

## Program and Budget Committee

### Sixteenth Session

Geneva, January 12 and 13, 2011

### REPORT

*adopted by the Program and Budget Committee*

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1. The sixteenth session of the WIPO Program and Budget Committee (PBC) was held at the headquarters of WIPO on January 12 and 13, 2011.
2. The Committee is composed of the following Member States: 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) and Zambia (53). The members of the Committee which were represented at this session were the following: Algeria, Angola, Bangladesh, Belarus, Bulgaria, China, Colombia, Croatia, Czech Republic, Egypt, France, Germany, Hungary, India, Iran (Islamic Republic of), Japan, Nigeria, Oman, Poland, Republic of Korea, Romania, Russian Federation, Senegal, South Africa, Spain, Switzerland (*ex officio*), Thailand, Turkey, United Kingdom, United States of America, Uruguay and Zambia (32). In addition, the following States, members of WIPO but not members of the Committee, were represented as observers: Australia, Bahrain, Chile, Comoros, Côte d'Ivoire, El Salvador, Ecuador, Israel, Madagascar, Malaysia, Monaco, Portugal, Serbia, Slovenia, Socialist People's Libyan Arab Jamahiriya, Trinidad and Tobago (16). The list of participants appears in the Annex to the present document.

ITEM 1: OPENING OF THE SESSION

3. The Chair welcomed the Delegations and recalled that the sixteenth session of the PBC was convened pursuant to paragraph 8 of the report on the Working Group on Audit Committee Related Matters (Working Group) (document WO/GA/39/13) approved by Member States at the General Assembly (GA) in 2010: "An extraordinary session of the PBC would be convened in January 2011 (preferably January 12 – 13 as per the indicative timeline below) to endorse the composition of the new Audit Committee and discuss the implementation of the recommendations of the Audit Committee contained in document WO/GA/38/2".
4. The Director General welcomed the delegations and explained that he was taking the floor to wish all delegates and their families a very happy and successful year in 2011 and one in which he hoped that consensus and agreement would prevail in the Organization.

ITEM 2: ADOPTION OF THE AGENDA

5. The Chair announced that an additional document WO/PBC/16/4, Oversight Recommendation Statistics, had been prepared for agenda item 5. With this amendment the agenda contained in WO/PBC/16/1 Prov.2 was adopted.

ITEM 3: SELECTION OF MEMBERS OF THE WIPO INDEPENDENT ADVISORY OVERSIGHT COMMITTEE (IAOC)

6. Discussions were based on document WO/PBC/16/2.
7. The Chair recalled that document WO/GA/39/13 (Report of the Working Group on the Audit Committee Related Matters), approved by Member States at the last GA in 2010, set out the process and the timeline for the selection for the new members of WIPO's new audit committee. The Chair added that the Report of the Selection Panel (document WO/PBC/16/2) would be presented by the Chairman of the Selection Panel (Mr. Andrés Guggiana, Chile). The Chair thanked the Selection Panel for the excellent work done in the fulfillment of its mandate and representing all Member States in the selection process, for the thorough consideration of all

applications and development of a very complex evaluation matrix. The Chair added that the work of the Selection Panel was a symbol of how Member States could make progress by working productively and proactively together.

8. The Chairman of the Selection Panel presented document WO/PBC/16/2 containing recommendation of the Selection Panel for the Appointment of Members of the WIPO Independent Advisory Oversight Committee (IAOC). The Panel's Chair stressed that the report of the Panel represented the opinion of all Panel members. The Panel was made up seven members, each of which represented one of the seven groups of WIPO Member States. In other words, all groups were duly represented by one regular Panel member and in the case of China and Russia the Panel members also had alternates. The Chair of the Panel highlighted that all of the Panel's work had been entirely Member State driven. The Panel had strictly followed its rules of procedure (adopted by consensus by its seven members). The Panel had complied with all of the selection stages described in document WO/GA/39/13: advertisements had been placed in the Economist, Le Monde and the WIPO website; the Director General alerted all Member States, requesting them to put forward candidates; and a letter had been sent from the office of the Director General to the WIPO Group Coordinators, requesting them to invite members of their Groups to put forward candidates. All of the foregoing had been done with the aim of receiving the greatest number of candidates possible from all Groups of WIPO within the deadline. One hundred applications had been received from nationals of all WIPO Groups. In parallel to this process, the Selection Panel, with the collaboration of the IAOC, had drawn up an evaluation matrix. The matrix attributed points for each of the characteristics/competencies required of the candidates to evaluate them for the minimum criteria of eligibility (consistent with the contents of document WO/GA/39/13). The Selection Panel had decided that all 100 candidates had been eligible. The candidatures had been sent to the IAOC for a ranking-based assessment on the basis of Evaluation Matrix. In doing so, the candidates' applications had been redacted to remove their names and nationalities. The IAOC determined that 44 of the 100 applications qualified for detailed assessment and ranking based on the evaluation matrix. The Panel's Chair emphasized that fact that the analysis by the IAOC, which determined the 44 candidates qualified for more detailed assessment, had been carried out on the basis of information that had been submitted by the candidates themselves within the agreed deadline and without IAOC knowledge of the name or the nationality of a candidate. Furthermore, the IAOC had carried out an additional review to ascertain the accuracy of the analysis. For that purpose, it had discussed some of the candidates that had not been included among the 44 selected. That confirmed that the procedure and criteria applied for the selection of the 44 candidates had been correct. The Panel's Chair explained that the Panel had then ranked the 44 candidates on merit in the following: the overall ranking, ranking within his/her respective to regional Group and in accordance with the specific competency grouping. On the basis of these rankings, the Selection Panel had established a short list of candidates with the highest ranking candidates from each WIPO Group. Due consideration had been given to the skills of each candidate so that the selected candidates formed a group with the proper mix of skills, expertise, correct geographical representation and gender balance. The Chair of the Panel indicated that all the WIPO Groups had been represented on this final list, except for the Group of Central European and Baltic States (CEB). This was due to the fact that the only candidature received from CEB had not met the minimum requirements under the evaluation matrix and therefore had not been included in the aforementioned group of 44 candidates. So as to make up for the candidate of that group, and following the guidelines appearing in document WO/GA/39/13, the Panel had unanimously decided to include the candidate with the highest ranking, which in addition had made it possible to maintain the proper balance of skills, expertise, geographical and gender balance. Once the seven best ranked candidates had been selected, their references had been checked. Finally, the Selection Panel had carried out telephone interviews with each of the selected candidates to verify their availability, professional level, commitment and independence. These interviews had been carried out on the basis of questions drawn up by the Selection Panel, with the IAOC's assistance, and put forward to all interviewed candidates. The members of the Panel had drawn up a list of seven names, which

in their view represented the best candidates for full membership of the IAOC. The Panel believed that it had selected a group with the best geographical representation possible on the basis of the applications received within the deadline, with the highest degree of professional merit and proper gender balance. The Chair of the Panel then expressed his gratitude, on his own behalf and on behalf of all the PBC members, for the support and the hard work performed by the members of the Selection Panel, the IAOC (in particular its Chair) and the Secretariat's team headed by Secretary to the Panel. The Panel's Chair said that in response to some delegations' requests for a possibility to consult the curricula vitae of the selected candidates, it had been arranged that the CVs in question could be consulted this afternoon in the Secretariat's offices.

9. The Delegation of Slovenia (on behalf of Group of Central European and Baltic States, (CEB)) thanked the Selection Panel and its Chair for the Panel's report and for the extensive work done. The Group recognized the importance of a well-skilled, highly experienced and motivated IAOC team, which would be able to continue the good work done by the previous audit committee. However, the Group expressed some concerns relating to the proposed composition of the new IAOC. According to the 2010 GA decision, the IAOC should be composed of seven members representing each of the seven geographical regions of the WIPO Member States, unless there was no qualified candidate from a specific region. This provision embraced the fundamental notion of prevalence of merit-based criteria over regional representation. The Group stated that it had supported this principle from the beginning of this process and would continue to do so. Nevertheless, the Group was discontent to see that the proposed composition of the new IAOC did not include any candidate from the CEB Group, whereas all other regions were adequately represented. Bearing in mind that among the 100 applications submitted on time there was a well qualified candidate from the CEB Group, the Group expressed concern that due to some technicalities its region was deprived of having a representative on the IAOC. That being so, the Group wished a successful and fruitful work to the new IAOC.
10. The Delegation of France expressed its gratitude to the members of the Selection Panel for carrying out their task successfully and within the tight schedule. The Delegation understood that the final list of seven candidates had been established taking into account individual merit as well as complimentary skills, so as to form a competent and balanced team, thus ensuring effectiveness and coherence among the new IAOC. The Delegation took good note of the recommendations contained in paragraphs 13 and 14 of the Selection Panel's report and stood ready to approve it.
11. The Delegation of India (on behalf of the Asian Group) said that India was honored to assume coordinatorship of the Asian Group and felt privileged to represent its Member States. It wished to convey the Group's commitment to work closely and constructively with other WIPO Groups, the Secretariat and other partners to make collective progress in all WIPO meetings in the coming months. The Group was very pleased to see the proposed smooth turnover in the membership of the IAOC and was also pleased that Member States had been able to find common ground on what had appeared to be a difficult issue some months ago. This was testimony to the fact that there was no issue that could not be resolved, if there was a general willingness on all sides to find win-win solutions with an open mind. The Group welcomed the nomination of the seven new candidates for membership of the IAOC as proposed by the Selection Panel in its report. The Group believed that the proposed team represented a good balance between merit, equitable job representation and complementary corporate skills. The Group noted with satisfaction that the top ranking candidates from the respective WIPO groups had been selected and that there was a greater gender balance in the composition of the IAOC, with the inclusion of two women candidates. The Group was pleased to see that a candidate from India had been selected from the Asian region. The Group thanked the Selection Panel for its painstaking and timely efforts in proposing an optimal new IAOC team and expressed its sincere appreciation to the Chair and the members of the outgoing audit committee for their technical support and assistance provided to the Selection Panel. The Group endorsed the

appointment of the seven candidates, as proposed by the Selection Panel, and looked forward to productive innings for the new membership of the IAOC. The Group noted, in particular, the recommendation of the Selection Panel in paragraph 14 of its report that: "When an offer of appointment was made to the candidates listed above, independence and availability be emphasized as essential attributes of the functions of a member of the IAOC." The Group attached great importance to these two important aspects, especially the commitment of the new IAOC members to function independently and autonomously of their own personal affiliations, employers and national authorities. In order to ensure this, the Group believed that it would be useful to obtain a commitment to this effect from the selected candidates, either orally or in writing, at the time of their appointment. Further, the Group wished to recall that the IAOC was set up to assist Member States in discharging their oversight governance functions in a more meaningful way. The Group therefore hoped that this session of the PBC would result in streamlining institutional mechanisms and processes to ensure that the reports and recommendations of the IAOC were duly considered by WIPO Member States and that necessary action be taken in a timely manner. It added that if suitable mechanisms were not evolved to ensure that the output and work of the IAOC would be made use of by Member States, the considerable efforts made so far by all Members to establish an optimal new audit committee would have been in vain. The Group said that it would present a proposal in this regard under the appropriate agenda item. With a view to enhancing the interaction between the IAOC and the Member States, the Group looked forward to the information session with the new members of the IAOC as approved by the GA in paragraph 10 of document WO/GA/39/13. In order to familiarize Member States with the new IAOC membership the Group requested that the curricula vitae of the seven new members be circulated for information to all Member States at the meeting.

12. The Delegation of South Africa (on behalf of the African Group) assured the Chair and the delegation of the Group's support report in the PBC's work. The Group was grateful to the members of the Selection Panel for the work done in selecting the final seven candidates for the consideration of the PBC. The Group wished to raise a pertinent procedural issue regarding technical restrictions imposed on accessing the report of the Selection Panel posted on the Internet. The Group believed that this technical restriction (password) had not been communicated to all Member States and thus Member States of the Group had difficulty accessing the document. It expected that in the future such inconvenience would be avoided by communicating such restrictions to all Member States. [*sic, recte* communication transmitting password to access the document sent to all Member States on December 17, 2010]. The Group noted that the report provided only the names of the selected candidates but not details of their qualifications and competencies. Whilst understanding and appreciating the rigorous process undertaken by the Selection Panel in selecting the final seven candidates, the Group thought it useful to have the curricula vitae of the seven candidates, in order for the PBC to familiarize itself with the nominated candidates. The Group requested that a list of other potential candidates be available to the Member States and not only to the Secretariat, as suggested in paragraph 15 of the document WO/PBC/16/2. The Group endorsed the nominated candidates and was particularly pleased with the inclusion of two women in the IAOC. This signified the realization of not only the fair representation in terms of a geographical representation but also of gender balance. In conclusion, the Group thanked the outgoing IAOC members for their excellent work during their tenure.
13. The Chair noted that the Secretariat had taken note of the communication difficulty and apologized for that. He announced that curricula vitae of the candidates would be made available.
14. The Delegation of Algeria endorsed the statement made by South Africa on behalf on the African Group. The Delegation also the Chair of the Selection Panel and commended the clarity of his statement. It also thanked the Secretary to the Panel and his team for the steadfast assistance provided during the Panel's many meetings. As a member and as vice-Chair of the Panel, Algeria played an active part in the selection process of the future

members of the WIPO IAOC. Within that context the Panel members ensured that, in determining the membership for the IAOC, criteria such as professional qualifications, expertise, gender equality and geographical balance were satisfied. The Delegation was confident that the synergies and complementarities created among different areas of competence among the candidates proposed for the approval of the PBC, would make it possible to establish an efficient oversight body further contributing to the improvement of transparency and governance at WIPO, especially in good program execution and rational use of resources, both human and financial. In light of all of the above, the Delegation fully supported the recommendation made by the Selection Panel in paragraph 13 of its report. Lastly, the Delegation paid tribute to the outgoing members of the committee and wished to thank them for the outstanding job that they had done over the recent years and especially for their valuable support given to members of the Selection Panel.

15. The Delegation of the United States of America appreciated the efforts of the Selection Panel in the review and ranking of applicants. The Delegation thanked its colleagues on the Selection Panel for the rigorous evaluation of the applicant pool. The Delegation was confident that the Selection Panel had undertaken its responsibility with the utmost seriousness and had recommended only the most qualified candidates. The Delegation congratulated the Selection Panel for undertaking what had been a careful and transparent process. The decision to make available the curricula vitae of the seven nominees later today, would fully satisfy the requirement for transparent process and the PBC Member States' assurance concerning the appointment of these individuals.
16. The Delegation of Angola wished to thank the members of the Selection Panel for recommending members of the new IAOC, in particular for the work and time devoted during the last four months. The Delegation supported the statement made by the African Group and endorsed the recommendation of the Selection Panel contained in the paragraphs 13 and 14 of its report. The Delegation conveyed its best wishes to the newly appointed candidates and assured of its corporation and support in future assignments. The Delegation requested, as stated the African Group, that the curricula vitae of the seven new candidates be made available. It welcomed the fact that within the seven nominated candidates there was a candidate from Africa.
17. The Delegation of China thanked the Secretariat for the preparatory work done for the present session, in particular the fact that all the documents of the meeting were distributed to Member States in the six official languages ahead of the meeting. This demonstrated the importance that WIPO attached to the language issue and it would facilitate active participation in the proceedings of this meeting by all Member States. The Delegation noted that the main agenda items related to the IAOC. The Delegation welcomed the establishment of this wholly new advisory oversight body and hoped that the nascent IAOC would subsequently discharge its future responsibilities well: promote internal control by way of review and assessment of how Member States had put into place their supervisory role and better exercise their management function over the operation of all funds within WIPO. The Delegation wished to congratulate the seven candidates on the final list. It hoped that they would contribute into the work of IAOC with their outstanding merit and abundant experience. At the same time the Delegation thanked the Selection Panel and the outgoing members of the IAOC for the quality work that they had done. The Delegation emphasized that it would continue to take active part in, and pay extended attention to, the work of the WIPO IAOC and hoped that with in-depth participation and discussion among the Member States, the administrative work of WIPO would continue to move toward greater efficiency and make greater contribution to the future development of the IP regime.
18. The Delegation of the Republic of Korea assured the Chair that it would continue to make its best efforts to work constructively with other Member States and the Secretariat this year. The Delegation endorsed the statement made by the Asian Group and welcomed the nomination of the seven new candidates for membership of the IAOC, following a long and painstaking selection process. As the Group Coordinator had stated, the Delegation believed that the

proposed team was composed of able members with merit and complementary corporate skills, and that geographical representation was equitable. The Delegation wished to raise its concerns regarding some conflicts of interest that might arise. The Delegation has been made aware that several of the candidates were currently working or had worked in the past for their respective governments. Among the criteria to be taken into account in the evaluation of the applications was independence. The Delegation believed that IAOC members should carry out the mandates independently, regardless of their own or of their countries' national interest. In order to ensure this, it was important to take the necessary measures to obtain commitment to this effect from the selected candidates, through, for instance, a written declaration before their appointment confirmed orally at the next PBC meeting. Finally, the Delegation believed that all Member States had the right to know who the new IAOC members were. Therefore, the Delegation supported the Asian Group's request that detailed resumes of the seven new members be circulated to all Member States.

19. The Chair believed that two important points had been raised: the availability of the curricula vitae of the candidates, already taken care of, and the importance of the independence of candidates. The Chair added that on the latter point all Members felt very strongly that independence was an integral part of the contract.
20. The Delegation of Nigeria supported the statement of the African Group. The Delegation noted the effort put into the selection process and congratulated the Selection Panel. It expressed its support for the recommendation of the Selection Panel, and noted, in particular, the gender balance in the proposed IAOC. It looked forward to receiving the candidates' curricula vitae. The Delegation was particularly satisfied that an African candidate was on the list of nominees. Finally, the Delegation expressed its appreciation to the members of the outgoing IAOC for discharging their duties.
21. The Chair proposed to read out the Oath of Loyalty that the new IAOC members would be asked to take, adding that it might alleviate many of the delegations' concerns. The text was read as follows: "I solemnly swear (or undertake, affirm, promise) to exercise in all loyalty, discretion and conscience the functions entrusted to me as a member of the WIPO Independent Advisory Oversight Committee, to discharge these functions and to regulate my conduct in the interest of performing that function only in view, without seeking or accepting instructions or assistance from any government or other authority outside the World Intellectual Property Organization in regard to the accomplishment of my duties ". The Chair explained that the nominee was expected to sign and date the oath. The Chair invited the Chair of the outgoing IAOC (Audit Committee) to take the floor and joined delegations in thanking him and his colleagues for their excellent services and a wonderful job that they had done in informing and guiding the Member States.
22. The Chair of the IAOC (Audit Committee), on behalf of his colleagues, wished to thank the membership for the excellent relations that had been established over the past few years. He also thanked the Secretariat, in particular the new Management Team put in place as of January last year, with whom the IOAC had worked quite closely and constructively in the interest of the Organization. The IAOC Chair also thanked the Selection Panel, with which the Committee worked extensively. He added that either that day or the day after, the last report of the outgoing Committee would be made available (in English only). The IAOC Chair said that the Committee had tried to summarize in it what it considered to be the message for its successors. The Committee welcomed the creation of the new Oversight Committee and added that it was long overdue and that the rotation was really mandatory. The IAOC Chair hoped that the process put in place would continue in three years time for the three members who would have to be replaced. He added that the IAOC regretted that the time limit imposed by the General Assembly decision prevented receipt of greater number of applications. While the Committee shared the view that all candidates recommended were excellent, it would have been better to have more candidates from all the groups (three groups had only one candidate each). Finally, a number of candidates might be interesting for the Secretariat at the time of the selection of a new internal auditor. The Committee invited the Secretariat to examine the

applications received and possibly draw the attention of the applicants to this future vacancy. The IOAC Chair believed that some of the candidates who had not been selected could be a very good addition to the Secretariat in another capacity. Concerning the access to the curricula vitae, the Chair recalled that, in his experience in the United Nations, the curricula vitae of members of committees were always circulated in public documents. He suggested that, when the process was undertaken next time, the vacancy announcement should state that the curricula vitae of the selected candidates might be made public i.e., circulated to Member States, which was the practice in other organizations. The IAOC Chair added that he and his colleagues would try their best to facilitate the transition to the new Committee during 2012.

23. The Chair announced that copies of the seven curricula vitae were being made available to the membership. The Chair understood that since there were no more comments, the PBC agreed to approve the recommendation of the Selection Panel for the appointment to the WIPO Independent Advisory Oversight Committee as recorded in paragraphs 13 and 14 of the Panel's Report.
24. The Program and Budget Committee approved the recommendation of the Selection Panel for the Appointment of the WIPO Independent Advisory Oversight Committee, as recorded in paragraphs 13 and 14 of the Selection Panel's Report (document WO/PBC/16/2).

#### ITEM 4 REVIEW OF THE TERMS OF REFERENCE OF THE WIPO IAOC

25. Discussions were based on document WO/PBC/16/3 and WO/PBC/16/3/Rev.
26. The Chair clarified that, in accordance with the Financial and Regulations Rules of WIPO (FRR), the GA approved the WIPO Audit Committee's Terms of Reference (ToR) upon recommendation by the PBC. Therefore, the decision paragraph of document WO/PBC/16/3 would be edited to request the PBC to recommend to the GA the approval of the revisions of the ToR of the WIPO IAOC. The Chair then invited Mr. Roz, the Chair of the current IAOC to introduce the document.
27. The Chair of the IAOC (Audit Committee) explained that, as discussed with the Group Coordinators during the Committee's last meeting, the IAOC felt that the changes introduced by the PBC and the GA in the rotation mechanism and the selection of IAOC members had to be reflected in the Committee's ToR, so that the new members were fully aware of their mandate and responsibilities, in particular the rotation mechanism. The changes made were only the ones that had previously been approved by the GA through the approval of the Working Group on Audit Committee Related Matters (document WO/GA/93/13) and were shown in the document in track change mode. The IAOC Chair added that no changes were proposed to the substance, anything that could have changed the mandate or the role of the Committee. The IAOC Chair remarked that should PBC approve the proposed revisions, it would fulfill its mandate as the ToR should be reviewed every three years. He also reminded the delegations that at the last PBC and the last GA, the Committee recommended that in 2012 the ToR of the Oversight Committee, the ToR of the external auditor and the Internal Audit Charter be all reviewed at the same time, to ensure full coordination between the three oversight bodies. The Committee believed that this would benefit the Organization and the Member States by providing clarity on roles of these bodies. The IAOC Chair added that the year 2012 was recommended because as of January 1, 2012, there would be a new external auditor and a new internal auditor. The IAOC Chair invited the membership to endorse the changes proposed in the document.
28. The Delegation of India (on behalf of the Asian Group) welcomed document WO/PBC/16/3. The Group believed that the proposed changes were necessary in order to reflect the changes approved by the 39th session of WIPO GA in September 2010 with regard to the nomenclature of the Committee, its composition, rotation mechanism and the selection process of its



members. The Group also welcomed the corresponding changes made with regard to the quorum, meetings' duration and additional selection criteria. However, with regard to the proposed change in paragraph 12 of the document, the Group noted an anomaly between that paragraph and paragraph 3(iii) of document WO/GA/39/13 (approved by the GA) where it was agreed to: "improve the interaction between the Audit Committee and Member States and institutionalize the information sessions between Member States and Audit Committee at the end of each committee meeting". When compared to the proposed change in paragraph 12, it could be seen that paragraph 12 restricted participation of Member States to regional Coordinators only. The Group believed that an opportunity for more regular and periodic interface between all Member States and the IAOC was of great importance, in order to ensure more effective oversight by Member States and the IAOC. As such, the Group requested that these interactions be open to all Member States, instead of being restricted only to regional group Coordinators. The Group therefore proposed to modify the last sentence of paragraph 12 as follows: "the IAOC shall keep Members States informed of its work on a regular basis. In particular, following each of its formal sessions the Committee shall prepare a report for circulation to the Program and Budget Committee and organize a meeting with all WIPO Member States". The proposed change was to replace the phrase "the WIPO Group Coordinators" with the phrase "all WIPO Member States". Finally, the Group wished to thank the Chair of the outgoing Committee and his team for their assistance in updating the Committee's ToR.

29. The Delegation of South Africa (on behalf of the African Group) took note of the revisions made by the IAOC to its ToR. The revisions were in line with the changes outlined in the report of the Working Group (document WO/GA/39/13). However, the Group wished to propose some new changes to the proposed revisions. Under paragraph 3, line 3, the words "to the extent possible", should be deleted, to be consistent with the text of paragraph 14 of document WO/GA/39/13, which read: "The Audit Committee will be composed of seven members from each of the seven geographical regions of WIPO Member States". Under paragraph 6, the Group suggested insertion of the word "integrity" between the words "professionalism" and "independence". The Group also wished to clarify the reference (last line of the same paragraph) to "...two working languages...". The Group said that since WIPO had six official languages, the reference to "working languages" should be deleted and the language of that paragraph should refer to either English or French, without a reference to any official language, in view of the ongoing negotiations of the language policy. The Group did not wish to prejudice the outcome of that language policy and stated that reference to working languages meant prejudging the outcome of the language policy negotiations. The Group preferred that the reference to working languages be deleted and the sentence would read as follows: "Candidates must possess a demonstrated working knowledge of either English or French". Regarding paragraph 7(f), the Group requested clarification regarding the proposed insertion of: "international and/or intergovernmental experience and experience in Committee work", as the Group found it confusing and did not see what value such wording added to the text, as it seemed to refer more to the criteria required of diplomats and would mean that if a person did not have an international or intergovernmental experience he/she would not qualify. Regarding paragraph 12, the Group endorsed the proposal by the Asian Group to replace the references to "WIPO Group Coordinators" by "all Members States." The Group highlighted that, as the Audit Committee had indicated in document WO/GA/38/2, should the membership of the Committee be reduced (as was the case), this would imply cost saving to be used to provide more substantive support to the Committee, possibly a dedicated secretariat. The Group also recommended that the revised ToR of the IAOC include a provision for a dedicated secretariat, to provide the IAOC with not only substantive support but also logistical and administrative assistance.
30. The Chair summarized the changes proposed so far: in paragraph 3 striking, in the third line, the phrase "to the extent possible"; in paragraph 6, third line from the bottom, after the word "professionalism" add the word "integrity"; the last line, the phrase would read "candidates must

possess a demonstrated working knowledge of either English or French”; and in paragraph 7(f) strike out that clause “and experience in Committee work.”

31. The Delegation of South Africa confirmed its preference for striking out the clause, however pending the examination of the meaning of clause, because at the moment the Group did not understand what the clause referred to or what value it added to the text.
32. The Delegation of Bangladesh supported the statement made by the Asian Group and the points raised by the African Group. In that, the Delegation also sought clarification regarding point 7(f) and the meaning of “...the experience in Committee work”. The Delegation noted that this had been one of the criteria that might have been used by the Selection Panel. The Delegation suggested an amendment to paragraph 14(f). The existing ToR did provide for assistance from the WIPO Secretariat but as the interaction with the Committee has shown, this support had so far been on an *ad hoc* basis and there had been some complaints regarding the support that the Committee had received, especially in terms of carrying out the specific tasks. The delegation suggested strengthening the language of this paragraph. This was one of the recommendations that had come from the outgoing IAOC (as per document WO/GA/38/2), and one of the issues that would be discussed under the next agenda item. However since the membership was examining the ToR, the Delegation would find it useful to hear from the Chair of the IAOC how the Committee would like to see the strengthening of this provision. Along that line, the Group was ready to look at the African Group’s suggestion to construe the idea of a dedicated secretariat for the IAOC.
33. The Delegation of France (on behalf of Group B) thanked the IAOC and the Secretariat for the revised ToR. The Group thought that the amendments proposed faithfully reflected proposals in document WO/GA/39/13 as adopted by the last GA. Regarding paragraph 12, the Group wished to see the mention of both the regional Group Coordinators and interested Member States. Therefore, the Group was prepared to go along with the Asian Group’s and the African Group’s proposal to align this text with paragraph 3 and 10 of the Report of the Working Group (WO/GA/39/13). However, the language in those paragraphs was “...information sessions between Member States and the Audit Committee.” It did not refer to all Member States. So, in order to align the two texts, paragraph 12 should say “...organize a meeting with WIPO Members States.” The Group stated that the members of its Group would express themselves individually on other proposed amendments
34. The Chair summarized the proposed amendment as follows: to be consistent with prior references, paragraph 12 would read “...organize a meeting with WIPO Member States...”.
35. The Delegation of Angola proposed the following amendments. Paragraph 4(ii), in the sentence “Four members of the new Independent Advisory Oversight Committee.(...)” add the words “starting in February 2011” to make the phrase consistent with the contents of paragraph 28(ii) of document WO/GA/39/13. Since the Committee should come into being as of the February 1, the wording referring to February 2011 should be added. In paragraph 4 (v), the words “Except as provided under paragraph 4(iii) above...” should be deleted, also to be in line with paragraph 28(v) of WO/GA/39/13. Regarding paragraph 4(vi), third line, second sentence: “If the departing member belongs to a Group that already has another representative (...)”, the Delegation believed that, when the matter had been discussed, this had not exactly been the agreement reached. Therefore it suggested that this phrase be deleted to align the text with the gentleman’s agreement reached at the time. In paragraph 4(vii) the Delegation suggested deletion of “Except as provided for in paragraph 4 (viii) below”, to be fully in line with the text with paragraph 28(vi) of WO/GA/39/13. In paragraph 6, the Delegation suggested that the phrase “The Selection Panel, in nominating candidates” be changed to “The Selection Panel, in selecting or recommending candidates for election by the Program and Budget Committee (...)”. The Delegation pointed out that the Selection Panel did not have the legal power to nominate candidates but only to make recommendations. The Delegation also endorsed insertion of the word “integrity” in paragraph 6, as proposed by the African Group. In respect of paragraph 7(f), the Delegation supported the statement by the African Group with regard to the criteria of candidates having international and/or governmental experience and experience in Committee

- work. It added that paragraph 6 which said that “candidates possess relevant qualification and experience” specified the matter clearly enough. The Delegation believed that the criterion of work experience in international or intergovernmental environment was not necessary. What was important was to select the best candidates. The Delegation also supported the view of the African Group on paragraph 12 and suggested the wording of: “(...) Group Coordinators plus interested Members of PBC.”, if there was a need to find a compromise phrasing.
36. The Delegation of Germany, regarding paragraph 12, pointed out the sequencing of the “report” and the “meeting” and wondered which should be listed first since the practice had been that the meeting had been followed by the report. As the text stood, the report came first and the meeting followed. If the meeting came first, the result of such meeting could be reflected in the report. The Delegation requested clarification on the sequencing: what came first, the meeting or the report or they had nothing to do with each other.
  37. The Secretariat (ADG) said that it would work on the revised language with the Chair, suggesting mentioning the meeting first and then the report.
  38. The Delegation of the United States of America appreciated the efforts by the IAOC to review its ToR to bring it in line with the GA decision taken at its 2010 session. The Delegation supported the Asian Group’s suggestion for the change to paragraph 12. As the Delegation had indicated during discussion of the previous agenda item, it was crucial that appointment to the IAOC was a fully transparent process. Therefore, the Delegation requested an addition to the end of paragraph 6 of the ToR. It would read: “When making its recommendations to the PBC, the Selection Panel shall provide CVs for all individuals being nominated for appointment to the Independent Advisory Oversight Committee.” This addition would address the Delegation’s concern regarding the appointment process. With this change, the Delegation stood ready to approve the ToR. The Delegation did not support the African Group’s suggestion to delete “to the extent possible” from paragraph 3. It reminded the delegations that there were instances, as seen during the current selection process, where the only candidate from a regional group did not advance to the next selection stage.
  39. The Delegation of Slovenia thanked the outgoing audit committee and Mr. Roz especially, for the amendments to the ToR presented in the document WO/PBC/16/3. It added that those modifications were indeed necessary in order to reflect the current situation. The Delegation had the following comments. On paragraph 12 (as expressed by other Coordinators), the Delegation believed that the interaction between audit committee and the Member States was extremely important and crucial and it had proven in the past to be very useful. Therefore, it supported the idea of opening the briefings with IAOC to wider membership, not only Group Coordinators. The Delegation added that it could accept either of the two wording proposals made (by the Asian Group and Group B). Regarding paragraph 3, the Delegation highlighted that deletion of words “...to the extent possible...” would produce phrasing which was contradictory to, and in discrepancy with, the just adopted new composition of the IAOC where not all seven WIPO groups were represented.
  40. The Delegation of Spain supported what the Coordinator of Group B had said about extending the Group’s support for suggestion made by the Asian Group to include all Members States interested in attending a meeting with IAOC and increasing as far possible the transparency of the Organization. On the latter, the Delegation endorsed the proposal by the Delegation of the United States to publish the curricula vitae of the selected candidates. This proposal fostered the necessary transparency, which the Delegation believed was not sufficiently present as yet in the Organization. On paragraph 6, the Delegation supported the suggestion by the African Group in respect of the languages. Member States were involved in negotiations of language policy and therefore paragraph 6 should refer to the official languages of WIPO. The Delegation pointed the word “competencies” was translated into Spanish as “competencias”, which was incorrect and requested that it be corrected to “requicitos” (paragraph 7).
  41. The Delegation of the United Kingdom was in agreement with the statement by Group B and wished to make two other substantive points. First, in paragraph 3, the suggestion to delete the

words “to the extent possible”: the Delegation suggested referring the text back to the original GA decision and requested the Secretariat to clarify what it was. If the deletion was made, it thought that the following text could be inserted in brackets at the end of that sentence: “unless there was no qualified candidate from a specific region.” Regarding paragraph 7, the Delegation believed the insertion of (f) in regard to “international and intergovernmental experience” was actually quite important and it would be desirable to keep that phrase. Paragraph 7 said that “The Audit Committee should corporately possess (...)” It did not say that it “had to”. For this reason, the Delegation preferred to retain point (f).

42. The Delegation of India (in its national capacity) supported the intervention made by the Delegation of the United Kingdom with regard to paragraph 3. The Delegation thought that it might be useful to simply capture what had been decided at the GA. It recalled the United Kingdom’s proposal that, in the event that there was no qualified candidate from a particular region, there of course would have to be someone else chosen from another region, as was the case at present. The Delegation wished to find a suitable wording to reflect that in paragraph 3. Referring to paragraph 4(vi), line four, the Delegation wondered of the utility of the word “and” because when read, it said “If the departing member belongs to a Group that already has another representative, and to the extent possible, he or she will be replaced by a member originating from the Group(s) not represented in the Committee”. The Delegation suggested deleting “and” and, if anything, replacing it with “then”. On paragraph 6, the Delegation agreed with the change proposed by the Delegation of Angola i.e., “The Selection Panel in recommending candidates (...)” and requested that the following part of the sentence changed to read: “The Selection Panel in recommending candidates for appointment by the Program and Budget Committee (...)” The current word was “election” by the PBC. However, this was not an electoral process, but a selection or appointment by the PBC. So the word “election” also needed to be changed to “selection” or “appointment” by the PBC. In paragraph 12, the Delegation was ready to go along with the suggestion made by Group B to delete the word “all” from the phrase “(...) all Member States” to keep it in line with the report of the Working Group on the Audit Committee. It also agreed with the Delegation of Germany that the sequencing in this paragraph needed to be reversed. The idea behind changing the ToR in this regard was the agreement of the GA that, every time the IAOC met, its meeting would be followed by an interactive session with WIPO Member States and if that could be captured in the wording the Delegation would be satisfied. The Delegation also supported the proposal by Delegation of the United States in regard of paragraph 6 and circulating the curricula vitae of the candidates. The Delegation believed that this would contribute to the transparency of the process. It requested the Secretariat to clarify whether this was consistent with the current processes in WIPO and whether there was a possibility that it would violate confidentiality under which these applications had been sent for selection.
43. The Delegation of China associated itself with the comments made by the Delegations of South Africa and Spain regarding language requirements for the IAOC members (paragraph 6). It suggested modifying the last sentence to read: “Candidates must possess or demonstrate their working knowledge of one of the WIPO official languages, preferably English or French.”
44. The Delegation of Algeria supported the statements of the Delegations of Angola and India regarding paragraph 4. It believed that the text of the ToR should correspond to what was said in the report of the Working Group and proposed to delete the last sentence of paragraph 4(vi), i.e., “If the departing member belongs to a Group that already has another representative” etc., should be deleted.
45. The Delegation of Colombia agreed with the suggestions made by the Delegations of Angola and India on paragraph 6. However, bearing in mind that there was a mistake in the text of the decision, i.e., it was not the PBC that approved but it recommended to the GA that they elect, should be taken into account. Therefore, perhaps the paragraph should say: “...in selecting candidates to be recommended by the Program Budget Committee to the General Assembly” etc.

46. The Chair of the IAOC (Audit Committee) wished to comment why certain wording had been suggested. Regarding the insertion of “to the extent possible”, he explained that it had already been foreseen in the Working Group that there might be the possibility that not all Groups would be represented. If such possibility was not foreseen, there would be a contradiction between the ToR and reality. For example, if “to the extent possible” was deleted, it would mean that the current recommendation of the Selection Panel could not be endorsed. Regarding paragraph 4(v), the IAOC Chair pointed out that if the phrase “except as provided” etc., was deleted there would be contradiction with the text of paragraph 4(iii). The wording of “except as provided” etc. had been inserted to comply with the text of the report of the Working Group. Similar issue would arise if “to the extent possible” was deleted from paragraph 4(vi). On one hand the same geographical group was imposed, on the other hand if it happened that there were no candidates from the groups that were not represented, he wondered what would be done then. The phrase was inserted to foresee the possibility that there were no candidates from a given group. The IAOC Chair reminded the membership that this year, three groups had only one candidate and there might be an instance, as in 2006 when the old Audit Committee (AC) had been created, that certain group had had no candidates at all. Concerning paragraph 6 and the word “election,” the IAOC Chair thought it useful to have Secretariat’s opinion on what the process was. He explained that the word “election” had been retained as it appeared in the original ToR. He had no preference for any wording that Members might recommend. He suggested that the Secretariat with the assistance with the Legal Counsel might find the best terminology to use. The IAOC Chair drew the Members’ attention to paragraph 7, which ended with “the Oversight Committee should corporately possess the following competencies.” He added that this did not mean that all members should possess the competencies listed therein. However, the Selection Panel and the old AC considered that to have a least one member, if not more, who had an experience and knowledge about the world of the UN system was important. He further said that his colleagues in the old AC had repeatedly expressed the appreciation for the fact that there were two members who had experience in the UN, because it had facilitated the work. The UN world was a particular one, so that was why this wording was put in. The experience in Committee work, although it seemed redundant to the PBC membership, was not. The IAOC Chair recalled that many candidates who had applied did not have any committee experience and the Oversight Committee’s work was collegial, with members working together. In order to work in this fashion one had to know how to draft, how to interact and how to work with other colleagues. Concerning the assistance provided to the IAOC: this matter had already been discussed two years ago and Members had not been in favor of adding resources. It had been a matter of cost, and the IAOC Chair believed that the old AC did not really need a full coverage of substantive secretariat support. However, the Committee needed secretariat’s substantive support. It had good administrative support doing purely administrative and logistical work. All the reports, research and the rest of the work had been possible because the Committee had a couple of retiree members who had worked very hard to provide the reports and do the research. This would not have been possible with the current level of support. The IAOC Chair’s suggestion was that Members envisage additional support and discuss it with the new IAOC. The new IAOC members were still actively working, so they would not be as available as the old members. The IAOC Chair wished to make it clear that the IOAC did not complain to the Secretariat as the Secretariat had done what the Member States had decided regarding provision of technical assistance. He recalled that there had been 20,000 Swiss francs foreseen in the IAOC budget for consulting work. The money had not been used as the IAOC did not feel the need for very technical expertise. However there would be the need for some substantive support and the new IAOC chair might be in a better position to discuss with the Secretariat what to do and how to do it.
47. The Chair thanked the IAOC Chair for raising all these issues. On the issue of “to the extent possible” in regional groupings, the Delegation of India had probably offered the best suggestion, which was to refer to the original language that all Members had agreed to. That should be able to broach the problem, which was a real one as at present there was not a representative from every group. The Chair added that, as the IAOC Chair had also pointed

- out, that could happen again as it had in the past. Therefore, Members should try to find the language on that paragraph. Regarding the required language knowledge issue, with all the proposals made so far it should be possible to find agreement on wording during the break.
48. The Delegation of France (in its national capacity) referred to some of the amendments proposed to the last sentence in paragraph 6 and preferred to keep this sentence as drafted, i.e., “candidates must possess a demonstrated working knowledge of one of the two working languages of WIPO, English or French.” The Delegation fully understood the arguments put forward by the Delegations that had taken the floor on this issue (South Africa and Spain in particular). That being so, the Delegation could show some flexibility and accept either of the formulations proposed by those Delegations. On the other hand, the Delegation thought that it would be difficult for it to accept the formulation proposed by the Delegation of China because that would totally change the situation. In fact, it would make it much less likely that the new IAOC team would have a common working language and the Delegation stressed that it was very important that the new IAOC could communicate easily.
  49. The Delegation of Bangladesh wished to put on record its appreciation for Mr. Roz, particularly for addressing the two issues that the Delegation had raised and added that it took note of the explanation provided, particularly regarding paragraph 7(f). The Delegation felt that the existing ToR addressed that point but if an additional reference to intergovernmental experience added value, it would definitely support it. In that context, the Delegation thanked the Delegation of the United Kingdom for clarifying the matter. As regards paragraph 3, the Delegation took note of the debate and on the words “to the extent possible” and wished to point out that this was one of the most critical issues that came to the fore during the negotiations of the Roadmap. In accordance with the compromise reached at the time, the Delegation suggested that the ideal solution would be to delete the words “to the extent possible” and keep the sentence as it was in paragraph 14 of the Roadmap and also add paragraph 15 as reflected in the Roadmap. It reflected that one problem that might arise was that, when Members had talked about the highest ranking candidate the situation might deflect from the reality, as could be seen from the present case. In the present case, the Selection Panel had decided to choose the highest ranking female candidate. Therefore, the Delegation suggested that, some linguistic flexibility could perhaps be helpful to allow for that kind of situation. Since paragraphs 14 and 15 of document WO/GA/39/13 were a very critical outcome of the negotiation process, the Delegation suggested retaining those two paragraphs but maybe with a bit of linguistic changes to allow for certain other situations.
  50. The Chair thanked the Secretariat for the distributed draft revised document reflecting the amendments made in the course of that day’s discussions.
  51. The Delegation of South Africa supported suggestions made by the Delegation of Bangladesh for paragraph 3. It also wished to respond to the reply provided by the IAOC Chair. The Delegation suggested that the last words in paragraph 7(f), i.e., “experience in Committee work” should be deleted and the sentence would stop after “...intergovernmental experience” because the Delegation did not understand what “Committee work” was. Regarding the wording of paragraph 4(vi), the Delegation did not recognize that language, believed that it was a matter of consistency with what had already been adopted in document WO/GA/39/13 and requested that the specific language be struck out, i.e., the entire text starting from: “If the departing member belongs to a Group that already has another representative, and to the extent possible, he/she will be replaced by a member (...).”
  52. The Chair invited the Delegation of South Africa to examine the new revised draft of the document and reflect whether it still wished to strike out the entire clause as both, in paragraphs 3 and 4(vi), the language was revised to reflect what had already been adopted in WO/PBC/39/13.
  53. The Delegation of Angola agreed to the deletion proposed in paragraph 3 of “to the extent possible”. In paragraph 4(ii) the delegation requested insertion of “February 2011” as the new Committee would start on February 1, 2011. In paragraph 4(v), it accepted deletion of the

words: “Except as provided for (...).” In paragraph 4(vi), it requested deletion of the part “If the departing member belongs to (...)”. It also thought that, in paragraph 4(vii), the first sentence starting “Except as provided for in paragraph 4(viii) below” should be deleted. On the paragraph 6, the Delegation supported the insertion proposed by the Delegation of the United States (regarding circulation of curricula vitae) and approved of the change proposed for paragraph 12. With these changes the delegation was ready to approve the document.

54. The Chair proposed to go through the revised text of the document paragraph by paragraph to see where the areas of divergence lay. He was concerned about the suggestion to delete paragraph 4(vi), on the basis of fairness, as if the clause in question was not there, then each member of the IAOC would be replaced by a candidate from the same geographical region to which he or she belonged. His concern was that, if that language was put in without any of the other following language, then the CEB Group would never have a representative on IAOC. He invited the delegations to consider how the proposed deletion would impact the current situation with the CEB Group, a situation where a group might not have a representative. The Chair then invited comments on paragraphs 1 and 2. There were none. In paragraph 3, “to the extent possible” was deleted and the agreed language was introduced.
55. The Delegation of Algeria, on paragraph 3, believed that the deletion responded to the concerns expressed by many delegations, particularly the Coordinator of the African Group. However, the Delegation still had some reservations about the use of the word “qualified”. It would be preferable to have “eligible” instead of “qualified”, by saying “However, if no eligible candidate (...)”, because “qualified”, was one of the criteria of eligibility, not all the different criteria.
56. The Delegation of the United Kingdom, in response to what had just been said, stated that it would have an issue with such proposal, because the text in question came from the GA document. Changing the text would mean that Members would be reinterpreting what the GA had said and it did not believe that Members could do that. The Delegation suggested to leave the text as it was to respect constitutionally what the GA had decided.
57. The Delegation of Algeria stated that it was aware of the previously approved text and added that it had made this proposal based on experience in the Selection Panel and how that issue had been worked out when the Panel attempted to apply the criteria. The Delegation was not attempting to rewrite the GA decision but attempted to clarify and help the work of the Committee which would have to apply this ToR. It further explained that, at one time, the IAOC would have to try to explain and interpret what was meant by “qualified” and, in that case, Members were going to face another problem. It repeated that it would prefer to use “eligible” instead of “qualified” and added that it understood the position of the United Kingdom concerning this decision.
58. The Delegation of Slovenia thanked the Chair for the explanation provided. The Delegation was supportive of the wording and the use of language used in the documents approved or adopted by the GA. The Delegation requested that the discussion on that point continue the following day, after the meeting of the CEB Group to discuss the matter.
59. The Delegation of the United Kingdom thanked the Delegation of Algeria for clarifying what it had meant. The Delegation pointed out that since the Selection Panel had not seem to have any issues with the current language (“qualified”) in choosing the new members, then there should not be any issues with it in the future either. The Delegation hoped that this fact satisfied the Delegation of Algeria’s understandable concern, that a Selection Panel would have no issue with the GA approved language.
60. The Delegation of India observed that while the language had been lifted from the GA decision, it thought that, because of the way the text had been drafted, it did not clearly say what the process was going to be. It suggested that after the first sentence, “As of (...), the IAOC will be composed of seven members from each of the seven geographical regions of WIPO Member States”, the next sentence should be what was below: “The seven members will be nominated by the PBC following a selection process carried out by a Selection Panel set up by the Committee for this purpose, to be assisted by the current WIPO IAOC.” After that: “However in

case there is no qualified candidate available from any region, the position would be filled in by the highest ranking candidate in the IAOC assessment irrespective of his/or her regional representation”.

61. The Chair thanked the Delegation of India for an excellent proposal and added that this proposal as well as the suggestion by the Delegation of Algeria (the use of “eligible” instead of “qualified”) would be duly considered. The session was adjourned for the day.
62. As the session resumed the Chair recalled that the current proposal on the table for paragraph 3 was that the second sentence would read: “The seven members will be nominated by the PBC following a selection process carried out by a Selection Panel set up by the Committee for this purpose, to be assisted by the current WIPO IAOC”, in the third sentence would be the new language as approved by the GA, and the fourth sentence would remain the same. There still remained the issue of the use of “qualified” *versus* “eligible”.
63. The Delegation of the United Kingdom proposed that, following consultations with the Delegation of Algeria, paragraph 3 on membership and qualifications, should simply say: “As of February 2011, the IAOC will be composed of seven members nominated by the PBC.” At the end, the final sentence of this paragraph: “The services of the two external experts of the existing IAOC will be retained”, a reference to the GA document could be added: “as per the document WO/GA/39/13.”
64. The Delegation of Algeria thanked the Delegation of the United Kingdom for the proposal and added that indeed the two delegations discussed their views. The Delegation explained that it had not been happy with the original proposed wording as it felt that quality was not really being enhanced by it. For that reason, it believed that the word “qualified”, as used in this paragraph, was misleading, led to confusion and did not reflect what actually had happened within the Selection Panel in which the Algerian delegate participated. Qualification was one of the eligibility criteria established by the Selection Panel. There had been many other criteria that the Panel had also taken into account when determining eligibility and they did not relate to qualifications as such. For instance, the CEB Group candidate had been excluded, not because the person proposed was unqualified, but for another reason. The reason was that the information provided in the curriculum vitae of that candidate had not been sufficient to allow the Selection Panel to evaluate the candidate or to apply the selection criteria. The Delegation drew attention to paragraph 9 of the Panel’s Report, stating that: “(...) the Selection Panel decided to include the highest ranking female candidate in overall merit in the absence of a candidate from the CEB Group.” The Delegation further said that the candidate proposed to replace the CEB candidate, had not been the better candidate in terms of the overall ranking, but had been the best female candidate. The Panel had looked at the issue of gender equality, which was another example of applying criteria that did not relate to qualification. For these reasons, the Delegation believed that the reference to “qualified” candidate did not accurately reflect the discussion that had taken place and thus was not an appropriate terminology to be used. Whether or not it was included in a decision adopted by the GA, and this discussion was not being reopened at present, Members were engaged in something different and new at this session. PBC was discussing a new document, which hopefully would be adopted by the GA in September.
65. The Chair pointed out that a lot of competencies that Members were looking for were laid out in paragraph 7. Therefore, he wondered whether it might be better to leave this paragraph very simple and focus exclusively on the members’ competencies issue in paragraph 7. He pointed out that the exact same issue appeared in paragraph 4(vi). In both of these cases, Members were trying to get the idea of regional representation and, he thought, were being distracted by the choice between “eligible” *versus* “qualified” when in fact, what Members were looking to reflect in both paragraphs, was that there would be regional representation. The Chair suggested that Members step back and not focus on those words and focus instead at aiming for regional representation.



66. The Delegation of South Africa (on behalf of the African Group), wished to echo the statement by the Delegation Algeria. It felt that it was very important to use the right terminology in this instance. It recalled that the Algerian Delegate was a member of the Selection Panel and having listened carefully to what the Delegate had to say about the selection process of the final seven candidates, it was very important to choose a word that encapsulated what had been explained by the Delegate. For the Delegation, eligibility was the right terminology in this instance.
67. The Chair recalled that the Panel had created its own evaluation matrix, ideas on how to evaluate candidates and thought that was the idea behind nominating colleagues from the PBC to represent Member States in the Panel. Membership should not necessarily focus on tying the hands of the Panel by the way they had looked at things. Obviously, gender had not been one of the indicators and the Panel rightly recommended that it should be. Perhaps the phrase should be turned around so as not to focus on that issue. The Chair proposed to work on such language with the Secretariat.
68. The Delegation of Algeria said that following consultation with various colleagues, especially the Coordinator of Group B, it wished to propose the following formulation: "In case there is no candidate", deleting "*qualified*", "who meets the criteria established by the Selecting Panel in accordance with the decision of the GA (...)"; and here the text would quote the particular decision by the GA and make reference to document WO/GA/39/13.
69. The Delegation of India was concerned that if it said: "(...) a candidate who does not meet the selection criteria", it was not clear whether it was the eligibility criteria or the other broad criteria that had been identified. It suggested that, if this language was to be used, the right paragraph numbers be identified to make sure that the reference was made to the eligibility criteria, and not the overall criteria laid down in the document.
70. The Chair suggested saying: "In case the Panel is not able to recommend a candidate based on the decision (...)", using passive voice.
71. The Delegation of India stated that it would prefer to keep it simple and use the word "eligible" instead of "qualified", because that was the word used in the operative paragraph talking about a candidate who was eligible for a detailed evaluation. However, if this word caused a problem to some delegations, then, at least, the paragraph in the document referring to the "minimum qualified threshold which determines the eligibility of a candidate for detailed evaluation" should be indicated. It added that, otherwise, the PBC ran the risk of mixing up the various criteria in this document.
72. The Delegation of Angola supported the position of the Delegation of Algeria. It also suggested that the "eligible" be followed by a slash and "qualified" i.e., "eligible/qualified" to cover both requirements and to allow everybody to interpret it in their own manner. The similar insertion should also be made in paragraph 4(vi).
73. The Chair read out language suggested by the Secretariat as a possible other alternative - after the composition of the committee and the number of members the paragraph would read: "The seven members will be nominated by the PBC after the selection process." Then: "However, in case the Panel is not able to recommend a candidate from any region, the position will be filled by (...)", taking out the phrase "(...) if there is no qualified candidate available (...)" The Chair suggested to discuss paragraph 4(ii) where a change was proposed by the Delegation of Angola (adding "February 2011"), an addition that seemed to be generally accepted.
74. The Delegation of Angola wondered of the possible implication as to the selection process and the use of selection criteria by the Panel if the language proposed by the Secretariat would be used, i.e., "in case the Panel is not able to recommend a candidate". In the Delegation's opinion it might provide for a case where the Panel would decide that it was not able to recommend anybody and would then chose a candidate without employing the selection criteria.

75. The Chair assured the Delegation that since the rest of the paragraph remained unchanged, the situation as described above could not happen as the text specified that the position would be filled by the highest ranking candidate in the IAOC's assessment and the Panel would have the rules of procedure.
76. The Delegation of India stated that its preference would be to substitute the word "qualified" with "eligible". If that was not possible, it would accept the languages proposed by the Secretariat. It also suggested making reference to paragraphs 21 and 22 of the Working Group's report (regarding the selection criteria) in the language proposed by the Delegation of Algeria.
77. The Delegation of Algeria commented that the Secretariat's proposal of "In the case there is no candidate available from any region (...)", would mean that if a regional Group proposed just one candidate, then the Selection panel would automatically elect that person. Whereas, the applied criteria meant that if there was just one candidate for one group, he/she was not automatically selected but had first to meet the eligibility criteria. The Delegation stressed that it supported the position of the Delegation of India and preferred to use the adjective "eligible" or, if it was not possible, to go back to the original proposal cited in paragraph 21 and 22 of the Working Group report.
78. The Delegation of Australia wondered whether the two concepts, i.e. number of members and the criteria, should not be separated instead of being included in the same paragraph. It suggested that paragraph 3 talk only about the size of the Committee, while everything referring to the Selection Panel process be published, in a proper sequence, probably between paragraphs 7 and 8. It added that the text proposed by the Secretariat was acceptable to the Delegation.
79. The Delegation of Angola considered the proposal made by the Delegation of India very sound and in line with the proposal by Algeria. The Delegation believed that the two proposals should be combined and suggested that the two delegations consult to find an appropriate language.
80. The Delegation of Algeria read out the proposed text, as agreed with the Delegation of India: "However, in case there is no candidate, who meets the criteria established by the Selection Panel in accordance with the General Assembly decision (reference to be provided by the Secretariat), as contained in contained in paragraph 21 and 22 of document WO/GA/39/13."
81. The Delegation of the United Kingdom found the proposal acceptable but wished to include reference to paragraphs 14, 15, 16 of the same document to the text, as that was where the document talked about "qualified" candidates and when there was not a regional representation required. The Delegation added that it was also comfortable with the Secretariat's proposal as well as the proposal made by the Delegation of Australia to separate the text on the size of the committee from the one on the selection process.
82. The Delegation of India welcomed the addition of paragraph 14, 15 and 16 as proposed by the United Kingdom. The Delegation was not certain if paragraph 16 related to this issue as it talked about delimitation to seven members.
83. The Delegation of the United Kingdom specified that it had meant paragraph 26.
84. The Chair confirmed the reference to paragraph being 14, 15, 21, 22 and 26.
85. The Delegation of India thanked the membership for making it possible to arrive at a solution and agreed to the referencing of paragraph 26.
86. The Chair proposed to discuss amendments to paragraphs 5 and 6.
87. The Delegation of Slovenia (on behalf of the CEB Group) pointed out that if paragraph 4(vi) read that each member of the Oversight Committee would be replaced by a candidate from the same geographical region to which he or she belonged, then the text would clearly pre-judge that the CEB Group, which did not have a candidate, would ever have a replacement member from its Group either. The Group therefore preferred the text to remain as it had been in the original (non-revised version) of the document.

88. The Delegation of South Africa (on behalf of the African Group) stated that, following consultations, the Group would accept the text of the paragraph 4(vi) if the words “to the extent possible” were deleted.
89. The Chair read the changed text: “If the departing member belongs to a Group that already has another representative, he or she will be replaced by a member originating from the Group(s) not represented in the Committee.” The rest of the paragraph would remain, with the change of “qualified” to “eligible”.
90. The Delegation of the United Kingdom suggested that reference to paragraph 14, 15, 21, 22, and 26 of document WO/GA/39/13 be repeated in this section.
91. The Delegation of Angola confirmed that, following consultations within the African Group and in the spirit of compromise, it no longer insisted on deletions in this paragraph that it had previously proposed. Concerning the paragraphs 4(v), and 4(vi) the Delegation suggested moving the opening phrase (“Except as provided in, etc.”) from the beginning of the paragraph to the end.
92. The Chair summarized the changes proposed so far, on which there was agreement: in paragraph 4(vi): re-instating the second sentence with the edit of taking out “and to the extent possible”; the third sentence would be replaced with the exact language that had just been approved (starting at “However, in case there is no candidate that meets the criteria (...)” with the references to the paragraphs as outlined. For paragraph 4(v) and 4(vii) the Delegation of Angola proposed to keep the language that he had previously proposed striking out, but to move it to the end of that sentence as the final clause. The Chair proposed to examine paragraph 4(viii) referring to the roster of experts and if need be editing the text.
93. Referring to paragraph 4(viii), the Delegation of the Republic of Korea requested clarification as to how Members would know that a highest ranking candidate from the roster/pool of experts would be selected if a member resigned and there were no qualified candidates available from any region.
94. The Delegation of Germany requested confirmation that its understanding of paragraph 4(vi) was correct: there were two Group B members, so one Group B member could be replaced by another Group B member. Therefore, a replacement would have to be from other Groups, out of which three had no more candidates. It would mean that another group would have two members. The three replacement groups would not be in (CEB and the other two groups with only one candidate presented). It seemed to the Delegation that certain Groups would always have more than one candidate while others would have none, as was the situation at present.
95. On the issue of the roster, the Chair clarified that as regards replacement after the end of the mandate of the first group (of IAOC members), there would be a new selection process, which would create a new roster. The problem identified by the Delegation of South Korea was that currently in the roster there were no CEB Group representatives, so Member States incurred the risk of double encumbering.
96. The Delegation of Slovenia (on behalf on CEB Group) stated that, at present, only the CEB Group did not have a candidate within the Group, so if a post would be open, there would have to be another process of selection and acquiring new applications. The same would apply to other Groups with only one candidate if this situation happened. As regards Groups with several candidates in the roster, the selection process we would not have to be used again. The Delegation thought that it would be useful to have such safety clause.
97. Regarding the concerns raised by the Delegations of the Republic of Korea and Slovenia, the Chair proposed to discuss them during the break. He invited the Chair of the IAOC to explain the reasoning behind the text to help delegations better understand the issue.
98. The Chair of the IAOC explained that, in drafting paragraph 4(viii) he had tried to reflect the content of paragraph 27 of document WO/GA/39/13. He further said that he had intentionally used the wording “a roster/pool of experts identified during the selection process maybe used in

case of resignation/ demise of a member of the IAOC.” If there was someone dropping out, the Selection Panel would reconvene as it was up to the Panel to make a recommendation to the PBC and the Panel could decide to consider all the applicants or only some applicants. The wording “may be used” left all the possibilities open without going to specifics of “qualified” or “eligible” candidates. It would be up to the Selection Panel to negotiate the process.

99. The Delegation of Australia wished to provide more information about the rationale behind paragraph 28(viii) of document WO/GA/39/13, recalling that it was essentially there to prevent the Organization from going through a whole new selection process should there be a resignation or should someone be unable to serve on the Committee. The pool would only be refreshed every three years. When the text had been drafted, when the compromise had been reached by all regional Groups the previous year, it had been designed to make sure that Member States would not be put through a whole selection process to select one person. That was the reason for which the pool of experts had been created.
100. The Chair inquired whether all delegations were comfortable with the explanations provided. There were no responses to the contrary and the text was agreed on. The Chair invited comments on the redrafted paragraph 6, the text of which had been distributed to delegations.
101. The Delegation of Spain said that it had discussed the text with a number of delegations and came up with a joint Spain-China proposal for paragraph 6. It said the proposal took into account the real situation with reference to working languages in WIPO at present, and, at the same did not close the door to any possible future changes. The proposed text was to say: “Candidates must possess a demonstrated working knowledge of WIPO official languages, including English or French”, in other words, apart from English and French any one of the four languages would be acceptable. The Delegation further explained that this criterion would thus not be limited to English and French and the text would, in fact, authorize the use of other WIPO official languages.
102. The Delegation of Australia wondered about the financial impact of the Spain-China proposal and whether interpretation would have to be made available for meetings of the IAOC.
103. The Delegation of China supported the statement made by the Delegation of Spain. In terms of the financial implication of the proposal, the Delegation thought that, first of all, Member States had to consider the equal rights of all WIPO official languages to be used in the work of the committee as important as IAOC. It added that there might be financial implications, which could be calculated by the Secretariat later. The Delegation believed that the most important was to include all the official language of the WIPO, in order to guarantee full participation of all the members of the IAOC coming from different regions and different countries.
104. The Delegation of Spain endorsed the comments made by the Delegation of China. It added that, whatever happened, the fact was that English or French would be maintained and the increased financial impact would be absolutely minimal. The proposal simply took into account the possibility of using other languages.
105. The Secretariat stated that it understood the text as follows: candidates would have to have the knowledge of either English or French, in addition to any other official language. In terms of interpretation, the worst case scenario could be: one member of the IAOC spoke Chinese and English, another would speak Spanish and French. Interpretation-wise, the Secretariat said that English and French would be the minimum provided, plus another language, if there was a specific request. It added that, at present, English and French interpretation was being provided, with Chinese being provided in the past.
106. The Chair of the IAOC added that the internal, working IAOC documents were provided in English or French as the Committee worked on that basis. In terms of languages, it was his understanding that in 2005 (when the AC had been created), Member States had agreed to have English, French and Chinese and this was why there had been interpretation into English, French and Chinese during the Committee’s meetings, which had been helpful to the Chinese IAOC member.

107. The Delegation of Spain wished to confirm that there was no change from the practical point of view in the proposal. It only provided a possibility for the future.
108. The Delegation of France stated that it did not understand the meaning of the proposal and added that the meaning was not at all the same as that of the original sentence. The Delegation was uncomfortable with the proposal and recalled that the original idea had been to ensure that there would be at least one common language within the IAOC members. The Delegation therefore requested that the word "including" be replaced with "at least" i.e., "(...)" at least English or French."
109. The Chair did not think that either in the original text or in the working body of the AC there had been one common working language. It was either of the two. He invited the Delegation to comment on the two proposals on the table: "including English or French" or "at least English or French".
110. The Delegation of Spain considered the French proposal much more limited than the joint China-Spain proposal because if one said "at least", it meant that English or French excluded, whereas the joint proposal said that it should be the six languages and, in any case, English or French. In other words, nothing would be changed as compared to the present situation but the text would open up the possibilities for the future, in light of the discussion on the language policy that would be held the following day. The Delegation added that although it found the French proposal more restrictive, it was ready to agree to it.
111. The Chair read out the proposal on the table: "Candidates must possess a demonstrated working knowledge of WIPO official languages, at least English or French." There were no further comments from delegations and the sentence was agreed on.
112. The Delegation of Australia, referring to the last sentence of paragraph 6 (provision of curricula vitae), suggested that in order to balance transparency with the privacy of the candidates, the private information regarding candidates (their date of birth, salary, addresses, family information. etc.) be protected and asked that the respective sentence of paragraph 6 be modified to reflect this.
113. The Chair suggested modifying the text to read: "(...) shall provide redacted curricula vitae" so the standard procedure of the Secretariat would be to check with the people nominated and prepare redacted curricula vitae for circulation to Member States.
114. The Delegation of Germany suggested that the standard WIPO personal history form could be revised to produce a shorter form that could be used in the similar application process, with basic questions and not requiring the information on the first salary earned or other unnecessary private information, which was irrelevant to the Selection Panel.
115. The Chair confirmed that it was thus agreed that the curricula vitae for distribution to Member States would be redacted to contain professional experience only. The Chair then summarized changes proposed to the remaining paragraphs and invited delegations comments.
116. The Delegation of South Africa reminded the membership that it had recommended that the issue of a dedicated Secretariat for the new IAOC be considered and included, preferably, in paragraph 14.
117. The Chair invited the Secretariat and the IAOC Chair to provide additional information on this issue.
118. The Secretariat said that, at the moment, there was a dedicated half-time General Service secretariat support provided to the IAOC. It believed that the type of support that the IAOC Chair was envisaging was more substantive, in terms work, research and report writing. It might be useful to ask the IAOC Chair specifically. However, in his intervention he had mentioned fact that, at the moment, the members of the IAOC had the time to write the reports because many of them were retired. He (the IAOC Chair) had been concerned about the incoming members of the IAOC, as many of them had other jobs to do, and whether they would have the necessary time.

119. The IAOC (Audit Committee) Chair said he disagreed with the Secretariat because even as a retired person had a lot interesting things to do, instead of doing an unpaid job. Nonetheless, discussion on this issue had been taking place since the beginning [of the old AC]. He recalled that the matter came up during discussion on the revision of the composition of the old AC. In that discussion, it had appeared that a number of Member States had not been willing to provide additional support to the Committee. They had wanted to agree to this in exchange for a reduction in the number of the members of the Committee. Paragraph 14 of the document under discussion foresaw that WIPO should provide more logistical than administrative support in the substantive and technical work. He said that it was his understanding that the details of this administrative support would be examined under discussion of the Committee's recommendation, since it was one of the recommendations made. While the IAOC Chair was grateful to the African Group for raising this concern again, he felt that paragraph 14 already foresaw the substantive and technical work support. The modalities had to be worked out by the PBC, the Secretariat and the Committee itself. He said he was prepared to distribute an excerpt from the United Nations Audit Committee rules of procedure, which described the functions of the secretariat of the Committee. He said that this would provide Member States with a better understanding of the type of substantive work that was required of the IAOC. He believed that one of the functions of the IAOC was to ensure that the Organization used its resources in a considerate manner, the IAOC itself did not require, according to a discussion held in the old Committee, a full-time executive secretariat. However, the IAOC would need someone to perform a number of functions which could be performed on the basis of a consultancy contract, on the "as and when required" basis, depending on the work to be done. The IAOC Chair reiterated that the necessary provisions existed under paragraph 14(b), and added that his understanding had been that the details would be discussed in the next phase of the discussion on the follow up to the Committee's recommendations.
120. The Delegation of South Africa thanked for the explanation and said that it would have to consult with its Group on the matter, because it did not find the explanation satisfactory. Although the Delegation understood that it was one of recommendations made in document WO/GA/38/2, it still believed that paragraph 14 should capture what additional assistance the new IAOC might need.
121. The Chair suspended consideration of this item until the opinion of the African Group was known on this matter.
122. The Delegation of China requested to go back to paragraph 6 and stated that, after consulting with the Delegation of Spain, it wished to replace the word, "at least" with "preferably". The other part of the sentence would remain the same.
123. The Delegation of France responded that, unfortunately, "preferably" was too weak a word for the Delegation and not as good as "including".
124. The discussion resumed the following day and the Chair announced that final report of the IAOC from its last meeting was now available at the document counter. Also available was the revised IAOC ToR, document WO/PBC/16/3/Rev. The Chair then informed the membership that there was agreement of the concerned parties on the language of paragraph 6 of this document; the change being that instead of the word "including" or "preferably", it would say "in particular". The sentence would thus read: "Candidates must possess a demonstrated working knowledge of WIPO official languages, in particular English or French." There were no further comments from delegations on the agreed text.
125. The Delegation of South Africa said it had a proposal on the language of paragraph 14. It proposed to insert a new sentence after: "This assistance shall be provided to the IAOC from the WIPO secretariat which will be outside of the Internal Audit and Oversight Division of WIPO in accordance with the principles of accountability and transparency." The new sentence would read: "This assistance will be in the form of a dedicated independent professional assistant who should serve on part-time basis as secretariat for IAOC."

126. The Delegation of India said that its understanding was that there was a general service staff that already assisted the IAOC on a part-time basis, and now a professional staff was requested.
127. The Delegation of South Africa confirmed a professional assistance was requested in addition to the assistance of a general service staff.
128. The Delegation of India understood that the part-time general assistance that had been given was inadequate for the work of the AC. It asked whether it was possible to make it clear that professional assistance was “in addition” to, because there was no reference to the general staff part-time services in the existing ToR.
129. The Chair requested the Secretariat to help redraft the proposed text.
130. The Delegation of the United Kingdom highlighted that discussion on this point would also take place under item 5 Implementation of Recommendations Made by the Audit Committee. The Delegation thought that time was unnecessarily spent on amending the text, as whatever would be agreed under item 5 would apply and determine the way forward.
131. The Chair recapitulated that the counter-proposal was to leave this issue out of the ToR discussion and take it up the under AC Recommendations as it did not necessarily need to be in the ToR.
132. The Delegation of South Africa (on behalf of African Group) strongly believed that this provision had to be included in the ToR and added that even if this issue would be discussed under item 5, it wished to come back to the ToR and include the agreed provision therein.
133. The Chair suggested the following text to capture the concern of the Delegation of India: “This assistance will be in the form of a dedicated independent professional and general service assistance who would serve on a part-time basis as secretariat for the IAOC.”
134. The Delegation of India agreed with the proposed text.
135. The Delegation of Germany requested information on how the additional assistance would be funded and whether the fact that there would be additional assistance meant that meetings might be shorter.
136. The Secretariat responded that the savings that might be made by having less interpretation cost (for IAOC meetings) would suffice to cover this additional assistance.
137. The IAOC Chair reminded the delegations that having reduced the number of the IAOC members from nine to seven saving were made which would help offset the cost. He added that it was his understanding, two years ago, that the reduction of membership was the condition to approve the recommendation in question.
138. The Delegation of the United Kingdom stated that as long as there was assurance that this cost was within the current budget envelope, the proposal was acceptable to the Delegation.
139. The Chair confirmed that this was correct.
140. The Delegation of China was not clear on the meaning of paragraph 4(vi) and the relationship with the point (viii). The Delegation’s question was whether if the IAOC member resigned/departed and his or her group had no candidate who had been recommended in the previous selection process (was not in the pool of experts), and since each member of the IAOC Committee would be replaced by a candidate from the same geographical region (as per point (vi), the concerned Group could submit another candidate to replace the previous member (who departed). It asked if this understanding was correct or if the Group had no chance to submit a new candidate.
141. The Chair explained that, as had been discussed, the key operative word was “may”. The Selection Panel, i.e., Member States, would reconvene and then they might revert to the roster to convene a new grouping. As discussed in the specific case of CEB countries, since there was no CEBS candidate on the roster, that fact would trigger a new process.

142. The Secretariat added that, point 4(viii) used the words “Roster (...) maybe be used”. It did not say “will be used”, so the use of roster was an option but not necessarily an obligation.
143. The Delegation of China asked whether it meant that if a member left or resigned, then his/her Group had the right to recommend a new candidate to replace him/her.
144. The Delegation of Egypt, regarding paragraph 17 and the words in the last amendment, suggested that: “the Committee should” be changed to: “the Committee shall” to be in line with previous statements.
145. The Chair clarified that it would be the Panel’s call at that point in time. He further announced that this concluded discussion on agenda item 4 and read out the decision paragraph in document WO/PBC/16/3 Rev.
  146. The Program and Budget Committee recommended to the General Assembly the approval of the revisions of the Terms of Reference of the WIPO Independent Advisory Oversight Committee as contained in the Annex of document WO/PBC/16/3 Rev.

#### ITEM 5 IMPLEMENTATION OF RECOMMENDATIONS MADE BY THE AUDIT COMMITTEE

147. Discussions were based on documents WO/GA/38/2 and WO/PBC/16/4.
148. The Chair specified that this discussion would be taking place under the umbrella of the Working Group’s report (document WO/GA/39/13), pursuant to which the present session was convened. The recommendations to be reviewed were found under section 6, paragraphs 72, 74, 76, 80 and 81 of document WO/GA/38/2. The Chair invited the Secretariat to present this agenda item.
149. The Secretariat highlighted that out of recommendations listed in the paragraphs 72, 74, 76, 80 and 81 of document WO/GA/38/2, recommendation 72 had been implemented, i.e., the name of the Committee had been changed. Recommendation 74 proposed that Member States consider establishment within WIPO of a new more functional governing body, meeting more frequently than the PBC, with possible membership of 12 to 16. This recommendation remained outstanding together with the related recommendation 76, which needed to be considered by Member States. Recommendation 76 proposed that the IAOC be designated by Member States as a subsidiary organ of the PBC/GA or the suggested smaller governing body. Recommendation 80 on the size and membership of the IAOC had been implemented through the decision taken by the PBC. Recommendation in paragraph 81 contained a number of specific conclusions and remained outstanding. In relation to paragraph 81 item (e), there were related audit recommendations for which there was a document, produced by the Internal Auditor (document WO/PBC/16/4), which would be introduced by the Internal Auditor. The document contained a status report on the number of open and closed internal and external audit and oversight recommendations.
150. Concerning paragraph 74, the IAOC (Audit Committee) Chair added that when the AC had made this recommendation it did not expect it have such an impact. He further added that recommendation in paragraph 76 had been discussed at the first meeting of the Working Group last January. He drew the membership’s attention to the fact that, at present, the Oversight Committee did not really exist in the structure of the Organization. In that respect he recalled that although there had been an official Working Group of the PBC to discuss AC matters, the AC itself, had not been a part of any official body. Therefore, he believed the situation had been that an official Working Group had been discussing what an unofficial Committee had been suggesting. The IAOC Chair considered that it was important that a decision be taken by the PBC in this regard, even though it had be endorsed by the General Assembly, as there were also expenditures involved (the cost of interpretation and translation provided to the Committee). He said that it was also important to define the status of the members of the Oversight Committee as at present, they did not have an official status and the matter should be



clarified. In this regard, the IAOC Chair said that he had done some groundwork with the UN and some members of the Secretariat and had forwarded his conclusions to the Legal Counsel and the administration. These conclusions indicated that members of the Oversight Committee should/or could be given the status of “experts on mission”, which was an official status foreseen by the Convention on Privileges and Immunities for specialized agencies. Such status would give IAOC members a minimum coverage for the work they performed on Member States’ behalf. Concerning paragraph 81, the IAOC Chair first reminded that the document had been issued in August 2009. He then added that, in January 2010, the new Senior Management Team had been put in place, as a result of which the situation had considerably improved, in particular concerning better interaction between the AC and the Secretariat. The members of the AC also had better understanding of the IP concepts and challenges. This was linked to paragraph 81(b), and a customized training program. The IAOC Chair said he was working on a proposal for a training program for the new Oversight Committee and thought that the first meeting of the Committee should be mostly devoted to training and briefing by the Secretariat, Member States and the outgoing AC. Thus paragraph 81(a) and (b) would be addressed. On paragraph 81(c), the IAOC Chair believed that its contents should be reflected in the next revision of the ToR of the IAOC and remarked that it was one of the many items that, in the Committee’s view, were missing in the ToR. One of them, the issue of independence, had been pointed out today. The clause on conflict of interest was still missing and should be dealt with within the framework of the revision of the ToR, which the Committee suggested take place in 2012 (together with the revision of the Internal Audit Charter and the ToR of the External Auditor). Regarding paragraph 81(d), the Chair said that the Committee had recommended on several occasions that the independence of the IAOD should be stressed and strengthened. The Committee believed that this point was work in progress. The Secretariat had designed a follow up system for the implementation of oversight recommendations and a report on this matter was being submitted to the PBC (WO/PBC/16/4). Based on paragraph 1 of this report, 95 recommendations were recorded as “open” by Program Managers. The IAOC Chair said that the report constituted a major improvement as compared to the situation before the document had been issued. The Committee was aware that the Director General and the Administration and Management Sector had worked on this issue. Progress had been made, but the IAOC Chair thought that more progress was to be achieved. It could possibly be the responsibility of the various oversight bodies: External Auditor and the internal audit should verify whether they agree with the conclusion of Program Managers and the IAOC would have to do the same. The IAOC Chair remarked that the old AC had made a lot of recommendations, which would have to be reviewed by the new Oversight Committee so that it would choose those that it considered strategic. Concerning paragraph 81(f), the Committee agreed that there was need for stronger Secretariat support to the IAOC with specialized expertise. The ToR of the executive secretary of the United Nations Audit Committee had been circulated to give Member States an idea of the type of work that was required to have an efficient Oversight Committee. This might be achieved either through a dedicated service or a dedicated person, not necessarily full-time.

151. The Director of Internal Audit and Oversight Division (IAOD) (the Internal Auditor) introduced document WO/PBC/16/4, containing information on the implementation of oversight recommendations made by all oversight bodies: for Internal Audit and Evaluation, the Audit Committee (AC), the external auditors, the JIU and other ad hoc external reports that the Member States had requested be monitored and followed up. The Internal Auditor said that for many years lists and records of the recommendations and management actions to follow up and implement the recommendations had been kept. The process itself had developed and became stronger over time. The current procedure was that every six months, the Internal Auditor reported to the Director General on implementation progress. This report was also submitted to the AC, so they might look at the detailed information in the large spreadsheet data base maintained for that purpose together with a range of statistics, graphs and tables explaining the current situation. The Internal Auditor said that great effort had been made to make good use and provide better management information on the progress of implementing

recommendations, to ensure strong control so recommendations would not be lost or forgotten. To highlight when a recommendation was considered particularly important, a traffic light system was used to indicate this in the spreadsheet, so that it could be easily identified and implemented as quickly as possible. The statistics clearly showed that overall, implementation had picked up in pace since 2007 for recommendations from all sources. But, also, there were significantly more and regular output of recommendations from all the various oversight sources. In particular, main sources of recommendations were the AC (since early 2006) and the IAOD, where there was an Internal Audit Section since the middle of 2007, and an Evaluation Section functioning on and off since the middle of 2008. The Internal Auditor advised caution in interpreting the statistics, as the Organization is emerging from a relatively low level of oversight to a more encouraging and useful level of oversight. The Internal Auditor noted that in the last years, the Director General had given very strong support and direction to Program Managers to carry out implementation activities, but, certain implementation activities would take some years to complete and were quite significant in terms of resources. For example, it was commonly known how much time and effort had been put into the Medium-Term Strategic Plan (MTSP) and how much time and effort would be needed for the Organization to use the MTSP properly for the implementation of the strategic goals. The Internal Auditor summarized that currently there were 95 recommendations which were not yet fully implemented. The Secretariat were working to be able to refine this further, by indicating within the spreadsheet data base of oversight recommendation what actual percentage of work remained to be implemented in those 95 recommendations. He added that some of the 95 recommendations were nearly implemented. He noted that there would always be some recommendations being worked on at any particular time as new recommendations were being added at a rate of something just over 100 a year from all sources. The Secretariat's policy was to implement accepted recommendations as quickly as possible. The Internal Auditor stated that since the AC began its work in 2006, the records showed that they had made 225 recommendations. Currently, according to the information provided by Program Managers, only 26 of the accepted recommendations remained not fully implemented. Where a recommendation was not going to be implemented, the Director General has agreed with the AC on a very clear and good policy called "comply or explain". Program Managers had to fully explain if they were not going to implement a particular recommendation, wholly or in part, and this was recorded in the spreadsheet. If Program Managers agreed to implement a recommendation then it was to be done as soon as possible. The Internal Auditor had responsibility to maintain an accurate record of these decisions and activity. He said he had a professional responsibility to keep track of his own recommendations, and that when there was going to be an audit, it could be seen what happened to the recommendations made in similar previous audits. He pointed to figure 2 in the document relating to the evaluation of the outstanding recommendations. He remarked that a year ago there were quite a few more open recommendations, stretching back to 2002, but effort had been made in the last year to reduce the backlog - anything that had been not fully implemented for over three years - and therefore the curve in figure 2 would be much steeper. It was hoped that in the future recommendations would be implemented or cleared, with a reasonable explanation of activities, in between six and twelve months. That showed the intent of the Director General to take these things very seriously. The most important thing was that management should only accept sensible recommendations which, once implemented, would actually make things better for WIPO. Hence it was a big incentive for the Organization to implement recommendations quickly and effectively. The Internal Auditor noted that Figure 3 in the document showed the distribution of the recommendations not yet fully implemented. He remarked that there were five open recommendations in his Division, all made by the AC, most of them relating to staffing issues. There were a number of recommendations in the finance area as the external auditors were, of course, always especially interested in financial management issues. The last graphic in the document was a pie chart giving details of the sources of the remaining unimplemented open recommendations. The Internal Auditor noted that special efforts would be made to target the long-standing JIU and Ernst&Young recommendations. Otherwise, the distribution of the source of recommendations was fairly normal. However, in the future there would likely be

- more evaluation recommendations simply because more evaluation work would be conducted, resulting in more recommendations.
152. The Delegation of Germany inquired as to the ratio between the number of recommendations made and the accepted ones, and the number of “comply or explain” ones and whether once explained they were taken off the list. It also inquired what happened in case a Program Manager found the recommendation unreasonable and asked if there was a process of deciding and whether the AC was involved. The Delegation also requested additional information regarding three recommendations dating back to 2005.
153. The Director of IAOD (the Internal Auditor) responded, noting that the total of all oversight recommendations ever made since the records were kept, i.e., 2002 was approximately 692. Regarding the “comply or explain” recommendations, he explained that all information regarding details of implementation and whether Program Managers’ complied or provided explanation was kept in the spreadsheet data base for archive purposes. This was the primary way of following up on internal audit matters i.e., to go back to the spreadsheet to see what the managers had previously said, on the occasion of the next audit. The spreadsheet was submitted to the Director General and the AC every six months. He further explained that when the periodic updating information was received from Program Managers and the spreadsheets were updated, he would also do a check through what he considered to be the most important recommendations. Such check had just begun for the set of recommendations which is dated January 7. For this process, and regarding accountability, an Office Instruction (OI16/10) had been issued by the Director General. Accordingly, internal audit had the ability to go back and ask Program Managers to provide the information that would support the information that they had provided within the spreadsheet. The Program Manager was contacted if he/she was trying to close a recommendation without due thought or had not explained as clearly as possible what had been done. Program Managers were expected to be able to support with documentation what they recorded which they would keep with them in their sections.
154. The Delegation of India expressed its satisfaction with the review of the 225 IOAC recommendations currently taking place and noted that almost 50 percent of the recommendations had been attended to in the last six months, while it did not wish to go into the reasons as to why these recommendations had not been looked at before that. The Delegation was convinced that if the current trend continued, the 95 open recommendations should hopefully find closure at an early date. It also took note of the Director, IAOD’s remark that some of these 95 recommendations were close to completion and added that it was looking forward to an update on this matter at the upcoming PBC session in June. The Delegation hoped that by that time, Member States would also have the review of these recommendations by the new IAOC. It recalled that this was one of the issues agreed on in the GA decision, i.e., that the new IAOC would take stock of the recommendations and give its own opinions. Therefore, the Delegation hoped that, perhaps in the next PBC session, Member States could look at how it was progressing with the IAOD and simultaneously consider the view of the new IAOC on which were the important recommendations that needed prioritizing. The Delegation underlined a suggestion made by the IAOC Chair on conducting validation of the reports produced by Program Managers on the implementation of recommendations. It considered it a worthwhile endeavor as Member States were aiming to streamline the governance and management in WIPO and validation and checks were part of this process. The Delegation added that the PBC should request the IAOD to conduct these and report on them in the next PBC session. The Delegation saw that considerable work was being done by the IAOD on the oversight recommendations and considered it a very encouraging indicator of the positive transformation led by the Director General and the Senior Management Team in WIPO. To follow this further and to maintain the same pace, the Delegation believed that the IAOD needed to be equipped with the requisite human resources and in this connection the Delegation inquired about the status of the vacancies that were supposed to be filled and whether IAOD now had the necessary human resources to deal with these recommendations in a timely fashion.

155. The Chair said that due note was taken of the request to have an update in the June session and to have the opinion of the new IAOC.
156. The Director of IAOD (Internal Auditor) reported on the staffing of the IAOD and said that since the last GA, two selection boards (for the Head of the Internal Audit section and the Head of the Evaluation section) had been set up. They had considered shortlists and would proceed with further selection work soon. The Director General had given very strong directions to HRMD to complete these recruitments as soon as possible. As a temporary measure, the Investigation Section would benefit from an internal transfer for six months (until July), so all the sections in IAOD would hopefully, as soon as possible this year, have permanent heads of section. The Division also greatly relied on a number of temporary staff: One in the Internal Audit section, one in the Investigation section, and for all assistant support. Those issues would be the next staffing issues that the Division would try address in a practical way. Other good staffing news was that the Senior Evaluator would shortly return from maternity leave so the Evaluation Section activities would be resumed to a degree. The Internal Auditor was positive that significant progress would be made through 2011 to resolve long standing staffing issues and thanked Member States for their interest in these matters. Regarding the oldest recommendations (the question by the Delegation of Germany), he said that they mainly related to the JIU report on the oversight lacunae in WIPO made in 2005.
157. The Chair of the IAOC (Audit Committee) clarified that 225/226 was the number of recommendations that the AC had made as of August of 2009. The total number of recommendations made by the AC was higher. It needed to be pointed out that by addressing one recommendation, very often five or six other would be addressed. He added that it had taken an enormous effort on the part of the Secretariat to move ahead. The situation at present could be seen as either "glass half empty or half full". He saw it as half full, as the process moved forward because of the interest and commitment of the Director General and Mr. Sundaram to proceed. It could be described as half empty, because the process was not yet fully in place although a lot of progress had been made. However, there was still the question of validation which needed to be refined and who would be responsible for checking the explanations and whether compliance as described was acceptable or not. Once this was established by June, which would be the next step, the glass could be called three quarters full. The IAOC Chair assured the membership that this was one of the issues that he intended to discuss extensively with the new IAOC as part of the transfer of knowledge that Member States had requested. Further, he confirmed that the Committee had received a spreadsheet. However, the Committee had pointed out that these documents, about 150 pages long, were sometimes received two weeks prior to its meetings. He admitted that, over the past three meetings, the Committee simply had not had the possibility to look at them or it would have had to spend a week just looking at such reports. However, the report did exist and major progress had been made. He understood that the Administration sector was also developing the database, that had been in the making for many years, and hoped that such database would facilitate the work of the new IAOC in monitoring the implementation.
158. The Chair suggested to discuss recommendations in chronological order i.e., from paragraph 72 and recalled that since recommendation in that paragraph had been implemented (the title of the AC had been changed), discussion would start with paragraph 74. The recommendation therein was that Member States consider the establishment in WIPO of a new more functioning governing body meeting more frequently than the PBC, with the possible membership of 12 to 16. This recommendation remained outstanding together with the related recommendation in paragraph 76.
159. The Delegation of France (on behalf of Group B) made a statement regarding all recommendations. Group B thought that there was a real need for the new IAOC to update, review or revisit the numerous recommendations made by the previous AC, as stated in paragraph 7 of document WO/GA/39/13. This entailed *inter alia* consultations between the IAOC and the Secretariat. Group B noted the comments of the Chair of the AC, made at the 2010 General Assembly, that certain recommendations had been superseded and that the

Committee would undertake a review to ensure that only the most relevant recommendations would remain. As far as the recommendation contained in paragraph 74 of WO/GA/38/2 was concerned, Group B understood the rationale for putting it forward had been mainly the lack of interaction between the old AC and Member States. In view of the fact that regular meetings between the IAOC and Member States were now provided for, Group B was inclined to think that there might be some need for the IAOC to revisit this particular recommendation of its predecessor. Group B remained nonetheless open to exchange on this proposal to establish within WIPO a new more functional governing body meeting more frequently than the PBC with the possible membership of 12 to 16. The Group would be particularly interested to understand what would be the added value of such a body. The Group did not believe that creating a new governing body *per se* would improve the work. Regarding the composition of such a body, when looking at examples from other organizations, the Group said that one did not see often this kind of very limited membership. Usually governing bodies comprised one fifth of the membership which would amount to approximately 37 members in the case of WIPO. Group B also wished to come back to the role of the Coordination Committee, which together with the PBC, performed the same functions as a governing body. Last but not least, creating a new body within WIPO meant amending the WIPO Convention which was a long and cumbersome process. As for the recommendation contained in paragraph 76, Group B already considered the IAOC as a subsidiary organ of the PBC, given that the IAOC submitted regular reports to PBC. In case there was a need to officialize this, the Group said that it would be open to as to how this might be accommodated. Turning to paragraph 13 of document WO/GA/39/13, Group B believed that the most appropriate way to discuss the IAOC recommendations beyond September 2011 would be to continue doing so within the framework of the PBC. Since it had been argued that the length of PBC session did not provide for sufficient time to do so, the Group was prepared to discuss a brief extension of the PBC meetings so as to make sure that sufficient time was allocated to discussing the IAOC recommendations. The Delegation added that other Group B members would make complementary and more precise interventions on some of the recommendations considered, as they deem appropriate.

160. The Delegation of India (on behalf of the Asian Group) stated that the Asian Group believed that recommendation 74 was worth exploring in a careful manner for the following reasons. One, the PBC, which dealt with a range of program, budget and administration issues, including the AC recommendations, was formally convened only annually and only for a period of three days. Two, apart from the substantive deliberations on the Program and Budget document, which required considerable time, there were other substantive issues on the PBC agenda for the discussion of which sufficient time was currently unavailable. This had led to some difficult and tense sessions of the PBC. Three, the establishment of a smaller, additional layer of governance that could consider many of the PBC issues in a careful manner would, in the Group's view, ensure timely consideration and resolution of key issues prior to the PBC sessions. This would facilitate smooth conduct of PBC sessions and allow the PBC to focus on its key area of concern i.e., Program and Budget issues. The Asian Group formally believed that broad based consensus among Member States on this issue would be necessary before consideration of formal proposals. Taking this into account, and with a view to evolving a well calibrated and carefully examined proposal in this regard, the Asian Group proposed the following two steps. Step one: preparation of a background paper by the Secretariat, building on the paper prepared by the AC, which outlined the composition, mandate, etc, of similar bodies existing in other UN and international organizations. The relationship of these bodies with other governing bodies within the organization, such as the WIPO PBC, should also be elaborated in the paper. The paper should be presented to the upcoming session of the PBC in June 2011 for discussion by Member States. Step two: informal consultations among Member States should be organized by the Chair or the Vice-Chair of the PBC, in the run up to the PBC session, in order to ascertain the views of Member States and evolve a broad consensus on the issue. The Asian Group looked forward to hearing the views of other delegations in this regard.
161. The Delegation of South Africa (on the behalf of the African Group) provided its views on the recommendations contained in paragraphs 72 to 81. The Group was pleased that some of the

recommendations had already been implemented, for example, the name of the AC had been changed to the Independent Advisory Oversight Committee and its composition. The Group was particularly looking forward to the discussion of other recommendations made by the Committee, particularly regarding the establishment of a new more functional governing body, meeting more frequently than the PBC with a possible membership of 12 to 16. This particular recommendation emanated from the gaps regarding governance issues within WIPO identified by the Committee. The Group's view was that the recommendation for the creation of a new governing body should be thought out thoroughly. The most important aspect was to first identify the objectives and the mandate of such a body, before elaborating on its composition and frequency of meetings. The Group proposed that the Secretariat prepare comparative, analytical document on the functions of the Coordination Committee, the PBC and other executive policies of the UN specialized agencies, which would draw a comparison between those executive bodies and the body that Member States sought to create. With regard to the recommendation that the IAOC be designated by Member States as subsidiary organ of the PBC, the GA or a suggested governing body (paragraph 45 of the document WO/GA/38/2), the Group's view was that this recommendation related to the recommendation on the creation of a new governing body. However, in the absence of a new WIPO governing body, the African Group proposed that the IAOC be either a subsidiary body of the PBC or the GA, as recommended by the Committee. The Group's preference was that the IAOC be designated the subsidiary body of the PBC. The Group also believed that the new IAOC should discuss and follow-up on the recommendations made by the outgoing Committee and report their own views to the next session of the PBC. Regarding the recommendation in paragraph 13 of document WO/GA/39/13 that Member States consider, at the PBC in January 2011, agreeing on a regular and designated inter-governmental mechanism to discuss the IAOC's recommendations beyond September 2011, the Group proposed that the discussion on the recommendations be prioritized, that they be discussed within the PBC, provided that the PBC was extended to five days. The Group supported the current arrangement of an additional two days dedicated to discussing the recommendation of the IAOC. In addition, the Group reiterated its position on the extension of the duration of the PBC to five days, and on the frequency of the PBC meetings increased to at least four sessions a year.

162. The Chair stated that following statements by the three Groups, it was clear that the recommendation on a new governing body needed to be considered further. Both Group B and the African Group mentioned the need for the new IAOC to opine on this issue and to make their comments. The Asian Group and African Group both recommended that the Secretariat prepare a document that would set out how these bodies function in other organizations. He wondered what the most appropriate way to proceed was, to chart a path forward that would include input from the new IAOC, the paper from the Secretariat, along with the proposal of the Asian Group to have informal consultations of the PBC to flush out Member States views.
163. The Delegation of France (on behalf of Group B) reacted to some of the proposals made by other regional coordinators and to the conclusions/ information provided by the Chair. Group B considered the proposal for a Secretariat prepared document containing comparisons between practice at WIPO and other UN organizations as an interesting one. However, the Group did not wish such document to be confined to that comparison. What the Group would expect from such a document was to take into account the issues raised by Member States relating to the setting up of this body, in particular issues raised by Group B. Therefore, the Group considered that it would be useful for Member States to be able to give to the Secretariat, not only during this session but also afterwards, any comments they might have. It suggested that deadline for submission of such comments should be set. In addition, in response to the proposal of the Asian Group of having informal consultations before the next session, Group B stated it would not go along with that proposal for several reasons. First of all, the Roadmap adopted by the GA clearly stated that there was to be a three stage discussion: at the present session, in June and then in September 2011. As the Group saw it, the priority at this stage was to have the Secretariat's study, which could not be produced immediately. Accordingly, the Group preferred

to first have this study, probably before the June meeting, to enable Member States to prepare for that meeting properly.

164. The Delegation of Spain requested clarification as to the meaning of “executive body”, as it might give rise to different interpretations. It might be considered that Member States were referring to a committee body that we would be dealing with everything to do with WIPO, or it might be referring to something much more specific, dealing with PBC matters. The Delegation wondered if that was to be a subsidiary body set up by the PBC or a general body discussing all issues related to the Organization.
165. The Chair of the IAOC (Audit Committee) explained that, in the Committee’s view, a three day annual PBC session dealing with the enormous amount of documentation was not sufficient. He added that the issue of non consideration of the AC’s recommendations by the PBC was only a small part of the bigger issue of what the Committee considered to be insufficient governance on the part of Member States. It was the Committee’s impression that this had led to some confusion and tense discussions during the past two years, both during the PBC and the GA. The Committee would not wish to recommend the creation of a special body just to deal with the oversight committee’s recommendations. The IAOC Chair highlighted that there was a change since the time the report had been issued in August of 2009, as the interaction between the Committee and the Member States had been institutionalized. The question was what the next step would be: there were discussions and there were recommendations. The IAOC Chair recalled that before making recommendations, the Committee, without outside expertise, had done a short review of practice in other organizations. This was similar to what was now proposed to be done by the Secretariat. The Committee’s view was not limited to the IAOC. What the Committee had seen at that time, was that for four years it had made recommendations that the PBC never looked at. If this had continued, eventually the AC would have become like window dressing: reports would have been written, money spent but there would be no value added. The Chair concluded by saying that the Committee was there to assist and advise the Member States.
166. The Delegation of India, in its national capacity, wished to respond to the comments made on its proposal and other proposals regarding the recommendation in paragraph 74. The Delegation believed that the recommendation to create an additional smaller, more functional more frequently meeting body had not been made so that this body would only look at the AC recommendations. It had been made to redress lack in the current governance structure of WIPO. As all attendees of the PBC sessions knew, the last three sessions had been unnecessarily tense and fraught, as there had been too many substantive issues on the agenda, each requiring deliberation and careful consideration by Member States. The Delegation added that there were several issues that needed more periodic and regular attention by Member States, rather than being all bundled up together for one annual session of just three days. It believed that if these issues were attended to and resolved in a timely manner before the PBC sessions, the work of the PBC would have been that much smoother and that much more productive. It was against this background that the Delegation welcomed the recommendations of the AC that a smaller more functional layer of governance be established. The comment by Group B that an interface had been set up to improve interaction between the AC and the Member States, in the Delegation’s view, was not linked to this issue. It was restricted to the issue of the interaction between AC and Member States, which was a separate recommendation in itself. The Delegation welcomed the more frequent interaction between Member States and the AC, but this was more in terms of hearing from the Committee after its meetings on its findings. This did not take away the importance of having an intergovernmental forum on which to formally consider the recommendations the Committee made. It did not take away the need for an additional layer of governance to look into not just the AC’s recommendations but several other issues, which were currently overloading the PBC agenda. The Delegation further said that it was not possible to have informal consultations on the matter at present as the Secretariat was yet to prepare its paper. The Delegation added that it found the latter a little confusing. There was already an excellent 20 page document

prepared by the AC elaborated on the governance structure in 15 UN and international organizations (Annex to the document WO/GA/38/2). It talked about the organization, the kind of governance, the bodies and their membership, the role and reporting structures, the functions and activities, the number of sessions held a year and whether they had a dedicated secretariat to support them. The Delegation considered this detailed document a very good substantive basis for discussion among Member States. It added that, in order to have a meaningful discussion in the June PBC, it would be helpful to exchange views to understand what it was that Members were not clear about. As the Coordinator for the Asian Group, the Delegation strongly suggested that Members sit down and talk to each other as there was no other way in which this issue could be discussed. The Delegation wished to reiterate its proposal and looked forward to more positive responses from other delegations.

167. The Chair said that his intention was indeed to focus on paragraph 74. It requested the Delegation of India to read the Asian Group's statement.
168. The Delegation of India said that it had statements on behalf of the Asian Group, on three of the remaining recommendations. Regarding paragraph 81 (assistance to the IAOC from the WIPO Secretariat), the Asian Group strongly supported the provision of necessary secretarial support to the IAOC by the WIPO Secretariat, in order to enable the IAOC to carry out its mandate and tasks. The existing ToR explicitly stipulated that the WIPO Secretariat should provide assistance to the Committee, including "(a) logistical and administrative support for assisting with AC meeting and preparing drafts reports; (b) substantive and technical work in preparation for AC meetings which may include research and background position papers and others as may be requested by the AC." The Asian Group urged the Secretariat to extend the above mandated assistance to the IAOC. The Group requested the Secretariat to outline the manner in which it sought to enhance secretariat support to the new IOAC team. On the status of the IAOC members within the WIPO structure (paragraph 76), the Group supported this recommendation, i.e., that the WIPO IAOC be designated by Member States as a subsidiary organ of the PBC, the GA, or the suggested new governing body. Since the IOAC was an institution set up by the GA, the highest body in WIPO, with a specific mandate and clear ToR, the Asian Group believed that that it was logical to provide a legal status to the Committee by designating it as a subsidiary body reporting to a key WIPO body. Since the IAOC was an external and independent oversight body to advise Member States, the Group was of the view that it would be appropriate to designate the IAOC as a subsidiary organ of the WIPO General Assembly, reporting to WIPO Member States at the highest level. The Group looked forward to an early consensus and implementation of this recommendation, so that the new IAOC membership had a clear legal status in the Organization, when it embarked on its work. This would also help alleviate some of the operational difficulties experienced by the AC members and enable them to discharge their duties as members of this important Committee. On the establishment of an intergovernmental mechanism to discuss AC recommendations beyond September 2011, it recalled that paragraph 13 of the Working Group report (document WO/GA/39/13) stated: "during the extraordinary session of the PBC in January 2011, Member States will consider agreeing on a regular and designated intergovernmental mechanism to discuss the AC's recommendations beyond September 2011." The Group attached great importance to this issue and believed that it was important and urgent to evolve a suitable intergovernmental forum, where the IAOC reports and recommendations could be fully considered by Member States. As recommended in paragraph 73 of the AC report: "The WIPO AC is advisory oversight mechanism for Member States. The interaction between the AC and Member States 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 to interact with oversight bodies, and act upon their reports." The Asian Group was of the view that it would be ideal, for the IAOC reports and recommendations to be considered by a smaller governing body that met more frequently, as recommended by the AC. However, given the importance and urgency of the issue and pending the creation of such a new governing body, the Asian Group proposed that a working group of Member States be set up under the PBC to look into the AC recommendations and report its view to the PBC



for consideration. Such a working group could be similarly modeled on the lines of the successful Working Group on Audit Related Matters, whose report had been approved and endorsed by the WIPO General Assembly in September 2010. Separately, in order to facilitate meaningful consideration of the Working Group's report, as decided at the 39th WIPO GA, the PBC sessions should be extended to five days, with a designated time for discussing the IAOC recommendations. The Asian Group looked forward to a positive decision on this issue, in this session, and stood ready to engage constructively in the discussion.

169. The Delegation of Germany remarked that there was some agreement, common thinking, on the production of the governance paper. It thought that there were two ways to go forward regarding this paper. One was, like the AC had done, to look at e.g., 15 organizations and provide information how they were organized on this issue. The second step would be what WIPO could learn from it. The other way around was: first, to identify WIPO needs, examine the existing governance structure, identify any gaps; second, go focused and see what other organizations had as best practice, and what were the ways to solve the problem. The second way would be more qualified, it would not just produce a document talking about and looking into the constitution of other organizations. Then there was the question of the independence of the Secretariat in identifying gaps in governance structure. The Delegation concluded that should the second way be used, it made no sense to have informal consultations before more detailed information was available, as that would only duplicate Members' discussion at meetings.
170. The Delegation of Spain reflected that there were two ways of looking at matters. In its view, the AC report left some matters in abandon. The Delegation had listened to the statement by the Delegation of India which had been very clear and allowed Member States to "put their finger on the problem." It agreed entirely with the idea that there should be enhanced oversight. It did not think that the recommendations had been sufficiently taken into account and remarked that what frequently happened was that measures were approved and Members did not know exactly what they were approving in the PBC. The Delegation was convinced that the system needed to be improved and anything intended to enhance oversight was a good development. Coming to the question of what exactly the new body would do, the Delegation stated that the starting point was the fact that Members had to respect their own rules. If a matter came before the PBC (was transmitted to it by the GA), this clearly fell within the competences of the PBC and not within the general competences of the Organization. However, the PBC was not competent to deal with all matters of WIPO. Therefore, the Delegation thought that it might be appropriate to have a subsidiary body, falling within the competences of the PBC. However, the PBC itself could not take a decision that would have an impact on other committees, as it could only deal with matters within its competences. The Delegation thought that there was a clearly defined sphere of competence for the PBC and that more general matters should be dealt with by the Coordination Committee as that was where their competence came in. Accordingly, if Member States wished to take a decision related to general governance of the Organization, such decision should be taken within the Coordination Committee. Noting the position of the Delegation of India, the Delegation supported its statement. It agreed that the AC recommendation had not been sufficiently taken into account and they should be. The Delegation added that, within the bodies that existed at present the system was not really working, as those bodies did not have enough time to do deal with all matters. However, the Delegation felt that it was not going to help if there was a new body as it could make things even more cumbersome. To clarify this opinion, the Delegation explained that if Members did not respect their own existing rules there was no point in adopting new rules. What Members needed to do was to ensure compliance with the rules that already existed. It said that it was hard to ensure that Members properly study the documents and adopt budget if the meetings were short, documents were available late, and there were only a few days to look at a very complex issues. That was just one example of the current situation, things not working as they should. The PBC should work properly, as had initially been intended, in accordance with the rules, and should hold more meetings. The same applied to the Coordination Committee. The Delegation underlined that it saw no point in creating new bodies. Instead the Delegation

advocated ensuring that the existing bodies operate as they should. In summing up, the Delegation stressed that it was in favor of enhanced oversight in WIPO. It believed that the Organization did not have a clear governance structure and for this reason things were not functioning as they should. It called on Members to ensure that they respected their own rules, and set up mechanisms to allow compliance with those very rules. If, then, Member States realized that a mechanism was not working, this mechanism should be corrected, not a new one set up. The Delegation stated that it did not see any value in setting up a body to deal exclusively with the PBC issues. The Delegation added that it was not against it, however Member States should reflect very clearly on what that would mean: what the competences of such a body would be, the periodicity of its meetings, its membership and what would happen to its decisions and how they would be followed up. It would be better for Member States to reflect on how to make things operate as they should within the current structure.

171. The IAOC Chair wished to avoid confusion and clarified that the Committee did not recommend additional oversight as it thought that the current structure of oversight was adequate. It did not work properly, because there was insufficient coordination between oversight bodies and that was the Committee recommended the review of the ToR in 2012 of the three oversight bodies. The Committee felt that there was a problem of governance in the following sense: there was oversight and recommendations, but the question was how the governance worked to improve the efficiency of the Organization using the work done by the oversight bodies.
172. The Delegation of the United Kingdom commented that if the main problem was coordination, its initial reaction was that creating additional bodies within the system would obviously enhance that problem. However, the Delegation agreed fully with the opinion of the Delegation of Germany, i.e., that Member States needed an analysis of the gaps in the coordination. It also agreed with what the Delegation of Spain had said, that it was the existing structure which needed to operate as it was supposed to, and that was what Member States should be looking at. As to the argument that a new body would solve the governance problem, the Delegation said that paragraphs 73 and 74 did not say that the new body would do just that. They specifically talked about the interaction between the AC and the Member States in acting upon their report. That was a key problem identified, and the Group B's proposal to extend PBC sessions was trying to solve that problem. The Delegation considered that having further analysis by the Secretariat could be useful, but some initial questions would need to be answered. These might be: how the existing structure was not allowing to do what the Member States wished to do and how the new structure would solve this; how would the creation of a new body remove the faults in the process. The Delegation continued to say that if the same Members formed membership of the new body, how this was going to solve the problem which was actually elsewhere. The other questions were: how the WIPO constitution guided Member States in deciding which issues needed to be addressed by the PBC rather than any of the other bodies, how to avoid duplication of the PBC mandate if there was a new body, how the other UN organizations determine membership of such bodies (which would have to be addressed up front) and whether issues addressed by the other UN executive committees could be addressed by the PBC or the Coordination Committee if their sessions were extended. The Delegation stated that the above-listed questions needed to be answered and analyzed by the Member States and asked for couple of months to be able to do that.
173. The Delegation of Mexico fully supported the concerns expressed by Group B regarding setting up a new body to deal with general matters and the fear that the committee might get bogged down in organizational matters and not be really efficient within the Organization. At the same time, the Delegation associated itself with the request made the Asian Group and the African Group to create some kind of committee to give better governance to the Organization. The Delegation added that it had seen very clearly this year that the informal efforts made by ambassadors, delegations and the Director General to try and resolve problems could be dealt with by this type committee. It thought that the discussion had to go forward. Member States had to look at various solutions. These solutions should be put forward and a small group that would do that would be very useful.

174. The Delegation of Egypt fully associated itself with the statement of the African Group. It also found the intervention by the Delegation of Germany very pertinent as it tried to identify the way forward. It should be emphasized that the way forward needed to be identified without further delay. It identified two issues that Members needed to move forward in this regard. The Delegation thought that the idea of a document to help Member on the way forward (as proposed by the African Group and the Asian Group) was the key. This document should consist of three parts: first, a comparative study building on what the AC had already produced; second, as mentioned by the Delegation of France, the views of Members States and/or Groups and their understanding of what the various elements of recommendation 74 were and their vision for it (as the Delegation gleaned that delegations might be talking about different concepts). While some delegations thought the new body would only tackle the AC interaction, others, including the IAOC Chair, thought that it was a broader issue dealing with governance of the Organization, a view to which the Delegation also subscribed. The third element of the proposed document should include a literature review of discussions on governance within WIPO, as the question of governance had previously been raised and documents dating back to 1990s existed. The Delegation recalled that some of the bodies that were being taken for granted now were actually new creations. The PBC itself had only been created in the late 90s. The Delegation said that this section of the document should also include a list of all the documents that had talked or discussed the issue of WIPO governance. Regarding the issue of informal consultations, the Delegation believed that this would be a good way forward despite the fact that some delegations thought that a parallel track should not be created and the matter should be discussed within the PBC. The Delegation mentioned that the Director General was calling (in January) for a discussion amongst some ambassadors to talk about issues of governance and, in fact, the Secretariat had produced a comparative paper. So whether Members liked it or not, this discussion was happening. The Delegation believed that an informal discussion prior to the June PBC would be very helpful. Therefore, the Delegation supported and urged other Member States to support the call for an informal discussion. Finally, the Delegation thought that the outcome of this informal discussion could form the fourth part of the document that would be presented to the PBC.
175. The Delegation of South Africa, in its national capacity, voiced its position on paragraph 74, a recommendation on a new governing body. The Delegation was supportive of this recommendation and thought it worth exploring further. Hence, it was suggested by the African Group that a comparative document should be prepared. The governing bodies in WIPO were not functioning as desired. There seemed to be a gap that needed to be filled. The Delegation supported the proposal by the Asian Group for informal consultations on this matter, which would provide Member States with an opportunity to further explore and discuss what they envisaged this new body to do, apart from the IAOC recommendation. The Delegation thought that informal consultations should take place before June PBC and be open to all Member States, not limited to the PBC, to provide all Member States with an opportunity to voice their position on this matter.
176. The Delegation of India wished to clarify what seemed to be a broad misperception on what it had said earlier as the Asian Group Coordinator. It had said earlier that this recommendation deserved careful consideration. It also had said that there had to be broad based consensus among Member States before formulating formal proposals. Because of this, it had said that Member States should have informal consultation amongst themselves. What the Delegation meant, as the Asian Group and as India, was not that the creation of an executive body would be a miracle cure for all ailments but that this recommendation deserved careful scrutiny. That scrutiny could only come through discussion among Member States and not the Secretariat preparing and providing Member States with tons of documents. It was the Member States finally who had to determine what WIPO governing structure was, if any. Here the Delegation agreed with the Delegation of Germany that the starting point of the exercise was the diagnosis of the gaps in the governing structure and how they could be remedied. To do this there was no better way forward than consultation among Member States. While the Secretariat could be requested to prepare documents and answer queries, it was not the Secretariat that had to

come up with a solution to this issue, it was the Member States. On the issue of not sufficient time given in the PBC all delegations seemed to agree that something needed to be done. Both, the PBC and the Coordination Committee needed to review the frequency and the duration of their meetings. Therefore, the Delegation reiterated its proposal to have informal discussions, chaired by the PBC Chair, because it wished it to be a Member States driven process, as the Delegation of Germany had said. Like the Delegation of Germany, this Delegation was not certain that the Secretariat was independent and impartial enough to do this on its own. It had to be Member States. The informal consultations could be open to all Member States, as requested by the African Group. The Delegation was also open to the proposal made by the Delegation of Mexico saying that there could be a small committee that would look into governance issues without prejudging solutions. This committee could perhaps look into how the PBC was working, what needed to be done to improve it, duration and frequency of its meetings and the agenda, (what could be divided between PBC and Coordination Committee), whether the Coordination Committee needed to have a clearer mandate and hold more frequent sessions. The Delegation added that even the 2012 review of ToR of all oversight bodies, as proposed by the IAOC Chair, formed a part of the governance landscape of WIPO. Such a committee could look into all these issues and come up with ideas that could be a starting point for the discussion. The Delegation reemphasized that, as India and as all of the Asian Group, it did not say that a new executive body be created immediately. It had said that Member States needed to start discussing how we fix the gaps that were evident and that seemed to be recognized by everyone.

177. The Delegation of Algeria expressed its support for the statement made by the African Group and endorsed what had been said by the Delegation of Egypt. In particular, it believed it necessary and relevant to convene informal consultations. However, it was not in favor of the format proposed by the Secretariat i.e., the customary way in which such consultations were held. As the Delegation of Egypt had pointed when the DG had met with a number of ambassadors, various points had been made on this issue. The Delegation had nothing against discussions between the DG and some ambassadors, however when it came to taking a decision on a matter as important as governance, then such consultations had to be open, inclusive and transparent. It pointed out that this was actually emphasized by recommendation 44 in the Development Agenda.
178. The Chair commented that it was his understanding that the discussions with the DG had been organized at a request of a Member State. He thought that this particular issue should be left aside and that Members should focus on themselves instead.
179. The Delegation of Bangladesh stated that as a UN-specialized agency, WIPO should maintain the transparency and inclusiveness in its governance functions. There is a governance vacuum in the Organization that had been created in the absence of an efficient, yet representational governing body. This vacuum, as some delegations had said, could not be built in or be redressed through any informal arrangement that was not mandated by the broader membership and did not reflect the representational and diverse nature of WIPO's membership. There were a number of best practices in terms of effective and efficient form of governance mechanisms, which were available in the context of other UN bodies and organization. The Delegation felt that these practices could be very well adapted to the specific needs of WIPO through consultations among membership. The Delegation fully endorsed its Group coordinator's view that, as a starting point of these discussions, an informative and analytical document from the Secretariat would be definitely helpful. As regards to the informal consultation suggested by the Asian Group, it was not intended to substitute for the discussions to be held within PBC, but only to facilitate and take the discussion forward. This was a practice that Members followed in other situations and the Delegation did see merit in replicating that in this particular instance as well.
180. The Delegation of France, on behalf of Group B, said that it seemed that unless there was broad agreement in the room about the Secretariat's paper, the membership had to consider where it stood. Certain very relevant comments had been made by a number of delegations,

indicating how they saw such a paper. On the particular issue of informal consultations, Group B did not wish to give an impression of not wanting to talk about this recommendation. In fact, as said in the Group's initial statement, the Group was open to discussion. However, the Group believed that today, Members were having a very good discussion. It also believed a very clear Roadmap had been given to the membership by the GA, and which made provisions for quite a number of days to be set aside to discuss all of the recommendations, but more particularly, this particular recommendation that was highlighted. The Group referred the membership to paragraphs 11 and 12 of document WO/GA/39/13. These stated very clearly that there should be two days of discussion during the spring session of the PBC and then another two days of additional discussions in September. The Group considered it quite extensive. There had already been quite intensive discussions on this issue. The Group stressed that it found the present discussion very useful but wished to reiterate Group B's views that this discussion could be concluded within the framework of the PBC, as foreseen in the Roadmap.

181. The Chair said that the Secretariat confirmed that indeed two extra days had been added to both of the sessions: in June and in September. He added that all delegations seemed to agree on the question of diagnosis, that Member States needed to identify amongst themselves where the gaps might be and added that this went beyond the PBC. The sticking point was how to move forward. There had been some discussion on the paper (the Secretariat document proposed to be prepared). The basis for this document existed in the AC document, but that delegations might be looking for more and the key was the observation by Member States on what in their view might be lacking.
182. The Delegation of Germany proposed starting the process with the questionnaire to Member States, which would provide an opportunity to Member States to express their views without going into informal sessions. In this way, the Secretariat would not be left to decide on its own where the problems were. The Secretariat's input would come through the proposed paper/study. The Delegation thought that Member States should express their opinion first without holding informal sessions at this stage.
183. The Chair summarized that the idea was to issue a questionnaire in order to structure the input from Member States as to where they felt the governance gaps might be.
184. The Delegation of India thought that there was a paradox between the general agreement on the need to diagnose the gaps and some delegations' unwillingness to discuss informally how the problem can be fixed, while at the same time, they were ready to put their opinions on record in writing. The Delegation thought that perhaps the approach by the Delegation of Mexico to have small a working group or a committee of the PBC to look into governance issue could be used. Such committee could send out a questionnaire, after discussing within itself, informally, to broadly identify the issues. The Delegation pointed out that in order to draft a questionnaire, one should have an idea about its contents and how to ask the right questions. It added that the right questions could only emerge when delegations talk and tell each other what they thought the right questions were. Therefore, the Delegation reiterated its request for informal consultations, failing which it called on delegations to consider setting up a small working group or committee that would be an excellent mechanism, as it had been in the case of the composition of the IAOC, which had been a far more complicated and intense issue.
185. The Delegation of Egypt saw no harm in the Secretariat's compiling and issuing a questionnaire. However, the Delegation believed that in the case of governance Member States were able to develop their own views of where the lacuna in governance was and how they could address it. It added that if a Member State did not know where the Organization should be heading, a questionnaire would not be of much help, as ultimately, a questionnaire would reflect what the Secretariat believed to be the issues of concern. The Delegation stated that the emphasis should be on requesting Member States to present their own views. In that regard, the Delegation suggested that Member States present their views and provide a forum where this would be discussed informally in order to assess where they were heading. It added

that the present discussion did not go into the details, and that it would be unfortunate not to have detailed informal discussion.

186. The Delegation of the United States of America agreed with the proposal put forward by Germany, as well as with the reservations expressed by the Delegation of Spain, in terms of what should be the content of any paper that would be produced for purposes of the PBC. The Delegation pointed out that for purposes of the PBC informal consultations, the point of informal consultations was that they were informal, so since the Delegation had seen willingness it too wished to continue the discussion. However, it did not see the need to decide immediately whether there were going to be informal consultations. The Delegation also pointed out that there was a clear way forward as expressed by the Group B coordinator and the suggestion from the Delegations of Germany and Spain. It suggested that Members try to build on what seemed to be the elements of consensus on the way forward.
187. The Delegation of the United Kingdom fully agreed that there was no need to make a decision on the future meetings, since there already was a GA decision to have a PBC discussion as pointed by the Group B coordinator. The Delegation wished to record that, in consideration of full transparency and the importance of the discussions, it wished that all of the discussions on governance in WIPO take place in the PBC, because they would be on put record. It considered the present discussion very constructive and was glad that it was taking place in the PBC, was put on record, which it wished to continue throughout the discussion and added that it stood by its statement.
188. The Delegation of Spain agreed with the statement by the United States. It was indeed true that there could be no doubt as to the need for a general discussion on governance within WIPO. It added however, that Members should not confine themselves solely to the question of the PBC but needed to have this broader discussion. The Delegation recalled Article 8 of the WIPO Convention referring to the Coordination Committee. First, "the Coordination Committee advises bodies of the General Assembly and the Director General on all administrative financial matters and matters of common interest." Bearing this in mind, the proposed informal group, first and foremost, should decide as to the appropriateness of taking this forward within the PBC or the Coordination Committee. The Delegation saw this as a matter that should be dealt with by the Coordination Committee, because the Coordination Committee was competent to deal with all matters relating to WIPO governance.
189. The Delegation of South Africa, responding to the proposal on the small committee, reiterated its support for the initial proposal of the Asian Group, i.e., informal consultations. It preferred informal consultations because it wished to expedite the process towards understanding whether an executive body was needed or not, as per the AC recommendation. In that, as proposed, a paper should be prepared by the Secretariat. The Delegation thus suggested that the paper should be made available in April 2011 to facilitate discussion in the informal consultation proposed by the Asian Group, and to provide a source of reference in advance of the June PBC. The Delegation thought that this approach should cover the concern of some delegations. It emphasized that it was not in favor of the questionnaire right now, as a questionnaire could take time to evolve. In contrast, if there were informal consultations, at least there would be an interactive stimulating the process.
190. The Delegation of India said that it listened carefully to the proposal by the United States. It thought that a questionnaire should be based on a common understanding of the diagnosis, the shared idea. It also thought that, as mentioned by one delegation, the PBC had only skimmed the surface of this particular recommendation and this was the first time that it was being dealt with in some depth. The Delegation thought that, in this context and at this stage, having a questionnaire would bring up a lot of questions in itself and therefore the Delegation would not be in a position to support it. On the comment by Group B, that according to the Roadmap, this issue was going to be discussed at the PBC, the Delegation said that the present discussion revealed that the issue went far beyond the PBC. At the present discussion, Members were discussing identifying lacunae in WIPO's governance structure, which went beyond the PBC itself, as the Delegation of Spain had pointed out. Several issues were being looked at: the

Coordination Committee rules, how oversight interacts with Member States' governance duties and the best way to make sure that these work effectively together. The Delegation wondered whether such discussion should be limited to the 53 members of the PBC. Although the Roadmap required discussion in the PBC, as the African Group pointed out, such discussion should be open to all Member States of WIPO because the governance of WIPO was something which everybody had a stake in, and a right to express their opinion on. The Delegation stated that, like the Delegation of the United Kingdom, it preferred a formal format of discussion with statements recorded. It added that this was in the Delegation's original proposal and the only reason it proposed informal discussions instead was because it believed that several delegations would not be comfortable with such formal. It stated that, like the Delegation of the United Kingdom, it was ready to stand by its statements and wished to see them recorded in a formal meeting. In fact, in relation to setting up of a committee, the Delegation wished to have such committee's discussions recorded. The Delegation concluded by saying that it would prefer formal, recorded discussions before coming to the stage of questionnaire and that it preferred the discussion not being limited to the 53 Member States of the PBC.

191. The Delegation of the United Kingdom said that, as regarded the questionnaire, it thought that questionnaire would be a transparent way to identify what Members considered as the common problems that they felt the Organization faced. Members would have e.g., two months to put forward all their questions and opinions so that all pieces of the puzzle would be on the table. The results in the questionnaire would then be used as a basis for further discussion and diagnosis.
192. The Chair surmised that there was a common proposal, in various forms made by various delegations, to have a report from the Secretariat, presenting the various structures and options based on existing practice in other organizations and that it would incorporate views of Member States (for the submission of which they would be given a deadline). Another proposal was to have some sort of recapitulation of what WIPO had tried to do in the past or what had been proposed in the past. The Chair proposed that a paper be prepared to form the basis of discussions in June. The paper would have three parts: one, a review of other structures; two, input from Member States, as presented and non-redacted; and three, a recapitulation of what the structure was. The proposed deadline for the preparation of the paper would be April 2011. There also needed to be a deadline for the submission of Member States' input and the six-week requirement for documentation (translation into six languages six weeks before the session) should also be taken into account, as this was the type of document that one would want in all official languages so that important issues governance could be considered by everyone. Therefore, the Chair thought that the April deadline was a little optimistic.
193. The Delegation of France, on behalf of Group B, agreed entirely with the Chair's proposal regarding the Secretariat's paper. Regarding its contents, the Group thought that it would be useful, since there were many unanswered questions, if the document contained an analysis of the internal situation and not only examples of practices in other organizations. By internal analysis, the Group meant identifying the lacunae and not concentrating solely on the comparative aspect with other organizations. It added that Member States' submissions would probably come in different formats, and that many responses from Group B members would mostly be in form of questions, similar to the ones asked earlier that morning, regarding the objectives and needs on governance.
194. The Chair clarified that the Secretariat would not be asked to identify the gaps in governance as that was Member States task. He also thought that the regional groupings might play a synthesizing role in trying to refine and identify gaps.
195. The Delegation of Egypt, regarding the six week rule and translation, reminded the delegations that the GA had taken the decision that exceptionally voluminous documents would be presented in the language that they had been originally presented in and that a summary would be prepared in the five other languages, or if a particular country requested that it be made available in its language. The Delegation said that the reason for which it had proposed April

was that there would be a very busy time after the end of February and documents should be made available as early as possible to give Member States time to examine them. It understood that the Secretariat would be preparing two of the three elements of the document: the comparison, for which the base was already available and the part presenting what already had been written on governance. The Delegation thought that both tasks were of “compiling the information” nature so the work should not take too much time and it should be available in some of the other official languages. As for the third element, the Member States’ submissions, the Delegation thought that deadline should be set at March 1 or 15, 2011. It pointed out that the April deadline was not chosen haphazardly. It was chosen to allow Member States sufficient time to be able to absorb the information and have sufficient time to prepare their respective positions for the June PBC.

196. The Delegation of India, on the Secretariat’s document, reiterated the Asian Group’s request that the document also elaborate on how the smaller governing body in a particular organization interfaced with other governing bodies within that organization (such as the WIPO PBC). This request had been made as it was evident from the AC document that many organizations had both a smaller governing body and a larger one, like the PBC. The Delegation wished to know how their mandates were interlinked, who they reported to, whether they were sub-bodies of the PBC-equivalent-body. The Delegation stated that it would be grateful if this aspect could be incorporated in the Secretariat’s paper. Further, the Delegation requested the addition of the legal implications of creating such a body, view on the legality of the setting up of such a body, as some delegations had referred to a possible need of changing of the WIPO Convention in such a case. The Delegation also seconded the Chair’s view that the Secretariat will not be the right agent to conduct an internal analysis of WIPO’s governance. Referring to the Group B’s comment that their responses might come in the form of questions, the Delegation commented that while these questions would undoubtedly envisage the discussion, the Delegation thought that an analysis similar to the one requested of the Secretariat would contribute more to the paper. It should ideally be Member States giving their views and opinions of how they viewed WIPO’s current governance structure and functioning, any gaps that existed in their view, and proposals on how these gaps could be addressed and corrected.
197. The Delegation of Germany reflected on the proposals made by the Delegations of India and Spain and emphasized that the starting point was how to improve the existing governance structure. It said that Members realized that the possible creation of a new body was not the magic solution, but one of the options. Another option was to improve the existing structure. Analytical work needed to be done in this respect and the question was who would do it. Regarding the structure of the proposed document, and the three parts, the Delegation was of the opinion that Member States’ responses also needed to be structured to make analysis of the material easier. The Delegation wished to avoid the situation where a response from a Member State would have an issue addressed partly in the first paragraph and completed somewhere in the middle of the paper. It stressed that without structured responses there would be no proper analysis of either the problems or the solutions.
198. The Delegation of the United Kingdom commented that in addition to providing their views and opinions on the existing structure and how it could be improved, Member States should also be allowed to put forward questions.
199. The Delegation of Spain said that the responses to the questionnaire should be made available to all Member States in the language that they were submitted. The Secretariat should also prepare a summary of responses in English and French. Regarding legal implications of establishment of a new body, the Delegation believed that there would not be any need to change the WIPO Convention. It added, however, that the Secretariat could be requested to clarify that point. It explained that under Article 12 of the WIPO General Rules of Procedure, any body might establish a committee or other subsidiary body reporting to it. Therefore, should any new body be established, it could be established as a subsidiary organ of the PBC or the Coordination Committee, which would be the Delegation’s preference.



200. The Chair said that the intervention by the Delegation of Spain provided more of the reality check as to what membership was talking about and what the implications would be. He pointed out that Members were running the risk of having a lot of information to digest, however that was exactly what they wanted. He added that one outstanding question was whether Members wished to try to come up with a format to structure their input or if they were more comfortable allowing more of the free form.
201. The Delegation of Australia was of the view that a structured format would greatly enhance the input of Member States. It added that the format did not need to be decided at this point and that maybe the Group Coordinators could discuss that with the Secretariat by the end of the month. Then the structured questionnaire would be released to Member States, with a deadline set on responses.
202. The Delegation of Germany inquired whether there existed any external study, however academic, on the governance of WIPO, which the Delegation thought would be useful to have for comparison's sake.
203. The Delegation of Bangladesh understood the need for a more methodical approach to this issue and a more structural format for the questionnaire. The Delegation added, however, that it did not have very positive experiences with questionnaires. Whenever a questionnaire was received from the Secretariat, usually there was an obligation to send it back to the capital, which did not always recognize the importance and the weight given to these discussions. Therefore, feedback was often not received in the right time. The Delegation's preference would be to have more of a pre-closed discussion and a free format to generate issues around this question. Accordingly, maybe some very broad questions could be identified on which Member States could be asked to comment. For example, whether Member States thought that there was any significant gap in the governance structure and if so, how they thought those gaps could be addressed. Some delegations might suggest drastic measures to address those gaps, others might feel that the *status quo* was better and some minor fine tuning would be enough. These were the views that could be generated. During that time the Secretariat could focus on the other two elements, which were: what was happening in other organizations; and what had happened so far in WIPO. Once the Secretariat received Members' pre-formatted views, it could examine the legal and financial implications on the basis on the various options that would have been suggested. On the basis of all of the above, Members would have a consolidated document presented to them, preferably by the end of April or at any realistic time-frame sufficient to at least have a discussion in the June PBC. If after June, Members would feel that a more structured questionnaire would be necessary to focus on some particular elements, it could be factored in. The Delegation added that if the Chair felt that some informal consultations between June and September would be useful, that can also be factored in. By September Member States should be in a position to have a very informed debate on this matter.
204. The Chair found the proposed structure to the responses very useful.
205. The Delegation of Switzerland thought that the way to structure Member States' responses as proposed by the Delegation of Bangladesh could be followed. However, the Delegation pointed out that some members might find the existing situation satisfactory. Therefore, all options should be left open and delegations should not be forced to identify the lacunae, as there might not be any. The Delegation thought that a deadline of two months would be sufficient for the responses. It said that it might be useful for Member States to then have a discussion amongst themselves, before the second phase i.e., the analysis of the responses by the Secretariat, to review the proposed options and decide on which options the Secretariat should concentrate. It added that having a paper on the situation in other organizations would be useful, however following that. The Delegation also thought it premature to ask the Secretariat to identify any financial implications at that stage. It suggested using the two extra days of the June PBC session to have a first discussion on the results of the survey and decide on the follow up of the process.

206. The Delegation of Egypt considered the proposal by the Delegation of Bangladesh as the best way forward, at this stage, as Members did not wish to constrain themselves to the type of questions that might figure in a questionnaire because, ultimately, the type of questions asked determined the discourse. Therefore, the very general questions identified by Bangladesh were useful. The Delegation urged the membership to look at the question of the time limit: Member States to present their views by March so that the document could be prepared by April. That would enable Members to have sufficient time to discuss it.
207. The Delegation of India endorsed the format in the proposal by the Delegation of Bangladesh. It added that a questionnaire with a detailed format would need to be proceeded by a consultation among, as Australia had said, Group Coordinators. Such consultations, either in the restricted Group Coordinators format or in the open format as requested earlier, would be necessary to evolve the questionnaire. So either Member States decided to proceed that way, or according to the broad lines proposed by Bangladesh, or with a free hand given to Member States in commenting, which would be more useful as it could allow for a wider range of views and leave the rest open since this was the preliminary stage of the discussion. The Delegation also agreed with the Delegation of Switzerland that full analysis of the economic and financial implications of all the options would be unnecessary perhaps at this stage. The Delegation had previously requested (in its national capacity) the information on the legal implications, whether it implicated the revision of the WIPO Convention (in case a new body was to be established).
208. The Delegation of the United Kingdom stated that what was needed, was a note sent to Member States by the Secretariat reading: "We invite Member States to give their considerations to the questions as to WIPO governance as discussed in the PBC session on January 12 and 13, 2011", and giving the deadline for the receipt of submissions.
209. The Delegation of France, in its national capacity, thought that a lot of time was spent on discussing very procedural matters. The Delegation agreed with the proposed broad line approach for the document to be prepared and did not believe that Member States' responses needed to be structured. It was also not in favor of the proposal by the Delegation of Australia regarding consultations between Group Coordinators as it had full confidence in the Secretariat's ability to properly structure the document. It added that since there was no agreement of the format of the questionnaire, that issue was solved.
210. The Delegation of South Africa, in its national capacity, fully endorsed suggestions made by the Delegation of Bangladesh.
211. At the start of the afternoon session the Chair read out the proposed conclusion, that would be a part of the draft decision paragraph, encapsulating the morning's discussions: "request the Secretariat, in accordance with the Roadmap set out in document WO/GA/39/13, to prepare a document with Member States' input for consideration by the PBC at its session in June 2011. This document is to include (a) update on the governance structures of other intergovernmental organizations (b) input from Member States addressing their views on WIPO's governance structure and (c) a review of prior documentation on governance at WIPO." This would be immediately followed up with a note verbale asking for input from Member States to be received by March 4, 2011, which would give delegations five weeks to prepare their responses. Should any countries have any problems meeting that deadline, they would only have to write to the Secretariat who would surely be able to be flexible.
212. The Delegation of Egypt did not understand the reason for the reference to the Roadmap in the text because the Roadmap did not request this document. It also pointed out that while the draft conclusion said: "for consideration by the PBC at its June session", it was not specified when the document should be made available. It thought that a date should be set, e.g., April 2011, especially since a deadline of March 4 was set for Member States' responses. With regard to point (a) saying: "updates on the governance structure", it inquired whether it meant an update of what the AC had prepared. If so, that would need to be clarified. Further, while it was fine to refer to other intergovernmental organizations, it might be better to start with the UN organizations and other intergovernmental organizations.

213. The Secretariat responded that it anchored the draft text on the Roadmap because it referred to the follow up mechanism for the AC recommendations, one of which was on the new body. This was a way of justifying why it would be taken up at the June PBC session and would provide linkage to the fact that that was one of the outstanding discussions on the recommendations.
214. The Chair suggested that since this was not in the original document, as the Delegation of Egypt pointed out, the words "in accordance with" be changed to "following up on" or removed. Equally, reference to UN organizations could be added.
215. The Delegation of Germany thought that the document would be an update on the situation in other organizations, since the AC report was not entirely the right basis. It said that the AC's intention had been to present Member States with the proof that there were 37 organizations that had such an executive body. However, they were all the same because the AC had chosen exactly the organizations that supported their argument. It said that the document should contain information on other types of organizations where the structure was different from the 15 examples already presented, which all had the same set up.
216. The IAOC Chair replied that this was not the methodology followed and added that the AC had chosen organizations where there was an audit committee similar to that of WIPO. There were only 15 such organizations and the AC looked at what other governance existed in those cases.
217. Then Delegation of Germany responded that choosing one such organization would have been enough, as more only provided repetitious results which were of no value to Member States and that it would be better to have a wider look.
218. The Delegation of India requested that the AC document be used as a basis and be further updated, because there might be organizations that were missing from the listing and there might have been changes to some of these bodies post-2008. It added that, contrary to what Germany had said, the 15 organizations surveyed did not have the same template. Six of them had a small governing body of 16 members but there were others which had varying mechanisms, for example: FAO had two small committees; another UN body had a budget committee and a program committee; WHO had a different structure. The Delegation thought that, since this was the beginning of the exercise, the more comprehensive the information, the more easy to find best practices that applied best to the WIPO context. Therefore, a comprehensive table would serve Member States best.
219. The Chair pointed out that the document referred only to the UN system, while there were also the specialized agencies, on which the information should be included. The Chair inquired whether all delegations agreed to base the new document on the contents of the AC paper.
220. The Delegation of the Republic of Korea inquired whether, when talking about the governance, it meant the governance related to PBC matters or covering all WIPO governance matters. If it covered all WIPO governance matters, then the Delegation saw the issue as being outside the competence of the PBC, just like the Delegations of Germany and Spain exactly pointed out. The Delegation believed the governance issue belonged to the competency of the Coordination Committee rather than PBC.
221. The Chair recalled that paragraph 13 of the Working Group report said that during the January extraordinary session Members would consider agreeing on a regular and designated intergovernmental mechanism to discuss the AC's recommendation beyond September 2011. He pointed out that, at present, Member States had gone beyond that. He added that Member States could, of course, give input on whatever they chose to do. The PBC recommending discussions obviously would be limited to the mandate of the PBC. The information that had been asked related to the mechanism at large so that delegations could understand it. The decision making point was, as pointed out by previous speakers, either beyond the purview of the PBC or not. There might be agreement that the situation was fine. If Members were uncomfortable with the way the proposed conclusion was drafted it could be changed.

222. The Delegation of the Republic of Korea opined that the discussion on rotation of chairs in other bodies in WIPO (proposed last year) could take place in parallel with discussion on the governance issue and be held in the proper forum, like the Coordination Committee
223. The Delegation of Spain, to accommodate the concern expressed by the Republic of Korea, proposed to divide the process into two parts. For the time being, the wording of the conclusion was that the PBC should consider the results. At that point, in accordance with the results obtained, the PBC might suggest that the matter was beyond its competence and could transmit it to the GA or the Coordination Committee. In addition, it meant that Members would not be going against the legal interpretation of the powers of the PBC.
224. The Delegation of the United Kingdom helped to clarify the matter by recalling the decision by the GA that the Chair of the GA would carry on with consultations in terms of the rotation of Chairs. This was part of the governance of WIPO but it was his mandate to do that. It warned that Member States would be stepping on his toes if the PBC were suddenly to opine on that matter.
225. The Delegation of India agreed with the Delegation of Spain and the Republic of Korea in that the overall governance issue would be outside the mandate of the PBC and should ideally be discussed under the Coordination Committee. The Delegation wondered how the interventions that had just been made would be recorded as it did not think this issue should be revisited at the June session. It added that once the Secretariat's document would be discussed there would be a question of the next step. That meant that the June PBC would make a recommendation to the GA that further discussion should continue under the ambit of the Coordination Committee. It suggested that one way of doing it was to perhaps make that recommendation during this PBC session.
226. The Delegation of Australia wondered whether it was possible to alleviate some of the concerns expressed by adding a reference to recommendation 74 that dealt with the governance structure issue, as recorded in the AC report (document WO/GA/38/2), which would clarify matters.
227. The Delegation of Switzerland, on the question raised the Republic of Korea and bearing in mind the statement by India, thought that all that needed to be done was to follow the existing rules of procedure and that Members did not need to specify anything further at this stage. It explained that the PBC was going to examine the issue in June and then, depending upon the recommendation made that went to the Assemblies and the Assemblies decision, everything would start moving forward and be an automatic process.
228. The Chair said that the draft text could include the details of each step (the PBC in June, its recommendation to the GA, the GA decision) but risked to sound very pedantic. Following on suggestion by the Delegation of Australia, he proposed to add: "as recommended in paragraph 74 of the Audit Committee report."
229. The Delegation of France supported the Australian proposal and believed that reference to paragraph 74 would also take on board the concern expressed by the Delegation of Korea without, however, obliging Members to reformulate all the existing language. It noted though that it would have been preferable to be more precise and, rather than using the very inclusive terms of governance, to speak more specifically about the governing bodies or something more in line with the recommendation. But perhaps if there was just a reference to the recommendation itself, it would be sufficient.
230. The Chair read the proposal for point (b), input from Member States: "as recommended in document WO/GA/38/2 paragraph 74." The Chair then moved on to the recommendation in paragraph 76 and remarked that there was no strong consensus and invited further comments.
231. The Delegation of India (on behalf of the Asian Group) recalled that, based on the Groups' and delegations' statements on the recommendation in paragraph 76, there seemed to be a broad convergence of views that the new IAOC needed a legal status that was concomitant to its *de facto* function of now. There were also statements saying that it should be a subsidiary organ of

the PBC since it was already reporting to it PBC. The Asian Group preferred that the IAOC be subsidiary body of the GA, since it was an external independent advisory body to Member States and therefore should report to Member States at the highest level, i.e., the GA. The Delegation believed that it was very important for the PBC to decide and provide a formal legal status to this body, especially considering that the new IAOC was going to embark on its work very soon. The Delegation requested that the PBC formally discuss the possibility of formally making the IAOC a subsidiary body of the PBC or the GA. It added that there seemed to be a convergence on making it a subsidiary organ of the PBC and added that the Asian Group was willing to work around that idea.

232. The Chair of the IAOC (Audit Committee) explained that this issue had been discussed with the Legal Counsel during the first meeting of the PBC Working Group. The Chair said that the Legal Counsel had confirmed that the AC had not been listed as an official WIPO committee and, as such, its members did not have any status within the framework of WIPO. The IAOC Chair recalled the contents of the document on the use of languages, where the AC was not listed as an official committee. It also recalled the Secretariat's explanation that interpretation had nevertheless been provided for its meetings as it had been the PBC that had decided so.
233. The Chair proposed discussing paragraphs 80 and 81 pending Legal Counsel's arrival.
234. The Chair of the IAOC (Audit Committee) pointed out that the report under consideration was two years old. Consequently, recommendation 81(a) was an ongoing matter and, in his view, the PBC could simply recommend that its contents be taken into account and added that the new IAOC would have to deal with it. Concerning point 81(b), as per the last (19th) AC report made available this morning, the Committee was already working on the preparation of a training session for the new members. He suggested that, therefore, the PBC could take note of this point of the recommendation. Regarding point 81(c), he said that the history of this recommendation was that, in principle and always, the oversight bodies had access to all records and staff. However, one director had refused to allow his staff members to come and answer the questions of the AC. That situation was the source of this recommendation. He added that the PBC might wish to confirm that this was the case. He recommended that when the IAOC review the ToR in 2012, this sentence in this recommendation should be added to the ToR. Concerning point 81(d), he said that this matter had been reported the previous year because the existing perception within the Organization that the operation and the independence of the IAOC was not fully understood or implemented. The IAOC Chair said that the matter was left up to the consideration of the PBC. He added, for Members' information, that the issue of independence had been the object and subject of a long document submitted by the UN Independent Audit Advisory Committee last year to the UN General Assembly in order to define the independence of audit and oversight. The UN General Assembly had not taken any decision on this matter. He considered it an important matter that needed to be further investigated. The initial system for the implementation of the oversight recommendations had been created. Nevertheless, the IAOC still believed that there was a need for a real system for follow up and validation of data. He concluded by saying that, in respect of point 81(f) (revision of ToR), the decision had already been taken this morning.
235. The Delegation of Germany inquired whether there was a specific reason to wait until 2012 to deal with recommendation 81(c) (IAOC access to records), while it could be dealt with at present and included in the revised ToR.
236. The Chair of the IAOC explained that he did not include this recommendation in the present revision of the ToR for reasons of cautiousness. The AC proposed only revisions which reflected previous PBC and GA decisions.
237. The Delegation of Spain supported the proposal to include point 81(c) in the revised ToR without waiting until 2012. However, the Delegation inquired whether a situation where a staff member was not permitted to discuss matters with the AC, or the AC were refused access to archives still happened recently.

238. The IAOC Chair explained that, as a matter of principle, the AC respected the confidentiality and no members of the AC had asked to see the archives or files of the IAOC. However, for a serious matter, the AC had requested two staff members to come and brief the AC on a report that it had been examining. The direct supervisor of these two staff members had refused. The incident had been reported to the DG. The AC had not called these staff members again because there was no need. However, it had been a decision by a manager to refuse access to these staff members, recently, before 2009.
239. The Delegation of India supported the Delegations of Germany and Spain in suggesting that point 81(c) be added to the ToR being adopted at the present session. Item 81(d) - the operational independence of IAOC - appeared a well accepted and acknowledged principle mentioned in the Internal Audit Charter adopted recently. Therefore, as the PBC, Member States could recommend that management emphasized and disseminated the principle of operational independence of the IAOC. That would take account of the recommendation and would do what the PBC could do in this regard. The rest could perhaps be revisited during the triangular review of the ToRs in 2012. As regards point 81(e) - establishing a follow up system for the implementation of oversight recommendations - the PBC needed to acknowledge that a system had been put into place. This was a very encouraging and positive development. The Delegation took note of it and thanked the Secretariat for this initiative. On this occasion, it requested the Secretariat to evolve a verification, check-up mechanism so that the process advanced logically to the next step. That could be a recommendation by the PBC. On the staffing issue, the Delegation recalled the position of the Asian Group, who had urged the Secretariat to extend the mandate of assistance to the IAOC, in terms of logistic and administrative as well as substantive and technical support. The Delegation was looking forward to hearing from the Secretariat how it intended to support the new IAOC in its functions.
240. The Delegation of Egypt echoed what had been suggested by the Delegation of Germany and supported by the Delegations of Spain and India and proposed that a sentence to that effect be included in paragraph 17 of the ToR. Regarding point 81(e), the Delegation supported the proposal of the African Group. In general, this could be the first request that the PBC would make of the incoming IAOC.
241. The Chair agreed that paragraph 17 of the ToR, dealing with information requirements, seemed completely appropriate to place the sentence on IAOC access to files. The language of recommendation could be replicated there. He added that should there be agreement on doing so, it would ensure that the IAOC would have unhindered access to all staff of the Organization as well as access to records.
242. The Delegation of Israel supported the immediate implementation of point 81(c) as proposed.
243. The Chair announced that, in view of the general agreement, a sentence in paragraph 17 of the ToR regarding IAOC's unhindered access had been added. The Chair invited the Legal Counsel to explain the status of the IAOC, in view of recommendation in paragraph 76 that IAOC, "be designated by Member States as a subsidiary organ of the PBC."
244. The Legal Counsel stated that his understanding was that the IAOC was an organ established and reporting directly to the PBC. So, the IAOC was a subsidiary organ of the PBC.
245. The Delegation of Egypt was content to hear this fact and wondered if this assertion properly covered the concerns raised by the IAOC Chair, who had said that its members were calling to Geneva without any legal status. It asked confirmation as to the IOAC members' legal standing while in Geneva.
246. The Legal Counsel believed that the standing of the IAOC was more a function of a relationship the Organization had with the Swiss Federal Council. There was Headquarters Agreement specifically providing that the Swiss government would give access in and out of Switzerland and provide specific status to persons coming on official WIPO business. The IAOC would presumably have the status if they came to any meetings in Geneva. This language was going to be proposed to be included in the letter of appointment of the new members of the IAOC.

This did not have anything to do with whether the IAOC reported to the PBC or the GA, which was a different issue altogether.

247. The IAOC Chair recalled that, in order to address these issues, the ToR of the UN Independent Audit Advisory Committee specifically contained a sentence stating that the members of the UN Independent Audit Advisory Committee had the status of experts on mission. It was a specific status given to consultants and other advisors to the UN specialized agencies within the framework of the Convention of Privileges and Immunities. The IAOC position was that the members of the IAOC should be granted this status to be given travel certificate that was issued to experts on mission. Because many members of the IAOC did not travel from their country to Geneva directly, it would facilitate their receiving visas in any stopover country. This might facilitate the issuance of the Schengen visas, which had become a serious matter since last year, forcing colleagues to go to the capitals of another country to get their visas. The research done by IAOC seemed to demonstrate that the official status of experts on mission could be given to the members of the IAOC.
248. The Chair wondered how reference to some official status would be reflected in the letters of appointment for the new members.
249. The Legal Counsel confirmed that letters of appointment would include references to the official status when they attended functions in WIPO. In respect to the specialized agencies convention, that the IAOC Chair had mentioned, he was not certain that the United States was a party to the convention, which was the 47th one, while the 46th one applied to the UN in general. He added that, in any event, where WIPO was concerned, our relations with them be governed by the Headquarters Agreement between WIPO and the Swiss government.
250. The Delegation of India requested clarification as to whether the letter of appointment would outline the legal status of the IAOC in the organizational structure of WIPO as being a subsidiary organ of the PBC.
251. The Legal Counsel replied that if that was a specific request being made, this would be included in the letter of appointment and added that, yes, the IAOC was a subsidiary organ of the PBC.
252. The IAOC Chair said that he did not understand the resistance of the Secretariat to provide the IAOC members with the status of experts on mission, because this had been discussed and had been in the documentation forwarded to the legal Counsel and the ADG in the course of last year.
253. The Legal Counsel explained that, with reference to the experts on mission status, the problem was the simple paragraph. There was no such reference in the Headquarters Agreement between WIPO and the Swiss government. This notion probably existed in the Headquarters Agreement between the United States government and the United Nations. WIPO did not have such agreement hence it could not offer "experts on mission" status.
254. The Chair asked Member States whether their concern was that IAOC members have the necessary status in Switzerland reflecting that they were on official business with a subsidiary body of the WIPO.
255. The Delegation of Germany wondered what would happen if WIPO opened external offices and the IAOC members decided to visit one in the line of their work. It thought that it might be better to have a global regulation as to the members' status so it would not have to be resolved by each external office's agreements with the host country.
256. The Legal Counsel explained that all agreements were bilateral, i.e., agreement with the Swiss government applied in Switzerland. If IAOC members decided to go to the Tokyo office that would be governed by WIPO's relations with the Japanese government.
257. The Delegation of India said that the Asian Group raised this issue, because it had read about the operational difficulties faced by the AC in obtaining visas, medical insurance etc. whenever they travelled to Geneva. It added that in the new IAOC six out of the seven members held every day jobs, hence they would have to make a real effort to come to Geneva to participate in

the IAOC work. The Delegation hoped that whatever measures WIPO had in place to facilitate travel of consultants or experts on mission, the same facilities would be extended to the members of the IAOC to facilitate their travel to Geneva. The Delegation's concern was that, if the present tactical difficulties remained, they might act as a deterrent for active involvement and sustained participation by the IAOC members in meetings in Geneva. The Delegation requested the Secretariat to facilitate the practical aspects to make sure that the IAOC members were treated on equal footing with consultants and other experts who travel to Geneva for WIPO work.

258. The IAOC Chair advised the membership that, following discussion with the Legal Counsel on the current practices in WIPO regarding normal consultants, the Legal Counsel did not see any difficulty in issuing travel certificates to the members of the IAOC. Therefore, the matter was resolved.
259. The Chair read out the proposed draft decision pertaining to paragraph 81: "The PBC took note that recommendations listed in paragraph 72, 80, 81(c), (e) and (f) contained in document WO/GA/38/2 have been addressed and urged the Secretariat to evolve a verification mechanism to validate the reports of Program Managers." On the remaining point of paragraph 81: "The PBC requested the WIPO IAOC to review the remaining items under paragraph 81 of document WO/GA/38/2, with the purpose of submitting its considered views and recommendations thereon for the PBC session in September 2011."
260. The Delegation of Egypt inquired why the PBC session of September 2011 was chosen instead of the June session. It also remarked that the draft said that point 81(e) had been addressed while the Delegation understood that the new IAOC would be looking into it.
261. The Chair explained that the intervention of the Internal Auditor the previous day indicated that the follow up mechanism had been established although the verification remained to be evolved. As to September 2011 date, the Chair thought that the new IAOC should have the time to examine, evolve, consider and prepare its report and added that the IAOC might not be able to do that in time for the June session.
262. The IAOC Chair agreed that, having at most two meetings before June, the IAOC would probably not be in a position to conduct the review and report on it.
263. The Delegation of India inquired about point 81(b) and the customized training program mentioned by the IAOC Chair. It believed that this recommendation could easily be dealt with as all Members recognized the need for the IAOC to have an overview of the IP, WIPO organization and governance structure and their mandate. The PBC should have no difficulty in recommending a customized training program, which also included some items under point 81(a) (ii), improving understanding by the IAOC of the IP context and challenge. Regarding sub-item (d), as suggested earlier, the PBC could recommend to the management to emphasize and disseminate the principles of operational independence of the IAOC as recommended in the AC report. Especially since this notion had already been included in the Internal Audit Charter. In this way, point 81(d) would also have been taken care of.
264. The Delegation of the United Kingdom requested clarification as to the status of verification mechanism, which as it understood had been introduced in the program performance reporting last year. Therefore, Program Managers had this mechanism already in place. It wished to know the details of its current status as it might already incorporate what Members were looking for at present.
265. The Secretariat recalled that the issue of the performance review had been discussed and described at the last PBC and the Assemblies, the self-evaluation had also been complemented by a validation by the IAOD, which came up with a number of enhancements. As the process was moving forward, the Secretariat was putting into place those enhancements, covering a more refined and robust evaluation. The Secretariat opined that a similar approach could be used for validating by Program Managers as well.



266. In view of the above response, the Chair suggested to say: “(...) evolve its verification mechanism (...)” since it already existed and was being enhanced.
267. The Delegation of the United Kingdom suggested that, in this case, the text could perhaps reference program performance reporting to make sure that the text would not imply duplication of what already existed.
268. The IAOC Chair pointed out that there were two different aspects. The Program Performance Report was based on the Program Budget and on the Medium-Term Strategic Plan. It was really the implementation of the program. What was being discussed at present was the implementation of the oversight recommendations which did not necessarily imply a programmatic aspect. These recommendations were mostly on administrative, procedural matters. Therefore, the Chair would not suggest making this linkage. If Members wished to link to performance, this factor of implementation of recommendation could become part of the performance evaluation system of the managers. He would rather recommend that in the future, the managers be evaluated not only on the performance of the program but also performance in management of the staff, which was the largest expenditure, as a manager who badly manages the staff was wasting the Organization’s resources. He reiterated that if Members aligned this issue to performance, they might wish to recommend that the implementation be also included in the current implementation of performance evaluation for the individual staff members and managers. The Chair stressed again that there were two different issues: the Program Performance Report validation and the issue under discussion.
269. The Delegation of Egypt believed that since the new IAOC would be looking at this matter with fresh eyes, it might be useful for the IAOC to give the PBC their views on the follow up system of implementation as they might propose useful additions. For example, one of the issues was that Members did not know exactly which recommendations were being referenced. Perhaps, that was an addition that could be made. There were gross numbers but Members did not know which recommendations had been implemented and which had not. The new IAOC could present their views on how to improve the system further.
270. The Secretariat said it took the IAOC Chair’s comments on board but wished to clarify the issue of program performance reporting and how it was validated, first through the self-assessment by Program Managers, which was subsequently reviewed by the internal audit mechanism, from which there was a validation report, which was then considered and presented to the Member States through the IAOC. It explained that a very similar approach was being suggested (for audit recommendations). The previous day, the PBC had received a report from IAOD on the self-assessment that the Program Managers had done on the audit recommendations. If the same path was followed, it would stand normal that report would find its way through the IAOC to the PBC, in terms of a verification or validation of that self-assessment, so that the Organization could improve on not only the templates but the way it addressed audit recommendations. The Secretariat said that this was what it had understood from the United Kingdom’s intervention. This would ensure that the process would not be purely self-assessment with no verification. It would result in information as to the reasons for closing a recommendation, keeping it open, partially implemented etc.
271. The Delegation of Germany stated that the last report by the IOAC already included the protocol for the handover to ensure continuity of the Committee’s work, which said that the new IAOC should look at the implementation of the system of accountability for managers for the implementation of oversight recommendations. Therefore, the linkage was already there and did not need to be addressed again since it was already on the agenda as part of the handover protocol.
272. The Delegation of the United Kingdom confirmed that the Secretariat’s view was exactly its own view and added that if Members would introduce a new verification mechanism they would actually duplicate what already existed. The Delegation disagreed with the Chair of the IAOC and said that, even in its latest reports, the old AC had made recommendations on the strategic realignment plan which was actually about staff issues. In fact, the audit recommendations

were concerned with issues which should be covered by the Program Performance Report, so the two dovetailed each other. If a new verification mechanism was created, it would be duplicating exactly what was happening already.

273. The Delegation of India sought confirmation of its understanding of the Secretariat's explanation. It understood that the present follow up system for implementation was the compilation of reports by Program Managers about how they had complied with recommendations and what was proposed in verification system was that the IAOD would verify some of these reports. The Delegation inquired whether this was also the understanding of the Chair of the IAOC.
274. The IAOC (Audit Committee) Chair responded that it did not conceptually disagree with the Delegation of the United Kingdom. The issue was that the Committee's ToR specified that one of the tasks of the IAOC was monitoring the timely, effective and appropriate responses from management with regard to audit recommendations and monitoring the implementation of audit recommendations. The PPR verification took place every two years. The Chair did not see any problem in including the implementation of oversight recommendations every two years when Members would review the PPR. However, he did not think that one could afford to wait for two years to see whether an urgent recommendation might have been implemented. In fact, there was an agreement, an established system, that the report on implementation of audit recommendations be submitted twice a year to the AC. There was therefore a problem of timing and substantive differences. He said that if Member States wished to see the report every two years, then it could be done.
275. The Secretariat (ADG) added that there was also an interim, annual PPR, so it was not an exercise performed every two years.
276. The Delegation of Egypt suggested that, to clear confusion, the IAOC could be requested to present, by June, a document/ or report, whether written or oral, on the implementation of recommendation 81(e). The Delegation thought it to be a key element, as a lot of seemingly divergent points of view had been raised on this issue.
277. The Chair concurred with the proposal that the IAOC be requested to comment on this issue and therefore recommendation in paragraph 81(e) should be moved to the list of unaddressed issues.
278. The Delegation of Germany said that Member States were adding workload to the still understaffed IAOD and wondered if it was feasible for IAOD to carry it out and what would be expected from them
279. The Chair announced that draft decision on the issues discussed was being distributed.
280. The Delegations examined the text of the proposed draft decision making several editorial amendments.
281. The Delegation of India (on behalf of the Asian Group) wished to make a statement on paragraph 13 of document WO/GA/39/13 which stated": "During the extraordinary session of the PBC in January 2011, Member States will consider agreeing on a regular and designated inter-governmental mechanism to discuss the AC's recommendations beyond September 2011." The Asian Group attached great importance to this issue, and believed that it was important and urgent to evolve a suitable inter-governmental mechanism where the IAOC's reports and recommendations could be duly considered by Member States. As recommended by the AC in paragraph 73 of this report, the WIPO AC was an advisory oversight mechanism for Member States. The interaction between the AC and Member States had been sporadic and not synchronized with the PBC meetings held once per year. The Asian Group said that in other UN organizations, there were smaller and more functional governing bodies that met more frequently to interact with oversight bodies and act upon their reports. The Asian Group was of the view that it would be ideal for the IAOC's reports and recommendations to be considered by a smaller governing body, which met more frequently, as recommended by the AC. However, given the importance and urgency of the issue, and pending the creation of such a new

governing body, the Asian Group proposed that a working group of Member States be set up under the PBC to look into the AC's recommendations and report its views to the PBC for consideration. Such a working group could be modeled on the lines of the successful Working Group on AC Related Matters, whose report had been approved and endorsed by the WIPO General Assembly in September 2010. Separately, in order to facilitate meaningful consideration of the Working Group's report and related issues, as decided at the 2010 General Assembly, the PBC sessions should be extended to five days, with a designated time for discussing the IAOC's recommendations. The Asian Group looked forward to a positive decision in this regard in this session and stood ready to engage constructively in further discussion.

282. The Delegation of France (on behalf of Group B) reminded delegations of the Group's position on paragraph 13, and believed that the most appropriate way to discuss the IAOC's recommendations beyond September 2011, would be to continue doing so within the framework of the PBC. It had been argued that the length of PBC sessions had not provided sufficient time to do so. The Group agreed to discuss a brief extension of the PBC meetings to ensure that sufficient time was allocated to discussing IAOC's recommendations. The Group stated that it understood that the Delegation of India had made two proposals, which the Group considered superfluous. On one hand it proposed to extend the PBC meetings to five days to ensure time to discuss the audit recommendations, and on the other hand it proposed to set up a working party of the PBC, which would prepare for the examination of the recommendations. The Group found this a rather cumbersome procedure and preferred to keep this review within the PBC itself at the extended sessions.
283. The Delegation of South Africa (on behalf of the African Group) reiterated its morning's statement proposing that the discussion on the AC recommendations take place in the PBC. It further proposed that the duration of the PBC meeting be extended to five days and the frequency of meetings should be at least two formal sessions per year.
284. The Delegation of the United Kingdom agreed with the statement made for Group B and reiterated its position on the importance of not having superfluous meetings and duplication of venues to discuss the same issues. It reminded delegations that the Working Group on AC matters had had a shelf life, while the new proposed working group would not, as recommendations would come in continuously. The Delegation confirmed that it agreed to the extension of the PBC meetings' duration.
285. The Delegation of India disagreed with the description of the proposal as superfluous and duplicative for the following reasons: there was a broad consensus that the PBC was overburdened and this needed to be fixed somehow because the PBC was not able to deal with the many substantive issues on its agenda. If Members wished to rectify this, the PBC duration had to be extended. The extension of the duration was not simply to examine the AC recommendations, but to deal in a better and more meaningful way with all the various substantive agenda items. In the morning's discussions on the smaller more functional governing body, there was general agreement on this matter. It wished to make it clear that its proposal for an establishment of a working group was not a substitute for the extension of the duration or the frequency of the PBC sessions. It was based on paragraph 13 of document WO/GA/39/13, which said that the PBC: "consider agreeing on a regular and designated inter-governmental mechanism". It added that even if the PBC was extended to five days, given the number of issues and pending the creation of another smaller body, the PBC would still be falling short of time to deliberate on the recommendations. As of today, there were 95 open recommendations. The Delegation commented that it was not aware of any PBC-like committee anywhere, which would manage to have a meaningful discussion on all 95 recommendations and make its own concrete recommendation on each of them. For practical reasons, such a task was often left to a smaller body. It said that it was exactly for this reason that Members had created the Working Group on AC matters. It was in the light of these reasons that the Delegation proposed that a working group be created under the PBC in order to examine the AC recommendations and to report to the PBC. Reporting would not mean that

- such a working group would take decisions. Its report would then be discussed by the full PBC membership which would take decisions or make recommendations to the GA.
286. The Delegation of Switzerland, recalling the discussion during the Assemblies on the meaning of an intergovernmental mechanism, stated that such mechanism already existed and that there was a body meeting regularly to discuss the recommendations. As the Group B Coordinator had stated, the Delegation was in agreement to extend the duration of the PBC sessions. It added that, if Members respected the discipline at the meetings, a lot more could be accomplished, as proven by the last PBC, which had dealt with a heavy workload in just three days. The Delegation considered that, if the sessions were extended by two days, there would be plenty of time to examine all the recommendations, including the recommendations of the IAOC. Additionally, since it had also been decided that Member States would have an opportunity to meet the IAOC after each of its meetings, the Delegation did not see the point in setting up a working group.
287. The Delegation of Germany proposed a two step approach to resolve the matter. First, the PBC duration would be extended. If, after certain time, this proved insufficient, Member States could discuss other solutions.
288. The Delegation of Australia expanded on the suggestion by the Delegation of Germany and said that in extending the PBC, Members had to dedicate specific time to discuss the recommendations of the IAOC, also because the Secretariat had introduced a number of new measures to track implementation of these recommendations. The Delegation thought that the discussion was moving in the right direction and perhaps the PBC could review this issue at its September session, and consider whether additional measures need to be taken.
289. The Delegation of Bangladesh supported the statement of the Asian Group in that the general logic showed that the PBC could not (even if extended) consider all the issues presented to it. This was why the Asian Group had proposed that a working group be formed so that the PBC's normal work was not hampered.
290. The Delegation of the United Kingdom supported the proposal by the Delegations of Germany and Australia for taking a sensible approach, extending the PBC sessions and examining the situation after a certain time to see if other steps were necessary. The Delegation did not see the reason for predetermining at this point, what might be needed in the future. The first step, therefore, should be the extension of the length of the PBC's meetings.
291. The Delegation of Egypt thought that there was a general tendency to underestimate the work that would be undertaken in the PBC this year, in particular a full budget cycle that would have to be considered. There might be just enough time to consider the budget properly if the PBC was extended to five days. It referred delegations to the PBC session in 2009 when Members attempted to squeeze an entire budget discussion into three days of session and three days of informal meetings, which resulted in a bad incident. As such, the Delegation found value in the Asian Group's proposal, which it did not consider superfluous. However, at the same time, once again, the Delegation of Germany proposed a good way forward. The Delegation suggested that the decision paragraph should say that the PBC would begin discussing the recommendations in the session of the PBC and in June, at the end of that session, if it was believed that not enough ground was covered, that session would be extended by two days, starting the following week. The session would last from Monday to Friday (June 27 to July 1); on Friday, if Members believed that there was not enough time, the session would be extended to Monday and Tuesday of the following week.
292. The Delegation of Australia wished to clarify whether the PBC was asking the new IAOC to examine, by September 2011, recommendations made by the old AC. The statistics provided by IOAD said that there were 63 open recommendations from the AC, apart from over 116 recommendations by the internal audit and evaluation. The Delegation wondered if those 63 recommendations were still open and would be looked at by the new IAOC. If that was the case, the Delegation thought it premature to book time for their consideration at the June session.

293. The Chair clarified that as of July 1, 2010 it was 63 and as of January 7, 2011, it was 26 open recommendations, respectively.
294. The Delegation of France responded that it interpreted the proposal by Germany in a different manner and added that it did not fully understand the intervention made by the Delegation of Egypt. It stated that it did understand that Members had already decided to have two extra days for the June and September sessions to discuss the recommendations. The Delegation called this arrangement a provisional measure, although it was included in the Roadmap. It seemed to the Delegation that what was proposed at present, was that PBC sessions would be extended in the future. It seemed to the Delegation that this proposal was put forward due to the workload relating to the budget for the next biennium. However, the PBC had already foreseen an extension of the duration of its forthcoming sessions precisely to allow the time to discuss the recommendations and the budget. What the Delegation understood from the German proposal was that there was convergence of views within the PBC that the PBC should be extended by a couple of days this year. If that proved not to be sufficient, Members could consider the proposal by the Delegation of India.
295. The Secretariat confirmed that paragraph 13 referred particularly to AC recommendations and that the Delegation of Australia was correct in pointing out that 63 open recommendations as of July, 26, 2010, were still open as of January 7, 2011. As proposed by the Delegation of India, the verification process would go, as per the decision paragraph, through the new IAOC and the PBC, no later than September. As already pointed out, both the June and September PBC sessions had been extended by two days. The issue was whether the recommendations would be tackled by June or not, in terms of the new IAOC's paper which would come forward. It was not certain that they would have completed their work and that would only be known after their first meeting.
296. The Delegation of Turkey believed that proceeding with the extension of the PBC meetings was a good solution and that the establishment of a working group could be discussed at a later stage.
297. The Delegation of South Africa stated that Members would continue with the current arrangement (five day session) and then the PBC sessions would be extended and their frequency increased to four sessions per year.
298. The Delegation of Israel echoed the comment made by the United Kingdom that Members had a good and very fruitful discussion and was looking forward to more of such discussions in the framework of the PBC. It wished to look at the recommendations, in a wider view, within the framework of governance at WIPO. In this context it added that the UN Fifth Committee, which was the budgetary administrative committee of the UN, was the body which reviewed the work of both the board of auditors and the OIOS.
299. The Delegation of Portugal said it could subscribe to what had been said by the Delegation of Germany and thought that the proposal by the Delegation of Egypt had captured the spirit of the proposal made by the Delegation of Germany. Therefore, in the spirit of flexibility, the Delegation was ready to support the extension of the PBC to five days and, on an as-needed basis, a further prolongation for one or two more days.
300. The Delegation of India agreed that considerable progress had been made in the discussion and hoped that this trend would continue. It reminded the membership of that it had taken considerable time and effort to arrive to this point. There had been meetings not long ago, where the membership could not even get to the point of discussing these recommendations. The Delegation pointed out that the previously agreed decision said: "there will be two days designated during sessions of the PBC to continue discussions on the Audit Committee's recommendations." That meant that the PBC, in effect, would still have only three days to deal with all other issues on its agenda. The PBC would not therefore derive any benefit from the extension during its two forthcoming sessions. The Delegation also remarked that Members had not seen the 63 open recommendations in detail and did not know to what extent they might have been dealt with. The two days of the June and September sessions would be a

good forum to have a more detailed look, regardless of whether the new IAOC reduced the number of recommendations by that time. This would be a review by Member States of the recommendations that they had never had the occasion to discuss. The remaining three days of the June and September PBC would be taken by its regular business. The Delegation thought that the proposal by Egypt attempted to rectify that. Taking into consideration the interventions made by the Delegations of Germany and Australia, all options could be examined. It added that Members needed to come up with a creative “deal” making sure that the PBC had enough time to discuss its agenda items and the AC recommendations. The Asian Group’s proposal attempted to marry the two. Instead of two days discussion on recommendations, a PBC working group would look in detail at the 63 recommendations and produce a report to the PBC. The ensuing discussion could then be finished in half a day, with the remaining time consecrated to substantive items on the PBC’ agenda. That was the logic behind the proposal and the Delegation requested membership to give it due consideration.

301. The Delegation of the United Kingdom expressed its preference for the German approach. In response to the comment that the PBC had never seen the recommendations, the Delegation referred the membership to the compilation of the AC reports (15th to 17th meeting) submitted to the last PBC session and which invited the PBC to review them. Therefore the statement that the AC reports (and recommendations) had never been seen by Member States was incorrect.
302. The Chair summarized that at this stage there was no consensus on any of the options proposed so far.
303. The Delegation of Australia recalled that the Working Group during its meetings had made it clear that the preference was a two day discussion of the AC recommendations preceding the PBC, effectively extending the PBC to five days. There was no other proposal on the table at that time. It added that there was an agreed and approved Roadmap, which should be followed; there was a way forward and recommendations were going to be discussed
304. The Delegation of Monaco stated that first and foremost members had to respect the decisions that had been taken. The problem of the lack of time was identified and a solution proposed in the Roadmap (the two day extension of the next two sessions of the PBC). It added that members had not yet seen how successful or otherwise it was going to be and whether or not it would meet the expectations. It thought that Members were already prejudging the situation by saying that the solution proposed was not sufficient and that something else had to be done. It reminded delegations that the format had already been agreed on, so before going on to say that this was insufficient, it should be given a chance to succeed. The Delegation endorsed the German proposal to try the agreed solution and afterwards take stock of what was achieved to see whether things needed to be done differently.
305. The Delegation of Portugal supported the Egyptian proposal. If Members already accepted the extension to five days and if, at the end, it was proven insufficient, there was no harm in having a possibility to extend the session by further two days. It suggested trying a new formula: five day session, if insufficient, possibility of extension by two days.
306. The Chair suggested that the decision paragraph could say that following up on paragraph 13 of document WO/GA/39/13 the PBC will commence discussions on the open recommendations of the IAOC at the June session in 2011 and that at the end of that session a review would be undertaken as to modalities for effective work.
307. The Delegation of India inquired whether Group B and the other delegations agreed to extending the PBC session to five days with two sessions per year. If that was so, the Delegation would agree with the Australian proposal to start with that and then have a review clause. Apart from that, the Delegation requested that the review of recommendations have a designated agenda item to be taken up the beginning of each session. If that was the case, the Delegation was willing to look at that proposal. Finally, as seemed to be agreed to by all membership, a review would be required to take stock of whether such formula was working or not.

308. The Delegation of Switzerland, commenting on the decision taken by the GA on the Roadmap, said that it had been absolutely clear that the question how to deal with the AC recommendations was resolved until September 2011. It added that the question of extension to five days would be addressed by the Group B Coordinator in line with the Group's position. On the periodicity of meetings, the Delegation doubted the value of having two formal meetings a year, one in addition to the format following the budgetary process. If it was to discuss the AC recommendations, then five days seemed to be a bit too much. Therefore the Delegation had reservations about this proposal at his stage. On the issue of placing AC recommendations as the first item of the agenda, the Delegation wished to leave it up to the Chair to decide how to organize the hierarchy of the agenda items. The Delegation also had reservations about deciding that discussion of recommendations should take place at the beginning of the session.
309. The Delegation of France, clarifying Group B's position, stated that it had never said that Group B supported the African Group's proposal. It had previously said that a brief extension of the PBC sessions could be discussed. That was the precise position of Group B. It stated that Members had to very much bear in mind what the Delegation of Switzerland had just said about the Roadmap, i.e., that provisions for 2011 were in place. If anything was to be discussed now, it would be on the matters beginning in 2012. On the question of the frequency of PBC meetings, the Delegation remarked that although there was only one annual formal meeting, *de facto* the PBC did meet two or three times a year, and it did not change much whether it was a formal or an informal setting. It also stated that it did not interpret paragraph 13 in the same way as the Delegation of India. The Delegation said that although it had not participated in the discussion that had led to the drafting of this document, it did not see any reference either to the forum of the PBC as such or to the overload in the PBC's work. It seemed to the Delegation that paragraph 13 referred only to the appropriate treatment of the AC recommendations. It proposed that, as suggested earlier, this issue and other matters raised by India that were not included into paragraph 13, could be dealt with within the context of inputs to be sent by Member States. It could be an appropriate manner to bring up some of the broader governance issues, relating in particular to the role of the PBC.
310. The Delegation of Israel thought this issue should be discussed as part of the discussion on global strategy on governance. It also thought that the idea of having two five day sessions a year was a good basis for discussion. The length and the frequency of sessions would provide enough time to discuss both the budget and the AC recommendations.
311. The Delegation of India echoed the view of the Delegation of Israel. It thought that what paragraph 13 was asking Members to do was very clear. Paragraph 13 asked explicitly that at the extraordinary session of the PBC in January 2011 Member States come to agreeing on a regular and designated intergovernmental mechanism to discuss the AC recommendations, beyond September 2011. That was why the Delegation had proposed that the PBC sessions be extended to five days, with a designated agenda item. It also clarified that it had never implied that Group B had agreed to the African Group's proposal. Since, as mentioned on behalf Group B, in effect the PBC met two or three times a year, the Delegation did not see the difficulty in converting at least two of those meetings into regular formal sessions. Two or three PBC meeting per year would contribute to streamlining the work of the PBC, the Member States, the IAOC and other issues that the PBC considered.
312. The Chair said that given the lack of consensus on the matter, it was important that Members note the discussion that took place and that the discussion needed to continue. He suggested adoption of the text saying that following up on paragraph 13 of document WO/GA/39/13, the PBC would commence discussions of the open recommendations of the AC at its session in June 2011 and that at the end of the session, a review would be undertaken of the progress made.
313. The Delegation of India thought there was some consensus about extending the duration of the PBC sessions and now the suggestion was to close the discussions saying that they were inconclusive. The Delegation wished to bring closure to the discussion and suggested asking other delegations present whether they saw a problem with the extension of the duration of the

PBC session. If there were delegations formally opposed to it, then the discussion would continue in June.

314. The Chair recalled that there were expressions of reservations and preference to wait until the PBC tried out the new system before deciding on permanent extension.
315. The Delegation of South Africa supported the stand of the Delegation of India on this matter. It was also under the impression that Members were not far from reaching an agreement on this agenda item.
316. The Delegation of Egypt understood that all delegations had agreed to extending the PBC. The controversy was about whether there should also be a working group in addition to the extended PBC. It did not see why membership was reverting back to the first discussion on the extension.
317. The Delegation of Iran (Islamic Republic of) said that although it was flexible on the format for review of AC recommendations i.e., extended session or working group, it wished to know what the appropriate method to review AC recommendations would be in 2011.
318. The Chair reminded the membership that there would be five days scheduled for the June and September sessions and that the Delegation of Egypt had proposed to go two days past that time.
319. The Delegation of Australia pointed out that paragraph 13 said that the Member States would consider agreeing on a regular and designated intergovernmental mechanism to discuss the AC recommendations beyond September 2011 at this session. It stressed that the paragraph said: "will consider agreeing", which did not necessarily mean that Members had to agree on something today. The Delegation suggested deferring discussion on this particular item over to the next PBC, should the time run out.
320. The Delegation of France (on behalf of Group B) supported the statement by the Delegation of Australia on the meaning of paragraph 13. It said that Group B was respecting the letter of paragraph 13. It recalled Group B's past stand that if the work was more efficiently done and better organized, it was not necessary to extend the PBC. This position had not changed. Since there was a request to that effect, Group B could discuss a possible extension of the PBC sessions but was not prepared to take a decision on extending the PBC at this stage. It could agree to continue discussion for two days in June.
321. The Delegation of the United Kingdom agreed with the statement of Group B and was willing to consider the extension (of the PBC) by two days following evaluation how the five day PBC in June and September would have worked and, following that, a decision could be made on extending PBC to five days in the future. At this stage, the Delegation did not think that any Members had agreed to a full extension up to five days forever.
322. The Chair pointed out that the two day extension was interpreted differently by different delegation, e.g., in the proposal by Egypt that implied extending PBC to seven full days.
323. The Delegation of Switzerland supported statements made by the Group B Coordinator and the Delegation of the United Kingdom. Regarding the extension, the Delegation stressed that the June and the September meetings would last five days: two days on the AC recommendations and three days on other PBC matters and that there was no question of extending the sessions further. However, the Delegation was prepared to consider, after 2011, extending permanently the duration of the PBC.
324. The Delegation of Egypt was disappointed with the lack of faith in the discussions on this particular item. It added that it could read properly what paragraph 13 said, which was what members should do after September 2011. Two issues were being discussed. One was a proposal to extend the PBC by two days and have two formal PBC sessions a year. It seemed to the Delegation that Group B had agreed to it but then had retracted their agreement. The second issue that was the Asian Group's proposal, supported by several others, that in addition to the extension of the PBC beyond 2011 there would also be a working group. The Delegation



thought this not being in good faith on the part of the Group B to state that there was not agreement on anything.

325. The Chair clarified that he had never heard Group B, as a whole, agree to the two day extension. There was interest expressed in the two day extension by the Delegation of Germany and other delegations. The Chair did not see any bad faith in the discussion but rather confusion as to what the two days related to.
326. The Delegation of Australia wished to take a step back and look at the text in the Roadmap. It pointed out that paragraphs 11 and 12 talked about an extension of the PBC spring session so that there would be two days to discuss the AC recommendations, followed by a three day PBC session. The same arrangement was envisaged for the September 2011 PBC. Paragraph 13 of the Roadmap said that in the present session Members would “consider” agreeing on a mechanism, which did not necessarily mean that they had to agree on anything. The Delegation supported the Delegation of Germany’s suggestion that maybe membership could defer a decision on this issue until September. It added that, given that there would be four official days (between now and September) dedicated to discussion on the recommendations, the PBC might actually go through all of those. It concluded that decision should be deferred until September as there was no need to take one at this stage.
327. The Delegation of South Africa expressed its surprise at what it had heard. It recalled the African Group’s proposal that morning to keep focusing on discussing recommendations within the PBC and to extend the PBC for that purpose. The Delegation believed that there was an apparent agreement at the time to decide on this matter at this session. It added that it did not agree with the interpretation suggested by certain delegations and was surprised by comments it had heard that two additional days had been added to the PBC only as a gesture. The Delegation disagreed with those who had said that, therefore, there was no need to decide on the mechanism at present. It reminded delegations that it had also participated in the drafting of paragraph 13 and knew fully well what it meant. The key words were: “consider agreeing on a regular and designated intergovernmental mechanism”, which was the PBC. The Group could not agree with the idea expressed by some delegations that the discussion during the additional two days could be informal. The Delegation did not wish to have informal meetings. It added it had been arguing for a long time that Members had not had enough time and added that two formal PBC meetings would allow Members to deal with all the issues before the committee. It believed that implementing paragraph 13 would allow Members the opportunity to proceed with the work of the PBC. The Delegation said it had proposed what it had been saying all along and was surprised to hear that the African Group’s proposal had no added value at this stage.
328. The Delegation of India expressed its deep disappointment at the reaction of some delegations. It recalled that it had been a member of the Working Group which had finalized the report and that when the agreement had been reached on paragraphs 11, 12 and 13, the understanding had been very clear. Today that understanding seemed to have been breached. When the solution had been reached on those paragraphs it had been almost a golden moment that healed the rift present between countries in WIPO for a long time. The Delegation added that the *ad hoc* solution reached in the Working Group i.e., two extra days for the June and September PBC sessions, was agreed to in the context of reducing the number of the AC members from 9 to 7. It had been a deal: some delegations had agreed to reduce the number in exchange for agreement to their proposal to deal with the AC recommendations in a serious and meaningful manner. That was the history of paragraph 13. Until September 2011 it was an *ad hoc* arrangement. Beyond that, it was the real institutional change in WIPO which would ensure that the AC/ IAOC recommendations were heard as they deserved to be. Today, the Delegation felt that others got their deal - the numbers had been reduced and the new IAOC members had been elected. However, they (the others) were not interested in making a meaningful institutional change in WIPO beyond the *ad hoc* solution. The Delegation requested that its statement be recorded.
329. The Delegation of China supported the statement by the African Group and the proposal to extend the duration of the PBC and increase the frequency of its meetings, whether formal or

informal. In view of the fact that the issues before the PBC were important, all parties realized that the current duration was insufficient to fully deal with the items of the agenda. Therefore, extending the PBC was necessary.

330. The Delegation of Angola stated that adding two days to the PBC should not be opposed. It reminded delegations that during the Working Group last February, a deal had been made i.e., that there would be no additional sessions of the PBC but that two days would be added. This should not be challenged, as if it were to be, then a question of setting up a new body (working group) would come up again. Regarding paragraph 13, the Delegation recalled that the decision had been reached to send this matter back to the PBC for discussion to see if conclusion could be arrived at.
331. The Chair believed that no delegation had closed off on the willingness to discuss the needs of the PBC and regretted the miscommunications that had occurred between delegations. He proposed to leave this issue open for now and discuss it at the next session of the PBC but not at the end, as pointed out by the Delegation of India. The Chair proposed to continue discussing the recommendations at the beginning of the next session. Regarding the proposed draft decision read out earlier, the Chair suggested to change: "at the end of the session", to: "the PBC will commence discussions of the open recommendations of the IAOC at its session in June 2011. The PBC will also continue discussions of paragraph 13."
332. The Delegation of India did not think that it would make much of a difference how the timing was worded because ultimately it was about willingness of delegations to interface. Willingness made this day's discussion of other recommendations possible and great progress had been made.
333. The Chair proposed that the start time would not be specified. However, the Secretariat would place this item on top of the agenda.
334. The Delegation of Egypt suggested describing the present impasse in the text of the decision by saying that based on the Committee's inability to reach consensus it decided to continue discussing this issue.
335. The Chair read out the suggestion: "The Committee was unable to reach consensus and agreed to continue discussion of the issue." The Chair announced that the text of draft agreed decisions (WO/PBC/16/5 Prov.) was being distributed and invited the delegations to make any final observations.
336. The Delegation of Egypt remarked that the PBC discussion in June 2011 would not be based on paragraph 13. The preceding paragraphs specified what June and September PBC would be and that PBC would start discussion of the recommendations then. Paragraph 13 only referred to what Members would do afterwards.
337. The Chair amended the draft text to say: "...following up on document WO/GA/39/13" instead of paragraph 13.
338. The Delegation of France inquired what "open" recommendations meant.
339. The Chair considered the question pertinent as PBC wished to discuss all recommendations without limiting itself to the open ones. Therefore the word 'open' would be deleted.
340. The Delegation of Egypt supported deletion of the word "open".
341. The Delegation of Bangladesh also considered the word "open" unnecessary, and suggested that the word "commence" be changed to "continue".
342. The Delegation of India supported that proposal.
343. The Chair read the amended paragraph: "further decided that following up on document WO/GA/39/13 the PBC will continue discussion of recommendations of the IAOC at its session in June 2011. The Committee was unable to reach consensus on paragraph 13 and will continue discussion during the June session."

344. The Delegation of India thought that reference to the recommendations of the IAOC should be rephrased as AC, in accordance with the heading of agenda item 5 and because technically the name changed much later, after the recommendations had been made.
345. The Chair suggested: "AC (IAOC)" to capture both.
346. The Delegation of Israel believed that there should be no negative references in the latter part of the decision paragraph. It proposed, instead of saying that PBC was unable to reach consensus, to say that the PBC would continue discussion on paragraph 13 in order to reach consensus in the June session.
347. The Delegation of South Africa, in reference to point (v) (a), proposed to insert a sentence to make it clear and, after "update", add "based on Appendix I of WO/GA/38/2, (...)."
348. The Delegation of Angola supported the proposal made by the Delegation of Israel not to say that the PBC was unable to reach consensus.
349. The Delegation of France shared Israel's sentiments that that matters should be reflected in a positive light. However, it was uncomfortable with the end of the phrase, which seemed to prejudge the result. It proposed to delete "in the June session."
350. The Delegation of Egypt thought that the meeting was positive and that in this sense it was not fair to disregard the misunderstandings at the very end and try to sweep them under the carpet. The Delegation was therefore not supportive of the proposal made by the Delegation of Israel and would prefer to maintain the previous language (as proposed and amended by the Chair).
351. The Delegation of France, regarding paragraph (v) of the draft decision, suggested to change the text to read: "requested the Secretariat, following up on the recommendation contained in paragraph 74 and in accordance with the Roadmap set out in document WO/GA/39/13 (...)."
352. The Delegation of India, regarding point (iii) of the draft decision, remarked that recommendation 81(b) on the customized training program was listed as addressed but it had not really been discussed. The Chair of the IAOC had mentioned his proposal for it, but there had been no confirmation that this training program would indeed be carried out by the Secretariat. Once such confirmation was received, recommendation 81(b) would have been addressed. Regarding point 81(f) - stronger secretarial support to the IAOC - the Delegation said that this had been discussed in the context of the ToR. If the Secretariat could confirm that, as *per* the TORs, the new IAOC would receive the assistance of one general staff and one professional staff, this would suffice to say that this recommendation had been addressed. With regard to point 81(g), the Delegation requested clarification on the meaning of the text making reference to Annex III of the FRR.
353. The Secretariat confirmed that the training program was going to be discussed and agreed upon and, of course, the Secretariat would follow through in ensuring that the incoming new members of the IAOC get the required training in order to fulfill their mandate. The Secretariat confirmed that it would provide the specified assistance to the IAOC. The Secretariat explained that the reference to the FRR was inserted pursuant to the request by the Delegation of Egypt. The Secretariat added that according to the FRR, the terms of reference had to be reviewed once every three years. The insertion simply flagged that the next time would be in three years.
354. The Delegation of Egypt reiterated the explanation provided by the Secretariat. It agreed with the first part of the language proposed by the Delegation of France but was still concerned about: "in accordance with the Roadmap" as the Roadmap did not mention anything about the study.
355. The Delegation of South Africa supported the statement made by the Delegation of Egypt.
356. The Chair proposed saying: "following up on the recommendation contained in paragraph 74 of document WO/GA/38/2 to prepare a document, etc."
357. The Delegation of India preferred the language as it was originally proposed as it needed reference to the Roadmap. It proposed to say: "requested the Secretariat following up on the

Roadmap set out in document WO/GA/39/13 and the recommendation contained in paragraph 74 of document WO/GA/38/2

358. The Chair read out the amended text. In the absence of comments, the decision on agenda item 5 was agreed on.

359. The Program and Budget Committee:

- (i) took note of the contents of document WO/PBC/16/4;
- (ii) urged WIPO management to emphasize and disseminate the principle of operational independence of the Internal Audit and Oversight Division as recommended in paragraph 81(d) of document WO/GA/38/2;
- (iii) took note that recommendations listed in paragraphs 72, 80 and 81(b), (c), (d), (f) and (g) (in accordance with paragraph 13 of Annex III to the Financial Regulations and Rules) contained in document WO/GA/38/2 have been addressed;
- (iv) requested the new WIPO Independent Advisory Oversight Committee to review the items under paragraph 81(a) and (e) of document WO/GA/38/2, with the purpose of submitting its considered views and recommendations thereon for the Program and Budget Committee session, no later than in September 2011;
- (v) requested the Secretariat, following up on the Roadmap set out in document WO/GA/39/13 and the recommendation contained in paragraph 74 of document WO/GA/38/2, to prepare a document, with Member States' input, by April 2011, for consideration by the Program and Budget Committee at its session in June 2011. This document is to include:
  - (a) update, based on Appendix I of document WO/GA/38/2, on the governance structures of the United Nations and other intergovernmental organizations;
  - (b) input from Member States, addressing their views on WIPO's governance; and
  - (c) a review of prior documentation on governance at WIPO.
- (vi) further decided that, following up on document WO/GA/39/13, the Program and Budget Committee will continue discussion of the recommendations of the Audit Committee (Independent Advisory Oversight Committee) at its session in June 2011. The Program and Budget Committee was unable to reach consensus on paragraph 13 of document WO/GA/39/13 and will continue discussion during its June 2011 session.

ITEM 6 CLOSING OF THE SESSION

360. The Chair announced that Secretariat had prepared the list of decisions and recommendations taken at the session, contained in the draft of document WO/PBC/16/5 Prov. The full report of the sixteenth session would be produced by the Secretariat, according to usual practice, i.e., the draft report would be posted on PBC website for electronic approval.

361. The Program and Budget Committee adopted the Summary of Recommendations contained in document WO/PBC/16/5 Prov.

362. The session was closed.

[Annex follows]

**LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS**

*(dans l'ordre alphabétique des noms français des États/  
in the alphabetical order of the names in French of States)*

I. ÉTATS MEMBRES/MEMBER STATES

AFRIQUE DU SUD/ SOUTH AFRICA

Beulah NAIDOO, Counsellor (Humanitarian Affairs), Permanent Mission, Geneva

Tshihumbudzo RAVHANDALALA (Ms.), First Secretary (Economic Development), Permanent Mission, Geneva

ALGÉRIE/ ALGERIA

Hayet MEHADJI (Mme), premier secrétaire, Mission permanente, Genève

Boumediene MAHI, conseiller, Mission permanente, Genève

ALLEMAGNE/ GERMANY

Heinjoerg HERMANN, Counsellor, Permanent Mission, Geneva

ANGOLA

Kinkela Augusto MAKIESE, First Secretary, Permanent Mission, Geneva

BANGLADESH

Faiyaz Murshid KAZI, First Secretary, Permanent Mission, Geneva

BARBADE/ BARBADOS

BÉLARUS/ BELARUS

Andrei ANDREEV, First Secretary, Permanent Mission, Geneva

BRÉSIL/ BRAZIL

BULGARIE/ BULGARIA

Nadia KRASTEVA (Mrs.), Second Secretary, Permanent Mission, Geneva

Vladimir YOSSFIFOV, Consultant (WIPO issues), Permanent Mission, Geneva

CAMEROUN/ CAMEROON

CANADA

CHINE/ CHINA

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WANG Xiaoying, First Secretary, Permanent Mission, Geneva

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Clara Inés VARGAS SILVA (Sra.), Embajadora, en Comisión cargo Ministro Plenipotenciario, Misión Permanente, Ginebra

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CROATIE/ CROATIA

Željko TOPIĆ, Director General, State Intellectual Property Office, Zagreb

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ÉGYPTE/ EGYPT

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Mohamed GAD, First Secretary, Permanent Mission, Geneva

Bassel SALAH, First Secretary, Permanent Mission, Geneva

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FRANCE

Delphine LIDA (Mlle), conseiller, Mission permanente, Genève

GRÈCE/ GREECE

GUATEMALA

HONGRIE/ HUNGARY

Csaba BATICZ, Deputy Head, Industrial Property Law Section, Intellectual Property Office, Budapest

INDE/ INDIA

K. NANDINI (Mrs.), Counsellor (Economic), Permanent Mission, Geneva

IRAN (RÉPUBLIQUE ISLAMIQUE D')/ IRAN (ISLAMIC REPUBLIC OF)

Ali NASIMFAR, Second Secretary, Permanent Mission, Geneva

ITALIE/ ITALY

JAPON/ JAPAN

Motohiro SAKATA, Counsellor, Permanent Mission, Geneva

Hiroshi KAMIYAMA, First Secretary, Permanent Mission, Geneva

Satoshi FUKUDA, First Secretary, Permanent Mission, Geneva

JORDANIE/ JORDAN

KAZAKHSTAN

MEXIQUE/ MEXICO

NIGÉRIA/ NIGERIA

Afam EZEKUDE, Director-General, Nigerian Copyright Commission

Charles N. ONIANWA, Charge d'affaires a.i., Permanent Mission, Geneva

Olesegun Adeyemi ADEKUNLE, Director, Nigerian Copyright Commission

Ositadinma ANAEDU, Minister, Permanent Mission, Geneva

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RÉPUBLIQUE DE CORÉE/ REPUBLIC OF KOREA

Yong-sun KIM, First Secretary, Permanent Mission, Geneva

RÉPUBLIQUE DE MOLDOVA/ REPUBLIC OF MOLDOVA

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RÉPUBLIQUE TCHÈQUE/ CZECH REPUBLIC

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