recommendations that concerned LDCs, in particular Recommendation 2 which focused on additional resources needed to provide extra support to IP-related activities in LDCs.

68. The Delegation of Costa Rica reiterated its full support for the Development Agenda and took note of document WO/GA/38/3. The Delegation welcomed the general progress that was being made with respect to implementation of the Development Agenda. The Delegation made particular reference to the new projects related to Cluster A on "Technical Assistance", and welcomed the fact that for January 2010, the implementation of three projects of key interest to its Delegation, in the field of IP and Competition Law, and IP and the Public Domain, were scheduled to commence. It stated that like many developing countries, Costa Rica was aware that the implementation of the Development Agenda was of key importance and also recognized the importance of the efforts of the participating Member States in that connection. The Delegation added that it had held parallel meetings during that week to convey to the Organization its priorities for implementation. The Delegation believed the effort to be a joint one and that working together was the only thing that would guarantee the success of the key projects. It recommended that the Organization should implement the principles of the Development Agenda in a cross-cutting manner throughout the activities of the Organization. The Delegation further stated that a national debate on the Development Agenda had been held in Costa Rica so as to build awareness on the subject, encourage as broad a participatory debate as possible, and in so doing achieve an effective use of resources. The Delegation concluded by suggesting that other countries might want to follow that example and set aside the necessary resources to support such activities.

69. The Delegation of South Africa expressed its thanks and appreciation to the Chair of the CDIP, Ambassador Clarke. It also thanked the Chair of the Assemblies for his efficiency in conducting the various sessions of the Assemblies. The Delegation expressed its support for the statement that had been made by the distinguished delegate of Senegal, on behalf of the African Group. It also underscored its support for the proposal that had been made by the Delegation of Pakistan in relation to the coordination and monitoring mechanisms. The Delegation made reference to the point made by its Honorable Minister on a coordination and

monitoring mechanism, and firmly reiterated its position on the importance of being able to track progress on the work that was done in the Committees. The Delegation of South Africa expressed its satisfaction with respect to the progress made on the Development Agenda issues and stated that it would continue to submit proposals in relation to the projects that were critical to South Africa which included amongst others those on IP and competition; technology transfer and innovation; and small and medium-sized businesses. It added that its Delegation would submit proposals for consideration and hoped that the proposals could provide some impetus in that area. The Delegation emphasized the point that it had made before in relation to the budget, and reiterated the need for adequate resources to become an established item in the budget of the Organization, so as to ensure a balanced implementation of the 45 Development Agenda recommendations. The Delegation concluded by stating that the Development Agenda should have daily relevance in the work of WIPO.

70. The Delegation of France endorsed the statement that had been made by Sweden on behalf of the European Union and thanked Ambassador Clarke for the effective and attentive manner in which he had conducted work within the CDIP. The Delegation believed that the work done in that Committee had made progress and that progress was being made in a satisfactory manner. The Delegation commended the excellent work on substance that had been done by the Secretariat and noted in particular, the initiative to cluster recommendations into thematic groups. With respect to the coordination mechanism, the Delegation expressed support for the proposal that had been put forward by Group B. It concluded by welcoming the proposal from the Director General of his commitment to report on an annual basis to the CDIP, and stated that it would be ready to participate in constructive discussion on a coordination mechanism at the next session of the CDIP.

71. The Delegation of India placed on record its appreciation of the outstanding chairmanship, leadership and guidance of Ambassador Clarke in the deliberations of the CDIP as well as the outstanding work done by the Committee. The Delegation also placed on record its appreciation of the Director General, in adopting the Development Agenda as a core concern of his and a core priority area for WIPO. It fully endorsed the approach of mainstreaming the Development Agenda into the WIPO activities, in the entire spectra, and believed that to be a step in the right direction. The Delegation concluded by stating that it believed all Member States after sometime, would experience some sense of satisfaction that the Development Agenda had actually moved and delivered positive results.

72. The Delegation of Switzerland thanked Ambassador Clarke for his work and commitment as the Chair of the CDIP. The Delegation confirmed its support and commitment to the effective implementation of the recommendations of the WIPO Development Agenda and the work of the CDIP. It added that the new thematic approach adopted at the previous meeting of the CDIP for the implementation of recommendations, contained the necessary elements for strengthening the coordination both within the Secretariat and the CDIP. It added that the approach would provide for the effective implementation of recommendations as well as their monitoring by the Secretariat and the Committee. The Delegation believed that the new approach combined with the work of the DACD, the resources made available for implementation, as well as all of the work being done in the various divisions of WIPO through the mainstreaming of the Development Agenda, would enhance implementation of the recommendations. The Delegation concluded by associating itself with the statements that had been made by Group B and the various members of Group B during the present General Assembly or during the PBC.

73. The Delegation of Venezuela, associated itself with the statement made by Ecuador on behalf of GRULAC and expressed its support for the Development Agenda. The Delegation urged the CDIP to consider in its work, the need to give priority to rights, such as the right to food, or over commercial interests. It emphasized the need for the Committee to deliberate on effective transfer of technology models which could result in, for example, a social model for the transfer of knowledge, which would overcome obstacles that presently existed in many countries with respect to the provision of necessary elements such as food and medicines.

74. The Delegation of the United States of America stated that in the past five years, its Delegation, both in the Provisional Committee on the Development Agenda and in the CDIP, had been actively and constructively engaged in discussions on the role of IP and development and, that it looked forward to continuing to engage in the work of the CDIP. The Delegation expressed special thanks to Ambassador Clarke, for his skillful and effective work as Chair in leading the Committee forward. The Delegation of the United States of America, also expressed its contentment with the thematic approach to the implementation of the agreed recommendations adopted by Member States at the previous session of the CDIP. The Delegation believed that a thematic approach would help avoid duplicative program expenditures by recognizing the common elements and linkages between and among recommendations, thereby, advancing the work of the CDIP. The Delegation concluded by reiterating its support for the Group B proposal on the coordination mechanism.

75. The Delegation of Uruguay supported the statement that had been made by Ecuador, on behalf of GRULAC and reiterated the importance for its Delegation of the implementation of the 45 recommendations of the Development Agenda. The Delegation thanked Ambassador Clarke, for the excellent work that he had done while presiding over the CDIP, and also thanked the Director General, for his personal commitment to that subject. Similar to other delegations, the Delegation of Uruguay understood and believed that the implementation of the agreed recommendations should be applied in a cross-cutting manner throughout the work of WIPO. The Delegation thanked those countries that had submitted proposals for the analysis of a coordination and monitoring mechanism. The Delegation concluded by urging the General Assembly to instruct the CDIP to analyze the proposals submitted and to formulate a specific recommendation, to be sent to the 2010 General Assembly on that subject.

76. The Delegation of Chile expressed support for the statements that had been made previously with respect to the renewed commitment to the Development Agenda and the work of the CDIP. The Delegation further expressed its support for the statement made by the Delegation of Ecuador on behalf of GRULAC, and thanked Ambassador Clarke for the excellent work he had done while presiding over the CDIP. The Delegation added that Member States had lost a wonderful Chair, but had gained a great new Director. It stated that the work that had been accomplished in the first three sessions of the CDIP, filled Member States with hope. The Delegation further stated that in line with efforts to speed up discussions on the coordination and monitoring mechanism, a number of Member States had submitted proposals by the July 31, 2009, deadline. The Delegation expressed hope that those proposals would be addressed by the Committee in its fourth session, so as to come to a decision on the matter. It therefore urged the Secretariat to distribute the document containing those proposals with sufficient time prior to the following meeting. The Delegation believed that it was necessary to speed up the work of implementation since all the themes under the Development Agenda were not fully contained in the 45 recommendations. The Delegation further believed that due to the cross-cutting nature of many of the recommendations, they

should not be limited to the CDIP and therefore needed to be considered in many of the WIPO Committees. The Delegation concluded by stating that the submitted proposals should therefore be incorporated into the agendas of the other Standing Committees of WIPO.

77. The Delegation of the Republic of Korea joined other delegations in congratulating the Chairperson of the CDIP. The Delegation commended the significant progress in concretizing the 45 recommendations during the three sessions of the CDIP and thanked Ambassador Clarke for all the accomplishments. The Delegation welcomed the adoption of the thematic approach by Member States and expressed hope that productive discussions would be undertaken on how to implement the projects under the 45 recommendations. It expressed its confidence that the new Chair would show leadership in driving the discussions forward. The Delegation of the Republic of Korea reaffirmed its commitment to actively engaging in the discussions in the CDIP and implementation of the recommendations. It advocated the need for a balanced approach in the discussions within the CDIP, and for an equivalent share of time to be allocated for the review and approval of newly submitted projects as for other agenda items. The Delegation believed that the review and approval of new projects should not be delayed by discussions on other issues. In that connection, the Delegation noted that several proposals which had been submitted at the previous CDIP session were still in the pipeline and were awaiting discussion. Those proposals included two that were submitted by the Republic of Korea. The Delegation suggested that in the following November session, all the newly submitted projects should be fully discussed so that implementation of those proposals could take place in a timely manner.

78. The Delegation of Panama wished the Chair success in dealing with the delicate tasks facing him and also thanked the WIPO Secretariat for the very useful documents provided. The Delegation valued greatly the commitment and personal interest of the Director General who had set as a challenge the successful implementation of the Development Agenda and its incorporation as a central focus of the Organization's work. In addition, it welcomed his vision in proposing new ways to permit application of the Development Agenda and thus benefit from the advantages offered by intellectual property as a tool promoting the much sought after social and economic development in countries such as Panama. The Delegation fully supported the statement made by the Delegation of Ecuador on behalf of GRULAC. The Development Agenda had been an excellent initiative and it appreciated the significant work done within the Committee in previous meetings. It highlighted the substantive progress made and expressed recognition for the efforts made since the outset, as the full implementation of the Development Agenda would help to reduce the divide between all countries in relation to knowledge of intellectual property and the capacity to provide responses in that area. Panama supported the management undertaken and valued the efforts made. It undertook to monitor implementation of the successes achieved and expressed its wholehearted support in cooperating in all areas and making best use of the momentum and synergy generated to obtain the anticipated results. In the same way as other delegations, it welcomed the thematic focus presented by the Secretariat to accelerate the process of applying the recommendations so that those projects were reflected in terms of concrete benefits for Member States. One point of great interest for the Delegation was directly related to the decision to measure not only quantitative, but also qualitative, results and those results should be shared to assess possibilities for further development and the creation of synergies. In order to initiate the tasks to be undertaken in relation to the Development Agenda, in specific terms the establishment of a diagnosis of the situation of intellectual property at the national level appeared to be of great interest, and had in fact been done with the support of the Inter-American Development Bank (IDB). It has provided access to a way to devise an

intellectual property strategy and, on that basis, action plans. Since the current situation could not be ascertained, it would not be possible to know where that could lead in the future and much less how to get there.

79. The Delegation of Pakistan sought clarification on Agenda Item 23 stating that it had made a proposal regarding the decision paragraph of the document in question. After having read the proposal to the meeting twice and not having heard any opposition, the Delegation had the understanding that the proposal was accepted. The Delegation sought a confirmation from the Chair as to the status of its proposal.

80. The Chair invited the meeting to comment upon the proposal of Pakistan. The Chair expressed concern with respect to the manner in which the discussions were taking place. He stated that moving from one Agenda Item to another caused confusion in terms of the work before the Assemblies. The Chair then confirmed that the floor had been given to the Delegation of Pakistan, that the issue on the table was Agenda Item 23 and that he was seeking to ascertain whether there were any objections to the proposal made by the Delegation of Pakistan. Given that there were no objections to the proposal in question, the Chair suggested that discussions be reverted to Agenda Item 14.

81. The Delegation of Germany stated that its understanding as well as that of some other delegations in the room, mainly from Group B, was that Agenda Item 23 had been adopted in compliance with the manner in which the document that was before the Assemblies was drafted, and with no amendments in that respect. It added that if the Delegation of Pakistan was desirous in amending the decision of the Assemblies then there would be a need to have an additional round of discussions on the matter.

82. In order to allow further discussion, the Chair stated that Agenda Item 23 should remain open. The Chair then suggested that the Assemblies address Agenda Item 14 again.

83. The Delegation of Morocco supported the statement made by Senegal on behalf of the African Group and by Tunisia on behalf of the Arab Group. It recognized the great efforts undertaken by the Chair Ambassador Clarke in presiding the Committee and appreciated the efforts made by the Secretariat and the excellent work that had been undertaken within the CDIP. The Delegation believed that the budget was insufficient and it looked forward to the budget being at the required level for the Development Agenda. The Delegation also welcomed the commitment made by the Director General to make the development dimension a core part of all activities of WIPO and appreciated the level of commitment of the Organization and Member States. It also welcomed the proposal by the Director General to present annual reports on implementation to the Committee.

84. The Chair informed the meeting that there was a proposal from the Delegation of Pakistan under Agenda Item 23 that was an addition to the document under consideration and gave the floor to the Secretariat.

85. The Secretariat noted that on Friday evening, the meeting reverted to Agenda Item 23 at the request of the Delegation of Pakistan which had wanted a paragraph to be included as a decision paragraph. After some consultations between the Coordinator of Group B, the Delegation of Germany, and the Delegation of Pakistan, the two delegations had agreed on a language regarding the decision paragraph that read as follows: "The General Assembly took note of the Report and urged the CDIP to endeavor to reach an agreement on a coordination

mechanism for monitoring, assessing and reporting on the implementation of recommendations and report to the General Assembly at its 2010 session.” To the Secretariat’s understanding, the two delegations have agreed to that language and consequently, the meeting may adopt the paragraph.

86 In the absence of any comments from the floor, paragraph 84 above, was adopted.

87. The Delegation of Argentina, referring to the statement made on behalf of GRULAC, highlighted the importance and need to implement fully the Development Agenda so that the development dimension was incorporated in all WIPO’s activities. It welcomed the dedication of the Secretariat in formulating the projects to apply the recommendations and expressed the wish that the requisite human and financial resources for the implementation of the Development Agenda were made available as part of the WIPO ordinary budget. The Delegation reiterated its interest in reaching agreement without delay on coordination mechanisms and arrangements for supervision, assessment and submission of reports so as to guarantee the effective implementation of the Development Agenda. It emphasized that the commitment of all Member States to taking part in a constructive dialogue was necessary in view of the forthcoming finalization of the CDIP’s program of work and for the complete implementation of the Agenda. The Delegation stated that Argentina attached particular importance to the recommendations relating to the establishment of standards, flexibility mechanisms, public policy and the public domain (category B), and added that the development dimension should be taken into account in all WIPO’s standard-setting activities. The Delegation trusted that the study of the flexibility mechanisms in accordance with the TRIPS Agreement would be finalized shortly. In its opinion, the integration of the development dimension would help to ensure that intellectual property rules were in keeping with public policy objectives, such as the protection of public health, biodiversity and access to knowledge.

ITEM 24 OF THE CONSOLIDATED AGENDA:

REPORT ON THE WORK CONCERNING THE ADVISORY COMMITTEE ON ENFORCEMENT (ACE)

88. Discussions were based on document WO/GA/38/4.

89. The Delegation of Pakistan thanked the Secretariat for its openness in the discussions and expressed its appreciation for the efforts of the Secretariat to accommodate the concerns of the Delegation.

90. The Delegation of Ecuador, speaking on behalf of the Member States of GRULAC, recognized the importance of the work carried out by the ACE. It was acknowledged that WIPO as a specialized agency of the United Nations in charge of intellectual property globally was the suitable place for this forum to have discussions on intellectual property issues. The Delegation wished to ensure WIPO’s role in the international discussions on drafting norms, principles and proceedings relating to intellectual property issues. The difficulties in reaching consensus should not be used as a pretext to justify the threat of proliferation of projects outside WIPO. In this regard, GRULAC would always support multilateral solutions negotiated within WIPO. The combat against intellectual property

violations could be successful if it took into account the economic and social dimensions. In this regard, the Delegation reiterated the proposal by GRULAC, made on February 25, 2008, which related to the need of having Recommendation 45 of the WIPO Development Agenda guiding the future discussions of the ACE. The Delegation stated that there was a need to go beyond repressive strategies in the enforcement of intellectual property rights, taking into account the social, economic and educative environments of Member States. The future work of the ACE should focus on identifying elements that encourage intellectual property violations, and focus on how to overcome these in order to build sustainable respect for intellectual property. The Delegation concluded with the expression of its full recognition of the work carried out by the Secretariat and reiterated its commitment to finding the best way to continue working with the Secretariat and other Member States in the framework of the ACE.

91. The Delegation of Egypt thanked the Secretariat for document WO/GA/38/4. It recalled that at the fourteenth session of the Program and Budget Committee, there had been agreement that an item on the Global Congress on Combating Counterfeiting and Piracy be included in the agenda of the forthcoming session of the ACE. The Delegation requested that this agreement be reflected in the Report.

92. The Delegation of Sweden, speaking on behalf of the European Community and its Member States, stated that infringements of intellectual property rights, in particular counterfeiting and piracy, had become a serious threat to many business sectors, to consumers and governments all over the world. Nowadays almost every conceivable product was being illegally copied, including sport utilities, tools, car parts and aircraft components, pharmaceuticals, film and music, electronics, foodstuffs, toys and luxury goods. Items in all these categories were threatened. It was emphasized that no product appeared to be too cheap to counterfeit and no brand was immune. The losses of legitimate right holders and the risk to public health and consumer safety were obvious. Unless measures were taken, globally and nationally, these criminal offences would continue to spread, risking that entire economic sectors could end up in the hands of criminal organizations. In order to meet this challenge, there was a need for better mobilization and coordination among all relevant stakeholders. Against this background, the European Community and its Member States welcomed the work carried out by the ACE since 2002. At the same time, the Secretariat was encouraged to step up its activities in this area and to respond to the best of its ability to the requests for technical assistance made in this connection by the Members States of WIPO. It was obvious that WIPO, the international organization responsible for intellectual property rights, needed an ambitious approach to this important matter.

93. The Delegation of the United States expressed its full support for WIPO's work in reinforcing cooperation among enforcement authorities and relevant organizations in this field. It applauded and supported WIPO's efforts to coordinate and enhance the enforcement aspects of its technical assistance work. The Delegation stressed that the Advisory Committee on Enforcement provided a valuable forum in which to exchange information and country experiences concerning the enforcement of intellectual property rights. It was pointed out that the experiences of individual countries shared at the last ACE meeting were informative and useful in providing Member States with information on developing awareness raising, training, and education programs in the field of intellectual property enforcement. The Delegation looked forward to the fifth session of the ACE in November which would focus on the contribution of, and costs to, right holders in enforcement, while taking into account Recommendation No. 45 of the WIPO Development Agenda. The

Delegation supported WIPO's technical assistance efforts promoting effective enforcement of intellectual property rights with particular emphasis on problem solving training modules.

94. The Delegation of South Africa recalled why the ACE had been formed. Its purpose had been to advise WIPO, in particular, the Director General. Its mandate was therefore limited to an advisory role, and should not be elevated to an enforcement committee. He further stated that if there was a wish to create such a committee, WIPO would have to take a conscious decision to create that enforcement unit, and the ACE process should be properly managed. The Delegation stressed that it was not against intellectual property enforcement, but believed that, if it was to be effectively done, within an enabling environment, a proper institution should be created and sufficiently capacitated to deal with enforcement.

95. The General Assembly took note of the contents of document WO/GA/38/4 and approved the suggestion made by the Delegation of Egypt, as indicated in paragraph 90, above.

ITEM 25 OF THE CONSOLIDATED AGENDA:

REPORT ON THE WORK OF THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)

96. Discussions were based on document WO/GA/38/5.

97. The Secretariat introduced document WO/GA/38/5 which dealt with the work of the Standing Committee on Copyright and Related Rights (SCCR).

98. The Delegation of Egypt expressed its satisfaction that the second meeting of the Stakeholders' Platform on the Visually Impaired Persons (the Stakeholders' Platform), would be held later in the year in Egypt. The great variety of participants and stakeholders reflected the open approach and universality of the Organization. It suggested that WIPO organize a Regional Seminar on Exceptions and Limitations for educational purposes and access to knowledge in Africa. All economic, humanitarian and social aspects relating to exceptions and limitations should be taken into account; therefore, a comprehensive approach on limitations and exceptions was highly recommended. The Delegation also supported the position expressed by the African Group during the eighteenth session of the SCCR.

99. The Delegation of Ecuador, on behalf of GRULAC, recalled that the 2008 General Assembly had requested the Secretariat to report on the deliberations of the SCCR on exceptions and limitations, and appreciated the new actions that had been initiated. It drew attention to the proposal presented by the governments of Brazil, Ecuador and Paraguay at the seventeenth session of the SCCR in regard to, a treaty to enable access to copyrighted material for the visually impaired and persons with reading disabilities, recalling that the treaty in no way undermined the work of the SCCR in the field of limitations and exceptions and specially in areas such as education, libraries and archives. The treaty proposal was consistent with the United Nations Convention on the Rights of People with Disabilities specially in regard to articles 9 and 13 of the Convention. GRULAC further urged WIPO to support United Nations in its activities to improve access to knowledge by vulnerable groups.

100. The Delegation of Brazil supported the views of GRULAC, and welcomed that the subject of Exceptions and Limitations was permanently on the Agenda of the SCCR. Brazil also took the same position as Egypt on having a broad approach on Exception and Limitations. The Delegation also hoped that the SCCR would be in the position to undertake technical and specific discussion on limitations and exceptions for people with reading disabilities.

101. The Delegation of Sweden, speaking on behalf of the European Community and its 27 member States welcomed that the subjects of the protection of audiovisual performers and protection of broadcasting organisations remained on the agenda of the SCCR. Also, continued international discussions on exceptions and limitations would be most useful. It expressed gratitude to the Secretariat for organizing national and regional seminars, and appreciated the valuable stocktaking of positions on audiovisual performances at the information meeting in connection with the seventeenth session of the SCCR. The background document by the Secretariat prepared in accordance with the decision of the last SCCR session could, in combination with the open-ended consultations, provide a possible solution to the current deadlock. The Delegation recalled the strong support of the process expressed by the Director General at the eighteenth session of the SCCR and would welcome a session fully dedicated to that issue. In the area of the rights of broadcasting organisations, the Delegation thanked the Secretariat for organizing an information meeting at the eighteenth session of the SCCR, and looked forward to receiving the study on the economic and social impact of the unauthorized use of broadcasting signals. It drew attention to the mandate of the 2007 General Assembly, which had reproduced the key conditions established by the 2006 General Assembly. Good efforts had been made to conclude an updated treaty for the protection of the rights of broadcasting organisations, and the failures of the SCCR should not be seen as unwillingness, but rather as a consequence of the very strict conditions set up by the General Assembly for convening a diplomatic conference. The SCCR should examine the possible ways to move the discussions forward, including through possible revision of the current conditions for convening a future diplomatic conference. The Chairman of the SCCR was praised for his informal paper on a treaty on the rights of broadcasting organizations. The forthcoming questionnaire and the document on exceptions and limitations should provide a sound basis for future discussions. Exceptions and limitations for visually impaired persons were urgent and a very important issue, and discussions on this issue should be based on concrete and factual elements which, with input from the Stakeholders' Platform, could provide effective and timely solutions in the area. The EC and its member States were willing to take part in WIPO's discussions in a positive spirit.

102. The Delegation of South Africa expressed confidence that the SCCR had the potential to reach concrete results and outcomes on the issues in the agenda. It expressed its commitment to play a proactive role in the discussion related to the recognition of the rights of audiovisual performers. The informal consultations organized by the Secretariat had been very useful and had provided an opportunity to undertake a similar process at a national level. As a developing country, South Africa was strongly interested in continued work on limitations and exceptions. Its Government was undertaking a process of revising its policies in the area of copyright, and the theme of exceptions and limitations would be incorporated in that exercise. The approach adopted by the Secretariat, to address the problems of the visually impaired on a piecemeal basis, might not be the best practice. The scope of that process should be expanded to cover other forms of disabilities as well.

103. The Delegation of Ecuador welcomed the work of the SCCR on exceptions and limitations. The on-going comparative study on exceptions and limitations for educational purposes, studies from civil society and input from the delegations would provide a good basis for discussion on the subject and strengthen the legitimacy of the copyright system as a whole. It urged the SCCR to move forward to recognize a set of minimum exceptions and limitations. According to statistics from the World Health Organization, among the 340 million visually impaired persons, a large segment was from developing countries, and the limited number of books available in accessible formats posed a serious problem. Exceptions and limitations should be in line with the fundamental freedom of all, and reflect respect for human dignity. The Berne Convention itself contained a number of exceptions and limitations which provided certain areas of limited privileges for certain purposes, such as education and culture, and also allowed creators free access to previously published works. These now had to be reviewed in light of the new digital realities where the large populations of developing countries had little access to knowledge, as well as to the Internet. The best way to regulate copyright and related rights and ensure their enforcement would be to keep them in harmony with generally accepted human rights and values. The SCCR should fill in the gaps in the national norms by establishing an international instrument that would set up minimum international standards enabling the international exchange of works in accessible formats.

104. The Delegation of Switzerland recognized that educational activities, libraries and archives and the needs of visually impaired persons were important issues and welcomed the on-going work on these issues. As it appeared from the conclusions of the eighteenth session of the SCCR, the exact scope of the discussions on limitation and exceptions had not yet been precisely defined. A questionnaire had been submitted to the members of the SCCR, which had been requested to send comments to the Secretariat in order that a revised version could be discussed and finally approved at the next session, a process in which the Delegation would participate actively in line with those conclusions. In view of the importance of the question, it also supported the intensified consultations and other initiatives regarding audiovisual performances which could lead to a positive outcome.

105. The Delegation of China appreciated the work done on limitations and exceptions and the protection of audiovisual performances. Further work had to be done on those issues in order to conclude new treaties. The Delegation expressed its continued support for the work on those matters.

106. The Delegation of Argentina supported the statement made by the Delegation of Ecuador, on behalf of GRULAC, regarding the initiative on a treaty on limitations and exceptions for the visually impaired based on document SCCR/18/5. That initiative needed to be closely related to the principles of the Development Agenda. As to the protection of audiovisual performances, it stressed the importance of exchanging information and organizing information seminars at regional and national level so as to encourage the protection of performers at the international level.

107. The Delegation of Serbia, speaking on behalf of the Group of Central European and Baltic States, expressed its support for further work on developing the international protection of audiovisual performances and broadcasting organizations, as well as on limitations and exceptions, particularly for the benefit of the visually impaired. The Delegation also supported the organization of future seminars and conferences on the three issues. Treaties on

audiovisual performances and broadcasting organizations would constitute a solid basis for the protection of performers and broadcasters.

108. The Delegation of Senegal, speaking on behalf of the African Group, thanked the Secretariat for the attention paid to the request of the Group regarding the organization of the next stakeholders' platform in a developing country, namely in Egypt. Establishing flexibilities to facilitate the access to knowledge had to be a non-discriminatory and open process. Therefore, the Group reiterated its position expressed at the eighteenth session of the SCCR regarding the need to adopt a broad perspective to grant exceptions for the benefit of all disabled persons, not just limited to the visually impaired.

109. The Delegation of Norway supported the on-going work of the SCCR and stressed its commitment to adopt a treaty on the rights of broadcasting organizations soon. It was also optimistic regarding the possibilities to finalize the long-lasting discussions on the protection of audiovisual performances at international level. Related rights established for audiovisual performances should be as close as possible to the rights granted under copyright proper. It endorsed the statement of the Delegation of Sweden, on behalf of the European Community and its member States, to organize a special session of the SCCR to fast track the finalization of the discussions on that issue and the speedy approval of a treaty. As to limitations and exceptions, it praised the work of the Stakeholders' Platform to find arrangements that would facilitate access to works for the blind, visually impaired and other persons with reading disabilities. The Delegation remained open to adopt a practical approach in that regard.

110. The Delegation of the United Kingdom firmly supported the statement made by the Delegation of Sweden, on behalf of the European Community and its member States. It reaffirmed its support for the work of the visually impaired persons' initiative of WIPO, including the Stakeholders' Platform. It looked forward to timely and effective progress in that area.

111. The Delegation of Mexico expressed its desire to see concrete results in the important areas of the international protection of audiovisual performances and broadcasting organizations, keeping up with the new technological challenges. It urged the SCCR to resume its negotiations on treaties regarding both issues. Due to the unfortunate deadlock at the Diplomatic Conference of 2000, audiovisual performances remained unprotected and performers did not receive appropriate remuneration. Broadcasting organizations also needed additional international protection in order to fight against cross-border signal piracy. Finally, the Delegation recalled the requests made during the eighteenth session of the SCCR to elaborate a specific study on the social and economic impact of the lack of signal protection for these entities, and to organize regional and national seminars regarding the proposed treaty on the protection of broadcasting organizations.

112. The Delegation of Colombia stated that the three issues under discussion were very fundamental matters. As to audiovisual performances, it recalled the pending work after the Diplomatic Conference of 2000 to adopt a treaty that recognized the rights of audiovisual artists. As to broadcasting organizations, the Delegation referred to its position expressed during the 2008 General Assembly regarding specific parts of the proposed draft treaty, such as the inclusion of clauses on cultural diversity and on safeguarding the public interest regarding competition law and technology transfer in neither separate articles nor the preamble, the need to eliminate certain definitions such as rebroadcasting, and to limit protection to traditional broadcasting and cable-casting. As to the issue of limitations and

exceptions, the Delegation emphasized that a mandatory international instrument would be neither relevant nor appropriate. Instead, some general norms could be established at national level in accordance with the Berne Convention.

113. The Delegation of Ghana supported the statement of the Delegation of Senegal, on behalf of the African Group. It remained committed to the on-going efforts made at the SCCR to move forward on the issue of limitations and exceptions. Broadcasting issues were a very vibrant matter in its domestic legislation as were the provisions on fair dealing and access to knowledge, particularly for the disabled and educational institutions. The current process on a treaty negotiation should move forward effectively so that policy makers could develop appropriate and balanced solutions at the national level.

114. The Delegation of Iran (Islamic Republic of) stated that it had actively followed all SCCR sessions and continued being constructively engaged in the discussions on audiovisual performances. It was of the view that the negotiations on a WIPO treaty on broadcasting matters should continue with a signal based approach, in line with the decision adopted by the General Assembly in 2007. A new treaty should concentrate on the rights of traditional broadcasters and cablecasters and should not create unnecessary layers of protection that could restrict access to knowledge by members of society. Finally, the Delegation stressed the importance of limitations and exceptions as key factors for the social and economic development of Member States, and advocated free access to knowledge and information.

115. The Delegation of Kenya commended the recent SCCR studies on limitations and exceptions. Its national legislation was currently under revision in order to include exceptions and limitations for the visually impaired, libraries and educational institutions. Some empirical studies had also been carried out in that regard at national level. It supported the work of the Stakeholders' Platform led by WIPO and endorsed the statements made by the Delegations of Egypt, South Africa and Ghana regarding facilitated access to copyrighted content, not only for the visually impaired but also persons with other disabilities following a holistic and systematic approach. Access to knowledge was a very important element for the social and economic development of countries. As to the audiovisual performances issue, it recognized that not much had been done so far in the SCCR, and looked forward to tangible results in the near future. Finally, it welcomed more regional and national seminars in the area of protection of broadcasting organizations.

116. The Delegation of Morocco supported the statement made by the Delegation of Senegal on behalf of the African Group. The Diplomatic Conference of 2000 had resulted in positive steps towards the effective protection of audiovisual performances at the international level. It urged the Secretariat to organize more consultations at national and regional level in order to foster understanding on all issues at stake. Enhancing the rights of artists was essential, particularly in relation to new technological developments. As to broadcasting organizations, it stressed that any international instrument on the matter should follow the decision of the 2007 General Assembly regarding signal based protection. More regional consultations were needed to move the discussions forward. Finally, regarding limitations and exceptions, discussions should always be inspired by a global vision to facilitate access to knowledge for all people in the world.

117. The Delegation of Angola expressed its continuing support for the work of WIPO related to visually impaired persons, but stressed the importance of taking into account other kinds of disabilities as well. It expressed support for continuation of the work on the

protection of broadcasting organizations, as well as for the holding of regional meetings on that subject, taking into account the needs of least developed countries.

118. The Delegation of Korea expressed its support for continuation of the work on the protection of broadcasting organizations, taking into account the requirements of the digital environment.

119. The Delegation of Japan expressed its appreciation for the many efforts undertaken to seek solution to pending issues in the area of copyright and related rights. Copyright infringements had become more complex and could be best tackled through international cooperation. It further expressed strong support for the ongoing work of the SCCR on the protection of audiovisual performances and on the protection of broadcasting organizations. The Delegation welcomed exchange of views in the area of exceptions and limitations, and noted that the Copyright Act of Japan had been amended in 2009 to include specific provisions concerning access to copyright content by disabled groups. The Delegation further emphasized that the issue of exceptions and limitations had to be addressed in a flexible manner in conformity with international instruments.

120. The Delegation of Australia expressed its continuing support for adoption of the draft treaty on the protection of audiovisual performances. It recalled that the recent open-ended consultations on the protection of audiovisual performances had proven to be very positive in understanding the status of various issues, and in identifying potential ways to move forward. In the light of that recent momentum and the on-going importance of the issue, Australia supported retaining that topic on the Agenda of the meeting of the next WIPO General Assemblies, and reaffirmed its commitment to contribute constructively towards the work of the SCCR in overcoming outstanding issues. On the protection of broadcasting organizations, Australia noted the prevalence of diverging positions, but was reassured that the information session of the eighteenth session of the SCCR had been valuable in promoting understanding of recent technological developments and the breadth of the issues, from a range of Member States perspectives. The commissioning of a study on the socio-political aspects of the unauthorized use of broadcast signals would also be very instructive. Australia expressed support for continuous work towards a treaty in that area, in an effort to address the prevailing and emerging technological issues. Discussions in the SCCR had advanced and there was willingness to show flexibility on possible ways of resolving divergent views. Since an international instrument was needed on exceptions and limitations, Australia supported the immediate action of the SCCR in addressing the special needs of the visually impaired persons, and believed that enhanced access to copyright materials for people with a disability had to be given priority. The Delegation further stated that domestic consultations had been initiated and would be pursued to contribute constructively to the next steps. The Delegation called for further consideration of the final questionnaire regarding exceptions and limitations.

121. The Delegation of Chile commended the work of the Chairman of the SCCR in advancing the discussions on the issue of limitations and exceptions, and hoped that the revised questionnaire on limitations and exceptions, and the fifth study on limitations that focused on education, would both be made available for the next session of the SCCR to be held in December 2009. The Delegation further recalled that five years after the first proposals made by the Delegation of Chile, it was now possible to assess the considerable progress that had been made towards improvement of the international standards. The proposal for a treaty to address the needs of visually impaired persons, tabled by Brazil, Ecuador and Paraguay, merited support and, together with the Stakeholder's Platform,

represented a major element of the agenda of the SCCR on limitations and exceptions. In August 2009 the IP Committee of the APEC Forum issued a report based on a questionnaire on limitations previously circulated to its members. The report, which constituted a useful reference for WIPO activities in that area, showed that countries with higher per capita income enjoyed a greater number of limitations to copyright. The Delegation assured that it would request the APEC Secretariat to send the report to the Chairman of the SCCR.

122. The Delegation of Paraguay, in supporting the statement made by the Delegation of Ecuador, expressed its satisfaction as a co-sponsor with that country and Brazil, of a proposal for a Treaty for Limitations for the Visually Impaired Persons. Such a treaty was a means to fulfil the Development Agenda of WIPO, the UN Declaration on Human Rights and the UN Convention on Persons with Disabilities. The SCCR to be held in December 2009 offered an excellent occasion to advance the discussions on that proposal.

123. The Delegation of the United States of America considered that it was necessary to update the rights of broadcasters, webcasters and cablecasters without prejudice to the public interest and the rights of the content owners. Despite the opinion expressed by the EU and its member States, the limited mandate given by the General Assembly in 2007 was appropriate. The Delegation said it would not be possible to move towards a Diplomatic Conference unless the SCCR agreed on issues such as the right owners entitled to protection, the scope of the rights and the limitations on the same. It was necessary to continue promoting enhanced accessibility for visually impaired persons. In that regard the Delegation called for a wide range of proposals and solutions to continue to be examined and discussed, including the treaty proposal tabled by Brazil, Paraguay and Ecuador as well as the initiatives under the Stakeholder's Platform. As regards limitations and exceptions in general, the Delegation opined that the framework of the Berne Convention was already working well, and no norm-setting exercise was necessary. The Delegation concurred that the adoption of a Treaty on Audiovisual Performances was a laudable objective. However, it pointed out that difficulties remained among the parties, especially in regards to the transfer of rights from the performers to the producers. It agreed that the Informal Open-Ended Consultations had facilitated a fluent and positive exchange among governments, and emphasised that the issue should be further discussed at the following SCCR.

124. The Delegation of India pointed out that during the eighteenth session of the SCCR, the Committee had undertaken a detailed discussion on the issue of limitations and exceptions, and suggested that the questionnaire reflected that legislations of Member States recognized a variety of limitations and exceptions, in accordance with their specific social, cultural and economic needs. The Delegation requested that the Secretariat expand further the list of questions, as such a process could represent a positive development towards reaching consensus on a common minimum standard of limitations and exceptions at the international level. The Delegation further welcomed the effort of WIPO in the context of the visually impaired persons, and consented to continue supporting the processes of the Stakeholders' Platform. However, India felt it was preferable to move further by concluding an internationally binding instrument, as proposed by Brazil, Ecuador and Paraguay. Regarding the protection of broadcasting organizations, India was committed to proceeding on the basis of the signal-based approach, in order to achieve an international agreement on that item. India welcomed the preparation of the study on the social and economic dimensions of unauthorized use of signals, deliberated during the eighteenth session of the SCCR. It further supported the organizing of regional and sub-regional events at the request of Member States. However, before convening a diplomatic conference it was necessary to further discuss the

issue and to achieve a broader agreement. The Delegation further reiterated its commitment to continue working on all the agenda items of the SCCR.

125. The Delegation of Algeria welcomed the efforts of the SCCR regarding the protection of audiovisual performers and broadcasting organizations. While thanking the Secretariat for the organization of the informal consultation, it also urged the SCCR to continue its work and to open a discussion on a possible treaty. It reaffirmed its commitment to contributing to the work of the SCCR in the field of the protection of broadcasting organizations and on the subject of limitations and exceptions.

126. The Delegation of Pakistan expressed hope for the SCCR to achieve concrete progress on the issue of limitations and exceptions, along with the specific process related to the visually impaired persons.

127. The Delegation of Uruguay, in supporting the statement made by Ecuador on behalf of GRULAC, emphasized that the proposed treaty for the visually impaired persons should be analyzed in detail, taking into consideration the importance of human rights recognized by other international instruments. It further stressed that a national solution was not always the best way to address the needs of the visually impaired. The Delegation urged WIPO to proceed in the process to solve practical problems and to reach an international agreement that would maintain the copyright system in harmony with other fundamental human rights. It further emphasized that the framework of the WIPO treaties was insufficient, as it did not take into account the international and moral obligations to grant impaired persons access to information and to creative works on equal conditions as persons not suffering from impairments.

128. The Delegation of Malaysia expressed its appreciation to the Secretariat for the work carried out on the three items of the agenda, namely exceptions and limitations, audiovisual performances and the protection of broadcasting organizations. The Delegation called for the retention of those matters on the agenda of the SCCR until concrete results were achieved. It was important to address audiovisual performances through various activities to conclude an international treaty. The SCCR was urged to continue its work on the issues reported in document WO/GA/38/5, in particular on the proposed treaty aimed at strengthening the rights of performers in their audiovisual performances. The Delegation pointed out that the draft treaty on the protection of broadcasting organizations was of paramount importance, although much concern had been expressed on substantive issues both by opponents and proponents of the draft treaty. Several regional seminars had been organized, and after much deliberation, compromise, accommodation and adaptation, the SCCR had settled on a signal based approach, and finally some headway had been made. That the matter had been retained in all the SCCR sessions only showed the relevance and significance of the treaty. The Delegation welcomed as laudable that WIPO was conducting a study on the socio-economic dimension of the unauthorized use of signals. Malaysia offered to host a regional consultation for the region, with the cooperation and assistance of WIPO. It also acknowledged the needs of visually impaired persons who required the sympathy of the world community, and urged that equitable access to protected works be provided for them. Malaysia looked forward to the conclusion of a treaty for visually impaired persons and to a report at the next General Assembly.

129. The Delegation of Guatemala supported the statement made on behalf of GRULAC, but stressed the importance of addressing as soon as possible the needs of visually impaired

persons. It therefore supported the proposal put forward by Brazil, Paraguay, and Ecuador. It pointed out that the United Nations had already highlighted the need to improve the access conditions for these people, and that this concern was also in line with implementation of the Development Agenda. Guatemala looked forward to progress on the Stakeholder's Platform and to the results of the questionnaire.

130. The Delegation of Ghana welcomed the study which had been commissioned on the protection of broadcasting organizations, and indicated that work in the SCCR had to be conducted on a comparative basis which would allow further progress. There was to be full commitment to continued discussion of that item on the basis of a signal-based approach, and to the holding of regional seminars to achieve progress to better protect broadcasting organizations. On the protection of audiovisual performances Ghana recalled the active role it had played, as well as noting the divergent positions in relation to the issue of transfer of rights. High expectations existed among the performers of its country for conclusion of an international instrument, although domestic legislation provided such protection through its Copyright Act. The Delegation commended the Secretariat for the various activities undertaken to promote discussion, and for the progress made in that area to help break the deadlock.

131. The Delegation of Nigeria recalled that in 2008 the WIPO General Assembly had decided that the issue of the protection of audiovisual performers should remain on the Agenda of the 2009 session of the General Assembly. In 2008 the General Assembly had also requested that the Secretariat report on the deliberations of the SCCR. At its session in May 2008 the SCCR had requested that an informal open-ended consultation take place on the issue of the protection of audiovisual performances. Those consultations took place in WIPO on September 8, chaired by Mr. Ositadinma Anaedu of Nigeria. On that occasion, all participating government delegations stressed their commitment to achieve an international instrument on the protection of audiovisual performers. The producers and performers briefed the delegations on the development of their on-going discussions on issues such as transfer of rights from the performers to the producers, and the different modalities for remuneration of actors. Furthermore, the delegations highlighted the importance of international protection of audiovisual performers for the cultural and economic development of their countries, and the promotion of cultural diversity therein. Some delegations hoped that the SCCR in December 2009 would recommend that an extraordinary session of the General Assembly take place in the first semester of 2010, for the purpose of convening a diplomatic conference at the end of that year.

132. The General Assembly unanimously decided to:

- (i) take note of the information contained in document WO/GA/38/5;
- (ii) encourage the Standing Committee on Copyright and Related Rights to continue its work regarding the issues reported on in this document; and
- (iii) request the Secretariat to report to the General Assembly on the continued work on these issues at its session in September 2010.

ITEM 26 OF THE CONSOLIDATED AGENDA:

REPORT ON THE WORK OF THE STANDING COMMITTEE ON THE LAW OF PATENTS (SCP)

133. Discussions were based on document WO/GA/38/6.

134. The Delegation of Ecuador, speaking on behalf of GRULAC, welcomed the fact that after a deadlock of a number of years, the Standing Committee on the Law of Patents (SCP) had now resumed its work and held already two important meetings. It was a particular point of pride that important progress had been achieved due to the chairmanship of a national of Chile, namely, Mr. Maximiliano Santa Cruz, whose experience and understanding had been crucial in the work of the SCP. The Delegation also noted that the SCP had shown realism and decided to move cautiously to the establishment of a work program. It had created a non-exhaustive list of points of interest for the members to which new topics had been added recently. The Delegation stated that the Report on the International Patent System was considered as a good basis for discussion by everyone and from which items could be taken for later study and discussion. More importantly, the SCP had agreed on moving forward on the discussion of certain items through the provision of studies by the Secretariat. More recently, studies had also been requested from experts outside the organization and those studies on specific topics would contribute even more to richer and more informed discussions. The Delegation observed that the progress made clearly demonstrated that not only did Member States wish and were able to make headway on substantive discussions, but that it could also be done by taking into account everybody's interests. The Delegation stated that it was aware that many members of the SCP were wondering what the point of the ongoing discussions was and whether the work should be accelerated. GRULAC believed that the two meetings held had not been a waste of time, but rather served to rebuild confidence which would contribute to enable the results of the SCP being the fruit of a realistic progressive approach, taking into account the interests of all Member States of WIPO. The Delegation noted that, naturally, any member of the SCP had the possibility of raising new issues for discussion and making proposals on how to work and how to achieve solutions to particular problems. Referring to the Conference on Intellectual Property and Public Policy Issues which had taken place in July, the Delegation welcomed the fact that the Conference had its origin in the SCP, and that its agenda had been intensely discussed and had benefitted from many contributions by Member States. The Delegation considered that the Conference profited from eminent speakers and a high level public participation, which showed the willingness to deepen the discussions on issues of public policy and the relationship between intellectual property and specific areas of human activity. The Delegation shared the view that such initiative, together with the creation of a Global Challenges Division and increasing contacts and co-operation between WIPO and sister organizations, would continue to contribute to solve more coherently those issues which constituted concerns for the international community.

135. The Delegation of Sweden, speaking on behalf of the European Community and its 27 Member States, welcomed the constructive work of the 13th session of the SCP, held from March 23 to 27, 2009. It was pleased that delegations had reached an agreement to instruct the Secretariat to carry out three expanded and two new preliminary studies regarding issues as identified in the summary of the Chair. The Delegation considered the progress thus made

an excellent basis for future discussions. It was certain that those discussions would be conducted with an open minded approach, and it hoped that they would enable the SCP to rapidly define a balanced work program, making it possible to proceed on the harmonization of patent laws.

136. The Delegation of Serbia, speaking on behalf of the Group of Central European and Baltic States, associated itself with the statement made by the Delegation of Sweden speaking on behalf of the European Community and its 27 Member States.

137. The Delegation of Iran (Islamic Republic of) appreciated the work of the SCP, especially the preliminary studies on the different subjects of the agenda of the SCP. In this regard, the Delegation considered that any kind of additional informative measures by providing comprehensive information and rich materials, which would help clarify the issues under discussions in the SCP, would facilitate the future work of the Committee. The Delegation also appreciated WIPO for the Conference on Intellectual Property and Public Policy Issues. The Delegation believed that the results of the Conference should be reflected and considered in the future work of the SCP, especially on the implementation of the harmonization of patent systems. The Delegation also believed that the harmonization of notions of substantive patentability requirements should contain some flexibility, considering the level of development of each country. Regarding the technical solution to improve better access to, and dissemination of, patent information, the Delegation was of the view that WIPO should provide technical assistance for developing countries to improve their national infrastructure in order to have access to such information.

138. The Delegation of Cuba considered that the SCP needed to continue discussing the various issues which had been proposed, in particular, issues of interest for developing countries, namely, the economic and social effects of the patent system, technology transfer, policies in respect of anti-competitive activities, sources of innovation, exclusions from patentable subject matter, exceptions and limitations, compulsory licenses, patents and health, the Convention on Biodiversity and other issues of public policy, as well as other matters relating to patents and the environment. The Delegation stated that particular importance should be given to climate change and alternative sources of energy from the perspective of developing countries so that they could have access to those technologies through technology transfer. Finally, the Delegation expressed its support to the statement made by the Delegation of Ecuador speaking on behalf of GRULAC.

139. The Delegation of Brazil expressed the wish to add a few comments to the comprehensive statement made by the Delegation of Ecuador speaking on behalf of GRULAC, which fully reflected the position of the Delegation. The Delegation welcomed the progress made in the SCP that had enabled delegations to have a profound exchange of ideas on the patent system and key aspects for developing countries to adapt their national models from their point of view. The Delegation considered that the discussions underway in the SCP on exceptions, limitations and exclusions were very important to the implementation of the Development Agenda. Therefore, the Delegation believed that it was very important that the studies reflected a plurality of views and did not overlook the plurality of systems that existed in the IP systems in the world. The Delegation stated that it was preparing its own contributions on patent information and south-south cooperation, and noted that, at the appropriate time, it would propose a work program on exceptions and limitations.

140. The Delegation of Trinidad and Tobago associated itself with the statement made by the Delegation of Ecuador speaking on behalf of GRULAC. The Delegation commended the SCP for taking the initiative of a step-by-step approach to getting the work done. The Delegation agreed that such approach and the preliminary studies were a good basis for further work. Therefore, it looked forward to the elaboration on those documents and to further studies with regard to public health, patentability of life forms and preliminary studies on transfer of technology and opposition systems which had proved useful to actual IP office operations. The Delegation appreciated the support given to the consideration of, among other things, the public policy implications of patents, climate change and food security. The Delegation anticipated that the end result of those deliberations would be the creation of an enabling commercial space that would encourage inventors to continue to innovate. The Delegation supported the SCP work on revising or reviewing the patent system, and it wished to endorse such progressive thinking in the hope that it would bring much needed advancement to the patent system.

141. The Delegation of Norway welcomed the report of the SCP, and supported the statement made by the Delegation of Sweden speaking on behalf of the European Community and its 27 Member States.

142. The Delegation of Uruguay supported the statement made by the Delegation of Ecuador speaking on behalf of GRULAC. The Delegation emphasized the importance of the future work of the SCP, which would continue its work taking into account the list of issues identified and ensuring a good balance with particular attention to matters of interest to developing countries. Furthermore, the Delegation requested information on the progress of studies which the Secretariat had commissioned to external experts, particularly on those pertaining to limitations and exceptions which would be prepared taking into account issues such as public health, education, research and experimentation and patentability of life forms, taking into consideration public policy, socio-economic and developmental perspective, bearing in mind the level of economic development of countries.

143. The Delegation of Guatemala supported the statement made by the Delegation of Ecuador speaking on behalf of GRULAC. The Delegation expressed the belief that the work had been enriched by the leadership shown by the Chair, Mr. Maximiliano Santa Cruz. In relation to the Conference on Intellectual Property and Public Policy Issues which had taken place in July 2009 in Geneva, the Delegation observed that the Conference had had a frank and far-reaching debate between participants which enabled the participants of the event to recognize the capacity of IP to promote inventions, creativity and technology transfer, and the need for producing social and economic benefits within the IP system. In the view of the Delegation, the Conference also recognized the importance of WIPO and its links to other relevant international organizations in the area of IP-related public policy issues, such as the World Trade Organization (WTO) and the World Health Organization (WHO). Further, the Delegation welcomed the fact that the SCP had commissioned a number of studies related to patents. In its view, those studies were important technical platforms to promote discussions within the Committee. Of particular interest to the Delegation in future meetings of the SCP were the discussions on issues such as exclusions, exceptions and limitations, as well as dissemination of information and the contents of patents. Finally, the Delegation said that it looked forward to the document on the technical solutions to enable a greater access to patent information and its broader dissemination.

144. The Delegation of Chile supported the statement made by the Delegation of Ecuador speaking on behalf of GRULAC. The Delegation observed that the SCP had managed to get back to work and had started meeting again after a deadlock of many years. Therefore, the Delegation welcomed the positive work towards the adoption of work program. In its view, the SCP meetings had served as an exercise to try to re-establish trust and confidence which would assist in achieving results through gradual and realistic work that could take into account the interests of all Member States of WIPO. With regard to the Conference on Intellectual Property and Public Policy Issues which took place in July 2009, the Delegation welcomed the fact that the Conference was proposed by the Committee itself and that the issues discussed had benefited from the contributions from WIPO Members. It was the opinion of the Delegation that the initiative of setting up the Global Issues Division would guarantee a more consistent approach. The Delegation thought that the carrying out of studies on specific issues would also assist in having a more well-informed discussion that would move forward on some issues and to avoid the mistakes that had been made in the past. The Delegation concluded that the Member States were able to make progress on substantive discussions in an inclusive manner, taking into account the interests of all.

145. The Delegation of India appreciated the deliberations in the SCP, and expressed its continued support for further discussions in the Committee. The Delegation also welcomed the studies proposed at the last session of the SCP. The Delegation stated that it had consistently proposed an inclusive approach to cover all the major issues in the SCP on an equal footing. The Delegation was not in favor of the harmonization of patent laws and considered that a one-size-fits-all approach was not appropriate, since countries were at different stages of development.

146. The Delegation of Panama supported the statement made by the Delegation of Ecuador speaking on behalf of GRULAC. The Delegation stated that the studies to be carried out must strike the right balance between various interests. The Delegation sought information concerning any progress made on issues referred to by the Delegation of Cuba, since they were directly linked to countries' national situations and national realities as a whole.

147. In response to the question raised by the Delegation of Uruguay on the status of the studies, the Secretariat noted that, as regards the study by external experts on exclusion, exception and limitations, which would be a massive and very important study, the process was underway. However, it could not yet, at this point, promise that that study would be ready for the next session, although it would surely be ready for the session after next. Concerning the other studies, the Secretariat stated that they would be submitted to the next session of the SCP, as two of them were practically finished, one was finished about three-quarters and one was half finished.

148. The General Assembly took note of the information contained in document WO/GA/38/6.

ITEM 27 OF THE CONSOLIDATED AGENDA:

REPORT ON THE WORK OF THE STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS (SCT)

149. Discussions were based on documents WO/GA/38/7 and 8.

150. In introducing documents WO/GA/38/7 and 8, the Secretariat made a brief summary on the work undertaken by the SCT in the areas of the convergence concerning representation of non-traditional marks as well as convergence concerning Trademark Opposition Procedures.

151. The WIPO General Assembly took note of the report of the SCT on areas of convergence concerning the representation of non-traditional marks reproduced in the Annex to document WO/GA/38/7, and of the areas of convergence concerning trademark opposition procedures reproduced in the Annex to document WO/GA/38/8.

ITEM 28 OF THE CONSOLIDATED AGENDA:

REPORT ON THE WORK OF THE INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE (IGC)

152. Discussions were based on documents WO/GA/38/9, 17, 18 and 19.

153. The Chair of the General Assembly invited the Chair of the IGC, Ambassador Gauto Vielman (Paraguay) to present a report on his tenure as Chair.

154. The Delegation of Paraguay delivered the following statement on behalf of Ambassador Gauto Vielman who was absent :

“At the 2007 WIPO General Assembly it was decided to renew the IGC mandate for two years until December 2009. During that period, the Committee has to date held three sessions, the twelfth, thirteenth and fourteenth. I was given the honor to chair the last two sessions, in October 2008 and June 2009.

“I wish to thank the distinguished Deputy Chairs, Mr. Abdellah Ouadhiri, from Morocco, and Mr. Lu Guoliang, from China, for their cooperation in carrying out this task. Likewise, I am grateful to the WIPO Secretariat for the invaluable support and consideration they have given me throughout my time as Chair.

“The most important thing I wish to highlight is the qualitative leap which has taken place in the Committee’s work which, during the last two sessions, became the subject of intense debate regarding the results it had produced, with a view to taking advantage of and giving form to the progress made since the Committee’s first session in April 2001. Perhaps the immediate effect of that qualitative leap is the situation emerging in the General Assembly, where there are difficulties because delegations are seeking with great assiduity to bring together the fruits of the efforts made over so many years, by producing concrete benefits.

“The problems in achieving a consensus regarding the Committee’s future work led me to hold numerous informal consultations with all the regional groups and certain individual delegations. These consultations took place between the two formal sessions which I was called on to chair. I submitted a report on these consultations at the beginning of the fourteenth session.

“It is also worth highlighting the successful operation of the Voluntary Contribution Fund which has allowed the participation of a significant number of indigenous and local communities. In this connection, I wish to express recognition to the Deputy Chair, Mr. Abdellah Ouadhiri, from Morocco, for having agreed to chair the Advisory Board for that Fund.

“In this sphere, it is also worth highlighting the active and growing participation of the NGOs representing indigenous and local communities. The mechanism adopted by the Committee for the accreditation of NGOs has led to an increase in their number to more than 200, many of which represent indigenous and local communities. As Chair, I have done everything possible to promote the participation of such communities in the sessions and have included them in the informal consultations I have held within the Committee.

“The contribution of the Secretariat through the preparation of studies and documents on substantive issues was also highlighted by numerous delegations. In particular, worthy of particular mention are the documents relating to the analysis of gaps in the protection of traditional knowledge and traditional cultural expressions, as well as substantive documents on genetic resources.

“Finally, I wish to highlight the high level of commitment and participation by delegations, especially those in the African Group, a region which led the debate with valuable written proposals and constructive statements during the sessions.

“It has been an honor for me to act as Chair of the IGC and I wish to thank sincerely the distinguished delegates of Member States for the privilege they have granted me. I am sure that soon the necessary solutions will emerge for the appropriate protection of these values which are so highly prized by all nations in the world, especially developing countries, as represented by genetic resources, traditional knowledge and traditional cultural expressions.”

155. The Delegation of Ecuador, on behalf of GRULAC, thanked Ambassador Gauto Vielman of Paraguay for his hard work as Chair of the IGC and the Secretariat for its efforts. GRULAC attached considerable importance to the work of the IGC as TK, TCEs and genetic resources should be protected nationally and internationally. The Latin American and Caribbean region possessed a great wealth of cultural and artistic traditions as well as a wide range of intellectual expressions and art, which had existed for thousands of years. The Group was aware of this wealth and had therefore actively participated in the IGC since its first meeting. The Group aimed to adopt appropriate international legal instruments to protect TK, TCEs and genetic resources for the benefit of all parties involved. It expressed its concerns regarding the deadlock the IGC was facing. In the meetings held since the 2008 Assemblies, Member States had not been able to define certain aspects of the future mandate of the IGC, despite considerable efforts made. The Group believed that extending the benefits

of the IP system to developing countries was one of the core objectives of the WIPO Development Agenda and this should be reflected in the decision of the GA on this agenda item. GRULAC acknowledged the valuable documents already produced on the protection of TK and TCEs and thanked the African Group for its proposal. It supported the renewal of the IGC mandate for the forthcoming budgetary biennium. The Group hoped for the development of a new and strong mandate for the IGC, one that included a work program and specific deadlines. This mandate should aim at developing a legal instrument or a *sui generis* protection system to prevent the misappropriation of TK, TCEs and genetic resources for the benefit of all parties involved.

156. The Delegation of Senegal, on behalf of the African Group, thanked Ambassador Gauto Vielman for his work as Chair of the IGC and the Secretariat for its efforts. For at least three reasons, the African Group supported the development of a legally binding international instrument or instruments. First, the importance of protecting TK, TCEs and genetic resources was already reflected in certain existing international instruments, such as the Universal Declaration of Human Rights and the CBD. Second, existing IP tools, based on individual rights, could not ensure protection of TK, TCEs and genetic resources and the cultural and economic values thereof. Third, there existed an urgent need to end the misappropriation of cultural heritage. The IGC should adopt a work program with a clear timetable, establish inter sessional meetings and conduct text based negotiations on TK, TCEs and genetic resources, to speed up its work. The IGC would then submit to the 2011 GA draft(s) of an international legally binding instrument and recommendations for the holding of a Diplomatic Conference. These also comprised the principles of the African Group proposal that gained support from many delegations. In response to the statement made by the Delegation of Ecuador on behalf of GRULAC, the African Group thanked GRULAC for its support. In conclusion, the African Group reiterated its firm intention to continue participating actively in the IGC in the hope to achieve specific results for the effective protection of TK, TCEs and genetic resources.

157. The Delegation of Serbia, on behalf of the Group of Central European and Baltic States, recognized the work done by the IGC to date. The Group understood and endorsed the importance of TK, TCEs and genetic resources for certain countries and regions. The Group fully supported the renewal of the IGC mandate for the next biennium. It urged Member States to constructively cooperate and negotiate on the content of the mandate. A common solution should be found after nine years of negotiation. The Group expressed its readiness to support the future work of the IGC on the substantive issues, on an outcome-oriented basis.

158. The Delegation of Sweden, speaking on behalf of the European Community and its 27 Member States, recognized the importance of the work carried out by the IGC. Although there was a common desire to renew the mandate of the IGC, the European Community was concerned over the inability to agree on the content of a renewed mandate, which should be renewed in a manner acceptable to all Member States and which could provide a double thrust to the work of the IGC. The European proposal comprised of two concurrent measures: (i) the preparation of and agreement upon a WIPO declaration and (ii) a refinement of the IGC's work flow. The development of a WIPO declaration on the value of TK, TCEs and genetic resources and their protection against misappropriation to be adopted by the GA would benefit the future work of the IGC for three reasons: (i) it could be achieved quickly; (ii) it could be broadly accepted by all Member States; and (iii) it would reaffirm WIPO's leading role on the three substantive issues. Such a declaration would not substitute the substantive outcomes of the work of the IGC, rather it would allow the IGC to move ahead in

parallel processes. The second aspect of the European proposal, an enhanced IGC mandate, was based on the African Group proposal, to accommodate the concerns of many delegations and indigenous communities. The European Community aimed to build on the assumption that in the long run no outcome of the IGC's work be excluded as it was premature to limit the outcome of the IGC to only one possible outcome. The European Community expressed its willingness to collaborate with others to accelerate the work of the IGC and to reach tangible results quickly. It emphasized its commitment to the work of the IGC and to the realization of the goals to be established under a new mandate. It reiterated that the aim of the European proposal was to find a solution that would be acceptable to all parties involved and enable the IGC to continue its important work. The Delegation expressed its readiness to discuss its proposal as well as the proposal submitted by the African Group with other delegations.

159. The Delegation of Tunisia, on behalf of the Group of Arab States, attached great importance to the protection of TK, TCEs and genetic resources, as these were closely linked to the economic, cultural and social development of the Arab States as well as other developing countries. The Group expressed its concern that the IGC had not yet brought about practical results, particularly, it had not managed to draft an international legally binding instrument or instruments to protect TK, TCEs and genetic resources. It therefore welcomed and supported the African Group proposal.

160. The Delegation of Burundi supported the statement made by the Delegation of Senegal speaking on behalf of the African Group and joined others in calling for an international legally binding instrument for the protection of TK, TCEs and genetic resources. The Delegation believed that WIPO was the forum to discuss this matter. Developing countries wished to see a fair distribution of the wealth arising from TK, TCEs and genetic resources. The Delegation expressed its concern about bio piracy and believed that developing countries were being treated in an unfair manner. Developing countries were part of the international community and should be entitled to receive recognition and remuneration for their creativity and inventions. The Delegation perceived the Secretariat as an arbiter, which should help countries to equally benefit from the IP system. It supported the renewal of the IGC's mandate with a clearly defined time frame, aimed at holding a Diplomatic Conference for the development of an international legally binding instrument.

161. The Delegation of Iran (Islamic Republic of) supported the African Group proposal and thereby the renewal of the IGC's mandate for the forthcoming biennium. A renewed mandate should include a clearly defined work program and timeframe to accelerate the work of the IGC and be aimed at text based negotiations for the development of a legally binding instrument or instruments to protect TK, TCEs and genetic resources. The Delegation emphasized the need to coordinate between the work of the IGC and that of other international bodies, such as the FAO and UNESCO. For instance, the CBD and the International Treaty on Plant Genetic Resources for Food and Agriculture recognized the sovereign right of States over their national resources by focusing on the fair and equitable sharing of benefits arising from the utilization of genetic resources. The IGC, on the other hand, after nine years of negotiations, had not yet delivered practical outcomes. The Delegation believed that there was a need to accelerate the work of the IGC by taking into consideration the principles recognized in other international bodies.

162. The Delegation of Argentina associated itself with the statement made by the Delegation of Ecuador on behalf of GRULAC and thanked Ambassador Rigoberto Gauto for

his excellent work and great dedication shown as Chair of the IGC. The Delegation firmly supported the renewal of the IGC's mandate for the 2010-2011 biennium, including therein the adoption of a program of work and timetable of activities. It believed that the future work of the IGC should be based on texts-and studies produced and that, likewise, new materials should be provided for negotiation of that subject which was complex and was being analyzed at the same time in various fora. The misappropriation of TK, TCEs and GRs was a subject of great concern for developing countries. The Delegation recalled Recommendation 18 of the WIPO Development Agenda, which urged the IGC to speed up the protection of GRs, TK and TCEs.

163. The Delegation of Peru attached great importance to the issues dealt with by the IGC, as Peru was one of many developing countries possessing a great source of biological and cultural diversity. Since 2000, IGC participants had invested a lot of time in examining the interface between IP and TK, TCEs and genetic resources. These issues were of vital importance to many countries and the IGC should therefore continue its work until an international legally binding instrument had been developed. The Delegation was concerned by the deadlock in the negotiations and the lack of substance faced by the IGC. It welcomed the African Group proposal on the renewal of the IGC's mandate and thought that this proposal was a good basis for the development of a stronger mandate. The importance of the IP system was largely justified by the understanding that IP was a key tool for social, economic and cultural development. For this reason, Peru actively participated in the IGC and other forums and shared its national experiences in protecting and promoting these issues. One example was the establishment of a National Committee for the Protection against Biopiracy, which examined issues of biotechnology and bio-resources of Peru and its indigenous communities. Although efforts had been made at the national level, Peru had still seen numerous cases of misappropriation of TK, TCEs and genetic resources. For this reason, Peru wished to see an international legally binding instrument for the protection of its biodiversity and associated TK. There was a need for clear objectives in the decision of the GA. The Delegation therefore called on all delegations to renew the IGC mandate with a view to developing a better IP system for the benefit of all, including the local and indigenous communities of developing countries.

164. The Delegation of Mexico supported the statement made by Ecuador on behalf of GRULAC. The protection of TK, TCEs and genetic resources was of vital importance for Mexico, as it was a country rich in customs, folklore and genetic resources. The Delegation recognized the importance of the work carried out by the IGC and the assistance provided the Secretariat in making available of materials on the protection of TK, TCEs and genetic resources, including the draft provisions and gap analyses. For Mexico, the renewal of the IGC mandate was a key issue, and the future work of the IGC should focus on the development of an international legally binding instrument or instruments for the protection of TK, TCEs and genetic resources.

165. The Delegation of Sri Lanka thanked Ambassador Gauto, the Chair of the IGC, for his work and efficient conduct of the IGC sessions and also thanked the Secretariat for its contribution to the work of the IGC. A deadlock faced by the IGC was not favorable to many Member States. The concerns expressed by the developing countries in the IGC needed to be addressed urgently and constructively. The protection and preservation of TK, TCEs and genetic resources were an important component for economic and social development. For this reason, the Delegation supported the renewal of the IGC's mandate. A renewed mandate should be based on a well-defined text and lead the work of the IGC to the development of an

international legal regime, as indicated in the African Group proposal. In parallel, many other measures were taken at the national level for the preservation and management of TK, TCEs and genetic resources. Such measures should be identified and properly executed with the assistance of WIPO. The Delegation remained positive and committed to engage in an open and transparent dialogue on the issues. It hoped that a political commitment would be shown by all Member States in order to find a way forward.

166. The Delegation of Guatemala stated that since the IGC did not reach an agreement on its future work, it was up to the GA to deliberate on the renewal of the IGC mandate for biennium 2010-2011. During the high level segment, the Vice Minister of Guatemala attached vital importance to the work of the IGC. Guatemala comprised many ethnic groups, including indigenous peoples of Maya descent. To respond to the interest of these communities, an international legally binding instrument was needed to prevent misappropriation of TK, TCEs and genetic resources. Equally important was the issue of access and equitable sharing of benefits for the utilization of genetic resources. The Delegation welcomed and supported the African Group proposal. The work of the IGC should be text-based and lead to the adoption of an international legally binding instrument or instruments. It should be carried out under a clear work program and through the holding of inter sessional meetings. The Delegation expressed its willingness to work constructively to overcome the remaining divergences of Member States and to overcome the deadlock faced by the IGC.

167. The Delegation of Bolivia (Plurinational State of) supported the statement made by the Delegation of Ecuador speaking on behalf of GRULAC. It thanked Ambassador Gauto Vielman for his work as Chair of the IGC. Bolivia was one of the 25 most diverse countries in the world and was therefore concerned that the international IP system had yet to develop an instrument to protect TK, TCEs and genetic resources. Through the granting of patents on knowledge unfairly acquired, the IP system favored the misappropriation of TK and TCEs, which was to the detriment of developing countries and its indigenous communities. After nine years of deliberations, many IGC participants saw the African Group proposal as the most constructive way to move forward in the development of a *sui generis* mechanism for the protection of TK, TCEs and genetic resources. It was important that the future work of the IGC considered the development of such international legal system, which would be in connection with human rights and the rights of indigenous peoples. In Bolivia, these issues had already been incorporated in its Constitution. The Delegation therefore urged Member States to positively respond to the concerns of developing countries by renewing the IGC mandate.

168. The Delegation of South Africa fully supported the statement made by the Delegation of Senegal on behalf of the African Group. It was necessary to have a binding instrument to benefit all, and most importantly, developing countries. As the Honorable Deputy Minister of Trade and Industry of South Africa had said, sufficient information had been gathered. Therefore, it was necessary to approach this work with some sense of urgency and renewed energy to bring it to finality. It was necessary to put strict timelines and ensure that progress was monitored consistently. South Africa remained firm in its position that substantive debates on the three issues were exhausted and the only aspect which remained for the IGC now was to commence text-based negotiations aimed at the conclusion of an internationally legally binding instrument or instruments for the protection of TK, TCEs and GRs. The substantive text which was to constitute the basis for the text based negotiations had been submitted by the African Group at the 14th session of the IGC and was contained in document

WIPO/GRTKF/IC/14/9. It was clear that the current mandate no longer sufficed to ensure political will to accelerate the work of the IGC. In this regard, South Africa supported the proposed language of the African Group for the renewal of the IGC mandate, namely: (1) the adoption of a clear work program and clear timeline as highlighted in the African Group proposal leading towards a Diplomatic Conference; (2) a clear commitment for text-based negotiations for an internationally legally binding instrument(s) based on the legal text contained document WIPO/GRTKF/IC/14/9; (3) the establishment of intersessional work as proposed by the African Group with the aim to accelerate the work of the IGC discussing pertinent issues of definitions, beneficiaries, prior informed consent, moral rights and *sui generis* options. A legally binding instrument/s constituted the sole alternative for an effective and comprehensive solution to the gross misappropriation of TK, TCEs and GRs within the IP context. While it was regretted that no consensus had been reached at the 14th session of the IGC, the Delegation remained committed, as it was at the inception of the IGC, to the establishment of a legally-binding international instrument/s. The African Group proposal had catalyzed greater participation and support from like-minded countries. The Delegation called upon all countries for their support.

169. The Delegation of Algeria called for the renewal of the IGC's mandate based on new terms. The Delegation underscored the importance of having discussions based on a definite plan of action and a definite timeline. The Algerian Delegation furthermore, wished to see, at the end of such discussions, that a binding international law instrument or instruments was adopted.

170. The Delegation of Norway thanked the WIPO Secretariat for its dedicated service. It favored the renewal of the IGC's mandate. The Delegation welcomed the EU proposal as submitted by Sweden and expressed the view that other proposals also had considerable merit. The Delegation of Norway advised that the success of the IGC be measured beyond its own performance and that developments at the national level were indicators of the success of IGC. The Delegation gave as an example a newly adopted Biodiversity Act of Norway and patent reforms which had used the IGC's definition of "traditional knowledge".

171. The Delegation of China thanked the Secretariat for its constructive work and noted that the IGC agenda item was of wide significance for countries around the world, especially developing countries. It was a matter of preserving and promoting GR, TK and TCEs, a source of innovation maintaining bio and cultural diversity and automatically ensuring global balance in sustainability. With active participation and promotion from the Member States, a lot of work had been done by the IGC for the protection of TK, TCEs and GRs during the past nine years. A lot of work had been done by the IGC but there was still a long way to go in terms of achieving the desired goals and expectations. It was hoped that progress could be made on the substantive work of the IGC. Therefore, the Chinese Delegation agreed with the proposal of the African Group on the renewal of the IGC's mandate. China supported the renewal of the IGC mandate for the 2010-2011 biennium and hoped that adjustments could be made to the working approach IGC took to ensure fruitful outcomes for setting up a clear work program and time table and to conduct text-based negotiations and consultations towards a legally-binding instrument. The Delegation hoped that Member States would work together to further discuss and enhance the IP protection of TK, TCEs and GRs, in parallel with the discussions held in other international fora and that progress would be made at international, regional and national levels. The Delegation stated it would work with other delegations to make a contribution in a constructive and a proactive manner.

172. The Delegation of Yemen supported the statement given by Tunisia on behalf of the Arab countries. It supported the renewal of the IGC mandate for better protection of TCEs and TK. The Delegation underscored that Yemen is rich in TK/TCEs resources and that IGC should aim at a binding international law instrument (s). The Delegation supported the proposal by the African Group.

173. The Delegation of Kenya supported the statement made by Senegal on behalf of the African Group. The Delegation underscored the fact that TK and TCEs had assumed a vital role in global trade. The Delegation further underlined that there had been commendable efforts at regional and national levels to legislate for protection of TK and TCEs. Such efforts notwithstanding, the trans-border nature of IP required minimum standards of protection in all countries and that TK and TCEs were not an exception. It was now time to synthesize studies conducted in the past ten years with the aim of coming up with a binding international law instrument(s). The Delegation underscored the fact that Kenya was in the process of establishing relevant laws for the protection of TK and TCEs. The Delegation of Kenyan further stated that it would consider it imprudent to support a program not likely to produce tangible results. It emphasized the importance of time bound, text-based negotiations leading to a binding international law instrument(s)

174. The Delegation of Canada stated that it had been an active participant in the IGC sessions since the IGC's inception. The IGC was the most appropriate forum to hold substantive discussions on GR, TK and TCEs. The Delegation explained that it was concerned with the failure to reach consensus at the 14th session of the IGC on a proposal for the extension of its mandate. The Delegation favored the renewal of the IGC mandate with a defined work program that would seek to achieve concrete international outcomes.

175. The Delegation of Panama supported the renewal of the IGC's mandate. It underlined the importance of a *sui generis* law for protection of TK and TCEs. It favored development of an international law text or instrument binding on all countries that would be submitted to the General Assembly. The Delegation stated that the IGC would need to conduct inter-sessional meetings for this purpose.

176. The Delegation of Malaysia stated that no consensus at the 14th session of the IGC should not be seen as an endpoint of the IGC but a positive commitment towards the IGC. The Delegation supported the African Group's proposal on the renewal of the mandate of the IGC for the 2010-2011 biennium and also fully supported the three underlying principles of the African Group's proposal, namely a legally binding instrument, a text-based negotiation, and a definite timeline. The Delegation stated that an internationally legally binding instrument was an important consideration and that text-based negotiations were a good starting point. It also suggested that the IGC use the draft legal text prepared in Cochin as a starting point. The Delegation concluded that a concrete international regime should be established and a clear time frame should be set up for reaching this objective.

177. The Delegation of Angola subscribed to the statement made by the Delegation of Senegal on behalf of the African Group. It believed that intensive work had already been done and supported renewing the mandate of the IGC. Future work should be on the basis of the existing texts and the three main components contained in the proposal of the African Group. The IGC's work should lead to the adoption of a legally binding international instrument or instruments for the protection of TK, GR and TCEs from the piracy, misuse and misappropriation.

178. The Delegation of Nigeria supported the statement of the Delegation of Senegal on behalf of the African Group and it noted that there had been overwhelming support for this proposal. The Delegation regretted that the IGC had not been able to meet the expectations of the General Assembly for the IGC to accelerate work on the protection of TK, GR and TCEs. It was instructive that many delegations had not been able to reach consensus on the future work. However, the constructive and consistent approach of the African Group in formulating texts and showing reasonable flexibility ensured that the work of the IGC advanced significantly. The Delegation noted that immense work had been done within the IGC and acknowledged the resourcefulness of the Secretariat and the leadership of the IGC. The Delegation supported the extension of the mandate of the IGC with a view to evolving a legally binding international instrument, because it had been shown conclusively from the responses of the various delegations to the list of ten issues that was formulated within the previous sessions and the “gap analyses”. With regard to the areas where the delegations had not reached sufficient convergence, all delegations should help accelerate the work of the IGC by showing sufficient flexibility and accommodation to allow concrete outcomes from the renewal of the mandate as proposed by the African Group. The Delegation stated that the work of the IGC had been enriched by the various national and regional experiences so it was the ripe time to engage in text-based negotiations to facilitate the process for the next stage. The Delegation welcomed the timeframes proposed by the African Group to accelerate the work towards evolving a legally binding instrument or instruments. It expressed its full support for the proposal of the African Group that a legally binding international instrument or instruments be submitted to the General Assembly in 2011. In conclusion, the Delegation reaffirmed the danger in the continued misappropriation of TK, GR and TCEs and stated it would be engaged constructively in finding the solutions to benefit the local communities and their countries.

179. The Delegation of Trinidad and Tobago associated itself with the statement made on behalf of GRULAC. It believed that the IGC had been steadily working toward consensus. The Delegation highlighted that the WIPO Voluntary Fund ensured wider participation from several contributors whose views would prove to be invaluable at this level of discussion. It stated there was a keen interest in this area on all sides because TK, folklore and GR touched delicate aspects of the respective identities as peoples and nations. Many nations were pursuing national and regional measures. For example, in the Caribbean region a regional study was in progress and in Trinidad and Tobago a legal framework at the national level was also being pursued. However, such strategies provided only a few partial measures to address the control and ownership of TK, GR and TCEs. The Delegation had no doubt to renew the mandate but it could not accept any notion of allowing all this momentum to be lost when the universal potential benefits were within its grasp. The Delegation stated their countries were rich in traditional healing practices that involved many natural medicines, herbs and rituals, the indigenous peoples, indigenous practices and TCEs and even the modern interpretations of some of these expressions. Many of their TK and GR were extracted and ended up in some products or pieces of research owned and produced by foreign entities without payment of monetary compensation to the communities where the knowledge was extracted. Therefore, the Delegation strongly supported the extension of the IGC mandate and incorporated the discussions on the development of a possible legally binding international instrument based on all the previous studies and discussions.

180. The Delegation of Colombia expressed its support for the renewal of the mandate of the IGC taking into account the cross-cutting nature of the work and the aim of achieving the best

way of protecting these very important TK, GR and folklore. The Delegation stated it was extremely important to continue with the work of the IGC in time to find the way of having legally binding instrument or instruments. The IP framework for national and economic goals was extremely important for dealing with these issues.

181. The Delegation of Australia strongly supported the extension of the mandate for the IGC since its country had a vibrant living indigenous culture and an established and growing biotechnology industry. It was deeply disappointed in the failure of the IGC to agree on the terms of an extended mandate, notwithstanding that all Member States agreed that the mandate should be renewed. The Delegation was concerned that Members' entrenched positions continued to make practical outcomes hard to achieve. The issues discussed in the IGC had commercial and cultural implications for both developed countries and developing countries. These issues also had been identified as a means of broadening IP to make it more relevant to the interests of people in the developing world and to indigenous populations everywhere. The IGC was the appropriate forum for ongoing consideration of these issues because it was equipped with the necessary technical expertise within a multilateral context. Therefore, all Member States were urged carefully to consider demonstrating the flexibility necessary to agree on the terms of an extended mandate. Even though there were wide-ranging interests at stake and significant gaps to bridge, it was still vital that a consensus be reached after negotiation. The Delegation had built on the original and useful work done by the African Group and tabled a proposal for extension of the mandate of the IGC. The proposal included (1) a commitment to text-based negotiations towards a real and practical outcome, including the possibility of a legally binding instrument; (2) provision for intersessional work sessions to accelerate progress; (3) focused work, building on the existing work of the IGC and guided by the full array of WIPO documents; and (4) submission of text for an international instrument to the 2011 General Assembly. The Delegation believed this proposal struck a compromise between the interests of Member States and provided a way forward for continued work in the IGC.

182. The Delegation of El Salvador supported the statement made by the Delegation of Ecuador on behalf of GRULAC. The Delegation recalled that the work of the IGC was for developing countries to effectively protect TK, GR and TCEs at the international level because the fair sharing of benefits arising from these resources was needed. The Delegation suggested putting the priority on national work and then going on with a new international strategy through international instruments. Consensus should be reached on the renewal of the mandate of the IGC for the next biennium. The Delegation suggested having a clear work calendar setting specific targets and objectives.

183. The Delegation of Ecuador underlined the importance of the work taking place within the IGC with respect to the preparation and analysis of documents in the area. Ecuador was a mega-diverse country, both naturally and culturally, and was the second country in the world in terms of the variety of its endemic vertebrates per unit of territory, the third in terms of diversity of amphibians, and the fourth in terms of sorts of birds, with 35% of all species of hummingbirds of the planet, therefore Ecuador being called "the hummingbird country". The Delegation said that Ecuador had an enormous quantity of vascular plants, which in the future would be extremely useful in the production of pharmaceuticals. The Delegation also said that Ecuador had a wide range of social forms reflected in the 14 nationalities and 18 indigenous peoples, Afro-Ecuadorians and *montubios*, in addition to the rural populations, which maintained an important variety of different social mixtures and social cultural forms, where one could see the multiplicity of systems of organization, customs, cultural

expressions, idioms, food, music, medicines, etc., and other expressions which were of tremendous wealth for Ecuadorian peoples. The Delegation affirmed that that wealth needed to be respected. It also said that one should learn to live in harmony with nature, since this was the only way of achieving *sumac kawsay* or well-being. The Delegation said that Ecuador's heritage had been subject to bio-piracy, which had caused tremendous natural and cultural damage to the country, some of which had been extremely serious, as endangered species had been destroyed. The Delegation gave the examples of the extinction of epibatidine, *ayahuasca*, and of the micro-diversity of the Galapagos waters. The Delegation affirmed its wish to continue the work of the IGC, and to support the continuation of its work under a mandate designed to achieve an international legally binding instrument to protect GR, TK and TCEs. At the same time, the Delegation supported the proposal of the African Group. The Delegation hoped that the theme would continue to be dealt within WIPO, because IP was a transversal axis for the protection of natural and cultural resources, and because that important multilateral forum was meeting the needs of Member States in a fair, equitable and inclusive manner. The Ecuadorian IP Institute was working on developing a number of different ways of protecting such heritage. For example, the Delegation mentioned the implementation of a biodiversity and TK database, training on intercultural issues, and the development of *sui generis* legislation for the protection of collective knowledge, ancestral knowledge, TCEs of all nationalities and indigenous peoples, including the *montubio* people, the Afro-Ecuadorian peoples and the ancestral communities of Ecuador. The Delegation said that Ecuador was developing a national biodiversity and TK protection strategy, including several processes and projects, which involved the State, specialized organizations and civil society, and which was based on the conviction that to preserve and use biological and cultural diversity in a sustainable manner was a source of wealth, which gave rights to new opportunities to alleviate poverty, stimulate the national economy, and improve the quality of life. The Delegation said that IP should serve as a mechanism for the development of the peoples.

184. The Delegation of Egypt associated itself fully with the statement of the African Group. The Delegation reiterated its intervention from the first session of the IGC: the creation of the IGC was a historic opportunity to find a balance in the international system for the protection of IP. It had articulated the great hopes in the work of the IGC and its contribution towards the creation of an international protection system which would have taken due account of all the interests and requirements of all parties. The Delegation had then recalled that many countries, particularly developing countries, held a great heritage of TK, folklore and GR, which had for many decades been exposed to illicit exploitation in many fields by certain foreign parties, particularly in medicine, industry, art, music, literature and other fields. The Delegation had noted that the past years had witnessed an upswing of such exploitation, particularly with the scientific advancements of modern technology. The Delegation had considered GR, TK and folklore, as well as IP rights related to them, to be vital topics for developing countries and their peoples. The Delegation had stated that these topics expressed the deficiencies in the international system of IP, because the system was incapable of providing effective protection for a great part of human creation, namely TK and TCEs. Moreover, the Delegation had maintained that it had not found the necessary concordance between international instruments in the field of genetic engineering and that the benefits arising from the use of GR were not being fairly distributed. Finally, the Delegation had stated that the IGC would have to submit recommendations so as to set up a comprehensive global framework for the protection of GR, TK and EoF and to guarantee an equitable sharing of benefits. The Delegation said that, almost a decade later, the IGC had seen the elaboration of documents and papers, of gap analyses and refinements of issues, yet what had remained

constant throughout those past years was that work towards the international protection of GR, TK, and folklore had gone nowhere beyond rhetoric and promises of prioritizing the issue. The IGC had proven more of a talk shop where positions were restated without any tangible progress towards the evolution of agreed language. The Delegation believed that a stage had been reached where an important decision needed to be made on where the IGC should go. The Delegation asked whether there was political will to cater for the interests of the vast majority of Member States. The Delegation claimed that the mandate of the IGC would be renewed with the concrete aim to advance on text-based negotiations, with a clearly defined work program for a legally-binding international instrument(s). The Delegation cautioned against continuing negotiations so as not to upset the arrangements of private stakeholders that do not wish to see a concrete legal regime for the protection of developing countries' GR, TK and folklore. The Delegation said that the entire Uruguay Round of multilateral trade negotiations, which had included the elaboration of the state-of-the-art international instrument on the protection of IP rights – negotiated and adopted outside of WIPO, among other major international legally-binding agreements – had lasted eight years. The Delegation said that the IGC, dealing only with a sub-set of IP rights, was nowhere near after a decade of discussions, and it did not believe that it would ever make progress in the absence of political will from the minority of Member States that were yet to show any flexibility. The Delegation fully supported the proposal presented by the African Group, and supported by like-minded countries, for the renewal of the IGC mandate on the premise of an internationally binding legal instrument or instruments and text-based negotiations. The Delegation also said that it was ultimately envisaged that at the end of that renewed mandate, a date for convening a Diplomatic Conference would be set.

185. The Delegation of Turkey stated that the item on IP and GR, TK and folklore was an area where patents, copyright and other areas of IP were joined together. This, the Delegation claimed, added to the difficulties encountered in the discussion of the item. The Delegation said that it had actively participated in the discussions of the IGC, recognizing the importance of the item for developing, developed and least developed countries. The Delegation added that at the last session of the IGC, no agreement had been reached as to the future mandate. The Delegation said that the mandate should be renewed. It also said that, concerning the content of the mandate, it was important to have international minimum standards to preserve, protect and develop TK, GR and TCEs. The Delegation said that the future mandate should facilitate the negotiations, which should be more focused and text-based.

186. The Delegation of the United States of America recorded its deep disappointment that the WIPO Member States had been unable to reach agreement at the last session of the IGC on the terms of a renewal of its mandate. The Delegation said that it shared with other WIPO members a strong preference for the renewal of the mandate of the IGC. The Delegation stated that, to facilitate discussions, it had submitted a proposal for the renewal of the IGC mandate. It was very important for the IGC to complete its unfinished work from the current biennium. The Delegation believed that the IGC should work toward consensus in the following two years on the draft objectives and principles, the definitions and the possible gaps in the international framework for the protection of TK, folklore and GR. The Delegation said that working toward consensus on the basis of the existing IGC mandate was consistent with the elements of the EU proposal. The Delegation said that reaching consensus on the draft policies and principles was an important first step that could lead to an international instrument, such as a declaration or recommendation. The Delegation also stated that any renewed IGC mandate should include benchmarks for achieving those goals, along with reporting requirements to the General Assembly. The Delegation saw some

positive elements in all four proposals submitted for renewal of the IGC mandate and before the General Assembly for consideration, and hoped that a solution could be found that was suitable to all Member States. With regard to a possible way forward, the Delegation said that the IGC mandate should contain a number of elements: (1) a need to accelerate the substantive work for the next budgetary biennium, focusing on the uncompleted work under its previous mandate; (2) a commitment to work toward consensus on the draft objectives and principles, definitions and the possible gaps in the international framework for TCEs and TK; (3) an agreement to work on TCEs, TK, and GR on an equal basis and a commitment to work towards consensus on concrete, achievable international outcomes; and (4) a requirement to present a progress report and appropriate recommendations on its substantive work to the 2010 General Assembly and a progress report and appropriate recommendations on proposed international outcomes to the 2011 General Assembly. The Delegation said that the IGC mandate should not contain certain elements, namely: (1) it should not incorporate commitments to start text-based negotiations without first reaching agreement on the content, nature, format and status of the text; (2) it should not prejudge any international outcome; (3) it should not contain commitments for a work program that exceeds available WIPO resources available for the IGC. With an agreed work plan in advance, the Delegation said that the IGC should be able to make substantial progress in two one-week sessions per year, as is the norm for other WIPO committees. The Delegation said that work on several difficult subjects had been underway for many, many years, indeed decades, and continued in WIPO, such as the rights of audiovisual performers, substantive patent law harmonization and the rights of broadcasters. The Delegation said that expectations should be tempered, as such difficult issues as those under consideration in the IGC were carefully examined. The Delegation claimed that it stood ready to constructively engage with the Chairman and other delegations to find a way forward that was acceptable to all.

187. The Delegation of Morocco fully endorsed the statement made by the African Group, including the preparation, on the basis of texts, of a legally binding international instrument. The Delegation said that for many years it had insisted on the recognition of the importance of the three fundamental questions outlined by the African Group, which applied to TK, GR and TCEs. The Delegation claimed that those countries were very rich in creativity, in TK and in cultural heritage, and that they had always attached utmost importance to the work of the IGC. The Delegation stated that it had put a great deal of hope in the work of the IGC, and hoped to achieve conclusive results of benefit to all. Something had to be done to protect these resources against illicit use, misappropriation, piracy and other forms of abuse. The Delegation highlighted the need to elaborate a legally binding international instrument. It was important to modify legislation at the international level, because often the ability of national legislation to cope with those problems was limited. The Delegation said that it was in the interest of all to renew the mandate of the IGC, with specific objectives in mind and a clearly defined timetable. The Delegation claimed that, within WIPO, issues had been discussed and negotiated, including individual and collective rights issues. The question of the rights of indigenous people had been more difficult, as their rights were not covered by existing international legal provisions. The Delegation said that if they were to be covered, the overall vision had to be changed and a more appropriate way of protecting them should be found. The Delegation said that it had on the statute books recognition of the urgent need to protect those rights, and that this was legitimate in every respect. The Delegation exhorted Member States to be open-minded and flexible, because the request concerned the elaboration of an international instrument very similar in nature to those already held and administered by WIPO. The Delegation hoped that a Diplomatic Conference could be held.

188. The Delegation of Pakistan expressed its disappointment at the lack of progress and commended all IGC participants for their patience. The Delegation pointed out its concern over the continued impasse in the work of the IGC and that clearer principles and norms to protect GRs, TK and TCEs and address misappropriation were needed. The IGC needed to come to grips with such issues as disclosure of origin, benefit sharing, prior informed consent and defensive protection. It supported the proposal of the African Group regarding the renewal of the mandate of the IGC and text-based negotiations for a legally binding instrument within a well defined timeframe.

189. The Delegation of Brazil supported the statement made by GRULAC. It pointed out that determining the particular benefits for developing countries to associate themselves with the Organization would be useful in defining the new mandate for the IGC, and that many of the WIPO Member States have been building a protection system for GRs, TK and TCEs. The Delegation believed that any mandate that did not lead to a concrete negotiating outcome would not have necessary credibility for the IGC, and that the renewed mandate of the IGC should include intensified work leading to negotiating binding international instruments.

190. The Delegation of Ghana associated itself with the statement made by the Delegation of Senegal on behalf of the African Group. It believed in the need to protect TK holders from infringement of their rights through misappropriation and misuse beyond the traditional context and that there was a need to accelerate the IGC's work. The Delegation endorsed the renewal of the mandate of the IGC with a view to building on uncompleted work under the previous mandate by adopting clearly defined timeframes and specificities in the scope of the work, and urged all delegations to work towards the convergence of views, with the possibility of developing an international legal instrument.

191. The Delegation of Cuba fully supported the statement of the Delegation of Ecuador on behalf of GRULAC, and stated that there was a great deal of work to be done in order to consider the international dimension of protection of TK, GR and folklore, which required renewing the mandate of the IGC.

192. The Delegation of the Bolivarian Republic of Venezuela supported the statement made by the Delegation of Ecuador on behalf of GRULAC. It was well known that Latin American and Caribbean resources in terms of TK and folklore were extensive, that they were first in the world in diversity of plants and animals and birds, and that approximately 30% of the world's food production came from agricultural resources of which they were major representatives. The Delegation was committed to continuing to ensure protection of TK, TCEs and GRs in order to avoid their improper extraction by major economic powers. It stated that there was a proposal on the table which was a basis for discussion that should lead to a future instrument, and the Delegation supported the renewal of the mandate of the IGC without predicting or requiring any particular outcome.

193. The Delegation of Botswana supported the statement made by the Delegation of Senegal on behalf of African Group and pointed out that its country would be hosting the Council of Ministers Meeting of ARIPO to look at the possibility of adopting a regional instrument on TK and TCEs. The issue being discussed was identified as important to the economic development of its country. As a result, the Industrial Property Act of Botswana had been amended to include protection of TK and handicrafts. It highlighted that its national and regional processes would only benefit from an emerging consensus within the international community on the protection of TK, TCEs and GRs, and stressed that it would

be unfortunate if the IGC could not agree on an internationally legally binding instrument. The Delegation supported the renewal of the mandate of the IGC.

194. The Delegation of the United Kingdom strongly supported the statement made by the Delegation of Sweden on behalf of the European Community and its 27 Member States and recognized the important role the IGC played in the complex issues associated with the protection of TCEs, TK and GRs in developing appropriate solutions. It valued the expertise that the Secretariat, WIPO Member States, observers and representatives of indigenous communities brought to the IGC and stated that it was vital that a new focused and energized mandate be agreed for the IGC to ensure that work continued in WIPO with technical expertise and IP knowledge available to effectively achieve results. A new IGC text should encourage results based outcomes. No outcome of the IGC should be excluded or prejudged. The Delegation stated its willingness to collaborate with all delegations in a mature and constructive manner to accelerate work and reach tangible results quickly.

195. The Delegation of Indonesia associated itself with the statement made by the Delegation of Senegal on behalf of the African Group and stated that it attached great importance to the protection of GRs, TK and folklore within the global IP system. Indonesia was known for its mega biodiversity and great cultural heritage, and was home to over 300 ethnic groups speaking approximately 700 languages, and also ranked first in the world for species richness of mammals, fourth for birds, fifth for amphibians, seventh for flowering plants. In its waters lived a prehistoric fish named the coelacanth whose age was 400 million years and was thought to have been extinct 65 million years ago. There were almost 1 million species of plants and animals that remained unknown to science. Almost 40 million people were directly dependent on biodiversity for subsistence, and the challenges of misuse, misappropriation, and outright piracy without any available legal remedies and protection were being faced. The absence of an international legally binding regime to protect those valuable resources would perpetuate the current imbalances of the global IP system which served the interests of some while ignoring the legitimate rights and interests of others mostly from developing nations. It viewed with great concern, that after nine years of deliberations within the context of the IGC, no agreement was in sight. It shared the view that the mandate of the IGC needed to be renewed with vigor and political will to protect GRs, TK and TCEs, with a clear mandate to embark on text-based negotiations leading to an international legally binding instrument or instruments within a specified time frame and that a non-legally binding instrument would certainly not be enough to provide legal remedies. It would not subscribe to a mere political declaration. The argument not to prejudge the outcome of any deliberations of the IGC by aiming at an international legal instrument was found to be perplexing as it would be the only viable solution. The Delegation shared the approach that the IGC and WIPO were the institutions equipped with technical expertise to deliberate the matters of protection of GRs, TK and TCEs, however, if those institutions did not have the political will to complete an instrument providing legal protection, there was always the possibility of considering other avenues. It was time to act.

196. The Delegation of Benin endorsed the position adopted by the African Group and others in commending the members of the IGC and the Chair for the work accomplished. There was still some way to go, however, and it was essential to renew the mandate of the IGC and redefine its tasks and the expected results. The subject addressed by the IGC was of great importance to Benin and it was hoped to see the elaboration of a strong international legally binding instrument. Was it not time to protect collective rights? It was time to move forward.

The Delegation strongly supported the statements made by the Delegation of Senegal on behalf of the African Group and by Bangladesh on behalf of LDCs.

197. The Delegation of Namibia expressed its appreciation to the WIPO Secretariat for the excellent preparation of the documents before this Assembly. It paid tribute to the Director General for his tireless efforts and dynamic leadership in steering the organization in the right direction. It considered that the issues pertaining to the IGC were of critical importance. It expressed its concern that the IGC had been discussing the possibility of an instrument for the protection of GR, TK and TCEs for the last fourteen sessions, but had still nothing to show as a concrete outcome, mainly due to the resistance from some Member States. It reiterated its support and endorsement for the African Group proposal contained in document WIPO/GRTKF/IC/14/9, and for the statement made by the African Group. It reaffirmed its statement made during the high level segment that “only the adoption of a legally binding international instrument could guarantee the effective protection of GR, TK and TCEs of Indigenous Communities of Members States”. It called for the extension of the IGC, with a specific mandate to undertake text-based negotiations on GR, TK and TCEs and to come up with a possible date for the hosting of a Diplomatic Conference.

198. The Delegation of Japan attached importance to the issue of GR, TK and TCEs, and had been engaged in discussions at the IGC with a constructive spirit. It stated that the protection of GR, TK and TCEs had been examined in various international fora. It believed that WIPO was the most appropriate forum, as a UN specialized agency in the field of IP, to best respond to the various Members’ expectations. It was disappointing that the IGC at its fourteenth session could not reach an agreement concerning the renewal of the mandate for the next biennium. It appreciated the tremendous efforts made by those groups and delegations which had put proposals on the table for the renewal of the mandate of the IGC, including three proposals from Group B members. The Delegation of Japan strongly supported the extension of the mandate of the IGC. Given the complexity of the issues, it expressed concerns about, among other things, but not limited to, some elements contained in the proposals which all led to a prejudged outcome of a legally binding instrument or instruments. Nonetheless, it was committed to engage in active discussions aimed at the renewal of the mandate of the IGC, since all members shared the view that the IGC should continue and intensify its work.

199. The Delegation of Mauritius voiced its support for the delegations which had previously taken the floor such as Senegal, on behalf of the African Group, Tunisia, on behalf of the Arab States, South Africa and Egypt, in calling for a renewal of the IGC mandate based on text-based negotiations with the goal of creating an international, legally binding instrument to protect TK, GR and TCEs, as outlined in the African Group proposal. It firmly believed that, after nearly a decade of IGC meetings which had not progressed to its continent’s satisfaction, this was the best way forward on these issues.

200. The Delegation of Costa Rica joined those supporting the statement of Ecuador on behalf of GRULAC. It thanked Ambassador Gauto for the excellent work that he had done during his mandate and also the Secretariat for its assistance between sessions and for the very useful documents that had helped to move forward in this topic. It supported a renewal of the IGC mandate and, like other delegations, expressed its appreciation to the African Group for the proposal submitted during the previous session. The Delegation considered it was an excellent basis on which to work to achieve an agreement. However, it recalled that the African proposal was not the only proposal on the table and that all the consultations and proposals that had been formulated needed to be taken into account as part of the dialogue

that should involve all WIPO members. It considered that the solutions to be sought should be as inclusive as possible and take into account the needs and requirements of all WIPO Members. Positions should be avoided that would widen the differences between members of the Organization. Not renewing the mandate of the IGC would not benefit anyone. It shared the concerns expressed by other delegations, such as those regarding misappropriation of GRs and TK, but felt it was important not to preclude, even before beginning a negotiating process, the desired results. The Delegation of Costa Rica felt that the only way to overcome differences and to respect the views of all WIPO Members was to have this type of dialogue.

201. The Delegation of the Philippines indicated that the need to adopt a mandate for the IGC, that will seriously address misappropriation of GR, TK and TCEs, rested upon the shoulders of this Assembly, and hoped that the Assembly would be able to find appropriate solutions to this most pressing concern. It considered that protection against misappropriation of GR, TK and TCEs by entities from outside the national jurisdiction could only be ensured through an international regime anchored in a legally binding instrument. It believed that WIPO, as the specialized agency of the UN in the integrated treatment of IP rights, had a key role to play in bridging national, regional and international goals, standards and strategies on IP, particularly those related to GR, TK and TCEs. It welcomed the opportunity to constructively engage with other delegations to arrive at a consensus on a legally binding instrument, text-based negotiations and a clearly defined work program, not only to promote and protect the interests of right holders, but also to ensure that IP rights provide a vehicle to achieve sustainable development and preserve the national patrimony for future generations. The Delegation stressed the imperative need to strengthen and continue the mandate of the IGC as a key instrument in advancing IP discussions on GR, TK and TCEs on a global scale, and in the establishment of an international legal regime that would provide effective remedial measures for misappropriation of GR, TK and TCEs, and to accord due recognition to the rights of TK holders.

202. The Delegation of India expressed its appreciation for the work carried out by the IGC in the past nine years. It said that, during this period, the IGC had deliberated upon a wide spectrum of issues, such as protection from misappropriation and mechanisms for positive benefits to local communities who are the repositories of vast knowledge. It was of the view that protection from misappropriation and providing positive benefits through benefit sharing were extremely important for the preservation of TK, GR and TCEs. Since the work of the IGC still needed to address these issues, it was committed to the extension of its mandate for the next biennium. It stated that the Members States of WIPO and the Secretariat had worked hard in the past nine years, and in the process, through fourteen sessions of the IGC, had generated well-researched documents which could guide the work of the IGC further. With extensive work already done, it considered it was time to move on to the next stage of deliberations in the IGC, being natural to expect that the next phase be text-based negotiations with a view to developing a legally binding international instrument or instruments within a specified time frame. It considered that the IGC should be mandated to carry out inter-sessional work to develop an international instrument, followed by a Diplomatic Conference wherein a decision for a legally binding instrument could be taken. The Delegation of India provided an update on the progress made at the national level to provide defensive protection to TK. It mentioned that India's pioneering initiative, the Traditional Knowledge Digital Library (TKDL), had established an institutional framework on defensive protection of TK and that it had concluded an Access Agreement with the European Patent Office in February 2009. It explained that this agreement allowed examiners of the EPO to utilize the TKDL for search and examination purposes, including citation of TKDL printouts, but that no

third party disclosure was permitted under the TKDL Access Agreement. It added that it had been able to identify 33 patent applications since February 2009, which in its opinion were based on existing prior art available under Indian Systems of Medicine. The Delegation of India mentioned that the option of submitting third party observations in all the 33 cases which were based on the TKDL had been used. It highlighted that in two of the patent applications where EPO had communicated to the applicants its intention to grant a patent, EPO had set aside its intention to grant a patent within two weeks of receiving these observations and opened up these applications for substantive examination. The Delegation stressed that while an attempt was being made by India to protect its TK, the developments clearly indicated that there was misappropriation due to lack of evidence of prior art available to patent examiners. It expected the international community to realize that TK, which most of the developing countries like India had, needed to be protected from misappropriation. It considered that time was of the essence as continued misappropriation adversely affected the available TK and, in turn, would affect sustainable development. The Delegation urged Member States to come to an agreement on the future mandate of the IGC in line with the concerns of the majority of states and the legitimate hope that the negotiations move forward.

203. The Delegation of Singapore strongly supported a renewal of the IGC's mandate and an acceleration of its work to achieve tangible and meaningful outcomes, including the conclusion of possible international instrument(s) for the protection of GR, TK and TCEs. It welcomed a robust and fruitful debate and exchange of views that would contribute towards building international consensus amongst WIPO Member States on the protection of GR, TK and TCEs. It believed that for any text on these issues to be truly meaningful, it had to enjoy broad support and consensus. It urged the entire WIPO membership to demonstrate flexibility in devising practical and creative solutions. The Delegation suggested working in digestible chunks and to strive to achieve progress on low hanging fruit first, so as to build momentum in the IGC's work. It considered that, within the framework of a clearly defined work program, focused discussions could be pursued, including text-based negotiations and expert group deliberations, to identify some common ground to help guide the IGC's work.

204. The Delegation of Thailand supported the renewal of the IGC mandate as proposed by the African Group. It stated that the time had come for the IGC to initiate text-based negotiations with a view to concluding an international legally binding instrument. It said that the renewal of the IGC mandate should be based on the need for a concrete outcome that would ensure effective protection against misuse and misappropriation of TK, TCEs and genetic resources, namely an international legally binding instrument.

205. The Delegation of Bangladesh stressed the importance that Bangladesh, together with other LDCs, attached to TK and TCEs in their efforts to enhance economic development, protect their cultural heritage, generate livelihoods and promote small and medium enterprises that benefitted local communities. The rights of their musicians and artisans should be protected from misappropriation and abuse. The Delegation of Bangladesh was concerned that the IGC was not making any headway towards an outcome. It was disappointed by the fact that there was still no agreement on how to renew the mandate of what it saw as an important WIPO body. It urged the Member States to agree on an approach that would lead, after the long drawn out discussions that had been taking place in the IGC, to safeguarding the rights and ownership of the holders of TK and TCEs in the developing countries. It said that the work that had been done in the IGC so far was sufficient to propel the IGC into substantive negotiations that would attain this concrete outcome. It was of the view that the best way forward was to accept the African Group proposal on the renewal of the IGC's

mandate. It considered that it was totally feasible for the IGC to initiate text-based negotiations that would pursue the adoption of a legally binding instrument or instruments on TK and TCEs within an agreed time frame.

206. The Delegation of the Republic of Korea supported the renewal of the mandate of the IGC for the next biennium and positively considered the three elements contained in the proposal made by African Group. It was, however, of the view that the process should not prejudice the outcome of the IGC negotiations, since a number of complicated issues remained without clear answers. First of all, there was no clear understanding so far of the subject matters and the scope of protection. In such a context, additional protection of TK, TCEs and genetic resources might raise numerous legal disputes related to various existing IP rights in the future. There was potentially an enormous negative impact that broad protection of TK, TCEs and genetic resources might provoke. It argued that the protection of TK, TCEs and genetic resources might convert large portions of public domain into subject matters subjected to property rights, with the effect that resources for innovative and creative activities be reduced by increasing their costs. It reiterated some examples that it had put forward at the fourteenth session of the IGC, since they illustrated the genuine concerns that it shared with many other delegations. It had heard complaints coming from Africa that many of the small African wooden sculptures and masks which were very popular souvenirs for tourists were made in one Asian country. Should this country have an obligation to pay for producing those sculptures? What if this Asian country produced a toy featuring Indians from North or South America? The Delegation of the Republic of Korea also referred to the famous traditional Korean dish named “kimchi”. In the event that a foreign company applied for a patent on the recipe of “kimchi”, which was already known in the Republic of Korea, then the Republic of Korea might try to invalidate such patent. The Delegation of the Republic of Korea wondered, however, whether this challenge would also mean that Korea had property rights in “kimchi”, that is, whether it had a right to authorize or prevent the production of “kimchi” by foreign companies, or even to ask license fees from those companies? If this was the case, would the Republic of Korea have to pay for “pizza” and “spaghetti” from Italy, “sushi” from Japan, “curry” from India, and so on? Therefore it wondered whether it would be possible to protect the originality of TK and TCEs and prevent the misleading use of it by providing alternative approaches that could be implemented within the existing system and without submitting those subject matters to property rights, such as certifications of originality and standards of quality. However and despite these concerns, the Delegation of the Republic of Korea expressed the wish to seriously, actively and constructively engage in the IGC without excluding any outcome under a renewed mandate.

207. The Delegation of Zimbabwe aligned itself with the statement made by the Delegation of Senegal on behalf of the African Group. It supported the renewal of the mandate of the IGC that would enable it to commence negotiation of a legally binding international instrument. It felt encouraged by the fact that previous speakers agreed on the need to renew this mandate and arrive at a concrete outcome. However, it expressed the need for a serious and genuine commitment and constructive engagement from all Member States in order to address the needs and concerns of indigenous peoples and traditional communities regarding IP. It added that a lot of ground work had been undertaken both at the level of WIPO and at the regional level. It was strongly convinced that the IGC should move towards text-based negotiations leading to a legally binding international instrument. It added that in recognition of the increasing scientific and commercial value of TK, TCEs and genetic resources, ARIPO had come up with a legal framework for their protection, and that efforts were being made towards its adoption by ARIPO Member States.

208. The Delegation of Kuwait said that much work at the IGC needed still to be done over the next few years. It supported the statement made by the Delegation of Tunisia on behalf of the Group of Arab States. It stated that all Member States realized how significant this issue was, an issue which embraced many complex, complicated and interrelated aspects that had to be tackled in the next few years. It noted that significant steps forward had been made in the past. It was time for WIPO to move forward and initiate text-based negotiations in order to produce a legally binding instrument which could protect the interests of all the stakeholders involved. The Delegation requested that the IGC mandate be renewed so that it could complete its work, by focusing on a number of aspects and adopting a clear method of work and timetable. This would require, as any delicate negotiating process, flexibility and political will.

209. The Delegation of Madagascar endorsed the statement made by the Delegation of Senegal on behalf of the African Group. It favored the renewal of the IGC's mandate in order to allow the IGC to step up its work, put an end to the lengthy and unproductive discussions that had been taking place so far and achieve the adoption of an international legally binding instrument.

210. The Delegation of Cameroon reiterated the stance that it had taken at the last session of the IGC. While expressing support for the renewal of the IGC mandate, it strongly endorsed the statement made by the Delegation of Senegal on behalf of the African Group. It stressed the need that TK, TCEs and genetic resources be protected by an internationally binding legal instrument.

211. The Delegation of Côte d'Ivoire entirely supported the statement made by the Delegation of Senegal on behalf of the African Group and the proposal that the African Group had put forward. It believed that this proposal enjoyed the broad support of a very large number of delegations. It said that after a number of years of unproductive discussion, time had come to establish a legal framework which would allow Member States to promote and protect TK, TCEs and genetic resources. It added that IP should serve the cause of social and economic development of all the peoples and that such this legal framework for protection would be a way of doing that. It supported for that reason the renewal of the IGC mandate with the hope that this would result in the drafting of one or several legally binding instrument(s). It stated that only such an instrument would grant effective protection to TK, TCEs and genetic resources.

212. The Delegation of Switzerland highlighted the importance that it attached to the continuation of the IGC's work. It recalled its commitment to the work of this Committee and its efforts to resolve certain problems in the context, for example, of the PCT. In view of the requests made by numerous delegations during the present session of the General Assemblies and the last session of the IGC, it was convinced that an agreement on the renewal of the mandate of the IGC was possible. It urged Member States to make the necessary efforts. It noted that interesting elements were contained in the proposals that were submitted. It remained open to seeking a solution, without being attached to certain words. It was of the view that it would be more effective to design the renewed mandate of the IGC in such a way that it established a clear work program that would enable the IGC to move forward in substantive terms and produce a text to be submitted to the General Assembly in about two years time.

213. The Delegation of Jamaica stressed the great importance that it attached to the work being undertaken by the IGC. It supported the proposal put forward by the African Group for the renewal of its mandate, which it said was the most comprehensive. Such a renewal would provide the IGC with additional time for continued and constructive engagement between the Member States, indigenous communities, the NGOs and technical experts in order to work towards the conclusion of an internationally binding instrument for the protection of TK, TCEs and genetic resources. It warned that the failure to reach a consensus within the IGC would haunt the Member States in the future and harm progress. It recalled that within the Caribbean region work was on-going with the establishment of the Caribbean Working Group on GR, TK and TCEs, aimed at developing a regime for the protection of the rights of the peoples within the Caribbean region. It added that this Working Group had benefited so far from the work of the IGC.

214. At the request of the Chair, the Secretariat informed the Member States that the Chair intended to reconvene the plenary session of the General Assemblies at 15h00 on Wednesday, 30th September 2009, in order to continue the deliberations on this Agenda item. The Chair would continue to hold informal consultations on this item in the meantime.

215. The Delegation of Brazil, speaking on behalf of India, Brazil and South Africa—the IBSA Group—said that it shared the frustration of developing countries, especially from the African Group, over the difficulty in defining a new mandate for the IGC, given that the IGC had been working on matters within its jurisdiction for almost a decade. The Delegation said that sufficient knowledge had been accumulated and that a good deal of progress had been made on concepts and modalities on the issues under consideration. It stated that it could see no reason why the work of the IGC could not be brought to the next level of text-based negotiations. It affirmed that it was important to keep norm-setting work on IP within the multilateral system within WIPO. It added that lack of progress had the potential of causing a lot of damage, and that while Member States were refraining from taking decisions at the IGC, TK and GR continued to be misappropriated at an alarming rate. The Delegation stated that the matter was not being taken seriously by WIPO. The Delegation reiterated that the chief goal of the Development Agenda (that of extending the benefit of the IP system to countries and communities excluded from innovation) had to guide the General Assembly deliberations on the renewal the IGC. It was hoped that the General Assembly would be able to give the IGC a new and vigorous mandate in line with the proposal of the African Group, calling for the negotiation of legally binding instruments within a reasonable time frame. The Delegation stated that this was possible and achievable.

216. The Chair reported that he had prepared a text which could bring a possible solution to the issue. The Chair clarified a few issues connected with the consultations that had been held, with a view to avoiding any confusion as to the current exercise and the role played by the representatives of each regional group. The process carried out had been an exchange of ideas on the basis of questions he had raised in the first consultation. There had been no text-based negotiations and no commitments had been given to any specific or general text. He said that the consultations and the general statements had made him aware of the positions of all delegations that had taken part in the consultations, both at the IGC and at the General Assembly. The Chair wished to clarify that his text had been prepared under his sole responsibility, and that no regional coordinator had yet seen it. He hoped that groups would take the text as a basis for an analysis of their work. He also wished to make it clear that he had no illusions over the possible response that the document could have. He said that he was fully aware that it may not be accepted immediately, but that it could be the basis for a

possible understanding or for discussion, or even the basis for a decision. These were matters for the regional groups to decide. The Chair said that there were two areas of reflection: (1) the text itself and (2) whether or not to reach an agreement to make progress on the issue, which was not a technical issue, but a political one. He said that he was aware of red lines that delegations had adopted, but whether or not these were offensive or defensive red lines it was not a helpful approach to stay behind those red lines to move forward with a negotiation process. He said that there was some way to go to rebuild trust, yet it was not the objective of his text to do so. Its objective was to see if there could be flexibility from all sides to move forward with the work of the IGC. He said that there was a lot of confidence-building that needed to be done to make a qualitative step forward. He hoped that regional groups would meet and analyze the text and come back with a position. The Chair said that he intended to hold consultations with regional coordinators and, if possible, heads of delegation, plus two, three or four other people, including other Ambassadors. He hoped to diligently move ahead with the work and come back with a solution for the next day. The Chair said that he wanted to give Member States as much time as possible in their groups to analyze the issue, and invited the regional coordinators to meet informally with him at 17h00. The Chairman then adjourned the discussion of this item.

217. Further to informal consultations the General Assembly adopted the following decision by consensus:

Bearing in mind the Development Agenda recommendations, the WIPO General Assembly agrees that the mandate of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore be renewed as follows:

(a) The Committee will, during the next budgetary biennium (2010/2011), and without prejudice to the work pursued in other fora, continue its work and undertake text-based negotiations with the objective of reaching agreement on a text of an international legal instrument (or instruments) which will ensure the effective protection of GRs, TK and TCEs.

(b) The Committee will follow, as set out below, a clearly defined work program for the 2010/2011 biennium. This work program will make provision for, in addition to the 15th session of the Committee scheduled for December 2009, four sessions of the IGC and three inter-sessional working groups, in the 2010-2011 biennium.

(c) The focus of the Committee's work in the 2010/2011 biennium will build on the existing work carried out by the Committee and use all WIPO working documents, including WIPO/GRTKF/IC/9/4, WIPO/GRTKF/IC/9/5 and WIPO/GRTKF/IC/11/8A (Traditional Cultural Expressions, Traditional Knowledge and Genetic Resources), which are to constitute the basis of the Committee's work on text-based negotiations.

(d) The Committee is requested to submit to the 2011 General Assembly the text (or texts) of an international legal instrument (or instruments) which will ensure the effective protection of GRs, TK and TCEs. The General Assembly in 2011 will decide on convening a Diplomatic Conference.

(e) The General Assembly requests the International Bureau to continue to assist the Committee by providing Member States with necessary expertise and funding of the participation of experts from developing countries and LDCs according to the usual formula.

Date	Activity
February/March 2010	First Intersessional Working Group
May/June 2010	IGC 16
September 2010	WIPO General Assembly
October 2010	Second Intersessional Working Group
December 2010	IGC 17
February/March 2011	Third Intersessional Working Group
May/June 2011	IGC 18
Early September 2011	IGC 19
September 2011	WIPO General Assembly

218. The Delegation of Germany, speaking on behalf of Group B, said that there had been an agreement reached during informal discussions according to which Group B would be given the possibility to take the floor on Agenda Item 28. The Delegation noted the inclusive reference to “all working documents” in paragraph (c) of the decision which made it clear that other relevant working documents could be drawn upon in the future work of the Committee.

219. The Delegation of Sweden, speaking on behalf of the European Community and its 27 Member States, agreed with the Delegation of Germany, and stated that what could be introduced as the basis for the future work of the IGC would be all WIPO documents relevant to GR, TK and TCEs.

220. The Delegation of Ecuador, on behalf of GRULAC, stated that their region was very rich in the resources discussed in the IGC. It extended its thanks to Ambassador Roberto Gauto and Maximilian Santa Cruz for their contribution to the region.

221. The Delegation of Senegal, on behalf of the African Group, recalled the distance that had existed between the positions on the mandate before the session of the General Assembly, and said that the result achieved was certainly a success which could be attributed to the Member States and to the Secretariat. It recognized that the Member States had worked in a spirit of openness, consensus and mutual trust and confidence. It said that a consensus was the fact that one was not satisfied with everything but accepted everything. The Delegation said that the success would not have been possible without the patience, integrity, quality of listening and initiative of the Chair. The Delegation recognized the Chair’s and Vice Chair’s initiative. The Delegation thanked the delegations who had placed their trust in the African Group by supporting most of their proposals. It also thanked others who had often not been in agreement but who, where necessary, had shown flexibility. It expressed the wish that the new life of the IGC would benefit its past life. It cautioned against repeating the mistakes of

the first years of work. It said that it had to be made certain that the work to be undertaken would lead to an international legal instrument that would ensure the effective protection of TK, TCEs and GRs.

222. The Delegation of China stated that it greatly appreciated the work of the Chair and the Vice Chairs for their efforts to promote consensus among Member States with regard to the future of the IGC. It also thanked the regional groups for their efforts, flexibility and pragmatism. It expressed the hope that the work of the IGC in the 2010/2011 biennium would be based on the new mandate, that it would be restructured and that negotiations on texts and the active consolidation of said texts would lead to the desired result. The Delegation said that it looked forward to working with other delegations in a spirit of cooperation and with a willingness to contribute to progress in the IGC.

223. The Delegation of Yemen, on behalf of the Asian Group, thanked the Secretariat for its good work, as well as all other groups and Member States for their constructive approach which had permitted an agreement. The Delegation wished to thank the Chair and the Vice Chairs who had helped all different groups to reach agreement.

224. The Delegation of Germany wished to align itself, on behalf of Group B, with the previous statements, particularly with the statements from the Delegations of Senegal, Ecuador and Yemen on behalf of their respective groups. The Delegation thanked the Chair and the two Vice Chairs for their efforts. The Delegation paid tribute to Ambassador Gauto Vielman and the members of the Secretariat who had worked hard towards the conclusion.

225. The Delegation of Tunisia congratulated all delegations for the success which they were witnessing. New life was being breathed into the IGC. The language which had been adopted in the IGC mandate had never been seen before. The new IGC mandate marked a watershed. The reason for this success was the support of all delegations, their goodwill, their understanding and their courage.

226. The Delegation of Sweden, on behalf of the European Community and its 27 Member States, congratulated the Chair and the Vice Chairs and all delegations for the positive outcome that enabled the important work of the IGC to continue. The European Community and its Member States had come with a proposal that struck a fair balance. The European Community also had a readiness to be flexible and to engage in discussions with all interested parties. The European Community was glad that their efforts as well as the efforts of others had been fruitful and hoped that the decision would prove to be a positive start for the future work of the IGC.

227. The Delegation of India appreciated the efforts of the Secretariat to enable the smooth conduct of the WIPO General Assemblies. The essence of a multilateral system lay in the consensus-based approach to address the diverse concerns of Member States. The deliberations of the IGC were a case in point. The Delegation thanked the Chair for his efforts to enable the constructive discussions on the mandate of the IGC. It was very heartening that all groups had shown flexibility and mutual trust with a view to addressing an extremely important issue. The Delegation was committed to working constructively to enable the effective functioning of the Organization.

228. The Delegation of the Russia Federation stated that the Russia Federation and the countries of its region were rich in TK and TCEs and that, therefore, the work of the IGC was

very important. All delegations and regional groups had shown extreme understanding and commitment in the discussions. Finally, consensus was reached on the basis of the text from the Chair. The Delegation thanked the Chair and the Vice Chairs for their patience and for their continued commitment. The Delegation expressed the certainty that the future work of the IGC would be successful in terms of achievement on the basis of cooperation.

229. The Delegation of Serbia, speaking on behalf of the Central Europe and Baltic States, associated itself with the previous speakers in thanking all delegations for their cooperation and flexibility contributing to the agreement that had been reached.

230. The Delegation of Angola expressed its pleasure with the success achieved and thanked the Chair for his efforts to reach a consensus paper that brought the positions together. The Delegation thanked the Delegation of Tunisia and the coordinator of the African Group for their tenacity, and also thanked the other Member States who had made an enormous sacrifice to achieve the outcome. The Delegation was grateful to the African Group, the Asian Group and GRULAC in particular for their support which was of great help from the outset. The Delegation finally thanked the European Community and its Member States and the Delegations of Switzerland and the United States of America who had shown flexibility.

231. The Delegation of Indonesia highly commended the efforts by the Chair and Vice Chairs and all parties to arrive at a final text regarding this very important matter. The renewal of the mandate of the IGC provided new life and vigor for the attainment of an international legal instrument for the effective international protection of GRs, TK and TCEs. The Delegation thanked the African Group for its determination and leadership and also thanked the coordinators and members of the Asian Group, GRULAC and Group B for their active roles and flexibility to arrive at the consensual text. The Delegation assured that it would actively participate and cooperate in the work of the coming sessions of the IGC.

232. The Delegation of United States of America supported the statements made by the Delegation of Germany on behalf of Group B. The Delegation appreciated the efforts of the Chair and the Vice Chairs. The Delegation highlighted that the result of the difficult negotiations was a tangible yet flexible outcome. It believed that difficult and substantive work lay ahead and it wished the IGC the best in tackling these difficult issues.

233. The Delegation of Pakistan stated that its understanding was that the IGC would undertake text-based negotiations with the objective of reaching an agreement on the text of an international legal instrument. The understanding of the Delegation was that the nature of the text would be such that it would lead to an international legal instrument. The Delegation asked the Director General if this understanding was correct.

234. The Director General answered affirmatively.

235. The General Assembly adopted the draft report of the 14th session of the Committee as reflected in document WIPO/GRTKF/IC/14/12 Prov. 2 as the report of that session.

ITEM 29 OF THE CONSOLIDATED AGENDA:

STANDING COMMITTEE ON INFORMATION TECHNOLOGY (SCIT)

236. Discussions were based on document WO/GA/38/10.

237. The Secretariat introduced the document by recalling that the Standing Committee on Information Technologies (SCIT) Plenary had finished its most important part of the work initially intended, notably, the WIPONET project in 2003. The mandate of the SCIT, therefore, should be reviewed in line with WIPO's new strategic goal concerning the coordination and development of global IP infrastructure. The present proposal was submitted for the approval of the Member States to replace the SCIT with two Committees, namely, the Committee on WIPO Standards (CWS) and the Committee on Global IP Infrastructure (CGI). It should be noted that the CWS would replace the Standards and Documentation Working Group (SDWG).

238. The Delegation of Argentina suggested that the mandate of the CWS should also include follow-up of the implementation of WIPO Standards, the provision of technical advice and assistance for capacity building, the support of IP Offices in undertaking projects regarding dissemination of IP information and the provision of IP services to SMEs.

239. The Delegations of Kenya, Mexico, Morocco, Barbados, Bulgaria, the United States of America, Japan and China welcomed the initiative of the Director General to reinforce international coordination on matters concerning IP infrastructure and supported the proposal to create the Committees as proposed in the document.

240. The Delegation of Japan clarified the scope that the Global IP Infrastructure (CGI) was intended to cover. Since the CGI included in its coverage international classifications, the work of the proposed Committee, CGI, should be clearly defined in relation to the work of existing classification-related Committees, for example Committee of Experts of IPC and Nice Classifications.

241. The Delegation of Barbados expressed its hope that financial assistance for the participation by developing countries in the Committee(s) would be arranged.

242. The Delegations of Venezuela, Pakistan, Egypt and Bolivia expressed the concern that consultations with member States were not sufficient to clarify a question of whether the mandate and work of the Committees might lead to harmonization of national laws and regulations, and requested further clarification on the need, justification for creating the Committees, and their respective mandate.

243. In response to the questions from the delegations who sought further clarification, the Director General stated that the proposal for the establishment of the two committees was a house-keeping arrangement designed to introduce order into a situation that required attention. The Standing Committee on Information Technology (SCIT) had not met since 2004. In consequence, its Working Group, the Standards and Documentation Working Group (SDWG), had no body to which to report. The first of the proposed new bodies, the

Committee on WIPO Standards (CWS) was intended simply to replace the SDWG, but to report directly to the WIPO General Assembly.

244. The Director General indicated that the second proposed new body, the Committee on Global Infrastructure (CGI) was intended to deal with a number of matters that no longer had a home amongst the various committees of Member States. These matters included questions of patent information, the policy of offices with respect to the commercial or free availability of patent information, machine assisted translation and software tools for digitization of industrial property information. Prior to the establishment of the SCIT, there was a body known as the Permanent Committee on Industrial Property Information (PCIPI), which had considered such matters. With the new strategic goal of the Organization of coordinating and developing global IP infrastructure, these matters were assuming increased importance.

245. The Director General made it clear that neither of the proposed new bodies would deal in any way with legal norms. The CWS dealt with technical standards for matters such as the numbering of industrial property applications, for data exchange or for computer languages or formats.

246. Addressing the concern expressed by a few delegations over possible influence on harmonization of laws, the Director General referred to possible confusion on the distinction between norms and standards that might be caused by the translation of the term “standard” into French. He made it clear that standards to be discussed at the Committee should be technical standards, and not legal norms. Finally, the Director General reiterated that the CGI would not deal with legal matters including those for harmonization of national laws.

247. The Delegations of Pakistan and Venezuela thanked the Director General for further clarification and joined others in supporting the creation of the CWS, as proposed in the document.

248. As concerns the creation of the CGI, however, the Delegations of Pakistan and Venezuela requested that it should be postponed to the next meeting of the General Assembly to allow for further consultation with member States. The Delegation of Pakistan made an additional proposal that, in view of the fact that the SDWG would meet in the last week of October 2009, the SDWG should be requested to discuss the proposal of the Secretariat for creating the CGI and to make recommendations to the next meeting of the General Assembly in 2010.

249. The General Assembly approved the proposal contained in paragraphs 11 to 16 in document WO/GA/38/10, as amended by the Delegation of Argentina in respect of the creation and the mandate of the CWS, and deferred the issue on the creation of the CGI to the next session of the General Assembly in 2010.

ITEM 35 OF THE CONSOLIDATED AGENDA:

INTERNET DOMAIN NAMES

250. Discussions were based on document WO/GA/38/12.

251. In introducing the Agenda item, the Secretariat recalled that since the establishment of the Uniform Domain Name Dispute Resolution Policy (UDRP) by the Internet Corporation for Assigned Names and Numbers (ICANN) as of December 1999, on the basis of recommendations made by WIPO in the First WIPO Internet Domain Name Process, the WIPO Arbitration and Mediation Center through September 2009 has administered some 16,000 cases under the UDRP and related policies. In 2008, WIPO witnessed an eight per cent increase over the preceding year, administering a total of 2,329 cases covering 3,958 domain names. This represents the highest number of cases administered by WIPO since the year 2000. WIPO UDRP proceedings have been conducted in 16 different languages and the List of WIPO Domain Name Panelists who decide UDRP cases includes some 400 trademark experts from 55 countries from all continents. The Center offers tools to facilitate access to the WIPO UDRP procedures and decisions, including an online Legal Index, an Overview of WIPO Panel Views on Selected UDRP Questions, and an extended statistics search facility. Recent developments in the DNS, such as privacy or proxy registration services and registrar issues, are presenting greater challenges for intellectual property owners, in particular trademark owners, in policing and enforcing their rights under the UDRP and otherwise. The Center is monitoring these developments and communicating with ICANN as appropriate. In addition to disputes involving generic top-level domains (gTLDs), as at September 2009, the Center provides domain name dispute resolution services to 60 country code top-level domain (ccTLD) registries and is in consultation with a number of additional ccTLDs.

252. The Secretariat further recalled that ICANN has announced policy developments that will present opportunities and legal and practical challenges for intellectual property rights owners and users: the introduction in the course of 2010/2011 of new top-level domains broadly expanding their currently limited number, and the introduction in the same period of internationalized domain names (IDNs; non-Latin script) at the top level. The Center monitors these developments, maintaining regular contact with ICANN, in an attempt to safeguard existing intellectual property rights in the event that the introduction of new gTLDs will proceed as presently envisioned by ICANN. Such collaboration encompasses proposing scalable dispute resolution procedures and policies to protect intellectual property interests in the DNS while striking a balance with the practical interests and legitimate expectations of the many DNS actors. The procedures under discussion with the WIPO Arbitration and Mediation Center include: a trademark-based Pre-(TLD) Delegation Dispute Resolution Procedure involving Registries, a Post-(TLD) Delegation Dispute Resolution Procedure involving Registries, and Complementary Rights Protections Mechanisms including an expedited (second and lower-level) domain name suspension mechanism.

253. The Secretariat also reported on the status of the recommendations made following the Second WIPO Internet Domain Name Process, which examined the relationship between domain names and certain identifiers other than trademarks. Based on the findings of this Process, the WIPO General Assembly recommended in September 2002 that the UDRP be amended to provide protection also for (1) the names and acronyms of international intergovernmental organizations (IGOs) and (2) country names against their abusive registration as domain names (the WIPO-2 Recommendations). While the WIPO-2 Recommendations were made in the context of the DNS at that time, i.e., prior to ICANN's plans for a broad expansion of the DNS, protection of geographical names and names and acronyms of IGOs is being reconsidered under ICANN's New gTLD Program. The Secretariat will continue to monitor these discussions and developments and provide input where possible.

254. The Delegation of The former Yugoslav Republic of Macedonia stated that it supports the efforts undertaken in connection with ICANN's New gTLD Program, and furthermore believes that such efforts should align themselves with the ISO 3166-1 List for the representation of names of countries.

255. The General Assembly took note of the contents of document WO/GA/38/12.

ITEM 36 OF THE CONSOLIDATED AGENDA:

COOPERATION UNDER THE AGREED STATEMENTS BY THE DIPLOMATIC
CONFERENCE REGARDING THE PATENT LAW TREATY (PLT)

256. Discussions were based on document WO/GA/38/13.

257. The General Assembly took note of the information contained in document WO/GA/38/13.

[Annex I follows]

Report by Mr. Drage, Member of the WIPO Audit Committee
at the General Assemblies of WIPO

Mr. Chairman, Distinguished Delegates

1. It is my pleasure on behalf of the Audit Committee (hereinafter referred to as “the Committee”) to introduce the Reports of its 12th, 13th and 14th meetings held in March, June and August 2009 as set out in documents: WO/AC/12/2, WO/AC/13/2 and WO/AC/14/2.
2. In each of these three meetings the Audit Committee reviewed 3 principal subjects:
 - A. The New Construction Project (NCP);
 - B. Internal Control and the work of the Internal Audit and Oversight Division (IAOD); and
 - C. The Strategic Realignment Program (SRP).
3. In addition the Committee reviewed proposals by the Secretariat on:
 - (i) Financial Disclosure and Declaration of Interests (see document WO/CC/61/4); and
 - (ii) The Voluntary Separation Program (see document WO/CC/61/3)

Further, it met the Ombudsman and a representative of the Staff Council. The Committee made recommendations relating to all these matters.

4. At its own initiative the Committee reviewed the subject of Ethics and Financial Disclosure in the United Nations System as a basis for practice in WIPO. Importantly, it also undertook its own Assessment of the work and operations of the Audit Committee for the three and a half years of its operation from January 2006 to June 2009. My colleague, Mr. Khalil Othman will address you on this subject shortly.

A. The New Construction Project:

5. With regard to the New Construction Project, the Committee noted good progress over the period and was primarily concerned with seeking clarification on various matters. As noted by the Committee, this autumn sees the commencement of the complex process of fitting out of the New Building with the enhanced management and communication risks of having up to 300 workers on the site at the same time.
6. On the subject of the New Conference Hall, at the Committee’s meeting in August, no presentation was made of its financial impact on WIPO and, *inter alia*, the Committee observed that:

“Whereas it was recognized that there were advantages in WIPO committing now to undertaking the construction of the New Conference Hall in terms of continuity of management, continuity of the Pilot, and lower cost advantages of integrating the project with the existing new

construction, at the time the construction industry was short of work, it was not clear that due account had been taken of the impact of committing to constructing a New Conference Hall at a time when the private sector, the primary funding source for WIPO, was experiencing a significant economic recession”.

B. Internal Control and the work of the Internal Audit and Oversight Division

7. Coming now to the second main item overseen by the Committee during its last three meetings, relating to Internal Control and the work of the Internal Audit and Oversight Division, the Audit Committee reviewed the following:

- (i) The work program of IAOD, its resources and prioritization of activities, including investigations and evaluation;
- (ii) The implementation of the recommendations made by the Audit Committee, the External Auditors and IAOD; and
- (iii) Specific IAOD reports covering aspects of:
 - (a) Procurement;
 - (b) IT Access Controls;
 - (c) Payroll;
 - (d) Travel and Mission Support.

8. The Committee regarded these latter Reports as being particularly useful in highlighting deficiencies in the control environment and indeed both the Payroll and Travel and Mission Support Audit, indicated the possibility of misuse of WIPO funds and the consequent requirement for urgent management action.

9. However, in the last three meetings, the Audit Committee saw little progress in the implementation of recommendations or indeed in a methodology to prioritize and catalyze the many outstanding implementations – and much more work is needed in this area.

10. As to the overall work of the IAOD, its resources and prioritization of its activities, the Audit Committee sees this as being a continuing challenge. On the one hand IAOD’s work needs to be relevant to the Strategic Realignment Program but on the other hand IAOD as an internal oversight body must have operational independence as part of WIPO, but not part of its management. In the area of investigations in particular, as referred to in the report of the Committee’s 14th meeting and in earlier meetings, this matter has yet to be adequately addressed.

C. The Strategic Realignment Program

11. Mr. Chairman, Distinguished Delegates, I will now turn to the third theme reviewed by the Committee, namely the SRP. As the Director General, Dr. Francis Gurry, made clear in his opening address to this General Assembly, many elements of SRP remain to be completed. He pointed out that the SRP will indeed take several years to accomplish.

12. In the period under review the Audit Committee was briefed by the Secretariat on a number of elements of the Strategic Realignment Program most particularly on the implementation of the new Financial Regulations and Rules, the implementation of IPSAS accounting standards and the introduction of new Staff Regulations and Rules.

13. Whilst the Committee has made a number of specific recommendations on these elements of SRP, in so far as it has been able to ascertain, there has been steady progress. However, the Committee has consistently recommended that, at least in so far as the Strategic Realignment Program relates to organizational renewal, there should be produced:

“a road map showing on a common timeline the inter-relationships of the component modules and the organization and resourcing requirements in a comprehensive and integrated manner on a SMART C basis, being specific, measurable, attainable, realistic, timely and consistent.”

14. Mr. Chairman, Distinguished Delegates may I remind you that this recommendation originated from the Desk to Desk review and the PriceWaterhouseCooper’s Report of 2007, which was followed by the Secretariat introducing the Organizational Improvement Program (OIP). Whilst the Committee accepts that the OIP has been superseded by SRP, the Strategic Realignment Program, from an oversight perspective the Audit Committee remains in the position where, at each of its quarterly meetings, it may receive a snap shot of some aspect of what is a huge organizational change program but does not see a coherent picture. This means that the Committee cannot properly review the priorities, the inter-relationships, the risks and the risk mitigation steps being taken by management in undertaking this organizational renewal. As mentioned in its Report of its 14th meeting the Committee is expecting a comprehensive update on SRP at its next meeting at the end of November.

15. Mr. Chairman, Distinguished Delegates, may I take this opportunity to underline the recommendation made by the Program and Budget Committee at its meeting on September 14-16, 2009, that the General Assembly:

“.....thoroughly examines the recommendations made by the Audit Committee for their implementation....”

This is set out under Agenda Item 7 of the Program and Budget Committee, in document A/47/15.

16. Finally Mr. Chairman may I request your permission to handover the floor to Mr. Khalil Othman, Chair of the Sub-committee of the Audit Committee to brief you on the “Assessment of the Work and the Operations of the Audit Committee”.

17. May I thank you for your cooperation and support.

[Annex II follows]

ANNEX II

Presentation by Mr. Khalil Othman on
“Assessment of the Work and Operations of the WIPO Audit Committee”
(Document WO/GA/38/2 of September 5, 2009)
WO/GA/38/2.Corr.

September 23, 2009

1. I take the floor to present the AC report entitled “Assessment of the Work and Operations of the WIPO Audit Committee.”
2. The WIPO Audit Committee decided back in December 2008, to carry out this assessment. The main purpose is to inform Member States of the work and operations of the AC covering the period January 2006 – June 2009 (3 and a half years). To our knowledge this is the first exercise of its kind among oversight/audit committees within the United Nations System Organizations.

Methodology

3. For the purpose of conducting the assessment 2 Survey Tables and Questionnaire were prepared:

Two Survey Tables were sent to 21 UN Organizations for validation and updating.

- (i) One on Oversight/Audit Committees (Appendix I); and
- (ii) Another on Governance (Appendix II).

4. The main questionnaire was the one on the Review of the Performance of the Audit Committee against its Terms of References (Section IV, Table 5).

5. Responses to the Questionnaire were limited, (See Table 1 paragraph 7 page 3). That was one reason why we called for a meeting with the Regional Group Coordinators and the Vice Chairs of the PBC on 17 June 2009. The views and suggestions expressed further contributed to our exercise.

6. Turning to the body of the report, our first message and in a form of a question is:

“Is WIPO in Need of an Audit Committee, An external Oversight body?”

7. As depicted in Sections II, III and IV of the Report we looked at

- (a) Rationale and Justification for establishing the WIPO AC
- (b) Difficulties faced by the Committee
- (c) Performance highlights and
- (d) Outcomes

8. We reached our first conclusion paragraph 71, page 21:

“There is an agreement among all parties (Member States, Secretariat, and AC members) that the continuation of an external independent and advisory Oversight/Audit Committee in WIPO is in the interest of the Organization and is needed”

This conclusion was confirmed during the deliberation of the PBC last week .

9. Our second message is about:

“The Title of the Audit Committee”

10. A look at the TORs of the AC and the work and reviews carried out by it clearly shows that the scope is not limited to “audit”. The WIPO Audit Committee is in fact an external, independent, review and advisory oversight body.

11. Hence our conclusion and recommendation paragraphs 71 and 72 page 21

“The word “Audit” does not encompass the scope of functions carried out by internal or external oversight/audit committees in line with other UN organizations, the title of the present WIPO AC should be changed to reflect such reality. It is recommended that Member States consider that the title of the WIPO Audit Committee be changed to the WIPO Independent Advisory Oversight Committee (IAOC)”.

Again this seems to have been accepted by the PBC.

12. Our third message and question is:

“How to Enhance the Efficiency, Effectiveness and the Role of the WIPO Audit Committee?”

In this regard we looked at:

- (a) Interaction with Member States and the governance structure within WIPO
- (b) Interaction with the Secretariat
- (c) Interaction with other oversight bodies the Internal and External Auditors and
- (d) Composition and membership of the AC.

13. With regard to “Interaction with Member States”, I will limit myself to two observations,

Within WIPO:

- (i) The committee meets quarterly and issues reports and recommendations;
- (ii) The PBC to whom the Committee reports meets once a year;
- (iii) Table 4 page 8 shows the gap between the date of issuance of the AC reports and the date of review, if any, by the PBC. This creates a problem to which I will revert later.

14. I must add that this problem was mitigated by implementation of certain AC recommendations by the Secretariat.

15 Our second observation is on Governance

16. An examination of the Governance structure in the UN system Organizations (See Section III & Appendix II) shows that other UN organizations besides having a GA or Conference (membership of all member States) and intermediate governing bodies of a membership between say 36 to 50, they also have a smaller more functional finance, administration, and program committees typically composed of between 12 and 16 members meeting several times a year.

17. In WIPO we have the GA, the Coordination Committee (83) and the PBC (54).

18. We concluded that there is a relative weakness of the governance structure within WIPO compared with other UN Org. Hence our conclusion and recommendation paragraphs 73-74 page 21:

“The WIPO/AC is an advisory oversight mechanism for Member States. The interaction between the AC and MS has been sporadic and not synchronized with the PBC, which meets once per year. In other UN organizations, there is a smaller and more functional layer of governing body that meets more frequently and among other functions interacts with oversight bodies, and acts upon their report. It is recommended that MS consider the establishment, within WIPO, of a new more functional governing body meeting more frequently than the PBC, with a possible membership of twelve to sixteen”.

19. I must stress that this recommendation is not simply advanced to meet the gap or the problem arising from the AC reporting on quarterly basis to the PBC which meets annually. This is more of a by-product to the recommendation although an important point. But the more relevant and important point in this recommendation is to close a gap in the governance structure in WIPO.

20. With the establishment of this smaller and more functional governing body that meets more frequently Member States will be able to exercise their oversight role in a more detailed, precise and comprehensive manner. Having followed the deliberations in the PBC on the revised budget 2010/11 it appeared that there is more rationale for the concept of establishing

this layer of a governing body.

21. Our second recommendation is also in line with good practice in the UN System. Hence our conclusion and recommendation in para 75 and 76 page 21:

“The oversight/audit committees in the UN and IFAD (see paragraphs 43 and 46 above) are subsidiary organs of their respective legislative bodies. It is recommended that the WIPO “Independent Advisory Oversight Committee (IAOC)” be designated by MS as a subsidiary organ of the PBC/GA or the suggested smaller governing body (paragraph 45).

With regard to the interaction with the Secretariat:

“The AC considers that there is a need for (i) more understanding by the Secretariat of the role of external oversight as an arm of MS; (ii) improved understanding by the AC of the IP context and challenges; and (iii) better interaction between the AC and the Secretariat”. The AC further recommends that customized training programme be designed for new AC members.

22. I turn now to the “Composition and Membership of the WIPO Audit Committee”.

23. You all know the background to this. In our report before you we examined the situation of oversight/audit committees in the UN System Organizations including WIPO. For this purpose we prepared a draft survey table (Appendix I, WO/GA/38/2) and sent it to 21 organizations. Only 15 of 21 has, or proposes to have, oversight/audit bodies.

An examination of this Table shows:

- a) There is no uniformity or standard among them;
- b) Variations in functions and activities;
- c) Membership varies between 4 to 9;
- d) In most cases (9 out of 15) members are appointed by Chief Executives and report to them;
- e) In certain cases members are staff members or a mixture of staff and non staff;
- f) Only in 3 cases including WIPO they are elected by Member States and report to them.
- g) In some cases members are paid honoraria or remunerations. In WIPO members are not paid.

24. The support by the Secretariat to the oversight/audit committees varies: a number has a dedicated Secretariat (UN P.5 and 1 GS) others have part-time professional/GS staff. In WIPO we only have a part-time GS.

25. For the differences and variations I mentioned one cannot conclude that there is a standard format in the UN System or speak of best practice. The ones that meet the criteria of an external, review, expert, independent and advisory body elected by Member States and

report to them are the Audit Committees in the UN (5 members) with a dedicated Secretariat (P.5 and 1 GS); IFAD (9) and WIPO (9) with 1 part-time GS.

26. In 9 out of the 15 organizations the members are appointed by the head of the organization and report to him or her. In these cases, (the majority), the oversight body is *de facto*, an additional layer of internal oversight.

27. Despite all variations and differences and after analyzing Appendix I on oversight/audit committees in the UN System Organizations and responses from stakeholders we ventured to present three options/scenario concerning the membership:

- “(i) Option one: *nine members*:
- (ii) Option two: *seven members*:
- (iii) Option three: *five members*:

Under each option we indicated certain criteria including:

- a. The notion of “safety in numbers” whereby the risk of not having the right mix of skills and qualifications individually and corporately is mitigated
- b. Geographical representation

28. The AC refrained from recommending any of the options on the size of membership of the AC leaving this decision to Member States.

29. In my presentation to the PBC last week I raised the question of the language used in paragraph (2) of document WO/GA/38/2 where it reads:

“The General Assembly is invited to take note of the content of the Assessment of the work and the operations of the WIPO Audit Committee” and its recommendations as indicated in paragraphs 72, 74, and 76 of this Annex.”

30. It has been normal practice that the PBC and the GA act on our recommendations: the PBC recommends and the GA decides:

31. In document A/47/15 dated September 16, 2009 on the Summary Recommendations by the PBC in its 14th session, the PBC under item 7 “recommended to the GA to thoroughly examine the recommendations made by the AC for their Implementation”

32. In this connection and as far as recommendation 2 of our Assessment Report regarding the establishment within WIPO of a more functional body meeting more frequently than the PBC with a possible membership of 12 to 16 and recommendation 3 designating the WIPO AC a subsidiary organ of the WIPO GA we were informed by the Legal Counsel that there were two routes: (a) one through amendment to the constitution and (b) another through a GA resolution

33. The AC sees advantages including timesaving by choosing the route of a GA resolution

34. With regard to the presentation by the Chair of the PBC on the composition of the AC, (A/47/15) we have the following observations:

- (a) the suggested working group may have the Chair or any member of the AC as an *ex officio* members;
- (b) the working group takes advantage of the dates when the AC is in session in Geneva to possibly meet with as many members of the AC as the group may wish and
- (c) the working group may complete its work as much in advance as possible before the next PBC meeting in September 2010 to allow Member States to nominate and eventually select new members of the AC

35. Mr. Chairman, Distinguished Delegate my colleagues and I will be happy to respond to questions you may raise.

Thank you.

[End of Annex II and of document]