

## **Committee on Development and Intellectual Property (CDIP)**

**Seventh Session**  
**Geneva, May 2 to 6, 2011**

### **DRAFT REPORT**

*prepared by the Secretariat*

1. The seventh session of the CDIP was held from May 2 to 6, 2011.
2. The following States were represented: Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Bolivia (Plurinational State of), Botswana, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Congo, Costa Rica, Cyprus, Czech Republic, Democratic People's Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, France, Germany, Haiti, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Jordan, Kenya, Kuwait, Kyrgyzstan, Latvia, Lebanon, Mexico, Monaco, Mauritania, Mongolia, Morocco, Myanmar, Namibia, Netherlands, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Serbia, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Swaziland, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia and Zimbabwe (100).
3. The following intergovernmental organizations (IGOs) took part as observers: United Nations Conference on Trade and Development (UNCTAD), European Union (EU), African Regional Intellectual Property Organization (ARIPO), Eurasian Patent Organization (EAPO), European Patent Office (EPO), World Trade Organization (WTO), World Health Organization (WHO), *Organisation Internationale de la Francophonie (OIF)*, South Centre and African Union (AU) (10).

4. Representatives of the following non-governmental organizations (NGOs) took part as observers: Association IQSensato, Center for International Environmental Law (CIEL), Chamber of Commerce and Industry of the Russian Federation (CCI RF), Computer and Communications Industry Association (CCIA), CropLife International, Free Software Foundation Europe (FSFE), Friends World Committee for Consultation (FWCC), Ibero-Latin-American Federation of Performers (FILAIE), *Ingénieurs du Monde (IdM)*, International Association for the Protection of Intellectual Property (AIPPI), International Centre for Trade and Sustainable Development (ICTSD), International Chamber of Commerce (ICC), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Pharmaceutical Manufacturers Associations (IFPMA), International Intellectual Property Institute (IIPPI), International Publishers Association (IPA), International Trademark Association (INTA), International Video Federation (IVF), Knowledge Ecology International (KEI), Library Copyright Alliance (LCA), Medicines Patent Pool and Third World Network (TWN) (23).

5. Ambassador Md. Abdul Hannan, Permanent Representative of Bangladesh chaired the session.

#### Agenda Item 1: Opening of the Meeting

6. The session was declared open by the Director General of WIPO, Dr. Francis Gurry, who referring to the agenda item 2 (Election of Officers), invited the delegations to nominate candidates.

#### Agenda Item 2: Election of Officers

7. The Delegation of France proposed to re-elect H.E. Ambassador Md. Abdul Hannan, Permanent Representative of Bangladesh to Chair the CDIP.

8. The Delegation of South Africa expressed its support for the proposal of the Delegation of France to have Ambassador Md. Abdul Hannan re-elected.

9. The Director General, on the basis of those statements, and in the absence of any objections, declared H.E. Ambassador Md. Abdul Hannan as elected.

10. The Chair welcomed all the delegations and thanked particularly those that had proposed and seconded him for re-election. He looked forward to the continued support and cooperation of all delegations as demonstrated during the previous two CDIP Sessions. Recalling with appreciation the progress made by the Committee in 2010 towards mainstreaming the WIPO Development Agenda in all WIPO activities and in implementing the 45 Recommendations through concrete measures, the Chair urged delegations to continue with their engagement in order to build on the positive momentum during that session as well. He called on the delegations to nominate two Vice-Chairs. The Chair then noted that since 2007 the CDIP had emerged as the main forum to discuss IP and development related issues and reminded the delegations that the Committee had a coordinating and monitoring role to ensure the mainstreaming of the Development Agenda recommendations and to approve projects to promote IP as a strategic tool contributing to the development and prosperity of nations. He drew attention to the General Assembly's statement that the aim of the Development Agenda was to ensure that development considerations should form an integral part of WIPO's work and stated that the Coordination Mechanism should promote that objective. He reminded delegations that that topic had been discussed in informal sessions during the last CDIP and urged them to find a consensus over that issue. The Chair also recalled that during the last session, the Committee received useful suggestions from delegates regarding its future work and accordingly, a number of documents were presented before it that corresponded to those suggestions. The Chair stated that there was a fairly heavy agenda in front of the Committee and with good time-management, the meeting should be able to conclude its work in time. To

achieve that, the Chair invited all delegations to remain focused and constructive in their interventions. He further stated that he would shortly announce an indicative work plan for the session. The Chair acknowledged the valuable advice and support that he continued to receive from the Director General, Mr. Francis Gurry, in taking forward the work of the Committee. He also acknowledged the support given to him by Mr. Geoffrey Onyeama, Deputy Director General, Mr. Irfan Baloch, Director of the Development Agenda Coordination Division (DACD), and other colleagues from the Secretariat who had been instrumental in preparing for the seventh session. The Committee was then requested to consider agenda item 3, document CDIP/7/1 prov. for adoption.

#### Agenda Item 3: Adoption of the Agenda

11. The Delegation of India, speaking on behalf of the Asian Group, stated that several proposals were made during the briefing session conducted by the Secretariat and following informal consultations, it had been agreed to reorganize the order of the session's agenda items, and in that respect, the Delegation proposed the following changes: In relation to agenda item 6, it suggested that the wording should change to read "General Statement" and the second part of the same agenda item currently reading "Consideration of the Director General's Report on the Implementation of the Development Agenda, document CDIP/7/2" should be merged with agenda item 7, titled "Monitor, Assess, Discuss and Report Implementation of all Development Agenda Recommendations". The Delegation further stated that in relation to agenda item 7 referenced as documents CDIP/7/INF/2 and CDIP/7/3 be merged with agenda item 8 titled "Consideration of Work Program for Implementation of Adopted Recommendations".

12. The Chair declared the revisions suggested by the Delegation of India as adopted given that there was no objection from the Committee. Referring to his proposal to suggest an indicative workplan, the Chair stated that he would like to deal with agenda items 4 through 7 using the first two and a half days comprising five working sessions; agenda items 8 and 9 during the third to the fifth day morning comprising four working sessions; and finally, agenda items 10 and 11 on the fifth day afternoon. The Chair then invited the Committee to approve the timetable and move on to the agenda item 4 on Accreditation of Observers, and invited the Secretariat to introduce the document.

#### Agenda Item 4: Accreditation of the observers

13. The Secretariat introduced the document CDIP/7/7 and informed the meeting that it had received a request for *ad hoc* accreditation from one Non-governmental Organization namely, the Association of Students and Researchers on the Governance of Island States. In accordance with the Rules of Procedure, upon request and subject to the approval of the Committee, the concerned NGO would be granted *ad hoc* observer status in the CDIP for a period of one year.

14. The Chair invited delegations to consider granting observer status to the concerned NGO and noted that as there was no objection to the proposal, the NGO was thereby granted *ad hoc* accreditation to the CDIP for a period of one year and invited its representatives to take their places in the room. He then invited the Committee to consider agenda item 5, and requested the Secretariat to introduce document CDIP/6/13 Prov. the Draft Report of the sixth session of the CDIP.

#### Agenda Item 5: Adoption of the draft Report of the Sixth Session of the CDIP

15. The Secretariat stated that document CDIP/6/13 Prov. was published on February 1, 2011, for Member States to make comments. One Delegation namely, the United States of America had sent its comments on March 13, 2011, with regards to minor grammatical and

typographical errors in relation to its own statement contained in paragraphs 195, 210, 238, 263 and 274.

16. The Chair invited the Committee to adopt the report as there were no further comments or requests for amendment and declared it adopted.

#### Agenda Item 6: General statements

17. The Chair opened the floor for General Statements.

18. The Delegation of Slovenia speaking on behalf of the Regional Group of Central European and Baltic States congratulated the Chair on his re-election to steer the seventh session of the Committee and assured him that the Group remained committed to the on-going work in the framework of the Committee. The Delegation also thanked the Secretariat for the documents produced and particularly the Director General's report on the implementation of the Development Agenda. It said that the report gave a comprehensive overview of how the Development Agenda was being mainstreamed in the work of WIPO. The Delegation noted that the relevance of the Development Agenda recommendations and the implementation of projects had gradually been increasing. In 2010, Member States adopted a Coordination Mechanism and Monitoring, Assessing and Reporting Modalities, thus enabling more focus on monitoring, assessment and mainstreaming of the implementation of development related activities. The Delegation stated that bearing in mind that development considerations were an integral part of WIPO's work, the overall balance of WIPO's activities should be maintained with all the substantive issues standing on equal footing in accordance with the mandate given by the General Assembly. The Delegation acknowledged the merits of such a mechanism which should be flexible, efficient, effective, transparent and pragmatic in order to facilitate the work of the CDIP in the respective WIPO bodies. Taking into account the cross-cutting nature of the Development Agenda recommendations, the Delegation suggested that the mechanism should apply an horizontal approach which should avoid duplication of WIPO's governance arrangements. The Delegation, then reassured the Chair that it would constructively participate in tackling each agenda item depending on the direction and depth of discussions.

19. The Delegation of Brazil, speaking on behalf of the Development Agenda Group congratulated the Chair on his re-election and recalled that the seventh session of the CDIP also marked the first anniversary of the Development Agenda Group. During that time the Group had shown its commitment to working constructively with all other groups as well as with individual delegations to mainstream the development dimension in all areas of WIPO's work. The Delegation also noted that an important step taken during the last General Assembly was the approval of the decision on Coordination Mechanism and Monitoring, Assessing and Reporting Modalities of the implementation of the Development Agenda recommendations. In accordance with that decision, two of the relevant WIPO bodies, namely the Advisory Committee on Enforcement (ACE) and the Standing Committee on Trademark, Industrial Designs and Geographical Indications (SCT), had already reported to the General Assembly on their contribution to the implementation of the Development Agenda. The Delegation noted however, that those reports had been made on an *ad hoc* basis and urged Member States to agree on a standard and permanent procedure for reporting. They must also decide on what relevant WIPO body should be reporting to the General Assembly. The Delegation therefore urged other members of the Committee to take the necessary time to address the issue with a view to reaching a common understanding that was long overdue. It recalled that at the last session of the CDIP, the Development Agenda Group had proposed the inclusion of an additional standing item in the agenda of the CDIP to be called "IP and Development Related Issues". That new agenda item should be devoted to discussing matters covered by the third pillar of the mandate and the General Assembly decision which created the CDIP. According to that decision, the mandate of the CDIP was threefold: the first pillar was "to develop a work program for implementation of the adopted recommendations"; second, "to monitor, assess, discuss and report on the implementation of all recommendations adopted and for that purpose

it shall coordinate with the relevant WIPO bodies”; and third “to discuss IP and development related issues as agreed by the Committee as well as those agreed on by the General Assembly”. The Delegation noted that with the adoption of the WIPO Development Agenda Coordination Mechanism, the time had come for the CDIP to start discussing how to put into practice the third pillar of its mandate. It added that in its view, the implementation of the Development Agenda should not be restricted to the design and execution of projects alone. The aim should be to ensure that development permeates the entire set up of WIPO and leads to concrete initiatives including a development friendly norm-setting as envisioned by the Development Agenda. The Delegation reiterated the importance of the Committee in that context and its openness to discuss what subject may be discussed under which agenda item and encouraged all delegations to express their views on that matter. As an initial contribution, the Development Agenda Group suggested in document CDIP/6/12 Rev. that discussions under the proposed agenda item could cover, among others, the following issues: i) reporting of the discussions in the WIPO seminar series on the Economics of IP, ii) WIPO’s contribution to the UN Millennium Development Goals (UN MDGs) and iii) preparation for the upcoming Conference on IP and Development. Regarding the proposed conference, the Delegation recalled that necessary resources for the organizing of a major international conference on integrating development into IP policy-making had already been allocated in WIPO’s Program and Budget for 2010/11. The Delegation reiterated its earlier suggestion that the process of preparation for the Conference should be dealt with within the CDIP. Member States should then discuss the dates, venue and agenda of the conference which should be preceded by substantive and detailed preparation including background studies. The Delegation also expressed its support for the African Group proposal entitled “Project on enhancing South-South cooperation on IP and Development among Developing Countries and LDCs” and expressed appreciation for the Delegation of Egypt for introducing the initial proposal at the last CDIP session which was endorsed by the African Group. The Delegation also called upon all delegations to work toward reaching agreements on the pending project on Patents and the Public Domain contained in document CDIP/7/5 and the Future Work Program on Flexibilities in the IP System contained in document CDIP/6/10, given that extensive discussions had already taken place in previous CDIP sessions. To conclude, the Delegation recalled that there was a need to fill the gap that existed in WIPO for a much needed cross-regional coordinating forum through which developing countries could pursue a development-oriented approach to IP matters at WIPO. The Delegation then, reassured the Committee of the Group’s continued constructive engagement under the direction of the Delegation of India which would takeover leadership of the Group after the end of the seventh session of the CDIP.

20. The Delegation of India, speaking on behalf of the Asian Group, congratulated the Chair on his re-election and thanked all the regional groups and delegations for unanimously endorsing the re-election of Bangladesh, a member of the Asian Group, as Chair of the Committee. The Delegation noted that under the Chair’s excellent leadership, the Committee had taken important steps toward mainstreaming the Development Agenda including the achievement of establishing a Monitoring, Reporting and Coordination Mechanism that enables the Committee to oversee the integration of the Development Agenda in all areas of WIPO’s work. The Delegation was convinced that under the Chair’s able guidance the session would achieve further progress. The Delegation expressed its appreciation in seeing the comprehensive and encouraging review of the implementation of the Development Agenda provided in the Director General’s report. The report showed that several important steps had been taken by WIPO Member States, as well as the Director General and his team to ensure greater development orientation in WIPO’s work and that concrete progress was being made towards a meaningful and genuine mainstreaming of the Development Agenda. The Delegation added that the Director General and his team should lay down the foundation for a sustained and meaningful organizational transformation where development considerations automatically become an integral part of WIPO’s work. The Delegation also noted the Director General’s undertaking that progress reports on the implementation of specific Development Agenda recommendations would continue to be provided regularly, as requested by the Asian Group in the fifth session of the CDIP. While the Delegation reserved the right to express its comments

separately from the Asian Group's statement, it still thanked the Director General for his report and looked forward to similar reports being presented to the CDIP on a regular basis in order to assist the Committee in fulfilling its core mandate of monitoring, assessing, discussing and reporting on the implementation of the Development Agenda. The Delegation also thanked the Secretariat for the well prepared and updated documents as well as the proposed new work program for consideration of the Committee. It added that comments on them would be made separately under the relevant agenda items. It also reiterated its appreciation of the Scoping Study on Copyright and Related Rights and the Public Domain by Professor Dussolier, contained in document CDIP/7/INF/2; the project proposal on IP and Brain Drain in document CDIP/7/4; and the project on Enhancing South-South cooperation contained in document CDIP/7/6. The Delegation expressed its hope to see the Committee reach consensus over the issue of Patent and the Public Domain contained in document CDIP/7/5, considering that substantial discussions had taken place in the previous sessions of the CDIP. The Delegation added that it was hoping equally to see consensus over the critical issue of Flexibilities in the IP System as contained in document CDIP/6/10. In addition it would appreciate seeing a new agenda item included in the next session of the CDIP scheduled for November 2011, in order to discuss important inter-linkages between IP and development. The Delegation pointed that out of the three elements of the mandate given by the General Assembly in 2007 to the Committee, only two elements were inscribed in the current session agenda, namely, 1) Develop a work plan for the implementation of the adopted recommendations and, 2) Monitor, assess, discuss and report on the implementation of all recommendations and for that purpose, coordinate with all relevant WIPO bodies. It said however, the third element, namely, discuss IP and development related issues, still failed to be addressed despite its mandate having been granted by the General Assembly. The Delegation stated that in its view, the Committee would be non-compliant with the General Assembly mandate if the key issue of IP and development was not addressed and further argued that it was indeed difficult to understand why the Committee should shy away from discussing the inter-relation between IP and development which was the primary rationale behind the establishment of the Committee. Under the proposed agenda item, the Delegation said it would suggest that three useful and un-addressed issues be dealt with; namely 1) preparations for an International Conference on Integrating Development into IP policy-making, which had already been budgeted for in the current biennium; 2) the discussions on the report of the seminar series on the Economics of IP convened by the Chief Economist of WIPO; 3) discuss WIPO involvement and contribution to IP-related work in other international bodies and forums as outlined in the Director General's report. The Delegation reiterated the importance of those discussions to better understand the inter-linkages between IP and development. It further stated that in parallel to those discussions, Member States could also consider and agree on other relevant issues that could be discussed under that agenda item. To conclude, the Delegation expressed its commitment to engaging constructively in the forthcoming discussion of the Committee and looked forward to making progress on other pending issues.

21. The Delegation of South Africa, speaking on behalf of the African Group, congratulated the Chair on his re-election and expressed confidence that the Committee would have constructive discussions under his leadership. The Delegation also thanked the Secretariat for the preparation of the documents for the session and particularly on the assistance provided to the African Group on preparing the project proposal on Enhancing South-South cooperation among Developing Countries and Least Developed Countries. The Delegation expressed its appreciation for the efforts made by the Director General in updating the Committee on the implementation of the Development Agenda throughout WIPO. It also noted the second report by the Director General on the implementation of the Development Agenda contained in document CDIP/7/2 and expressed the wish to elaborate further on the content of the report under the relevant agenda item. The Delegation further stated that it was particularly pleased by the Scoping Study on Copyright and Related Rights and the Public Domain contained in document CDIP/7/INF/2. The study provided a balanced and excellent analysis on the subject of copyright and related rights in the public domain, particularly with regard to its findings and recommendations. The study demonstrated the intricacies of IP and the public domain which

constituted a good basis for informed and constructive discussions in the Committee. It added that in conformity with the principle of a Member State-driven Development Agenda process, the African Group had submitted a project proposal entitled “Enhancing South-South cooperation on IP among Developing Countries and LDCs”. That project was initially submitted by the Delegation of Egypt at the last session of the Committee under the title “Project on Enhancing Cooperation on IP and Development among Developing Countries and LDCs” found in document CDIP/6/10. The Delegation explained that the project sought to enhance interaction and strong liaison among the countries of the South with a view to learning from each other in the area of IP and development. It hoped for a fruitful and constructive discussion when the project would be formally presented. The Delegation stated that the African Group had made a number of comments and suggestions to the discussion paper on IP and Brain Drain at the last session of the Committee. Accordingly, the African Group welcomed the new project on Intellectual Property (IP) and the Brain Drain prepared by the Secretariat. That project marked a watershed in IP rights discourse as the first project addressing the interface between IP and Brain Drain. It said that that was a subject of interest to the African Group and looked forward to its eventual implementation. The Delegation reiterated the importance that it attached to flexibilities in the IP system and stated that through flexibilities the real benefits of the IP system could be realized to a large extent by most of the developing countries. To that end, the Delegation stated that the African Group had made suggestions in the past under the agenda item “Future Work Program on Flexibilities in the IP System” particularly on the practical implementation and full use of patent flexibilities in critical areas of development such as public health, food security and agriculture. It also noted that it had outlined the other facets of the relationship between the patent regime and flexibilities that required more elaboration that included but not limited to pre-grant and post-grant opposition in the definition of patentability criteria. The Delegation looked forward to engaging in constructive discussions on those particular subjects, adding that the implementation of Monitoring, Assessing, Discussing and Reporting Mechanism or commonly known as Coordinating and Monitoring Mechanism was of great importance not only to the African Group but also to all developing countries. It expressed its interest in engaging in constructive discussions on that topic. The Delegation further stated that the coordination and monitoring mechanism was of great importance, not only to the African Group but to all developing countries. The 2010 WIPO General Assemblies approved that mechanism with a view that all relevant WIPO bodies should implement that decision. The Delegation expressed its concerns on the decision not being carried out consistently throughout the relevant WIPO bodies and hoped that the issue would be discussed and resolved by the Committee so that the mechanism would be duly executed. It further stated that it would like to see the third pillar of the Development Agenda included in the work of the Committee in order to conduct discussions on IP and development-related issues. The Delegation reiterated its suggestion made in the previous session of the Committee, where it proposed that a standing agenda item on Intellectual Property and Development be added to the agenda of the CDIP as it would ensure complete implementation of the three pillars of the CDIP mandate. It also reiterated the Group’s position that the agenda item in question should *inter alia* discuss how WIPO would address Development Agenda Recommendation 40 which requested WIPO to intensify its cooperation on IP-related issues with other United Nations specialized agencies, such as the WTO, WHO, UNCTAD and UNEP among others in order to strengthen coordination for maximum efficiency in undertaking development projects. The Delegation also believed that the agenda item on development would facilitate the discussion of the contribution of WIPO to the achievement of the MDGs. It further recalled its request concerning the invitations to the United Nations Special Rapporteurs on the right to food, the right to education and the right to health, to the CDIP in order to have interactive dialogue with them on those particular items and to enrich discussion and understanding on those matters as well as chart out the path that WIPO could follow in the realization of the MDGs, bearing in mind that the last report that WIPO compiled on its contribution to the MDGs in document CDIP/5/3 was not completely satisfactory. The Delegation added that as the Member States would be commencing the discussion on the next budget biennium for 2012/13 and mindful of the commitment made by the Director General on the implementation of the Development Agenda through the regular budget of WIPO, the

Delegation restated its position that the Development Agenda projects and activities should be financed from the regular budget of WIPO. To conclude, the Delegation reassured the Chair that it would continue to play a constructive role and engage in having a fruitful session under his leadership.

22. The Delegation of China congratulated the Chair on his re-election and expressed support for the forthcoming sessions under his leadership. It also expressed appreciation for the great importance that the Director General attached to the Development Agenda. The Delegation thanked the Secretariat for its hard work in preparing documents which had laid a good foundation for discussions. The report by the Director General was very important as it provided a comprehensive and systematic analysis with clear objectives in relation to the Development Agenda implementation. The Delegation stated that as a developing country itself, it would like to express its sincere appreciation on the achievements made to-date in implementing the 19 Development Agenda projects. It therefore reiterated its support and commitment to the work of the Committee to promote, together with other Member States, the implementation of the Development Agenda recommendations.

23. The Delegation of France, speaking on behalf of Group B, expressed its pleasure to see Ambassador Abdul Hannan chair the Committee again as it proposed earlier. The Delegation congratulated the Chair and emphasized the constructive spirit that was shown by delegations in agreeing to participate in the informal consultations on the margins of the CDIP session on the implementation of the Coordination Mechanism. It further stated that it would take the floor at a later stage to address each agenda item more substantively.

24. The Delegation of Venezuela thanked the Director General for his support and expressed its happiness to see Ambassador Abdul Hannan re-elected and Chair that session of the CDIP. It further stated that it was convinced that the meeting would achieve good results under his able leadership. The Delegation also thanked the WIPO Secretariat for the documents prepared for the CDIP. It further extended its appreciation for all the work the organization had done and the necessary consensus which enabled delegations to make progress on those very important issues. In that context, the Delegation reiterated its support for the statement made by the Delegation of Brazil on behalf of the Development Agenda Group on the issue of Coordination Mechanism. The Delegation reiterated that it was a very important achievement for WIPO and added that if Member States were to continue making interpretations of it, it could fail. It further stated that the CDIP had been established as a Committee standing on equal footing with other committees in WIPO and disagreed with the view that other committees did not have to provide information to the CDIP. The Delegation added that in its view, such an important topic for the Organization and all its members was evidenced by the creation of that mechanism which meant that Member States should not get side-tracked from the main issue. In the Delegation's point of view, it was vital to have a profound transformation of WIPO and that point was an illustration of that importance. From its point of view, that was part of the reason for the creation of the Development Agenda Group and it was important to have an efficient flow of information for Member States as well as for other committees to come to the CDIP with regards to implementing the Development Agenda. The Delegation further expressed the hope that the CDIP would not be made to render accounts to other committees but rather, to adopt a flow of information as was done in many other organizations, in order to achieve its objectives which were of prime importance to its Members States.

25. The Delegation of Mexico joined other delegations in congratulating the Chair on his re-election and supported the statements made by those delegations which considered the implementation of the Development Agenda recommendations of critical importance. In the Delegation's opinion, the Development Agenda implementation would greatly strengthen the Organization and enhance its role within the United Nations. The Delegation further stated that it would not only contribute towards the achievement of the MDGs, but also towards the sustainable development of developing countries and least developed countries. In that context, the Delegation thanked the Director General for his report on implementation of the



Development Agenda and stated that its implementation should be coordinated by the CDIP. The Delegation also noted that that would help the entire Organization and expressed its appreciation to have seen the 45 recommendations approved. It further noted the Secretariat's work with regard to each of the recommendations and expressed its willingness to contribute to the studies, questionnaires and projects on other recommendations as well as sharing experiences at Latin American workshops and seminars on appropriate topics. To conclude, the Delegation expressed the hope that the discussions of the Committee would be fruitful with the collaboration of all Member States in order to continue making progress on the implementation of the Development Agenda recommendations.

26. The Delegation of Hungary, speaking on behalf of the European Union and its 27 Member States, congratulated the Chair on his re-election. The Delegation also thanked the Secretariat for the documents prepared for the session and particularly the Director General for his report on the implementation of the Development Agenda. It noted that the Development Agenda had been taken into account across the Organization, thus contributing to the proper consideration of the specificities of the developing countries. The Delegation also acknowledged with satisfaction, the project-based methodology adopted by the CDIP in April 2009 which had allowed the endorsement of 19 projects covering 45 recommendations. The Delegation sought the Director General's views as regards the number of projects that could be taken on-board by the Secretariat at a given time without over-burdening WIPO's resources allocated for its other work. The Delegation was of the view that a balance should be established between the adoption of new projects and the necessary follow-up on existing projects. The follow-up capacity was indeed one of the main weaknesses identified in several projects already implemented or underway. The Delegation recalled that at the last session, attention was drawn to the fact that there was a need for the Committee to avoid duplicating the work of other WIPO bodies as well as other international organizations, including other relevant United Nations bodies. The volume of work which the Committee had accepted to undertake would require Member States to work as efficiently as possible and to focus on the technical and substantive issues at hand. The Delegation stated that the European Union and its Members States appreciated the suggestion made by Brazil on behalf of the Development Agenda Group and acknowledged that it was important that the Committee was recognized as the main forum in WIPO where issues relating to IP and development should be discussed. However, it felt that it was the overriding role of the Committee to discuss IP and development matters, and that to add an agenda item to that effect would not only just repeat the title of the Committee, but also suggest that the Committee existed to discuss issues other than IP and development. It would be more effective to add specific agenda items related to individual issues coming under the general framework of IP and development as necessary. The European Union and its Members States were therefore ready to discuss the three topics put forward in document CDIP/6/12 at the last session of the CDIP but could not agree to the creation of an additional standing agenda item. Finally, the Delegation stated that the European Union and its Members States looked forward to a fruitful and effective cooperation.

27. The Delegation of Pakistan thanked the Director General and his team in the Development Agenda Coordination Division for the excellent work and enduring contribution from the Secretariat in the work of the Committee and the Development Agenda implementation. The Delegation expressed its support for the statements made by the Asian Group and the Development Agenda Group respectively. Pakistan had a deep rooted interest in the WIPO Development Agenda to promote development as the ultimate aim of the global IP system - a system which was flexible in meeting the needs of different levels of development. The Delegation considered that an IP system was essential in today's world but it should help the developing and least developed countries rather than impede their progress and make them perpetually dependant upon the developed world. There was a need to actively explore the ways and means which would enable IP to make its full contribution to be commensurate with the task of development. That included a need to ensure that the IP system appropriately contributed to economic and social development. In the context of CDIP, the Delegation fully supported the project-based approach, in particular the thematic project approach. It believed

that the said approach had a faster rate of implementation of recommendations in many areas and keenly looked forward to tangible results in that regard. Commending the overall progress made with regard to the ongoing projects, the Delegation said it would be making specific comments on the projects on the relevant agenda items. At the same time, while appreciating that the project-based methodology had been adopted for reasons of efficiency and avoidance of duplication and overlap, it was worth reminding that the said approach had been adopted with the understanding that additional activities would be proposed for those recommendations. As for any recommendation, even if there was already a project for implementation, new projects or activities could be suggested. That was a central part of that methodology. Another central part of the Development Agenda regarding its monitoring, assessing and reporting obligations was the Coordination Mechanism which had been approved by General Assembly in 2010. In accordance with that decision, the Delegation understood that a couple of WIPO bodies were already reporting to the General Assembly on the contribution to the implementation of the Development Agenda. However, Member States still needed to agree on a permanent and standard procedure for reporting. They should also decide on what relevant WIPO bodies should be reporting to the General Assembly. As one of the original proponents of the Coordination Mechanism, the Delegation wished to underscore that the Committee should address the issue with a view to reaching a common understanding. It reiterated that the fulfillment of the third pillar of the mandate of the CDIP was to discuss IP and development related issues. In that regard, the Delegation supported the inclusion of a standing agenda item on that issue in the regular agenda of the CDIP as proposed by the Development Agenda Group during the last session of the CDIP. In conclusion, the Delegation of Pakistan reiterated its commitment to working together with all the stakeholders in WIPO and building bridges across various perspectives and view points. The Delegation shared the belief that the Development Agenda was a global partnership from which all countries should benefit according to their specific goals, needs and priorities.

28. The Delegation of Norway congratulated the Chair and thanked the Secretariat for the excellent documentation. The Delegation aligned itself with the statement made by the Delegation of Hungary on behalf of the European Union and its 27 Member States and in particular, expressed its support for what had been said about ensuring proper follow-up capacity on already initiated projects. As regards the issue of introducing a new standing agenda item which was also briefly discussed at the last CDIP session, the Delegation noted that the topic was on the mandate of that Committee and that there was a need to address IP and development issues. However it believed that specific issues would be best handled in the Committee by adding them to the agenda on an *ad hoc* basis. The Delegation felt that that would ensure prepared discussions by all Member States on the topics that would be introduced. The Delegation thanked the Director General for having submitted a very informative report contained in document CDIP/7/2 and expressed its commitment to engage in fruitful and constructive discussions at the seventh session of the CDIP.

29. The Delegation of Morocco thanked the Director General for his support and expressed its pleasure to see Ambassador Abdul Hannan re-elected as Chair of the CDIP. It was convinced that the meeting would achieve good results under his leadership. The Delegation also thanked the Director General for his interest in the activities of the Committee as well as the Secretariat for all their efforts and the quality of the documents provided. The Delegation also supported the statement made by South Africa on behalf of the African Group. It added that the thematic project approach was the appropriate way forward to define the direction for the future. The report of the Director General submitted for the consideration of the session was very helpful in clarifying and in giving pertinent ideas for directions in order to achieve the noble objectives of the Committee which were the economic and social development of Member States, particularly developing countries and LDCs. Since 2007, the CDIP had developed several projects. The Delegation noted the projects that had been carried out so far and their integration at an institutional level. The Delegation also pointed out that the results of those projects would only be known at the end or after the end of the 2012/13 biennium. Nevertheless the Delegation felt that it was important to point out that all the projects adopted to-date by the Committee could be

placed in the following two categories: 1) projects which were to promote innovation and IP through various studies, diffusion of information on IP and the organization of forums and regional seminars; 2) projects which aimed at technical assistance and capacity-building in developing countries and LDCs. The projects aimed at sharing legal and scientific information on IP required the necessary human competence and IP infrastructures to be carried out. Unfortunately, that was what was lacking in many member countries, particularly developing countries in Africa which were suffering the most from the lack of infrastructure and also from the Brain Drain phenomenon, which will be discussed later according to the agenda. The fact that the projects adopted by CDIP were adopted on the basis of requests from member countries and their implementation needed qualified personnel, meant a worry for countries most in need as due to the lack of expertise they would not be able to have projects. The Delegation thus requested the Committee that once the current projects ran out, the technical assistance and capacity-building projects should be strengthened. Further, the Delegation expressed support for the project put forward by the African Group on strengthening the South-South cooperation, adding that it certainly constituted an effective mechanism for development of innovation and IP in developing countries. The Delegation concluded by reassuring the Chair of its commitment to play a positive and constructive role during the seventh session of the CDIP.

30. The Delegation of Egypt congratulated the Chair on his re-election and assured him of its support and readiness to contribute positively to the work of the important Committee. The Delegation also thanked the Director General for the report presented at the current session and the implementation of the Development Agenda. It also thanked the Secretariat for their continuous efforts and for the preparation of the documents for the session and providing them as much as possible in the various official languages. In that context, the Delegation said it looked forward to the preparation of all the documents in Arabic particularly the report of the last CDIP which was not available in that language. The Delegation also expressed its full support for the statement of the Delegation of South Africa, speaking on behalf of the African Group and the statement of the Delegation of Brazil, speaking on behalf of the Development Agenda Group, as well as the priorities and interests of the developing countries and LDCs in those statements. The Delegation recalled that during the seventh session of the CDIP, Member States would be celebrating the third anniversary of the first session of the Committee held in March 2008. Those past three years were full of achievements and challenges at the same time. Perhaps the most important of those achievements was the change in the work of the Organization in order to run in parallel with the work of the mother Organization, the United Nations, in promoting the value of development and achieving the objectives of international development, mainly the MDGs. In that context, while development causes had been the work of the Organization, there still was some hesitation on the part of some because they were not used to dealing with IP from a developmental point of view, whereas in fact it was evident that the question of IP had become one of the running threads throughout the international and national systems and linking it to development only gave it added value and did not decrease its specificity as some saw it. During the past three years, delegations had achieved great progress in relation to the first segment of the mandate given to the Committee that dealt with the setting-up of a work program in order to implement the adopted recommendations and that was precisely what was going to be reviewed when the Director General's report was discussed. The Delegation further stated that as far as the second segment was concerned, that mandate dealt with the monitoring of the implementation of all adopted recommendations, assessing and discussing their implementation and presenting reports as well as coordinating with the various WIPO bodies for that purpose. In that respect, the Delegation noted that the last session of the WIPO General Assembly was successful in adopting a Coordination Mechanism. On the other hand, Member States had not yet reached unanimity in terms of implementation of that mechanism and the Delegation hoped that Member States would reach consensus during the current session. The Delegation added that the Committee so far had not yet achieved any progress as far as the starting of the implementation of the third segment of the mandate which dealt with the questions related to IP and development as agreed by the Committee and approved by the General Assembly. In that context, the Delegation referred to

the proposal presented by the Development Agenda Group during the sixth session which received great support from Member States and the African Group in particular. The Delegation urged all Member States to support that proposal which aimed at implementing the third and last segment of the mandate for which the Committee was initially set up. In that respect, the Delegation stated that during the last session a proposal on South-South cooperation on IP and development had been presented by it was an evidence of its conviction that the implementation of the recommendations of the Development Agenda should be led by the Member States. Indeed, that project proposal was on implementation of Recommendations 1, 10, 11, 13, 19, 25, and 32 of the WIPO Development Agenda and it aimed at promoting and doubling the interest and the advantages from the aggregated experiences which the developing countries and the LDCs had gained over the years in the field of using IP for the purposes of development. It said those were experiences that should be taken into consideration as they concerned the economic, social and development standards of those countries more. The Delegation expressed its appreciation to the African Group for adopting that proposal and presenting it to the session as the Group's project after having discussed it with many groups and the Secretariat. The Delegation therefore hoped that as the first project presented by the African Group and the first presented in fact by the developing countries, it would receive the support of all Members States because of the many benefits that would accrue from it for developing countries and LDCs. The Delegation noted that after the practical application of the thematic-based approach, the CDIP had put forward the program for the implementation of all of the Development Agenda recommendations that had been adopted. The activities of assessing, monitoring and discussing the various recommendations and the presentation of reports in coordination with the various WIPO bodies were established for that purpose, in addition to studying questions related to IP and development. The Delegation stated that it was a comprehensive mandate which reflected the depth of the Organization's work in accordance with the decision of the Member States. Therefore, the Delegation noted that it was a real challenge and Member States should carry out those tasks with a spirit free of hesitation or doubt as far as the practicality and adaptability of the development outlook toward the questions of intellectual property, and welcome the new attitude towards the causes of IP in a world full of many challenges to development.

31. The Secretariat made a few announcements. First, the delegations were requested to submit their statements in writing to the Secretariat to facilitate their inclusion in the Session's report. The second announcement was that the Director General would be hosting a reception that evening immediately after the session. Invitation cards had been placed on delegations' desks. The Secretariat also requested delegations to kindly register themselves outside at the Registration Desk for the purpose of preparing the list of participants. The Secretariat also pointed out to representatives from the Permanent Missions in Geneva, if already not done, to send Notes Verbale concerning their participation in the meeting.

32. The Delegation of Peru congratulated the Chair on his re-election and expressed its satisfaction at his leadership of the Committee. The Delegation reassured the Chair of its commitment and support in the delivery of the task at hand. It further stated that alongside other developing countries, it believed that it was highly important that the work of the Committee would be carried out and met with successful results. The Delegation noted that it had actively participated in the sixth session of the CDIP and expressed its appreciation for the report contained in document CDIP/7/2, where the progress made was clearly enumerated. In that respect, the Delegation expressed its gratitude to the Director General, Dr. Francis Gurry for his commitment to the implementation of the 45 Recommendations of the Development Agenda and for his untiring efforts in order to enable Member States to move forward. The Delegation also thanked the Secretariat for all of the documents that it provided at each session. The Delegation stated that nevertheless there was still a great deal of work to be done in all of the areas of WIPO's activities, and believed that Member States should be able, through the Secretariat, to achieve all of their goals. The Delegation added that it was indispensable to strengthen the Coordination Mechanisms that would enable an effective follow-up, assessment and implementation of the Development Agenda. The Delegation reiterated its wish to continue

to push forward all of the work on all the different recommendations so that the Committee could in the short or the medium-term achieve all its goals. The Delegation also stated that it believed that it was important for the Development Agenda to continue to have the Secretariat's invaluable assistance and support for all the projects in order to strengthen the capacities and promote innovation and IP as a tool for Development. It extended its thanks to the Secretariat and specifically the Development Agenda Coordination Division as well as the Regional Bureau for Latin America and the Caribbean for their support which had been so valuable in enabling the country to elaborate a Peruvian Development Agenda. The Delegation encouraged other members to continue contributing constructively in the implementation process through project proposals on an individual basis or through the regional groups enabling the Committee to fulfill its mandate. The Delegation further expressed its commitment to the Development Agenda implementation and reassured the Chair of its support and constructive input during that week's work. To conclude, the Delegation noted that in its view, the process would result in benefiting all nations throughout the world and to that end, it urged members to be flexible enough to reach consensus on all topics.

33. The Delegation of Nepal, speaking on behalf of the Least Developed Countries (LDCs) Group, congratulated the Chair on his re-election, stating that his wisdom and experience would be extremely needed for a successful conclusion of the meeting. The Delegation expressed its support for the work of the Committee and praised the Director General, Mr. Francis Gurry, for his unwavering commitment to promoting the LDCs' interests in the work and functioning of WIPO. The Delegation also noted the expanding activities in the area of the development of IP in LDCs and expressed appreciation, especially in relation to the launch of some important projects aiming to facilitate LDCs' access to technology and capacity building. The LDC Group acknowledged with satisfaction the steady progress made by WIPO in implementing more effectively the Development Agenda recommendations through the thematic project approach. The Delegation however cautioned the Committee that despite keeping in view the developing countries' requirements, in particular the acute needs of LDCs in developing the IP sector, the progress made was not sufficient. Concrete support measures were needed in the coming years in building the institutional capacity. In the Delegation's view, there was a need to go beyond the simple prosaic approach to address those structural weaknesses and challenges inherent in LDCs with a view to improving their poor IP infrastructure. The Delegation pointed out that access to technological knowledge was a key to innovation and knowledge creation. Technology had been transformational and the knowledge industry was fast emerging as a crucial sector at the global level. The Development of IP was closely linked to the creation of knowledge and information infrastructure, and in that, LDCs were lagging far behind. The latest UNCTAD publication of three conference events on LDCs revealed that out of three million patents registered globally during 1989–2008, only 32 originated in the LDCs and during the last five years just nine out of one million registered patents came from LDCs. In that context, the Delegation believed that the one-fourth of the international community that constituted 12% of the global population deserved more and better. In the Delegation's view IP had an important role to play in the overall development of the knowledge-based economy, and the LDCs needed technical assistance and financial resources in addition to a greater emphasis on developing a sound and balanced IP system for economic, technological and social development. The Delegation also recalled that in terms of capacity building and technical assistance, the 2009 LDC Ministerial Declaration on WIPO Issues contained important recommendations for the benefit of LDCs, namely, the submission of an annual report on the implementation of the declaration, the creation of a LDCs Trust Fund, and the creation of a separate program and budget for LDCs. The Group sought reassurance from the Secretariat that it would remain engaged in the implementation of the declaration with priority. The Delegation suggested that LDCs had economic, as well as institutional and human resources weaknesses. LDCs had limited productive capacities and continued to suffer from structural impediments. The situation was further aggravated by a series of multiple global crises such as economic and financial, food and energy and climate change challenges. In that context, LDCs required international assistance to benefit from the great potential of IP especially in terms of traditional knowledge, traditional cultural expression and bio-diversity for development. The Delegation stated that it

was committed to develop those resources to serve its people and supported the equitable distribution of benefits from genetic resources and traditional knowledge. In its view, while using those resources, the users should always disclose the country of origin. So, in practice, the users would require the pre-consent of the originating country and should confirm the benefits sharing scheme with them, or the rich heritage would be at risk of heading away in the absence of measures and technical know-how. The Delegation wished to highlight the serious efforts that were needed to promote economic development, protect and preserve a rich cultural heritage. Initiatives to protect them through IP acts were necessary in areas such as branding. The Delegation then urged WIPO to assist LDCs in answering to their needs, which meant helping them develop comprehensive strategies to use that precious indigenous resource for wealth creation, employment and innovation. To conclude, the Delegation noted that in about a week, Member States would be meeting in Istanbul, Turkey, for the fourth International Conference on LDCs. That meeting was very important for LDCs since it would take place once in a decade and the event was exclusively dedicated to the development and aspirations of LDCs. On the basis of the evaluation and the implementation of the Brussels Programme of Action and considering the evolving economic and social context, the Fourth UN Conference on LDCs needed to adopt a more strategic, comprehensive and sustained approach for a forward looking and result oriented program for the next decade. In that regard, the role of WIPO would be crucial. The Delegation expressed its delight to know that WIPO came up with the deliverables for LDCs, ranging from policies and norm-settings, to developing technical skills on building a knowledge infrastructure and establishing technology and innovation support centers, and branding and documenting the digitalization of traditional knowledge. Implementing them effectively was expected to contribute to bridging the knowledge gap and to making information for development easily accessible would greatly encourage an innovative approach to the promotion of goods and services of LDC nations.

34. The Delegation of Oman congratulated the Chair on his re-election and wished him success in his leadership of that Committee. The Delegation expressed its support for the statement made by the Delegation of Brazil, speaking on behalf of the Development Agenda Group, as well as the one made by its regional group spokesperson. It further expressed its thanks to the International Bureau for the documents submitted and, welcomed the Director General's comprehensive report which came in response to demands of the member countries. The Delegation gave special importance to the project on the enhancement of WIPO's Results-Based Management (RBM) Framework to support monitoring and evaluation of development activities, and welcomed the steps taken to implement that project. It said it was very important to develop and enhance information and quality of programs and activities provided by WIPO in the field of technical cooperation. It also stated that the International Bureau recently circulated a questionnaire among developing countries to evaluate WIPO's technical assistance for development. In that respect, the Delegation expressed its concern in terms of the difficulties encountered and challenges in responding to that questionnaire as it was not published in Arabic, thus leading to a participation drop in most Arab countries in that survey despite its importance. The Delegation said that it had reiterated on many occasions the importance of taking the measures to increase language coverage and to enable all member countries including developing countries and the least developed countries to make regional inputs during the elaboration of policies and their implementation. Referring to the workshop organized by the Development Agenda Coordination Division in Muscat, Oman on the 21<sup>st</sup> and 22<sup>nd</sup> of March, 2011, the Delegation noted the importance of the inclusion of IP in development plans. It reported that the workshop adopted several recommendations, foremost of which was the adoption of the Arabic language in all matters related to the Development Agenda especially in relation to questionnaires and queries issued by WIPO to improve Arab countries' participation in programs related to technical assistance. In that context, the Delegation pointed to the necessary support for the establishment of an IP Academy in the Arab region as part of the Development Agenda project as this would enhance efforts to maximize benefits from IP as a development tool in the Arab region. To that end, the Government of the Sultanate of Oman had sought to establish a national strategy in the field of IP, taking the first steps in monitoring and evaluating the use of IP at the national level. The Delegation looked forward to WIPO's

support in preparing and developing a comprehensive strategy to be included in the country's development policy. The Delegation further stated that it encouraged member countries to submit constructive proposals which would help in the Development Agenda implementation, and reiterated its support to the project submitted by the African Group aiming to improve South-South cooperation in IP. To conclude the Delegation expressed its hope that the seventh session activities would achieve the required results and bring about the consensus among member countries.

35. The Delegation of the Islamic Republic of Iran congratulated the Chair on his re-election which in its view would facilitate constructive discussions on important issues listed on the Agenda. The Delegation expressed its appreciation for the valuable report provided by the Director General, Mr. Francis Gurry and the Secretariat for preparing the documents. The Delegation associated itself with the statement made by the delegations of India and Brazil, speaking on behalf of the Asian Group and the Development Agenda Group respectively. The Delegation recalled that the adoption of the Coordination Mechanism and Monitoring, Assessing and Reporting Modalities was a significant achievement by the Organization. It however noted that the actual implementation of the mechanism had encountered difficulties, stating that it was the only member-driven tool for evaluation of Development Agenda mainstreaming in WIPO. The Delegation expressed its hope that Member States would facilitate the provision of reports from committees to General Assemblies and the CDIP. If that mechanism could work properly it would help the Organization and Member States to benefit and avoid the duplication of work in different committees and achieve focused and result-based actions. Therefore, the Delegation urged Member States to agree on a permanent and constant procedure for reporting from all relevant WIPO committees to the General Assembly and the CDIP. It also recalled that the reporting would be just the beginning of a long-term process which should be dynamic and lead to concrete recommendations to WIPO committees and particularly norm-setting committees. With the Coordination Mechanism, the CDIP could monitor the norm-setting process in all committees. Thus the CDIP would be left to examine the rules and the standards of other committees through a balanced and comprehensive approach toward norm-setting and address the development concerns of all countries particularly developing countries and LDCs. In that context, the CDIP could have an important role at the heart of norm-setting activities within the Organization. In the Delegation's view, the result of normative work in other committees should be reported to CDIP, to be examined in light of proper implementation of Recommendation 22 which stipulated that "WIPO's norm-setting activities should be supportive of the development goals within the United Nations system including those contained in the UN Millennium Development Declaration". Furthermore the mandate of the CDIP, approved by the General Assembly, covered a broad range of issues including, discussing IP and development which had been ignored since the establishment of the Committee by selecting project-based approach. The Delegation added that the inclusion of that part of the mandate could compliment the project implementation and technical assistance and as such it should not be neglected anymore. The CDIP discussion on IP and development could be applied to any appropriate IP issues with development implications including and not limited to promotion of development-friendly norms with a view to reforming the existing challenges in IP regime particularly to assure access to knowledge while keeping the legitimate interests of IP holders. The Delegation further stated that while recognizing the importance of the project-based approach and emphasizing the fact that CDIP projects should be designed to assist developing countries in formulating their national IP policies in accordance with their needs and requirements, it believed that only a comprehensive approach could mainstream development across the different areas and bodies of WIPO. Building upon the results of studies, the Delegation concluded, that now was the time for the CDIP to enter its second phase, which was norm-setting activity and develop concrete solutions for IP-related challenges through setting-up relevant guidelines and instruments.

36. The Delegation of Thailand congratulated the Chair on his re-election and expressed confidence in his leadership. The Delegation also thanked the Director General for his comprehensive report on the implementation of the Development Agenda. In that regard, it

associated itself with the statement made by the Delegation of India, speaking on behalf of the Asian Group, and added that it was pleased with the progress made in the Committee. The Delegation stated that as mentioned in the Director General's Report, a number of Development Agenda projects would come to completion in 2012, and noted that paragraph 27 of the report indicated that the outcome of those projects would fit into the future activities of WIPO, and that some of the follow-up activities would be undertaken from within the regular activities of WIPO and some others through follow up projects. The Delegation requested the Director General to elaborate on how Member States could pursue some of the Development Agenda projects that would be completed in the context of future activities of WIPO. For example, it said, Thailand was interested in the project on improvement of national, sub-regional and regional IP institutions and user capacity especially, the training of trainers programs on effective IP assets management by SMEs in the six pilot countries. However, the Delegation recalled that it had joined that project as a pilot country and now would like to learn about the results of the training. Moreover, it added that it would like to know if there was still a possibility to partake in phase 2 of the project as the project had already started and was being carried out in the pilot countries. The Delegation also pointed out that it had been participating in one of the Development Agenda projects, namely the project on IP and Product Branding for Business Development in Developing Countries and LDCs and as such, it was pleased with the progress made in the project's implementation so far. That project was not only useful and tactical, but also it had encouraged Thailand to initiate its own activities, to complement the Development Agenda projects in order to ensure the greatest possible benefits for the participating communities and the best possible outcomes for the Development Agenda project. The first complementary activity that Thailand was undertaking was a project on product design and knowledge enhancement for communities' handicraft which aimed to assist the villagers in improving designs of basketry products. The second activity was a project on capacity building in knowledge transfer on eco-design products, which sought to integrate the eco-friendly concept into the production process and product design of overhand woven cotton and brocade silk. The third complementary activity would focus on how to bring local products to global markets. That project would bring successful expatriate designers to share their experience on how to adapt traditional products and local creativity to the new global demand. The Delegation of Thailand hoped that those three complementary activities would help improve design and marketing aspects of the selected products and ensure successful branding. When the implementation of the WIPO products branding project would be completed, the Delegation said it would be pleased to share its experiences in greater detail. Lastly, the Delegation thanked the Secretariat and, especially the Development Sector, for the kind cooperation extended to Thailand and pledged to do its best to ensure fruitful and satisfactory implementation of the IP and product branding project.

37. The Delegation of Indonesia congratulated the Chair on his re-election and stated that it was confident that with his able stewardship the CDIP would make progress in achieving its mandate and pave the way for mainstreaming the Development Agenda into all aspects of WIPO activities. The Delegation also thanked the Director General for preparing the report on the implementation of the Development Agenda contained in document CDIP/7/2, which was the second report of the Director General for the period from January to December 2010. In that respect, the Delegation wished to align itself with the statement made by the Delegation of India, speaking on behalf of the Asian Group and the statement of the Delegation of Brazil which had spoken on behalf of the Development Agenda Group. The Delegation noted that nowadays, it had been realized that IP had become one of the many tools for growth in many countries for development and that Member States had been mandated to promote protection of IPRs through cooperation among States and also in collaboration with other international organizations. In relation to that, the Delegation looked forward to engage and to contribute in the implementation of the 45 Recommendations as the essence of the WIPO Development Agenda. The Delegation stated that the work in the CDIP had remained in line with the Development Agenda, which would be further and effectively implemented by establishing the Coordination Mechanism. The Delegation wished to emphasize the importance of intellectual property to achieve robust development and that development needed to be integrated into all



WIPO activities. Therefore, the Delegation of Indonesia was ready to embark with other WIPO member countries in fulfilling that strategic goal through a meaningful Coordination Mechanism. The Delegation referred to paragraph 8 of the Director General's report which mentioned that the Coordination Mechanism and Monitoring, Assessing and Reporting Modalities was an additional mechanisms to ensure mainstreaming of development consideration in the work of WIPO. In fact, it was not just an additional tool but it was a core of the WIPO work and only through that mechanism could Member States ensure the success of the Development Agenda implementation. It was also one of the pillars of the mandate of the CDIP, the Delegation added. Furthermore, the Coordination Mechanism and Monitoring, Assessing and Reporting Modalities adopted by the General Assembly should also be implemented in other WIPO bodies, including the Standing Committees of WIPO. In relation to the work of the CDIP, the Delegation attached great importance to the development dimension that should be reflected by its streamlining into all WIPO activities. The Delegation was pleased that the sixth session of the CDIP could maintain the momentum, enabling significant progress by approving several new projects to be implemented. The Delegation also felt that mainstreaming the Development Agenda into WIPO's activities was a challenge for both Member States and the Secretariat, and it was important that the Development Agenda Coordination Division (DACD) consulted Member States regularly to ensure that their expectations were met, especially in relation to how the Development Agenda should be implemented and integrated in WIPO. In addition, the WIPO Secretariat needed to make a regular evaluation and assessment of the implementation of the Development Agenda projects with a view to seeing the direct impact of such projects on development and to decide whether such projects needed to be terminated or continued for some period of time. Furthermore, the Delegation expressed its support for the inclusion of an additional agenda item entitled Intellectual Property and Development. The Delegation drew the attention of all Member States to the fact that one of the CDIP's main mandates approved by the General Assembly in 2007 was to discuss intellectual property and development related issues. The Committee now had the agenda items to discuss the two other main mandates of the CDIP namely consideration of program for implementation of the adopted recommendation and monitor, assess, discuss and report on implementation of adopted recommendations. Therefore, the Delegation felt that the inclusion of that agenda item would facilitate discussion on IP and development which was very much relevant. It was the Delegation's view that developing countries would benefit from the project in the area of IP and transfer of technology. It was therefore very urgent that the project should not be further delayed. The Delegation looked forward to take part in approving the project so as to implement it in the near future. It also said that it would like to see the project geared towards cooperation on intellectual property and development among developing countries and LDCs and that it would certainly enhance the capacity of developing countries and LDCs in developing intellectual property for the development of their respective countries. The Delegation observed that in today's world of economic competition, creative and innovative knowledge based economy was vital for economic growth and the welfare of the people. It also noted that the role of the informal economy in Indonesia was very crucial and in fact it played a pivotal role in the national economic structure. In that regard, IP could not be put aside in strengthening economic competitiveness and resilience. The Delegation also noted that the informal economy contributed significantly to the national welfare of the developing countries and the ability to prevent the outbreak of major economic crises. The informal economy, the Delegation further noted was the driving force behind a lot of innovation and contributed to the growth of the national economy, through employment creation, investments and exports. Therefore, the informal economy should be regarded as a potential means of IP-based business that would need to be well supported and developed. The Delegation then underlined the importance of WIPO's cooperation with other international organizations as well as the need for each and every international organization to take into account the global challenges at stake. Finally, the Delegation felt that successful and concrete implementation of the CDIP recommendations would prove the commitment of WIPO as well as all Member States to create an effective and balanced intellectual property regime. It further hoped to have a meaningful cooperation that would define the role of IP to contribute to global development.

38. The Delegation of Uruguay congratulated the Chair on his re-election and stated that it had been very much involved in the discussions on the Development Agenda. In that respect, it pointed out its participation in the Provisional Committee on Proposals Related to a WIPO Development (PCDA) in addition to the CDIP and expressed its support for the proposal made by the Delegation of Brazil, on behalf of the Development Agenda Group. The Delegation further stated that it was important to include the third pillar of the Committee's mandate and that development issues needed to be included in future work.

39. The Delegation of Panama congratulated the Chair on his re-election and expressed its satisfaction to see him preside over the work of the Committee. The Delegation appreciated the Secretariat's work in preparing the documents submitted to the Committee and also expressed satisfaction and gratitude for the personal commitment shown by Mr. Francis Gurry, Director General, as well as all WIPO Member States to the implementation of the Development Agenda. The Delegation also appreciated the significant progress that had been made in that regard and urged the Committee to keep working in a constructive and positive spirit. Those developments had greatly contributed to raising awareness of the fact that IP was a genuine mechanism which, when appropriately used, would turn into a means to support national development goals. The Delegation recalled the crucial role played by that Committee in guaranteeing that intellectual property became a tool for motivating and encouraging creativity and promoting innovation in a balanced way whilst protecting the interests of the rightholders. The work carried out by those responsible for innovation in the Latin American countries was becoming concrete as evidenced by the agenda of the meeting of the Directors of Latin American Industrial Property Offices. In principle, synergies should emerge and new challenges should be dealt with by those offices to ensure better management in the future. That was precisely why the Delegation considered WIPO as its main information provider and reiterated its support for the statement made on behalf of GRULAC while reaffirming the importance of the implementation of the Development Agenda recommendations. The Delegation further stated that its country was incorporating IP in non-traditional areas of its national plans and programs on social and economic development, and it would be continuing to work on topics such as technical cooperation to develop national capacities in the hope that it would impact all sectors in a positive and sustainable way.

40. The Delegation of Zimbabwe congratulated the Chair on his re-election and reassured him of its commitment and full support. The Delegation expressed its support for the statements made by the delegations of South Africa on behalf of the African Group and Brazil on behalf of the Development Agenda Group respectively. The Delegation was impressed by the importance that Director General Dr. Francis Gurry attached to mainstreaming the Development Agenda recommendations in all the activities of the Organization. In that respect, the Delegation wished to thank the Director General for producing the report and expressed its sincere hope that the discussions on that report would strengthen the work of the Organization in fulfilling the wishes and aspirations of its Member States. That also would give both the Secretariat and the Member States an opportunity to dialogue on important issues of mutual benefits. Turning to the substance of the report, the Delegation acknowledged the linkages between the Development Agenda recommendations and the various substantive programs of the Organization which were first introduced in the Revised Program and Budget for 2009 and further found in the 2010/11 Biennium. Indeed that was an indication of the seriousness that the Organization attached to that issue. However the Delegation hoped that in pursuance of those objectives, the comments made by the different delegations on the subject during the General Assembly held in 2010 would be duly taken on board. With regard to the Program Performance Report, the Delegation acknowledged that for the first time in 2008/09 the report contained a section in which contribution to the implementation of the Development Agenda was reported. It further noted that the introduction of new processes may take time to infuse, and it considered those efforts as work in progress with room for further improvements, especially with regard to the results and performance indicators. The Director General's report recognized the important role of the Coordination Mechanisms and monitoring assessing and reporting modalities as an additional tool for ensuring that development considerations form an integral

part of WIPO's work. At its inception in 2007, the CDIP was given three mandates, one of them was the Coordination Mechanism and monitoring assessing and reporting modalities. This latter was the core of the implementation of the Development Agenda and its mainstreaming in the work of WIPO. Despite the presence of a General Assembly decision on that issue there had been no effective and adequate discussion in other WIPO bodies including the standing committees of WIPO. As one of the hosts of the WIPO Academy programs, the Delegation took the opportunity to thank WIPO for providing capacity building programs that contributed immensely to the appreciation and use of intellectual property. The growing use and demand for WIPO Academy training programs both at local and regional levels, bore testimony to its success. Given the importance of those programs, the Delegation encouraged WIPO to continue ensuring that the content of materials was tailored toward the development priorities of Member States. The Delegation added that it was aware of the fact that for years the UN system had failed to work properly due to the lack of coordination within its various agencies. Hence the involvement of WIPO in the UN system-wide coherence initiative was welcomed, and given the Organization's comparative advantage in IP matters, its contributions would help to enrich discussions on global challenges that the world was facing. In consequence, the Delegation wished to encourage WIPO in continuing with that engagement and urged Member States to pay great attention to the measure and content of such initiatives to ensure that they fulfilled the Development Agenda's objectives. Lastly, the Delegation said the outlook for the future should be premised upon the mandate given to the CDIP in 2007, which placed the subject of the Coordination Mechanisms and monitoring assessing and reporting modalities as the core of the work of that body. It also welcomed the assistance provided by WIPO in the development of national IP strategies. The Delegation added that its country was amongst the beneficiaries of such assistance and, as such, in order for the Member States to derive maximum benefits from IP, their respective IP policies should be tailored in accordance with the overall national development of policies.

41. The Delegation of Myanmar congratulated the Chair on his able leadership, the WIPO Director General, Dr. Francis Gurry for his comprehensive report on the Development Agenda implementation, and the Development Agenda Coordination Division for all the preparations made for the session. The Delegation also associated itself with the statements made by the delegations of India and Nepal on behalf of the Asian Group and the LDCs Group respectively. The Delegation found it encouraging to see in the Director General's report that remarkable achievements had been made in establishing institutional mechanisms for the mainstreaming of the Development Agenda into the activities of WIPO and its committees, as well as in the implementation of the projects. The Delegation added that it considered those achievements as a reflection of the importance attached to the Development Agenda and efforts made by Member States as well as the commitments of the International Bureau and relevant stakeholders. While recognizing those achievements, the Delegation felt that there were a number of areas to improve the effectiveness of the implementation of the recommendations. In that regard, the Delegation highlighted two areas where there could be added value to the work done so far. Firstly, in relation to the project implementation, the quality of the project was important. For instance, the completed project on IP Technical Assistance Database currently provided data which was limited to technical assistance activities undertaken within the framework of the CDIP. In the Delegation's view more value could be added to the database by populating it with the historical data as well, in order to provide Member States with a full record of cooperation activities undertaken by WIPO including those undertaken under the aegis of the territory of bureaus and the PCT system. Second, some projects which were implemented as pilot projects, for example the project on IP and product branding for business development and the project on capacity building in the use of appropriate technologies, specific technical and scientific information were well designed projects and could very much contribute to the effective use of IP and technology for development. The Delegation added it would be very keen on getting feedback on those pilot projects. At the same time it was important to know how those kinds of activities would be regularized under the WIPO programs so that more countries could benefit from them. The Delegation therefore suggested that the component of the project, together with the nature of its implementation in pilot countries, should be included

in the Program and Budget with a fuller description of the manner by which regularized activities were projected to be carried out rather than a mere mention of the program linkage. The Delegation added that considering that the institutional mechanism for monitoring, assessing and reporting was being put in place and the budgetary procedure was in the process of being adopted, ensuring an effective execution would be important in terms of integration of the development dimension and devising and implementing projects. The Delegation concluded by expressing its appreciation for the Director General's report and reiterated its commitment in engaging constructively in the ongoing discussions for the advancement of the Committee's work on the implementation of its mandate.

42. The Delegation of Japan congratulated the Chair on his re-election, as well as the Director General and Secretariat for their substantial contribution in preparation for that CDIP session. It attached great importance to development related activities, including technical assistance and capacity building, as other Member States. Regarding those activities, Japan had been providing various types of assistance through the WIPO-Japan Fund-in-Trust. One of these Funds was for the Member States in the African LDCs and another for the Member States in the Asia-Pacific region. As one of the Fund-in-Trust programs, the WIPO Study Program on Innovation and Transfer of Technology was held in Casablanca, Morocco, from April 11 to 15, 2011. The Delegation believed that the program was able to allow successful methodologies and expertise of innovators such as universities and research institutes to be explored regarding technology transfer based on strategic and effective utilization of IP to be shared with officials of Intellectual Property Offices engaged in work related to Technology and Innovation Support Centers (TISCs) for the sustainable development of Member States in Africa. In addition, the Delegation mentioned the Policy Forum on Partnership between WIPO and the Japan Patent Office in the African Regional Economic Communities (RECs) on leveraging intellectual property for economic development. That Forum, organized by WIPO in cooperation with the Japan Patent Office (JPO) and the Common Market for Eastern and Southern Africa (COMESA), would be held in Lusaka, Zambia, from May 10 to 12, 2011. It was designed to be a platform for discussions, dialogues, and finally on successful experiences of the utilization of IP for business purposes amongst senior officials from regional economic communities and high officials of countries of the region in charge of the IP policy including heads of IP offices. The Delegation added that it wished awareness of the intellectual property system to rise through the aforementioned activities and a continuous dialogue with developing countries and LDCs. The effective exploitation of intellectual property rights was essential for developing countries and LDCs to achieve sustainable development in that context. The Delegation welcomed the launch of the IP Advantage Database where case studies of successful utilization of IP were stored by the WIPO Japan Office and Japan Fund-in-Trust program. The Delegation noted that the database experienced an increased number of data, since there was at that time 130 cases as opposed to the initial 50 available. The Delegation further believed that sharing of such best practices would contribute to economic development in developing countries. The Delegation then urged Member States to advance in an effective and efficient manner on substantive discussions consistent with the CDIP Coordination Mechanism agreed upon at the fifth session of the Committee, and adopted by the last General Assembly. It then recalled that a part of those principles clearly provided that duplication of work ought to be avoided. From that view point, Member States should primarily consider how the existing structure and procedure could be utilized to realize the basic philosophy of the Development Agenda. The Delegation then reassured the Chair that it was committed to constructive discussions and decisions under his wise guidance.

43. The Delegation of Yemen congratulated the Chair on his re-election and hoped that the session would be a success, given the faith placed in his wisdom and expert guidance. The Delegation also thanked the Director General, Mr. Francis Gurry, who had visited Yemen previously and the Arab Bureau in WIPO for all their support and assistance. The Delegation seized the opportunity to express its support for the projects proposed by the Delegation of Egypt and also to support the statements of the delegations of Brazil on behalf of the Development Agenda Group and of India on behalf of the Asian Group. It also extended its

support for the statements made by Arab delegations for the provision of documents and the questionnaires in the Arabic language, so that those countries could respond to the questionnaires, allowing them to participate in the work of those very important committees of WIPO. The Delegation concluded by thanking the Secretariat for the preparation of the documents and wished all delegations a successful CDIP session.

44. The Delegation of Congo congratulated the Chair on his re-election as well as the Director General and his team for the report on the implementation of the WIPO Development Agenda. It also commended the Secretariat for all the support that it provided including all the documents that were made available to Member States. The Delegation expressed its support for the statement made by the Delegation of South Africa on behalf of the African Group and urged all delegations to engage in constructive discussions for the benefit of all Member States. In that respect, all the items listed on the session's agenda deserved careful consideration because the Committee should provide a sustainable and fair solution to development problems. The Delegation further stated that there were a couple of issues of particular interest to it, namely IP and Brain Drain and the South-South cooperation project contained in the document CDIP/7/4. Indeed, Brain Drain was a major problem in southern countries. The Delegation recalled that it was among the beneficiaries of the Development Agenda implementation and it had created a national special center in order to deal with those issues. In that context, the Delegation requested more assistance from WIPO in relation to project follow-up and human resources capacity-building in particular.

Agenda Item 7: Monitor, assess, discuss, report on implementation of all Development Agenda recommendations and consideration of the Director General's Report on Implementation of the Development Agenda

45. The Director General introduced document CDIP/7/2 which was the second such report providing a summary or an overview of the implementation of the Development Agenda. He noted that many delegations had already commented on the report that was contained in the document and therefore proposed to be brief in his introduction, also since the contents were well known to all delegations. The Director General noted what the Secretariat had endeavored to do was to provide in a brief summary or an overview of the implementation of the Development Agenda – the second such report - the first one having being delivered at the fifth session of the CDIP in April 2010. The first part of the document covered the issue of mainstreaming the Development Agenda within the Organization and in that respect, the Director General referred to two developments that many delegations had pointed out. The first of those was the Coordination Mechanism, and he said the delegations' remarks on the need for more clarity were well noted. Secondly, it was about the work being done to mainstream, in the Program and Budget of WIPO, those projects that would seek to implement the various recommendations of the Development Agenda. The Director General then reminded the delegations that the Secretariat was in the process of preparing the Program and Budget for the next Biennium 2012/13 which would be published shortly and provide information that the Development Agenda projects were fully integrated into the ordinary Program and Budget. The second part of the document provided Member States with a summary of the Development Agenda projects that would be the subject of various progress reports and therefore he would not go into those in any detail. He said the third part of document provided an outlook for the future and referred in particular to the institutional mechanisms for mainstreaming the Development Agenda especially the project underway for Results-Based Management (RBM) Framework and its application to the development programs of WIPO under the Development Agenda. The Director General also drew the attention of the delegations that in the immediate future both in 2011 and 2012, a number of Development Agenda projects would be completed. In that context, the Director General stated that the document under consideration had signaled the Organization's intention to have those projects evaluated in terms of effectiveness of the projects actually implementing the respective Development Agenda recommendations which the Secretariat would present to the Committee when the projects would have been completed.

46. The Delegation of Panama appreciated the detailed report which was in three parts for clear presentation and better understanding of participants. The Delegation further appreciated the progress made and how far the Organization had gone to ensure that projects and activities related to the Development Agenda were integrated in the context of the Results-Based Management (RBM) Framework for better follow-up and evaluation of the progress of the programs of WIPO. The progress reported in the summary and in the annexes of the Director General's second report was very significant. The Delegation therefore seized the opportunity to congratulate WIPO once again, represented by its Director General, Mr. Francis Gurry. Indeed, it said, that was a result of the collective work of a group of committed professionals who had worked on the effective and timely implementation of the Development Agenda. The Delegation recalled that much of the progress made had been achieved with the assistance of WIPO, and mentioned the creation of strategic alliances where Panama had been able to start work on specific issues with some offices that had much higher development levels than its own. One such collaborative experience the Delegation mentioned was the work conducted by the WIPO Academy that focused on students thereby assisting them to get added value from distance learning. That mechanism could be used to prepare training of trainers, for them to have experience or better training skills for example. The Delegation further expressed its hope that the work on IP system flexibilities would give rise to opportunities, given that previous experiences on other topics provided valuable developments. To conclude, the Delegation declared having high expectation regarding the programs of Access to Research and Development and Innovation (aRD<sub>i</sub>) and the Technology and Innovation Support Centers (TISCs), the concept of which had been explained last week in a meeting attended by various public and private universities and academic staff from all over the nation.

47. The Delegation of India, speaking on behalf of the Asian Group, expressed its sincere appreciation to the Director General for his initiative and commitment in presenting a timely report on the implementation of the Development Agenda. The three part report provided a succinct yet comprehensive overview of the on-going efforts to mainstream the Development Agenda in all areas of WIPO's work. It was clear from the report that concrete progress had been made in that area and several important steps had been taken by WIPO Member States, the Director General and his team to ensure greater development orientation in WIPO's work through development friendly norm-setting and other initiatives in WIPO's substantive committees. The established method of linkages between the Development Agenda recommendations and various WIPO programs in the Program and Budget, and in the Program Performance Report (PPR) as well as the integration of the Development Agenda projects and activities in WIPO's Result-Based Management (RBM) Framework; the integration of the Development Agenda in the WIPO Academy training modules; the formulation of a roster of consultants; and an enhancement of civil society participation were part of that effort. In the Delegation's view, those positive efforts went beyond the confines of Development Agenda projects. It was laying the foundation as it marked the beginning of a genuine and long-term institutional transformation, bearing in mind that development considerations automatically formed an integral part of WIPO's work in all areas. Another such milestone was the adoption of a Coordination and Monitoring Mechanism by the General Assembly in 2010 that enabled the Committee to discharge the second pillar of its mandate of monitoring, assessing, discussing and reporting on the implementation of recommendations by coordinating with other relevant WIPO bodies. Indeed, since its operation lay in the CDIP's mandate, it was the core mechanism by which Member States could take stock of how the Development Agenda was being integrated across various bodies in WIPO rather than an additional tool to the CDIP as mentioned in the report. Similarly, the Medium-Term Strategic Plan proposed by the Director General, even though not adopted inter-governmentally as a guide for WIPO's future work, sought to incorporate the Development Agenda in a significant manner and indicated a growing commitment to integrating development considerations in WIPO's work. Whilst the Delegation was greatly encouraged by those positive developments, there would always be more that would need to be done to realize a vision as large as that of the Development Agenda. Considerable scope for improving on the above initiatives existed. For instance, while introduction of modules on the Development Agenda in the training program of the WIPO

Academy was a good first step, that should be followed by the more substantial step of ensuring that the content of the training module reflected a balanced view of intellectual property and integrated developmental considerations. Similarly, the linkages of the PPR and RBM frameworks to the Development Agenda recommendations needed to be more specific in order to clearly assess the manner and the extent to which programs had contributed to Development Agenda recommendations. A clearer understanding of more specific activities that were being undertaken as developmental activities in WIPO's Program and Budget would similarly enable a better understanding of the quantum of resources being spent on developmental activities in the regular budget. As regards WIPO's support to the work of other intergovernmental organizations, the Delegation hoped that that in itself would not be taken as an evidence of WIPO's contribution to the Development Agenda. What mattered was not so much the fact that WIPO was contributing to the work of those organizations but the nature and content of that contribution, especially since several opportunities to open issues such as climate change, public health, food security; and processes such as RIO+20 dealt with issues such as technology transfer, where IP rights played a key role. While the Delegation felt confident that the Secretariat had contributed constructively to dialogues related to IP in those organizations, it saw it equally important that the Secretariat reported on its engagements and cooperation with other organizations to WIPO Member States and elaborated on its response to integrate the Development Agenda in those important organizations since issues such as access to technology at an affordable cost was an area of core interest to developing countries. Indeed, the Delegation argued that the issue had substantial ramifications for developing countries that currently had no forum for discussion in WIPO, and it suggested that the CDIP could consider that under the proposed new agenda item on IP and development. The Delegation further noted with satisfaction that most of the ongoing 18 projects were proceeding at a good pace and appreciated the contribution being made by those projects. The Director General's report had stated that a number of projects were expected to be completed in 2012. However, the progress report of the sixth session and the overview of approved projects in Annex II of the Director General's report both suggested that some projects may not be completed during the planned period. For instance, the project on Capacity Building in the Use of Appropriate Technology Specific and Scientific Information as a Solution for Identified Developmental Challenges was still in the initial phase of establishing a national expert group even a year later. Similarly, the project on Establishment of Start-Up National IP Academies and the project on IP and Product Branding for Business Development in Developing Countries and LDCs were currently lagging behind schedule. Those and other delayed projects would need to be expedited with adequate financial and human resources allocated to them in a timely manner. While noting that some of those projects were reaching completion, the Delegation reiterated that the termination of a project did not translate into the implementation of specific Development Agenda recommendations. As agreed earlier, while adopting the project-based approach, the Development Agenda was a long-term work in progress and Member States should be free to propose new or additional projects for the consideration of the Committee, if considered necessary. The Delegation further asked the Secretariat to keep the Permanent Missions of the countries concerned in Geneva informed when Development Agenda projects and events were being organized in their respective countries. The fact that Missions were unaware of the Development Agenda activities being undertaken in their countries was unfortunate and counter-productive since the involvement of Missions would only enhance the value and usefulness of the exercise. The Delegation looked forward to the report of the independent external review of WIPO technical assistance and hoped that those technical assistance activities being undertaken in areas such as enforcement would not undermine the progress that had been achieved under the Development Agenda. Finally, the Delegation once again, expressed its sincere appreciation to the Director General and the Secretariat for the well-prepared, useful and encouraging efforts that they had shown. It believed that the entire Organization should be proud of what had been collectively achieved in implementing the Development Agenda in the last few years and looked forward to continuing commitment and political will in consolidating and building further on what had been achieved.

48. The Delegation of the Plurinational States of Bolivia congratulated the Chair on his re-election and reassured the Committee of its commitment to the implementation of the Development Agenda recommendations. It thanked the Director General for his report and his efforts and commitments to achieve an effective implementation in all WIPO sectors. As a general comment the Delegation Observed that the report lacked quality and detailed information necessary to examine the effective implementation of the Development Agenda which was closely related to transformation of WIPO. That change in WIPO pertained to the Organization's way of work and content of its activities, as well as in its vision and the way of advising developing countries on policies and strategies in the field of intellectual property. Nevertheless, in many parts, the report limited itself to information which did not include the changes that had been carried out and did not mention how activities contributed to the implementation of the Development Agenda. Such activities bringing favorable developments should have indicated the ways in which they would be responding to the developmental issues. What was required from WIPO was the integration of the concept of development in its activities and not the other way round. It was the activities of intellectual property that needed to change to embrace the concept of development. However, in some parts of the report, the Development Agenda seemed to be an invitation to stress on intellectual property, its importance for development and its inclusion in various policies for development and to make known the list of further activities that could contribute to development within the framework of the Development Agenda. Taking into account the great importance of the work of the Development Agenda by the CDIP, the Delegation suggested that in the future the reports be made more detailed and provide more substantive information, and also highlight the impact of the activities on the implementation of the Development Agenda. The Delegation said it would like to look at the important details of the report and highlight some of its concerns. Firstly, it noted that the report stated that the main focus of the MTSP was the guarantee of the implementation of the Development Agenda in the long-term. Elsewhere in the report it was said that WIPO in line with the MTSP would continue to facilitate discussions between Member States, especially those that were related to the future establishment of norms and standards. The MTSP was not approved by Member States and in fact many developing countries expressed their concerns as to its content which did not adequately reflect a focus on development and the Development Agenda. The Delegation in particular was concerned amongst other things about the mention of norm-setting activities. The Delegation then recalled that at the General Assembly it was agreed that comments on the MTSP should be included and should therefore be reflected in WIPO's activities. As regards the database on technical assistance the efforts made on the roster of consultants have been noted. However it would be appreciated that in addition to the consultants' names, their *curriculum vitae* is also provided in order to prevent potential conflicts of interest. Moreover, the Delegation reiterated its wish to have the material used included in the database, alongside the documents distributed and presentations made. In addition, the Delegation requested to have the names of the institutions with which the activity would have been coordinated with and the competent authorities involved. Developing countries needed at least to know what type of material WIPO was working with in technical assistance activities and what was provided to the various countries. With that information in the database, developing countries would be able to assess the changes made and the way in which the Development Agenda was reflected in WIPO's activities and technical assistance. Information on WIPO's cooperation with other IGOs in particular the UN system had been noted and welcomed, in particular the cooperation on the use of intellectual property with WHO, the UNFCCC and Rio+20. It had also been noted that there had been discussions with CERN and WTO, UNCTAD, UNESCO amongst others. The Delegation took note of the discussions with other institutions on activities that would be carried out in cooperation with them as well as contacts with ECOSOC and the High Commissioner for Human Rights, amongst others. However, it was also necessary to know what the prospects were, the positions and the recommendations made by WIPO in those various *fora*, and the Delegation requested to know more on what was the main focus of their participation; what the content of activities was; and how WIPO had changed in order to include the concept of development. The information provided however, was a mere list of activities and as it stood,



there was no way of assessing in what manner that cooperation contributed to the implementation of the Development Agenda. The Delegation expressed its wish to have substantive information on what went on during those exchanges about WIPO's involvement in meetings with the UNFCCC, Rio+20 and the WTO and particularly on the role of particular IP topics that were important to issues such as health, access to drugs and the environment, for example. In the context of those meetings or other meetings, the Delegation argued that it would be good for WIPO to promote a balanced approach by offering analysis of both positive and negative impacts on that topic. Despite the progress made there was still much to be done before WIPO's activities led to an effective implementation of the Development Agenda and reached a stage where public policies of developing countries would be promoted and where flexibilities would be enhanced or where alternative models of innovation would be promoted or where the problems caused by the negative impact of intellectual property could be solved. As regards the Development Agenda it was important to note that the project based methodology was approved with the understanding that additional activities could be proposed and therefore even when there was a project to implement, the Member States would have the opportunity to suggest additional activities in the context of the same recommendation. The Delegation went on to say that an analysis of information provided for the various projects that was included in the Annexes up to the end of December 2010 on the status of implementation of the recommendation, was lacking in details and that the format did not enable the Delegation to know how those projects contributed to the effective implementation of the Development Agenda. For example, looking at the implementation of Recommendation 1 related to technical assistance, the report referred to documents CDIP/6/3 where there was a list of technical assistance activities carried out by WIPO in various countries. However, nothing was said about the content of those activities, there was no detailed information, when Recommendation 1 specifically dealt with the details of technical assistance that it should be transparent, demand-driven and development-oriented and taking into account the priorities and special needs of developing countries and especially LDCs. It was a matter of including development in intellectual property policies and that did not answer the question of knowing to what extent WIPO had been adapting itself to that new reality. The Delegation moreover noted that carrying out technical assistance was not in itself a contribution to the implementation of Development Agenda; the activities should be balanced with regard to intellectual property and not only underscore the advantages but also the costs and the potential negative impacts, the exclusions, the flexibilities, the importance of public domain and alternative models for innovation. The same could be said about most of the information provided for example on Recommendation 3, on promoting a development-oriented IP culture, and yet in the list of activities there was no detailed information about what WIPO was doing to promote a pro-development approach in IP. Lastly, as regards the prospects for the future it had been noted that WIPO was continuing to provide assistance to countries in particular in establishing national strategies that would fully include IP. However, it was not really a matter of including IP in national policies for development; it was more a matter of including development in the policies and strategies of intellectual property. That difference was important in relation to what needed to be changed. It was not development policies but policies on intellectual property and with that WIPO's technical assistance activities to include the development dimension. In that context, the Delegation asked how WIPO's activities would change in the future to include development as well as more detailed information on the contents of national strategies for intellectual property that would still be worked on in the future.

49. The Delegation of South Africa, speaking on behalf of the African Group expressed its appreciation for the efforts made by the Director General in updating the Members States on the state of play on the implementation of the Development Agenda. It provided the Group's views on the three part report mainly the mainstreaming of the Development Agenda projects and the outlook for the future as well as the information provided in the two annexes. On the first issue, the Group understood that the Development Agenda must cut across all activities of WIPO as an illustration of its mainstreaming. The report of the Director General provided some useful insights on the commitment of the Organization to ensure that development was taken into account in all its activities especially in the MTSP of 2010-2015, which would be subject to a

review and approval next year. The integration of the Development Agenda projects and activities in WIPO's Results-Based Management (RBM) Framework and the adoption of the new budgetary process for the Development Agenda was a positive development. The Delegation was similarly pleased that the Coordination Mechanism was adopted at the last General Assembly meeting. Considering that paragraph 12 of the report mentioned the activities of WIPO with other intergovernmental organizations especially within the United Nations, the Group was particularly interested in two issues raised in that paragraph. First, that WIPO had engaged in discussions with the United Nations Institute for Training and Research (UNITAR), and the ITU, with a view to developing a program of collaborative activities. In addition the Group wished to find out more about the program aspired to by WIPO in cooperation with those two organizations and, of particular interest, the description of WIPO's involvement in the New Partnership for Africa's Development (NEPAD) which was the primary economic development program of the African Union (AU). Over and above that it would also be useful to get a sense of the contribution that WIPO was making to other organizations especially in the UN. As it was clear that WIPO was actively involved in those organizations, delegations had not been acquainted with the nature of its involvement. Regarding the Development Agenda projects, the African Group extended its gratitude to the Secretariat for implementing the projects in various countries, particularly in Africa. Nevertheless it would be useful for the report to provide details of countries benefiting from all Development Agenda projects. In some instances there was a mention of the countries while not so in others. For instance on paragraph 23(b) there was mention of the launching of six national networks of Technology and Innovation Support Centers (TISCs) without listing the beneficiaries and the same applied to paragraph 23(c) which mentioned the establishment of the Start-up National IP Academies in eight countries. The point that was being made was that the report should at least be as comprehensive as possible. The Delegation further stated that the implementation of the Development Agenda in future should also be reviewed in light of the full implementation of the three pillars of the mandate of the CDIP which included: 1) Develop a work program for implementation of the adopted recommendation, 2) Monitor, assess, discuss, and report on the implementation of all recommendations adopted and for that purpose it shall coordinate with relevant WIPO bodies and 3) Discuss intellectual property and development related issues as agreed by the Committee as well as those decided by the General Assembly". The first two pillars were currently being implemented but the implementation of the third pillar was yet to commence. The implementation of the third pillar was imperative for the implementation of the two other pillars. A proposal had been presented by the Development Agenda Group to tackle that and the Delegation looked forward to that agenda item being implemented in the Committee. Despite some Development Agenda projects having reached their end, some still did not attain the process of conclusion and the impact analysis on the implementation of those projects was missing in the report. The report should in future include impact analysis on the projects carried out as the main thrust of Development Agenda was on the benefits that countries derived from the activities of WIPO. The Delegation welcomed the Director General's statement on the fact that there would be an evaluation of the projects and that evaluation would be presented to the Committee for its consideration. Similarly the report should encourage Member States to present new projects and activities as at present the majority of the current Development Agenda projects had been initiated by the Secretariat. The two annexes to the report provided full information on the implementation of the Development Agenda and the 19 projects, however, the Delegation suggested that Annex 2 should be modified to better present the status of the implementation of the Development Agenda projects. Therefore the column on main achievements in Annex 2 should be complemented by an additional column with an indicator "status of implementation" because some of the activities reported under that column were not necessarily the main achievements. It would also be useful that the report included the challenges encountered in implementing the projects, mindful of the fact that the mainstreaming and implementation of the Development Agenda was a challenge for both the Member States and the Secretariat. In conclusion the Delegation welcomed the report of the Director General and requested that the next report should be more detailed.

50. The Delegation of Brazil, speaking on behalf of the Development Agenda Group, stated that it shared the evaluation of the report made by the Asian Group, the African Group and the Delegation of Bolivia. The Development Agenda Group welcomed the Director General's report on the implementation of the Development Agenda and noted that concrete progress was being made to ensure that WIPO's work was truly development-oriented. In the Delegation's view amongst the many activities carried out during the period under revision, three deserved particular attention. First the adoption of the coordination and monitoring mechanism by the WIPO General Assembly in 2010 was an important landmark and the CDIP was enabled to fully implement the second pillar of its mandate, which was monitoring, assessing, discussing and reporting on the implementation of Development Agenda recommendations by coordinating with other relevant WIPO bodies. That was a core mechanism by which Member States could take stock of how the Development Agenda was being integrated across various bodies in WIPO. Second, the decision to integrate the Development Agenda projects into the regular budget of WIPO was another positive accomplishment. The Delegation requested more details on what activities were being undertaken as developmental activities in the WIPO Program and Budget, and exactly how much was being spent on each of those activities. That was a request of both the developing and developed countries. Finally, it noted that WIPO had been more actively engaged with other international organizations of the UN system, and particularly regarding its engagement in the other intergovernmental processes with regard to climate change, health, food security and the Rio+20 negotiating process. Considering that it would be extremely useful if the Secretariat informed Member States on the types of engagement, on the content of the advice given and also on how the Secretariat measured those engagements could be interpreted as part of the mainstreaming of the Development Agenda recommendations. The Delegation expressed the hope that important issues, currently with no *fora* for discussion, could consequently find a home at the CDIP. Regarding the work of WIPO committees, the Delegation recalled with concern that the mandate of the Committee on WIPO Standards (CWS) had recently been put into question by some delegations, and that the CWS should abide by the General Assembly's mandate on WIPO's strategic vision and by Development Agenda Recommendations 24 and 27, which directed WIPO to facilitate IP-related aspects of ICT for growth and development. The Delegation expressed its satisfaction to see that some projects were already entering their final stages of implementation. Pointing out that it was not meant that the specific Development Agenda recommendation had been fully implemented or that it had been fully discussed as the language in the report might imply, the Development Agenda implementation was a work in progress and its final aim was to establish a more balanced IP system. Finally, the Development Agenda Group looked forward to the report of the independent external review on WIPO's technical assistance.

51. The Delegation of Algeria congratulated the Chair and thanked the Director General for the special interest he attached to the Development Agenda and for his excellent report and the fact that the Secretariat had made available the necessary working documents to prepare for the session. It supported the statements made by the delegations of Brazil and South Africa on behalf of the African Group and the Development Agenda Group respectively. It observed that since the launching of the Development Agenda in 2007, numerous activities had been initiated. However the expectations of the African countries should be taken into consideration. In the Delegation's view, the implementation of the 45 adopted Recommendations did not really mean implementation of the projects. It also was necessary to deal with the development culture in the Organization and to that end, mainstream the Development Agenda into WIPO's work. Under the Agreement between the United Nations and WIPO, the latter was responsible for the promotion of intellectual creativity and to facilitate the transfer to developing countries of technology as regards IP in order to accelerate their cultural and economic development. The Delegation said that WIPO had an important role to play in continuing the implementation of the UN MDGs. The Delegation was very pleased with the report prepared by the Director General in document CDIP/7/2, providing an overview of the implementation that referred to progress that had been achieved. The report also referred to the General Assembly held in 2010 which established the Coordination Mechanism and Monitoring, Evaluation and Reporting Modalities for the Development Agenda implementation. That enabled the Delegation to appreciate the

horizontal integration of the Development Agenda in the work of the Organization. The Delegation also referred to the development of the budgetary procedure as applied to CDIP projects, which it stated would enable forecasting for the budget within the framework of the Development Agenda. The Delegation stated that paragraph 4 of the Report said that the MTSP would be integrated into the biennial budget but that Plan had not been approved by the General Assembly in 2010 and some countries had already commented on that point. The Delegation suggested that in response, WIPO should take into account their comments as regards paragraph 6 where the Secretariat wanted to consider the present program and integrate it into the development objectives. While expressing its appreciation for the report, the Delegation requested more details, for instance, the areas where the Development Agenda would be integrated into the Program and Budget 2012/13 as indicated in paragraph 9. The Delegation appreciated the diversity mentioned there and also the introduction of distance learning courses intended for developing countries. Those courses should emphasize the contribution to be made by IP in the implementation of the objectives in particular as regards the transfer of technology, public health, food security and climate change. In view of the budgetary cuts the report also emphasized the considerable reduction in training courses provided for developing countries especially in the framework of copyright. The Delegation suggested that the resources of the Academy be increased in view of its major contribution to the Development Agenda. Referring to paragraph 12 concerning cooperation with intergovernmental organizations in particular the United Nations, the Delegation believed that the role of WIPO in its discussion with those international organizations, particularly as regards food security and environment, should be taken into consideration. It seemed to be early for WIPO to put forward its own vision in intergovernmental relations or to inform members about the action undertaken with reference to agreements such as the one with CERN. However, the report did not mention that the methodology was based on a guiding principle agreed upon by the Member States. The Delegation further reiterated the principle that the end of the projects did not mean the end of the recommendations, it being understood that the activities or additional projects could be proposed at a later stage. Finally, referring to the future, the report did not mention any mechanism for evaluation and assessment as regards the state of development and added that that should be an integral part of the institutional mechanism, which had been established to integrate the Development Agenda into the work program of the Organization. That mechanism was one of the three pillars of the CDIP for it to discharge its mandate. The Delegation also suggested that discussions in the Committee on the subject of IP and Development be added to the Committee's agenda, and believed that that would make a major contribution as regards the implementation of the WIPO projects in particular towards environment and access to health. In conclusion, the Delegation stated that it was pleased with the planning in the Program and Budget for 2010/11 for the international Conference on the integration of development in the field of IP and to that end, suggested informal consultations should be held as soon as possible to define the date, subjects and themes for speakers of that forthcoming Conference.

52. The Delegation of Sri Lanka aligned itself with the statement made by the Delegation of India on behalf of the Asian Group and the Delegation of Brazil on behalf of the Development Agenda Group and congratulated the Chair on his re-election to lead the seventh session of the CDIP. It also expressed its best wishes for the two Vice-Chairs elected and hoped that their assistance to the Chair would pave the way for a fruitful meeting during the week. The Delegation thanked the Secretariat for the briefing conducted for the delegates well before the session and also for the documents provided. In particular, it thanked the Director General for his initiative to report to the Committee on the activities undertaken by the WIPO Secretariat to implement the 45 Recommendations of the Development Agenda. The Delegation stated that the report was indeed comprehensive and systematically covered all areas of activities undertaken by the Organization. It said it was generally pleased that many projects seemed to be in the process of being implemented and that some projects were underway through to the next phase. In particular, the Delegation wished to thank the Secretariat for selecting Sri Lanka for a pilot project for the Start-up National IP Academy under Development Agenda Recommendation 10. The Delegation stated that its Government embraced the Start-up National IP Academy with high hopes and expectations when it was initiated more than a year

ago. In terms of financial support, WIPO's Secretariat would provide the following to the project: 1) Provide seed resources, 2) Sustain the project financially in the running cost for 2 years and 3) Ensure that the Secretariat would assist the country to continue the project through coordination between the country and donors. Based on those adopted terms, Sri Lanka requested the Secretariat to initiate the project in the country as it believed that it would provide an impetus to other efforts to set up national IP academy that would be a model for other developing countries. However to that day, the project had regrettably stagnated as the Secretariat had a different interpretation of the terms of assistance that was adopted for the project. It said that that was at variance with what was expressed by the Secretariat when the project-based approach was introduced in 2010. The intention was, among other things, to ensure the implementation of the Development Agenda recommendations as soon as possible. It was believed that adoption of a pragmatic and demand-driven process in the implementation of those projects was essential for its successful implementation. In that context, the terms of assistance should not be re-defined by the Secretariat after their adoption. The Secretariat could not convey to the concerned Government the specific wording such as "WIPO will provide substantive assistance" and then leave the Governments to implement the projects on their own. The Delegation noted that in its opinion that approach was becoming a type of technical assistance which the Organization was providing through various departments. The Delegation referred to WIPO's engagement with other intergovernmental processes notably with regard to climate change, health and food security, and said that the Secretariat had yet to disclose to Member States the type of engagement and the content of advice given and how it had measured the engagement in tangible terms to mainstream the Development Agenda recommendations. With regard to the climate change negotiations, further action should be taken to address the issue of intellectual property rights. The Delegation recalled that the Cancun Agreement established a structure to assess the needs and policies for transfer of technology to developing countries and it was yet to be defined as to how the climate technology and global network matching of technology supplied the technology needs of countries. While the Cancun Agreement did not specifically indicate any flexibility in intellectual property rights, it could not be disputed that there could be no meaningful discussion on technology transfer without referring to IPRs. Furthermore, the Rio+20 negotiation process was a complex process which countries were yet to agree on at the preparatory committee (Prepcom) meeting in New York. In addition, there had been little technology transfer because a new global regime on intellectual property set up after Rio in 1992 had the merit to defer access to technology for developing countries for double the cost with WTO. In that context, the role that WIPO could play in enhancing the capacity of developing countries in terms of advice of providing any other input needed to be clearly discussed with the Member States. As WIPO's engagement in that formal negotiation was extremely limited, the Delegation welcomed and appreciated WIPO's formal input and advice on IP held during the recent intergovernmental processes at the WHO. But, the Delegation said, that also questioned the neutrality of the Organization as the approach adopted by the Secretariat seemed too cautious. In conclusion, the Delegation stated that the fundamental objective of the Development Agenda adopted in 2007 was to result in a paradigm shift in international perspective of IP regimes to make IP as a means to serve the larger public goals of social, economic and cultural development. That vision had refuted universal applicability of a single IP protection model or the advisability of harmonization laws leading to higher protection standards in all countries irrespective of their levels of development. In that context, the work undertaken by the Committee had raised concerns as to whether its objective could be achieved given the current methodology adopted. It was therefore essential that the Committee should adopt a work program for an additional item proposed by the Development Agenda Group to ensure that the principles enshrined in the Development Agenda mandate were duly considered on their own merit in the CDIP.

53. The Delegation of the Islamic Republic of Iran associated itself with the statements made by the delegations of India on behalf of the Asian Group and Brazil on behalf of the Development Agenda Group respectively and welcomed the second report presented by the Director General on the implementation of the Development Agenda and appreciated his commitment to reporting to the CDIP on an annual basis. It also thanked the Secretariat for the

well prepared, useful and encouraging report. The report particularly provided a good overview of the status of implementation of recommendations and the main achievements of the 19 Development Agenda projects as well as an outlook for the future. The Delegation also noted with satisfaction that the Development Agenda Coordination Division (DACD) was working closely with other programs in the Organization to ensure that the Development Agenda was being implemented and integrated in all parts of WIPO's system. The Delegation suggested that it would be extremely important that the Division consulted regularly with Member States on their expectations of the Development Agenda implementation and the possibility of feeding the results of studies into the future activities of the Organization. The new initiative within the Program Performance Report (PPR) to reflect the contribution of each program to development and the integration of Development Agenda projects and activities, and WIPO's Results-Based Management (RBM) Framework were among the positive steps taken by the WIPO management and should be appreciated. As the Director General had indicated in his first report last year, the implementation of the Development Agenda was an endeavor that sought to transform the way the Organization operated, making development consideration an integral part of all the work. For that reason, the Delegation believed that mainstreaming development as a cross-cutting issue should go beyond section three of the MTSP document. In the course of MTSP discussions the Development Agenda Group had noted that a new separate section should be added to the MTSP document which features the Development Agenda in the various activities of the Organization. Furthermore, the Director General while talking about the future outlook for the Development Agenda implementation in his report did not mention anything about norm-setting and limited it to technical assistance for Member States. The Delegation said that Member States expected that the performance of CDIP would go beyond those areas. It also said that WIPO's involvement and contribution to the IP-related works in other international bodies was another issue that should be discussed in the Committee regularly. WIPO's technical advice to other international organizations especially in the area of IP should take into account the consensus view of its Member States. It was extremely important that WIPO reported back to the General Assembly and CDIP on its contribution to the other international organizations and the Delegation looked forward to hearing from the Director General about the details of such advice given by the WIPO Secretariat to other international organization in his upcoming report. Furthermore, the Delegation pointed out that it was still expecting the report of WIPO's contribution to the UN MDGs to be revised in light of comments made by Member States last year, noting that it would be imperative for WIPO as a UN specialized agency to update that report annually and present it to the CDIP for its consideration. Finally, the Delegation noted that the report of Director General referred to the mainstreaming of development in various WIPO committees, and believed that it was worth mentioning that the new Committee on WIPO Standards (CWS) whose mandate was approved by the General Assembly last year, contained valuable proof of development pillars such as capacity building and technical assistance. Unfortunately, in the first meeting of that new Committee, a few Member States ignored the clear mandate approved by the General Assembly. However, the Delegation emphasized and reiterated that development concerns were in the heart of CWS and the development-friendly mandate given by the General Assembly to the Committee could not be rejected.

54. The Delegation of the Philippines joined other delegations in thanking the Secretariat and congratulating the Chair on his re-election. The Delegation particularly thanked the Director General, Dr. Francis Gurry, for his report that provided valuable information in addition to the work that was currently being carried out in that context. Building upon the statements made by the Asian Group and the Development Agenda Group respectively, the Delegation said it would be most grateful if the Director General shared with the Committee the specific nature and the content of the work provided by the WIPO Secretariat to other international organizations as mentioned in paragraph 12 of the report and in line with Development Agenda Recommendation 40. The Delegation wished to take the opportunity to seek clarity on how the Development Agenda was being implemented. In that regard it urged all the Member States to share information on their IP laws, regulations and practices in good faith by replying to questionnaires prepared by the Secretariat. While it acknowledged the efforts of the Secretariat in preparing

the said questionnaires, the Delegation said that there was no clear understanding among Member States as to what the questionnaires purported, apart from information sharing and sharing of best practices only. That was precisely the reason which prompted developing countries including the Philippines to request the Secretariat during the last session of the SCT, for an information document to be presented at its next session, on how the Development Agenda recommendations, in particular Cluster B, were mainstreamed with regard to the work of the SCT on industrial designs law and practice. The Delegation therefore suggested that while the use of questionnaires had some utility, it could not and should not be taken as substantive compliance with the specific requirements under Cluster B of the Development Agenda on Norm-Setting, Flexibilities, Public Policy and Public Domain. In particular, the Delegation referred to Recommendations 15, 17, 21 and 22, which provided the fundamental elements pertaining to all norm-setting activities in WIPO. The Delegation then requested clarification on paragraph 23 (E), on the project on Improvement of National, Sub-regional, and Regional IP Institutional Capacity. It recalled that the Philippines was among the countries that sought information on the specific assistance that were currently being provided by the Secretariat to Member States, sub-regional and regional groups, in shaping their IP institutional capacity, and how those tools were actually developed as might be gleaned from paragraph 119 of the report of the CDIP which was adopted during the morning session. It said that the Secretariat's reply to that query as reflected in paragraph 125 of the same report, regrettably failed to squarely address that concern. Thus, the Delegation requested the kind indulgence of the Director General in providing clarity and guidance on that matter. Finally, the Delegation wished to underscore the need for Geneva-based Missions to be kept abreast of projects and programs, particularly those intended to be implemented in the respective countries and regions. That would ensure greater coordination thereby facilitating the free flow of information in keeping with the open, transparent and member-driven character of WIPO.

55. The Delegation of Pakistan welcomed the Director General's report, describing it as a positive effort towards the Development Agenda implementation. It said that the personal initiative reflected the commitment of the Director General by providing a second clear account of many of the achievements made and activities undertaken since the last session. The Delegation further noted that the report gave rise to hopes about the implementation of the Development Agenda through collective efforts. Member States would be able to realize their goals of a healthy and balanced global IP system. In the Delegation's view the three part report provided a comprehensive overview of the ongoing efforts to mainstream the Development Agenda in all areas of WIPO's work. It said it was clear from the report that concrete progress was being made in that area and several important steps had been taken by WIPO Member States, the Director General and his team, to ensure greater development-orientation in WIPO's work through development-friendly norm-setting and other initiatives in WIPO's substantive committees. Referring to the section in the report on Development Agenda mainstreaming into WIPO's program activities, the Delegation noted that the section mentioned that the Program and Budget and Program Performance Reports provided structured foundations for mainstreaming the Development Agenda through an approach that established linkages between the Development Agenda recommendations and the various substantive programs of WIPO. It also stated that under the Development Agenda project on Enhancement of WIPO's Results-Based Management (RBM) Framework, an exercise was undertaken to review the current results framework which would provide an insight into where the mainstreaming of the Development Agenda could be further strengthened in the Program and Budget 2012/13 biennium. The integration of the Development Agenda projects and activities in the RBM framework to facilitate monitoring and evaluation was complimented by the adoption of the new budgetary process applied to projects proposed by the Committee. While appreciating those developments, the Delegation felt that the linkages between the Program Performance Reports and the RBM framework to the Development Agenda recommendations needed to be more specific in order to clearly assess the manner and the extent to which the programs had contributed to the Development Agenda implementation. It said that mere provision of linkages might not be sufficient at times. At the same time, while the integration of the Development Agenda projects and activities in the RBM framework and the adoption of the new budgetary

processes for the projects was a positive development, the Secretariat should strive to ensure that there would not be any reduction in the available resources. A major bottleneck in trying to ascertain the level of budgetary allocations for the implementation of the Development Agenda activities was the lack of clear definitions. The WIPO Program and Budget currently did not provide a clear picture of what specific activities were being undertaken as “development activities” and how the resources were being spent in those areas. With regard to the mainstreaming of the Development Agenda in the work of the WIPO bodies, the report mentioned that the work of various WIPO bodies was conducted by following the principles of Development Agenda recommendations. However, it was not clear what benchmarks were used to reach that conclusion. The Delegation said an elaborative example could have further facilitated that understanding. As for the section on Development Agenda projects, the Delegation welcomed the fact that most of the ongoing 18 projects were proceeding appropriately, and it appreciated the contributions being made by those projects. However, it noted that certain projects were lagging behind and hoped that adequate resources would be allocated to them in a timely manner. Though that section highlighted some of the achievements of the Development Agenda projects, there was still room for improvement on discussing the effectiveness of such work and in realizing the development consideration. For example, the report could further expand with regard to the project on Specialized Database Access and Support, highlighting what activities were being undertaken by the Technology and Innovation Support Centers (TISCs) and what specific contribution was being made by them towards inculcating innovation. The Delegation added that a bird’s eye view of Annex 1 of the Director General’s Report gave an impression that work was already underway on most of the 45 Development Agenda Recommendations. However it was worth reiterating at the point that additional activities might be proposed for those recommendations, thus for any recommendation, even if there was already an agreed project for implementation, new projects or activities could still be suggested. In the report, in the section on the future outlook, it stated that WIPO would continue to assist countries in devising appropriate policies and national IP strategies. However, the Delegation noted, it was unclear how the national IP strategies for innovation were being drafted and how the Development Agenda concerns were involved in their implementation. The objective should not be to integrate IP into the national development policies, rather the focus should be on developing IP policies in accordance with the national development policies and priorities.

56. The Delegation of Egypt thanked the Director General for his report on implementation of the Development Agenda contained in document CDIP/7/2. The Delegation noted that the report was the second such contribution from the Director General based on his own initiative to report to the Committee on how the WIPO Secretariat had been implementing the Development Agenda in its activities. It added that the report was separate from the General Assembly’s mandated requirement that the CDIP itself shall ‘Monitor, access, discuss and report on the implementation of all recommendations adopted and for that purpose it shall coordinate with the relevant WIPO bodies’. That of course was the General Assembly’s decision of September 2007. Nonetheless, the Delegation welcomed the contribution of the Director General as an additional effort from the Secretariat reflecting the commitment to a development-oriented outlook for WIPO. The Delegation further stated that the report of the Director General had followed the same structure as the first submitted during the fifth session of the Committee in April 2010. In Part 1, the report presented the Director General’s vision of how the Development Agenda had been mainstreamed into WIPO’s programs and activities and in the work of other WIPO bodies. In Part 2, it presented a factual description of the Development Agenda projects and finally, in Part 3, it presented the Director General’s outlook for the future. It also contained two annexes with an extensive table on the status of the implementation of the recommendations as of end of December 2010 and an overview of approved projects by the CDIP. While endorsing the statements made by the delegations of South Africa on behalf of the African Group and Brazil on behalf of the Development Agenda Group, the Delegation of Egypt highlighted the following seven points on the report. However, before listing those points, the Delegation welcomed the Director General’s commitment to the Development Agenda. Regarding its point, the Delegation welcomed the linkages between the Development Agenda



recommendations and the various programs of WIPO introduced in the Revised Program and Budget for 2009 as well as the sections under each program introduced in the Program Performance Report (PPR) for the 2008/09 biennium, reporting on the contribution to the Development Agenda implementation. Nonetheless it believed that the expected results and performance indicators would benefit greatly from a more focused approach, avoiding broad aggregations and establishing a more direct relation to Development Agenda implementation. Furthermore, it noted that linkages between each of the programs and particularly Development Agenda recommendations did not go far enough towards addressing how those recommendations would be implemented. Second, the Delegation noted that while the report referred to the MTSP as establishing a pervasive focus on development and seeking to incorporate the 45 Development Agenda Recommendations in WIPO's work, the Delegation noted that the MTSP was not approved by the Member States and many Member States had submitted comments on the MTSP which indicated an inadequate development focus. Third, it stated that Member States were encouraged by the adoption of the new budgetary process for Development Agenda projects and activities within the overall context of WIPO's Program and Budget cycle and looked forward to the real-time application of the process in the upcoming Program and Budget cycle 2012/13. In the meantime, while it noted that paragraph 25 of the report pointed to a total financial resource devotion of almost 22 million Swiss francs, the Delegation requested further elaboration on that figure. It said that that would be most useful, given that Member States would shortly be embarking on the Program and Budget process over the coming weeks. The Delegation hoped that the information would be made available as soon as possible. Fourth, on a related point, the Delegation wished to echo what had been stated by the Development Agenda Group that the Development Agenda be funded from the regular budget of the Organization and not through extra-budgetary arrangement and also wished to underline the need for a more transparent definition of what constituted a "development-related activity" in WIPO. Fifth, the Delegation took particular note of the activities under paragraph 12 of the report, concerning cooperation with other inter-governmental organizations. While welcoming WIPO's engagement under the UN system, yet further clarification on such activities and the substantive contributions that the Secretariat had made there under would be useful. It must be ensured that WIPO's engagement in on-going discussions and negotiations in other *fora* on global challenges such as climate change, health, food, security etc. should be guided by the mandate agreed by the Member States and in those cases where those issues had not been discussed by the Member States, nor a consensus had been reached thereon, then it would be premature for the Organization to define a position for itself on those issues. Sixth, the Delegation welcomed the Secretariat's push as mentioned in paragraph 28 in assisting Member States in devising national IP strategies and encouraging them to fully integrate IP into their national development policies. However, it noted that the Secretariat should also be guided by how such IP policies could be development friendly, guided by the very first Development Agenda Recommendation which stipulated that "WIPO technical assistance shall be, *inter alia*, development-oriented, demand-driven and transparent, taking into account the priorities and the special needs of the developing countries, especially LDCs, as well as the different levels of development of Member States". Seventh, while referring to paragraph 29 of the report and the guiding principles of neutrality, transparency and accountability, the Delegation wished to repeat its earlier comments with regards to reference to MTSP in that context and believed that a more appropriate but missing reference would be the Program and Budget documents of WIPO approved by its Member States through consensus.

57. The Delegation of the Republic of Korea, taking the floor for the first time, associated itself with the statements made by other delegations that congratulated the Chair on his re-election. It also thanked the Director General and the Secretariat for having prepared all the documents, particularly the report on the implementation of the Development Agenda. Regarding the current agenda item 7, the Delegation highlighted and reiterated some of the comments previously made by the Delegation of India on behalf of the Asian Group. Although most of the projects seemed to be well implemented and substantive progress had been made, nevertheless, the report suggested that some projects were behind the planned schedule, for

example the project titled IP and Product Branding for Business Development in Developing Countries and LDCs. The Delegation observed that the original target was three countries but as of December 2010 the project was only implemented in two countries. Another example was the project titled Capacity Building in the Use of Appropriate Technology. After a whole year, the project was still in the initial phase of establishing a national experts group. Some delays were understandable such as those caused by the internal situation of benefiting Member States. However, most delays were due to lack of resources for inception. The Delegation then stated that it would like to ask the Secretariat to focus on the progress of all the projects and allocate adequate resources in a timely manner. It might also be helpful if the Secretariat and the Project Managers would seek the cooperation of Member States that had the capability and experience to support the implementation of a particular project. The Delegation informed that it had introduced some projects similar to the Development Agenda project that the Republic of Korea was carrying out. One such project done in collaborating with APEC was called "One Village One Brand" which was very similar to WIPO's branding project. The Delegation added that it was collaborating with an NGO called International Relief and Development on a project that provided appropriate technologies to least developed countries. It was similar to WIPO's appropriate technology project and since their commencement in 2009, both projects had attracted immense interest as well as numerous requests for help from many developing and least developed countries and the Delegation had learned that working together and close cooperation from all the participants was an essential element in making those projects successful. The Delegation reiterated its full commitment to the Development Agenda and its effective implementation and urged the CDIP to continue discussing the major issues in a consultative manner and to try to draw some positive outcomes from the session.

58. The Delegation of Spain congratulated the Chair on his re-election and the Director General for his report as well as the Secretariat for the preparation of all the documentation. Referring to the Director General's report, the Delegation indicated that the content of that document was lacking qualitative information and specifically highlighted the following points: that the report lacked the necessary data and the necessary dates for it to adequately measure the evolution of the different recommendations and different projects; there was no breakdown of the cost of the newly tabled projects. It was very important to have the desegregated cost as the Delegation had stated in other *fora* that it believed the breakdown of cost was vital so that Member States could know the real cost and the efficiency and efficacy of all projects. Also, no specific information was available in the breakdown of the projects that would allow Member States to have an idea and understanding of the financing of activities and how that financing and the budget were used. For example, the Delegation stated that document CDIP/7/2 page 9(6) of the Spanish version did not specify the cost or the origin of financing of the conferences that had taken place. If the financing came from WIPO then Member States needed to know how much they contributed. Another issue of concern to the Delegation of Spain was the experts and how they were selected. It asked why was there a need to keep hiring experts and what were they being contracted to perform? The Delegation nevertheless said it welcomed the overall perspective of the Director General's report and noted that despite recognizing the efforts that had been put into that, there were still gaps that did not help in having a clear idea on the cost, progress made and effectiveness of those projects. The Delegation recalled that Member States had had difficult financial times for many years and urged the Committee to be particularly attentive, cautious and careful when it came to the use of the money and the financing of the Organization. Reiterating the point about the hiring of external experts seemingly on a continuous basis, the Delegation asked whether there were no experts in WIPO to undertake such work. It concluded its remarks by saying that it still believed that good efforts had been made by the Director General and the staff of WIPO and hoped that the next report would show the necessary improvement.

59. The Delegation of the United States of America, taking the floor for the first time, congratulated the Chair on his re-election and reiterated its trust in his able stewardship of the Committee. The Delegation expressed its appreciation for the Director General and the Secretariat for preparing a second outstanding report on the implementation of the Development

Agenda. While intellectual property had always been important for development and while WIPO had throughout much of its history played essential role in helping countries to use the IP system to their advantage, the present report showed that the Development Agenda continued to refocus attention on a critical role of IP as a tool for development, thereby deepening WIPO's commitment to that important aspect of the Organization's work. The Delegation noted further that the report made clear that the Committee had continued to make substantial progress since the General Assembly approved its creation in October of 2007. After little more than three years, 19 Development Agenda projects were now under implementation, funded by nearly 22 million Swiss francs. Many of the projects were clearly meeting Member States' needs, for example the report noted that the projects on establishing start-up national IP academies had attracted considerable attention of Member States as eleven countries had requested WIPO's assistance in helping them to set up such IP academies between May and December of last year. The Delegation recalled what it said last year, that collective progress was an accomplishment of which Member States could be proud of. The Delegation concluded by stating that it looked forward to receiving future reports from the Director General.

60. The Delegation of Indonesia associated itself with the statements made by the Delegation of Brazil on behalf of the Development Agenda Group and the Delegation of India on behalf of the Asian Group respectively. It thanked the Director General and the Secretariat for preparing the report on the implementation of the Development Agenda recommendations contained in document CDIP/7/2. The Delegation said it wished to make comments concerning the implementation of the Development Agenda. First, it felt that mainstreaming the Development Agenda into WIPO's activities was a challenge for both Member States and the Secretariat. It was important that the Development Agenda Coordination Division consulted Member States regularly to ensure that their expectations were met on how the Development Agenda should be implemented and integrated in WIPO. Second, the Delegation requested the Secretariat to provide more details on Annex 1 of the said report on the status of implementation of all the Development Agenda recommendations as of December 2010, to include Member States that were the beneficiaries of the programs, and whether such programs were still on-going or already terminated. The Delegation further stated that the WIPO Secretariat needed to make a regular evaluation and assessment of the overall programs that had been undertaken to implement the Development Agenda recommendations in order to see the direct impact of the program in developing countries. The Delegation was of the view that the integration of the Development Agenda projects and activities in the work of WIPO and the adoption of the new budgetary process was a positive development. However, it would like to see that funds for the implementation of the Development Agenda were derived from WIPO's regular budget and not through extra-budgetary arrangement. It further suggested that WIPO should share information with Member States on the utilization of funds allocated for Development Agenda programs. The Delegation concluded by noting that Coordination Mechanism and Monitoring Accessing and Reporting Modalities was the core of WIPO's work and only through that mechanism could Member States ensure the success of the Development Agenda implementation. It was also one of the three pillars of the mandate of the CDIP and should be implemented in other WIPO bodies, including the standing Committee of WIPO, the Delegation added.

61. The Delegation of Norway thanked the Director General for his very informative and useful report. The report showed very clearly that a great deal of work had been done in WIPO to secure Development Agenda mainstreaming into its activities. The Delegation also expressed its pleasure to learn about specific achievements on projects that had been highlighted in the document. Development issues relating to IP remained of the highest priority to the Delegation, but at the same time, it was very important that WIPO secured adequate resources to focus on providing its global services and normative processes. The Delegation said it would be seen that an extensive number of projects had been launched since the CDIP was established. In its view, it was essential to ensure capacity in WIPO to follow-up important findings and positive outputs that could be seen in projects already underway. Much success had been found in walking the path toward showing good results. Therefore, the Delegation believed that a thorough evaluation of projects and activities was essential to guide the Committee further and

welcomed the Director General's announcement that completed projects would be evaluated and presented to the CDIP.

62. The Delegation of China thanked the Director General and Secretariat for the preparation of the documents and the report on the implementation of the Development Agenda recommendations. The Delegation believed that the Director General's report gave a full description and analysis of the implementation of the Development Agenda. As a developing country, China alongside other countries was delighted to see that the 19 projects had registered specific and concrete outcomes and results. In that context, it noted that with the guidelines provided by the Coordination Mechanism and the Monitoring, Assessing and Reporting Modalities, the different recommendations would enjoy specific outcomes as stated earlier. The progress was the result of the mechanism and the efforts made by WIPO and its Member States. The Delegation hoped that in the future WIPO would continue to strengthen its coordination with Member States as well as its planning role and assign and allocate sufficient resources to implement the Development Agenda.

63. The Delegation of India expressed support for the statement made by the Delegation of Brazil that spoke on behalf of the Development Agenda. As stated in the Asian Group and the Development Agenda Group statements, the Delegation was of the view that a good beginning had been made in the implementation of the Development Agenda in several areas. Without repeating the points made in those statements, the Delegation wished to make some additional comments that were intended to constructively contribute to enhancing the Development Agenda implementation and should not be construed as taking away anything from the good work done so far by the Director General, his team and the Member States of WIPO. As mentioned by several others, the Delegation of India stated that while Member States welcomed the linkages with the Development Agenda in the Program and Budget document and the Program Performance Report (PPR), it was important to go beyond and proactively propose specific development oriented programs with adequate funding. It stated that the setting up of technology innovation support centers or TISCs was an initiative introduced following a proposal from that Delegation. It had been proposed to "foster creativity and innovation in developing countries and least developed countries" as directed by the Development Agenda. The extent to which the TISCs were going to realize that and the contribution so far in the countries where they had been set up was unclear. The Delegation then requested the Secretariat to clarify that by indicating what concrete steps WIPO was taking to support development of national scientific and technological infrastructure as stated in Recommendation 11 and to assist in setting up appropriate national strategies in intellectual property as mentioned in the Development Agenda Recommendation 4. The Delegation added that promoting a development oriented IP culture, essentially making development considerations an integral part of the work of every WIPO body was recognized as part of the Organization's strategic vision. However, the recent proposal for norm-setting on industrial design in the Standing Committee on Trademarks, Industrial Designs and Geographical Indication (SCT) did not take on board the Development Agenda's recommendations on norm-setting as mentioned by some other delegations the previous day. Developing countries would therefore be compelled to request for an information document in that regard. The Delegation expressed its hope that norm-setting initiatives in all WIPO bodies and committees in the future would automatically comply with Cluster B of the Development Agenda on norm-setting and also provide reports on such compliance. Similarly, the Delegation noted the rejection by the Committee on WIPO Standards (CWS) recently of a General Assembly mandate to factor in the development dimension in its work was, from its point of view, a regrettable setback. It said that that showed that there was continued resistance in some quarters to changing the traditional mind-set on IP and in recognizing that every output, even if it was of a technical nature, had an implication from a development prospective. Indeed, the Delegation stated, Recommendation 27 of the Development Agenda requested WIPO to facilitate IP-related aspects of ICT for growth and development and specifically mandated WIPO to identify practical IP-related strategies to use ICT for economic, social and cultural development. While there was the willingness to consider specific development projects to implement such recommendations in the CDIP, there seemed to be an unwillingness to actually

mainstream those recommendations in the relevant WIPO committees, as in the case of the CWS. Taking into account the directives of the Development Agenda, the General Assembly mandate which reflected the Committee's mandate and recognizing the inter-linkage of IP-related ICT to development, the Delegation looked forward to the reversal of the CWS decision on the same lines. Unless there was a collective willingness to really integrate the Development Agenda in the substantive work of various WIPO bodies, the Delegation was concerned that the Development Agenda would remain limited to a few thematic projects in the CDIP. That, in the Delegation's point of view, would not be in the interest of developed and developing countries alike. In conclusion, the Delegation thanked the Director General once again for the comprehensive and encouraging overview of the implementation of the Development Agenda and looked forward to continued progress in that direction.

64. The Delegation of Venezuela thanked the Director General for his report and referring to document CDIP/7/2, noted that paragraph 8 in particular stated that the Coordination Mechanism provided additional tools to the CDIP to ensure that the development considerations were an integral part of WIPO's work. The Delegation therefore inquired from the Director General, if as part of that tool, he would consider the role of information flow that needed to exist between committees in WIPO. The Delegation recalled that the day before, in its opening statement, it mentioned the need to leave aside the interpretations of the mandate as it was being made both by the Secretariat and by some of the Member States that the mechanism rather than becoming a problem of different interpretation or reading of procedural issues, should become a tool for the implementation of the Development Agenda. Secondly, the Delegation asked the opinion of the Director General as regards the Committee's mandate, as was raised at the General Assembly and what was being done in terms of sharing of information or flow of information from the different committees to the CDIP, and if that had been helped by those additional tools.

65. The Delegation of Colombia congratulated the Chair on his re-election and assured him of its full cooperation to ensure the success of the meeting. The Delegation also thanked the Director General and the Secretariat for preparing the report on the Implementation of the Development Agenda and their commitment to achieving that objective. The Delegation observed that the report enabled Member States to have an overview of how the different bodies of WIPO had been contributing to the implementation of the Development Agenda in an integral way and gave clarity on the points that needed to be addressed. It would also certainly serve as a guide for progress in implementation of all the recommendations approved by the Assembly. The Delegation believed that the evaluation of projects given by the Director General was of vital importance to introduce the necessary correction and improvements for projects so that they would become ever more effective in their impact in developing and least developed countries. The Delegation said that it paid particular attention to the reference made by the Director General on providing assistance to countries in establishing plans and policies which were appropriate, particularly those for national strategies on intellectual property, within the framework of WIPO's Strategic Goal 3 and on the integration of intellectual property policy into national policies. The Delegation also stated that Colombia was one of the Latin American countries which had put forward and pushed for policies on intellectual property that included the protection, use and promotion of intellectual property for economic and social development. Therefore the Delegation considered it necessary to maintain support through simpler and more expeditious channels so that a growth of intellectual property offices could materialize.

66. The Delegation of Nigeria congratulated the Chair on his re-election and thanked the Director General for his report as well as Mr. Geoffrey Onyeama, the Deputy Director General, for the positive achievements recorded since October 2007 in the work of the CDIP. The Delegation supported the position of the African Group and stated that it would be glad to see more progress in the pace of the Development Agenda implementation and allocation of resources for CDIP programs. The Delegation added that it would be happy to see the mainstreaming of the Development Agenda within the global intellectual property system which had been a focus of the Director General, in particular, issues regarding access to medicine and

challenges facing that sector. The Delegation added that there was a sense of commitment by the leadership of the Organization in achieving positive progress in the work of CDIP and as such, it believed that the level of commitment would translate into positive progress in CDIP programs and their implementation.

67. The Director General commented on the statements of the delegations that had spoken. First of all, he noted that many delegations had asked for more detail in the report in its future version, and he reassured the Committee that additional details would be provided. The Director General pointed out that the Committee somehow had to get a balance between the project documents and the role they played; progress reports which were presented at the last session of the CDIP and which would be provided at the next session as well; the Program and Budget document which provided certain amount of financial data in line with the desire of the membership to mainstream all the projects so that they would be part of the regular budget which would indeed be the principal document in which the financial data of the various projects would be treated. Of course all of that could be repeated in the document. Citing the remarks of a particular Delegation that requested the modification of the objectives spelt out in the project document, the Director General stated that those objectives had been modified and added to by the Member States, and that at some stage a balance between whether that document was going to be the repository of all information or simply an overview of progress of the Development Agenda would be needed. On norm-setting, the Director General noted that the responsibility for that as well as for all policy rested with the Member States, and if he was not mistaken, he interpreted that a number of the interventions made in that regard were directed toward the Secretariat whereas he would suggest that the interventions be made between and among the delegations, since it was the Member States who were responsible for determining the implementation of the recommendations of the Development Agenda with respect to norm-setting. He said the Secretariat was unable to really influence that since it was the Member States' domain entirely. He observed that a lot of delegations had expressed concerns about the references to the participation of the Secretariat in the various meetings of other international organizations, which he said was something that the WIPO Member States had encouraged in the past. He stated that the policy of the Organization with respect to intellectual property was established by the Member States and the Secretariat could only reflect that policy and where there was no agreed policy, which was the case for vast areas of intellectual property and numerous questions in particular the latest state of the art questions that arose with respect to intellectual property, the most that the Secretariat could do was to provide information about the way in which the particular question or item was being addressed within national jurisdictions by various Member States; that was the most that the Secretariat would be able to do. The Director General added that with respect to a number of comments on projects, insofar as a project might affect a particular Member State, the Secretariat would like to invite that Member State to send in writing its comments that would gladly be responded to. For example, he noted that one Delegation had mentioned the delaying of the Start-up National IP Academy that applied to its country, and considering all the details that had to be incorporated, a lot of the delay that had occurred were with respect to discussions that were taking place in relation to the sort of expenses that could be borne by the Secretariat. In line with the policy that had been practiced by the United Nations system for decades now, capital expenditure was not provided. For example the Secretariat could not pay the rental for a premises for Start-up Academy and the reason for that was that the UN policy in the development area was that it had to be sustainable so that after the project had ended, if there was no further provision for the payment of rental then of course the whole thing would collapse and he added that he would simply suggest to engage in a conversation about the implementation of a project in a particular area. Considering the obligations to abide by the policy that had always been applied in the Organization in the development area, it could explain in one instance the delays that were experienced on the Coordination Mechanism. In respect of the question put forward by the Delegation of Venezuela on the Coordination Mechanism, the Director General explained that he could not provide an answer to it because it was felt that the matter fell within the purview of the Member States rather than the Secretariat. The Director General then pointed out that as the delegations were aware, the issue of how to

deal with the Coordination Mechanism had been discussed in a number of other committees, and noted that in general perhaps what he could say was that if a committee met twice in a year, the way it seemed to be coming out was that the Member States would agree that the question of the report of that committee on the implementation of the Development Agenda to the Assembly be considered at the second or closer to the Assemblies meeting and at that stage an agreement should be reached as to the form of that report, who should draft it, and how it should go. The Director General explained that he could not go beyond that because that had to do with the extent of the understanding that had been reached among Member States and beyond that it was up to them to decide.

68. The representative of the International Video Federation (IVF) speaking on behalf of producers and distributors of audiovisual works around the world, including major companies and SMEs, stated that the audiovisual industry contributed significantly to economic, social and cultural development around the world. The audiovisual sector relied on effective exclusive copyrights but also on appropriate exceptions and limitations. The representative stated that balance and flexibility were inherent in the existing IP system, and welcomed the CDIP projects and initiatives aimed at supporting developing countries to make better use of the IP system for their social, economic and cultural development. The representative observed that trying to reinvent the IP system would get IP stakeholders nowhere, and concluded that supporting developing countries in determining and implementing policies that best suited their interests would be much favorable to all.

69. The representative of the Library Copyright Alliance (LCA) which represented over 139,000 academic research and public libraries in the United States of America providing library services and promoting the public interest congratulated the Chair on his re-election and stated that the substantial efforts made to implement the Development Agenda as outlined in the Director General's report, the quantity of projects, and the extensive documentation were an evidence of the strategic priority of that work within WIPO's larger agenda. The representative particularly appreciated the efforts being made to enhance the participation of civil society in the Development Agenda initiative which greatly increased the understanding and benefited all stakeholders in the IP system. He further commented on the excellent scoping study on copyright and related rights in the public domain. As the Committee continued with the implementation of the work program, the representative urged the Member States to focus on qualitative social and cultural change that could result in an enhanced flexibilities system in national copyright laws. Within the numerous projects, it needed to be ensured that with respect to the diffusion of information and creative content, everything possible was done to create change that effectively met the needs of the information users in developing nations in the future. The representative further suggested accelerating efforts to increase limitations and exceptions and other flexibilities in national laws through a concrete initiative in the Committee and also to consider an evaluation of actual change across national laws as a CDIP project. The representative argued that there was the need to ensure that public policy principles that were integral to the Bern Convention and other international treaties would be incorporated into private contracts relating to information. As the Director General, Dr. Francis Gurry indicated in recent months, global norms related to private contracts needed to be established to ensure that the public policy of copyright law was brought into licensing regimes. The representative encouraged Member States to open a discussion of limitations to contract law to bring public policy into the licensing mechanisms of the future. The issue of mainstreaming the Development Agenda was critical in 2011 and 2012 as the Standing Committee on Copyright and Related Rights (SCCR) advanced its agenda on copyright limitations and exceptions. The Representative urged the CDIP to contribute to the work of the SCCR towards a new normative solution for copyright and licensing that strengthened flexibilities in national laws of the least developed nations, recognizing that that was an urgent need. The representative stated that the most important responsibility of both Committees at that time was the establishment of copyright limitations and exceptions to enable those with print disabilities to read and to create an environment where libraries and archives could fulfill their responsibility to society for collecting, organizing, preserving and making available information and to enable educational

and research institutions to perform their activities in a global information society. In conclusion, the representative urged the Member States to reinforce their efforts as a fundamental commitment of the Development Agenda.

Agenda Item 7: Consideration of work program for implementation of adopted recommendations

Consideration of Document CDIP/7/3

70. The Secretariat presented the document CDIP/7/3 Patent-Related Flexibilities Part II in the context of the discussions on Development Agenda Recommendation 14, and recalled that Member States at the fourth session of the CDIP that was held in April 2010, had requested WIPO to extend the study in document CDIP/5/4 on flexibilities in the area of patents to new flexibilities. Document CDIP/7/3 was submitted for Member States' consideration and as agreed by the CDIP, it addressed the following five flexibilities: Firstly it addressed the transition period left to WTO members in order to implement the TRIPS Agreement and in particular, it provided an illustration of the different periods of implementation available to developing and least developed countries. The second part related to issues that pertained to the patentability of substances existing in nature and replicas thereof, focusing on the international legal framework, the notion of invention and the different solutions that were adopted at the national level by different countries. Thirdly the document addressed the issue of disclosure including illustrating international legal framework on the issue and listing some areas of flexibility in respect of the disclosure of invention. Fourthly, substantive examination systems described in the document and some characteristics of such types of patent examination and finally, the option for countries to adopt *ex officio* IP office control on licensing contracts in order to avoid anti-competitive practices. That section was, as the title indicated, limited to the control of competitive clauses and did not elaborate on the broader framework of licensing agreements in general. The Secretariat stated that the document contained quite broad annexes as in the first document on patent related flexibilities. The first one contained relevant provisions of national and regional laws and the second one categorized some specific elements of the flexibilities contained in the document. The Secretariat concluded that the document intended to map the situation worldwide in respect of those five flexibilities and attempted to reflect countries' choices as factually as possible. It said as it was in the case of the first flexibilities study, the present document remained open for the correction of factual errors and mistakes that it might contain.

71. The Delegation of Brazil, speaking on behalf of the Development Agenda Group, thanked the Secretariat for developing further the previous study contained in document CDIP/5/4 and for presenting a preliminary study on five other flexibilities namely transitional period, patentability of substances existing in nature, disclosure related flexibility, examination systems and *ex officio* intellectual property office control of anti-competitive clauses in patent licensing agreements. The Delegation recalled that the study was conducted in the framework of Recommendation 14 of the Development Agenda, according to which WIPO should make available advice to developing countries on the implementation, understanding and use of flexibilities contained in the TRIPS Agreement. The Delegation noted in that regard that document CDIP/7/3 gave only a very general overview of the five flexibilities in what it was supposed to study. The Delegation noted that in most cases, the study merely scratched the surface of the issues by mentioning a handful of authors with diverse fields, and stated that the Development Agenda Group expected the study under reference to dwell exhaustively on each of the five flexibilities. It said only after a thorough analysis of those flexibilities would WIPO be in a position to "make available advice to developing countries and LDCs, on the implementation and operation of the rights and obligations and the understanding and use of flexibilities contained in the TRIPS Agreement" as Recommendation 14 had requested. The Delegation therefore questioned the quality of the advice WIPO had been giving to developing countries in the absence of such analysis, and requested that further work in that regard should be conducted. It believed that the scoping study on copyright and related rights and the public



domain was the model that should be followed to that end. Turning to the document CDIP/7/3, the Delegation stated that those comments should be reflected in a revised version of the document. With regard to the important issue of a transitional period, the Delegation noted that that was provided in recognition of the special economic and administrative constraints faced by LDCs and their need for flexibility to create a viable technological base. It said the report had pointed out that LDCs were often renouncing the general transitional periods available to them under the TRIPS Agreement and acceding to the WTO which was a matter of concern. The Delegation expressed its hope that the flexibilities available to LDCs and other developing countries under the TRIPS Agreement would be duly underscored in the legislative and technical assistance provided by WIPO. With regard to patentability of substances existing in nature, the Delegation observed with concern that some national legislation expressly provided that existence of a naturally occurring material was not an impediment for patent protection of the biological material isolated from its natural environment, produced by means of a technical process or unpurified or altered form. In the absence of the obligation to disclose the origin of the biological material in question, those legislations provided a stimulus for misappropriation and granting of erroneous patent. That only confirmed that a mandatory disclosure of origin of genetic resources and traditional knowledge was of utmost importance to avoid erroneous patents and misappropriation. Moreover, the Delegation noted, the absence of definition of what was an invention was one of the most important flexibility in the TRIPS Agreement and that flexibility was not further developed by document CDIP/7/3. Each Member State shall have the flexibility to design its patent system in accordance with its own legal system and practice. Regarding the disclosure related flexibilities, the Delegation stated that document CDIP/7/3 was rather surprising since it opened the possibility of the line that the disclosure requirement was the basic rationale for the very existence of the patent system. Paragraph 49 not only contradicted what was commonly understood as the reason that justified the existence of the patent system but it was also in contradiction with the TRIPS Agreement, especially in what concerned Articles 7 and 29. Sufficiency of disclosure was also a tool to improve legal certainty since it avoided growth of litigations while it defined with more clarity the bounds of the patents. The Delegation suggested that the revised version of document CDIP/7/3 should include a section dedicated to that issue. In that regard, the Delegation said concerning the disclosure of origin of genetic resources, the Member States of WTO and WIPO should find a common solution for that problem as soon as possible. It also argued that it was necessary to find a multi-lateral solution in order to make the IP system compliant with the provisions of the Nagoya Protocol to guarantee that the IP system would not grant erroneous patents based on the misappropriation of genetic resources and traditional knowledge. It noted that the WIPO IGC had a clear mandate to find a common ground in regard to the protection of genetic resources and traditional knowledge. It further stated that the mandatory disclosure requirement was the best way of complying with Nagoya Protocol and of guaranteeing that countries would not grant erroneous patents. It therefore urged Member States to fight against theft and misappropriation of biological material and associated traditional knowledge with the same commitment to the fight against other IP violations, because of the negative impact over traditional communities and biodiversity at a broader level. Finally in what concerned the substantive examination, the Delegation said it did not agree with paragraph 83 of the study which stated that conducting research and substantive examination for all applications might not be the best approach for all patent offices, which was a clear reference to developing and least developed countries. It said WIPO should support Member States in developing national capacity and their national IP systems, and should not suggest that having a complete patent system was something restricted to a few countries. Documents CDIP/7/3 should mention options available for all countries, which was to develop a national system of full substantive examination. In fact, document CDIP/7/3 erroneously suggested that developing and least developed countries should only revalidate patents granted abroad without taking into account the quality of the patent. It also suggested that while revalidating those patents, developing and least developed countries should ensure the principle that those patents fully complied with disclosure requirements and that the criteria for patentability were applied for those patents accurately, and as such, section 5 of document CDIP/7/3 should be revised in order to be in line with the

Development Agenda recommendations. The Delegation noted that the Development Agenda provided that the IP system should be inclusive, allowing developing countries and LDCs to benefit from it. The most adequate approach to that would be in what way cooperation should increase national capabilities in order to allow that all Member States would be capable of developing a national system of full substantive examination. Adopting other options should be a matter for national decision. However, what WIPO should guarantee was that its members be capable of fully implementing their national compromises while taking into account their own socio-economic realities and legal systems. The Delegation said that that was the kind of advice that it would expect from WIPO.

72. The Delegation of the United States of America expressed its appreciation to the Secretariat for its preparation of the preliminary study on five additional patent related flexibilities and had three sets of comments on the study. First, with respect to the sections on disclosure related flexibilities and substantive examination, from pages 20 through 35, the Delegation noticed that a few references to practices at the US Patent and Trademark Office (USPTO) appeared to be incomplete or inaccurate. The Delegation therefore offered its assistance to the Secretariat to clarify those factual issues on the margins of the meeting. Second, with respect to the indication of the origin of biological material section of the study, pages 27 through 29, or paragraphs 74 through 80, the Delegation noted that document discussed WIPO and TRIPS Council submissions containing proposals for new disclosure requirements on the patent laws, treating its requirement as one type of patent related flexibility. However, the Delegation pointed out that the document was not considering submissions that identified the limitations and harmful effects of such proposals. The Delegation recalled having produced several such submissions. One example would be the TRIPS Council document IP/W/C/434. The issue of the disclosure of the origin of biological material was the subject of on-going discussions in the WTO. The studies and interpretation of WTO TRIPS Agreement provisions as well as the inclusion of only some WTO members' views were in the Delegation's view, prejudicial to on going WTO TRIPS Council and other WTO discussions. The Delegation then suggested that until that issue was settled, it would be best to separate that discussion from the general discussion on the disclosure related flexibilities and placing it in a new section of the study titled "Other Issues", complementing that new section with a discussion reflecting the full range of views on the issue. The Delegation stated its objection to Part 6 of the document as written, which was entitled "Ex-officio office control of anti-competitive clauses in patent licensing agreements". Despite considering the narrow mandate the Secretariat had to operate within, the Delegation said in its view that part of the document did not adequately account for the pro-competitive benefits of patent licensing and failed to properly reflect the varied relationships between competition and IP agencies. The Delegation noted that competition policies vary widely among countries and regions. Part 6 of the document did not represent that broad spectrum of policies. A descriptive policy-neutral document that would draw on differing national and regional approaches to illustrate rather than prescribe specific policy approaches should have included the experience of the developed countries including the United States. Specifically, the Delegation noted that the document should have recognized that IP offices in many jurisdictions such as the United States of America did not examine the competitive impact of IP licensing agreements, rather competent anti-trust agencies or courts hearing anti-trust claims would perform that complex and nuanced analysis as needed on a case by case basis. IP offices generally were not set up or qualified to examine the nuance of IP-related competition issues in that manner. Therefore Part 6 of the document failed to reflect the widely recognized notion that patent licensing generally was pro-competitive. Rather it was suggested that patent licensing was inherently suspicious. Patent licensing typically was pro-competitive because it permitted patent donors to maximize the usefulness of their inventions by giving them the opportunity to combine the IP rights with other parts of the production process such as manufacturing facilities, channels of distribution and workers. Patent licensing did facilitate technology transfer and permitted companies to engage in open innovation, acquiring access to the best inventions that would fit their business model, even if they originated in other company's research and development efforts. Cost licensing frequently resolved blocking patent scenarios that could prevent companies from using the wrong technologies. As a result

of patent licensing, consumers benefit from the introduction of new products and reduce costs of production. Part 6 of the document also failed to recognize the likely pro-competitive benefits of grant back clauses, agreements to grant patent rights from licensees back to the original licensor. The Delegation further observed that grant backs could promote innovation and the subsequent licensing that was mentioned by protecting the ability of first innovators to practice improvements to their inventions after having been enabled that follow on inventions by others. Grant backs were limited in scope to the license technology and non-exclusive or unlikely to harm competition. In addition to not recognizing the pro-competitive benefits of patent licensing, Part 6 of the document failed to explain that jurisdictions like the United States of America analyzed the vast majority of all the licensing agreements under the rule of reason, in other words, that was about looking closely at the economic effects of the agreement on the market to determine whether any harm to competition would outweigh the pro-competitive benefits of the agreement.

73. The Delegation of Colombia thanked the Chair and the Secretariat for the document prepared. As a developing country, Colombia found the work done by the Secretariat as very important and significant. The Delegation believed that that work would support development and the IP system as a whole. Looking at documents CDIP/5/4 Rev. and CDIP/7/3 on patent related flexibilities in the multilateral legal framework and the legislative implementation at the national and regional levels, the Delegation said that it should incorporate aspects that would allow extending the perspective in relation to such flexibilities. The Delegation highlighted the differentiation made between paragraph 52 of CDIP/5/4 Rev. on the use by Government and the public interest as ground for compulsory license. The Delegation reiterated its interest in that matter and informed that the contents of the report were being analyzed in its capital. In relation to the report on the IP rights, the Delegation indicated that it did not agree with the idea that developing countries put in place import mechanisms to prevent the parallel import of medicines for combating HIV/AIDS. The Delegation argued that it was important to take necessary steps to reduce the cost of those medicines and mitigate the burden of their procurement on the social security and economy of the countries concerned. It informed that its national legislation allowed the Minister of Social Protection to authorize parallel imports, which were compatible with Article 6 of the TRIPS Agreements. It also stated that as indicated in the Declaration on the TRIPS Agreement and Public Health, each member of the WTO was free to determine its own rights regime, which was the right system in the Andean region by virtue of Articles 54 and 158 of Decision 4.6.8. Looking at document CDIP/7/3, the Delegation wished to refer to two of the topics, notably the patentability of substances existing in nature, and flexibilities relating to disclosure. On the patentability of substances existing in nature, as the document made clear, the Delegation said several legislations including those in countries of the Andean community, had excluded the patentability of substances existing in nature even if there was a human intervention in order to try and isolate substances existing in the natural state. That, the Delegation said, was in accordance with Article 27 of the TRIPS Agreement. The legislative regimes or systems applied different criteria on what was believed to be an invention in the Andean Region. That was why there was no need to continue discussions on greater clarification on what was meant by that issue or what was meant by an invention. Given that that was one of the principle flexibilities contained in the Article mentioned earlier pertaining to disclosure related flexibilities in chapter 4, the Delegation noted that in document CDIP/7/3, reference was made to the indication of the origin of biological material whose disclosure was supported by a country and work in that field was something parallel to WTO. The Delegation nevertheless argued that it would have been worth including in the document a reference to the proposal made in 2008 by a large group of Member States of the WTO, including developed and developing countries with Colombia among them, that called for the establishment of a requirement for disclosure of origin, as well as a reference to more recent proposals also supported by that country which were in line with the Nagoya Protocol arising from the Convention on Biological Diversity (CBD). Turning to paragraph 80 in which references were made to the issues to be debated in the WIPO IGC, the Delegation, in accordance with the position adopted in the WTO, had been supporting such obligatory or mandatory disclosure requirement.

74. The Delegation of Mexico thanked the Chair and the Secretariat for preparing document CDIP/7/3 and in that context noted that the methodology used was appropriate in revising the necessary information for the attention of Member States with regard to patent-related flexibilities contained within the TRIPS Agreement which could then be applied by different countries bearing in mind the different national legislations. It said that Member States could request support from WIPO to coordinate any assistance in that regard. The Delegation also welcomed the information about Mexico's legislation which was contained in the Annex, and noted that the information provided was up to date and accurate. Finally, the Delegation expressed its interest in the study and offered further cooperation to the Secretariat so that it could continue with that work.

75. The Delegation of Canada thanked the Chair and the Secretariat for the effort that had been put into the study as well as for the introduction that was provided on the document. The Delegation expressed its support for the statement made by the Delegation of the United States of America with respect to the disclosure section of the document and the potential utility of making those adjustments with respect to the structure of the document pertaining to the paragraphs in question under section 4. The Delegation also noted some of the comments made by various delegations with respect to inclusion of certain WTO documents pertaining to the discussions on disclosure and stated that, in its view, it would not be appropriate to include such documents in that particular study.

76. The Delegation of India thanked the Secretariat for taking on board Member States' request and presenting CDIP/7/3 containing a preliminary study on five specific flexibilities, and said it fully supported the statement made by the Delegation of Brazil, speaking on behalf of the Development Agenda Group. While avoiding repetition, the Delegation highlighted one general point of concern and commented that the study was rather sketchy and inadequate, whereas delegations would prefer that such a critical area of interest would deserve a more detailed study providing an in-depth appreciation on the issue of flexibilities. It recalled that the Secretariat was requested to have the study revised taking into account the comments made by the Development Agenda Group and other delegations. It further requested that its revision should be modeled along the lines of the excellent scoping study on copyrights, related rights and the public domain which clearly also was on the agenda of the Session. The Delegation added that it was particularly concerned about part five of the study pertaining to substantive examination and expressed its surprise that the Secretariat decided to recommend that all Member States did not need to conduct substantive examination for all patent applications. While paragraph 94 rightly recognized the territorial nature of patent legislations and the sovereign right of each Member State to evolve substantive examination systems that responded best to its needs by stating that "based on a cost and benefit analysis Member States have many options in defining the search and examination mechanism that best fitted the national/regional patent systems". However, in the Delegation's opinion, that part surprisingly contradicted the assertion in paragraph 83, that conducting such an examination for all applications might not have been the best approach for all patent offices owing to the complexity and cost of the task. The recommendation which followed that assertion in paragraph 83 was even more startling according to the Delegation, since it recommended different options "such as conducting only formal examination or conducting formal examination and search, or conducting also substantive examination but relying on work carried out by others via cooperation arrangements". The Delegation recalled that discussions on work sharing and outsourcing of certain examination of patent applications in the PCT Working Group in WIPO clearly revealed divergent views on the subject. It observed that in an objective study, it would be perhaps more advisable to refrain from making an equivocal recommendation especially considering the lack of convergence on the matter. The prerogative of sovereign Member States which permitted them to determine their own search and examination procedures consistent with the national laws and considerations such as patent quality, efficiency and cost should be respected. The Delegation of India therefore found it difficult to accept paragraph 83 and requested that it should be deleted from the revised version of the document.

77. The Delegation of Japan said it appreciated the enthusiastic work on the issue of flexibilities that was conducted by the Secretariat in light of the related recommendations such as Recommendations 14. It said it had consistently maintained that WIPO should provide practical and concrete advice on the understanding and use of flexibilities contained in the TRIPS Agreement so that Developing countries and LDCs would be able to easily implement them in appropriate cases. From that standpoint, the Delegation stated that compilation of relevant provisions of domestic laws of Member States would be not only proper as a means of advice to developing countries and LDCs, but also suitable for the neutrality of WIPO, rather than execution of general and conceptual analysis referring to academic papers on the subject. Furthermore, the Delegation noted that flexibilities contained in the TRIPS Agreement should not be primarily recommended measures by WIPO or WTO to each Member State but as alternatives which could be adopted, upon judgment of each Member State, where appropriate. The Delegation therefore remained concerned from the aforementioned viewpoint, that the conceptual analysis introduced in the documents CDIP/7/3 as well as CDIP/5/4 Rev., would lead Member States to a misinterpretation, despite the fact that there were various constructions on flexibilities contained in the TRIPS Agreement, as if WIPO were supporting and recommending specific ones, and any measures presented in the document were compliant with the Agreement. The Delegation further stated that regarding the five patent-related flexibilities mentioned in document CDIP/7/3, it could not help but to express the same grave concern. Especially in relation to the five patent-related flexibilities, the Delegation said it would like to suggest that WIPO should not unnecessarily expand the scope of the TRIPS flexibilities by deeming items which were not explicitly provided in the TRIPS Agreement to be within the scope of the flexibilities without any deliberation simply because of the fact that no provision referred to those items. It suggested that WIPO should instead provide objective and practical advice based on facts, and should avoid misleading Member States on the issue. In that regard, the Delegation pointed out that paragraphs 110 and 111 might be misleading. It noted that in paragraph 110 it said “competition policy is often a new instrument and there is not always a body able to address questions related to anti-competitive practices”. According to the document, it appeared that the use of *ex officio* IP office control described in paragraph 111 overcame that lack of capacity. Because in most cases whether a licensing contract was anti-competitive or not should be analyzed on a case by case basis by a competent authority with sufficient capacity, it would be much better to indicate not only the use of IP office but also offer practical advice on how to build the capacity to address questions related to anti-competitive practices.

78. The Delegation of the Netherlands congratulated the Chair on his re-election and thanked the Secretariat for the documents prepared. Commenting on document CDIP/7/3, the Delegation referred to Annex 2 on page 59 with regard to formal examinations in the Netherlands and stated that it was important to highlight that the patent would be granted regardless of the outcome of the examination so the footnote would need to read “regardless of the outcomes of the examination the patent will be granted”.

79. The Delegation of the Plurinational States of Bolivia thanked the Chair and the Secretariat for the valuable documents prepared and in that context, it noted that on page 26, under the paragraph on disclosure in the footnote number 136, Bolivia was listed as one of the group of countries. For the requirements of disclosure on the patent system however, Bolivia was not a member of that group of countries. The Delegation believed that there should be a broader scope proposal on patentability of life. Generally speaking, looking at the chapter on patentability of substances existing in nature, the Delegation stated that it found many interesting nuggets of information and it had been analyzed in its capital particularly Chapter 3. In that context, the Delegation noted that countries, as a result of a broad ranging definition of what an invention meant, and how an invention was patented on products existing in nature or substances existing in nature, and as stated earlier, a concern on that had been raised in several other *fora* and here in different WIPO committees. The Delegation said it seemed that the approach had been confirmed by the information contained in the document. Thus the Delegation requested further information on that particular chapter especially on the flexibilities

available in the international system. In its view, the focus in the study seemed to be limited to flexibilities particularly, the definition of what a micro-organism was, but it ignored other flexibilities for example public morality or public order. It said the document did not explain what constituted an invention or more precisely what constituted inventive steps. That would need to be more systematically explained, and in-depth analyses of what flexibilities existing in the international system needed to be highlighted.

80. The Delegation of Chile congratulated the Chair on his re-election to lead the Committee and re-assured that it would fully support the work of the Committee to achieve successful results. It also thanked the Secretariat for the preparation of the documents and CDIP/7/3 in particular. The Delegation noted that the document in question had only been available in Spanish a few days before the meeting and only preliminary comments could be made at that stage, and given the importance of the topic, it suggested that delegations and experts should be provided with enough time to study the document in detail. In consequence, the Delegation requested that the document in question remained open for discussion in the agenda for the next CDIP meeting. In general terms it said it would like to highlight that in its opinion, the document drawn up by the WIPO Secretariat was balanced and contained a great deal of factual information. Nevertheless, it agreed, with those who had raised the point, that the document could be improved or fine tuned. The Delegation added that the methodology and the approach used was appropriate. From its point of view, the focus was more on its content and thus believed the work carried out by the Secretariat and included in the document correspond to what was requested. The Delegation added that it was asked for a factual analysis from WIPO and that was contained in the document, which provided relevant information on the multilateral and international legal framework on the five flexibilities as they related to patents as well as examples at a national legislative level. All this information would need to be considered to ensure that each Member State could take the appropriate decision on flexibilities related to patents with an eye to its own interest and own reality on the ground. As explained earlier, the document made references to a number of flexibilities, which were very important and the Delegation expressed its intention to come back to those at a later session. Nevertheless, for the time being, it said it would like to refer to a single one of those, namely the *ex officio* verification of anti-competitive clauses in patent licensing agreements. As far as it was concerned, the key importance of competition norms and standards in relation to IP rights had been recognized not only in the TRIPS Agreement but also in subsequent bilateral agreements. Nevertheless, *ex officio* control or analysis by the IP office had carried with it a range of pre-suppositions, which as far as the Delegation was concerned, had not been fulfilled. For example in Chile, the industrial property office did not have the option or the right to revise licenses or licensing agreements given that those were contracts between private entities and the role of the offices might facilitate that. In terms of competition policy, that was dealt with by a different office, so when an entity wished to register the license of patent agreements then a different office would be responsible for it as opposed to the IP office. To conclude the Delegation looked forward to the opportunity to come back with further comments on the other flexibilities at a later date.

81. The Delegation of Australia congratulated the Chair on his re-election and expressed its appreciation for his guidance. The Delegation also thanked the Secretariat for the preparation of the document CDIP/7/3 and its comprehensive annexes in particular. The Delegation further stated that it was generally in support of the statement made by the Delegation of Japan, which argued that the paper should avoid developing new areas of flexibility that were not explicitly dealt with in current international norms. There were three aspects of the paper that the Delegation wished to comment on. Those were respectively, part 4 on disclosure related flexibilities; part 5 on substantive examination, and part 6 on the *ex officio* IP office control of anti-competitive clauses in patent licensing agreements. The Delegation suggested that those parts of the paper might have benefited from some of the following structural changes. There were two main aspects of disclosure requirements presented clearly in paragraph 58. One of those was the disclosure of the information to enable users to exploit the invention. That was the information on enablement in paragraphs 53 to 56 and information on the deposit of micro-

organisms in paragraph 72 and 73, providing examples of information to enable users to exploit the invention. The second main aspect of disclosure requirements in the paper was the disclosure of the scope of the claimed invention to enable the public to understand the boundaries of the monopoly, to understand what was claimed as new and non-obvious to avoid infringing the patent. That was the bulk of that part of the paper dealing with those two main aspects of disclosure enablement and scope of the invention. It left two other types of information that should be dealt with in that part of the paper but it might not be the appropriate place for them. The first other topic of information dealt with in that part of the paper was information on foreign patent applications as described in paragraph 69 and 70. That was information useful for patent examination perhaps that was better dealt with under part 5 on substantive examination. The other type of information dealt with in that part of the paper was different from the main aspect described earlier. The paper then described another type of information and that conspicuously hung on that part of the paper this information described in paragraph 47 to 80 of the paper, excluding paragraphs 72 and 73. That information was a statement in provenance of the material that the inventor used to develop the invention such as where the inventor obtained the material, whether the inventor complied with relevant laws governing access to the environment and access to knowledge. That information was of only minor assistance to assessing the novelty and obviousness of patent claims, and it was of only minor assistance to enable users to exploit the invention, and it was of such minor assistance to enable the public to understand the boundaries of the claimed monopoly. That information was really about whether the inventor had legitimate access to material used in developing an invention. In the Delegation's view the terminology "statement on provenance" was to differentiate that information from a disclosure of information on enablement and scope of invention, as described in paragraphs 47 to 68. Given that differentiation, the Delegation of Australia supported the Delegation of the United States' proposal to have the subject matter of paragraphs 74 to 80 which were statements on provenance dealt with in a new separate section of the paper. A final comment on that part, in paragraph 80, the paper acknowledged the ongoing work of the Intergovernmental Committee on IP, Genetic Resources, Traditional Knowledge and Folklore (IGC). It also acknowledged the ongoing work on genetic resources and associated traditional Knowledge and noted the recent meeting of the IGC's inter-sessional working group. The paragraph described the options before the IGC but had a footnote to a technical study from a 2003 meeting in the IGC that concerned only the disclosure options. The Delegation was of the view that the footnote in question seemed misplaced. Indeed, it was the Delegation's recollection that the study pre-dated the development of these four options for the IGC. Finally, the Delegation said any revisions to the paper CDIP/7/3 should not prevent the outcome of the discussions in the IGC. Turning to part 5 on substantive examination, the paper referred in a footnote to an academic office statement to reflect Australia's approach to substantive examination and addressed concerns expressed by the Delegation of India, if their concerns had been understood correctly, that the use by one IP office of another IP office's examination work could deprive an IP office of assessing the patent application according to their respective national law. The footnote number 155 quoted an academic author saying "neutral exploitation allows an office to utilize the work of another office without obliging it to do so". The Delegation said it considered the options listed at paragraph 93 as reasonable and believed in using most of the options to some extent. For example in modified examination process, reliance on PCT reports, and the practice of reviewing forum reports. The Delegation observed that although the final option in paragraph 93 was an interesting option, it nevertheless did not seem to be used very often. The Delegation added that its IP office advised that the total number of requests for that service for the years between 1975 and 2005 was only 2262. Finally, on part 6 of the paper regarding *ex officio* IP office control of anti-competitive clauses and patent licensing agreements, the Delegation wished to echo the statement made by from the Delegation of Chile and others. It concluded that the Australian patent laws did not regulate anti-competitive clauses in patent licensing agreements, and added that its IP office did not regulate such license in contracts.

82. The Delegation of Uruguay stated that the Spanish version of the document in question had arrived late and requested additional time to study that document in-depth. It added that

since the document included substantive aspects for countries in the form of applying legislation as regards patents, that was the reason why it had requested not to conclude consideration of the document at the present session of the Committee, but rather it should be continued in the next session.

83. The Delegation of Panama expressed its gratitude to the Secretariat for the document and the creative efforts for commissioning such studies for submission to the Committee for consideration. In relation to the document currently under discussion, the Delegation stated it would seek more clarification regarding five new flexibilities that Member States had asked for. In its view, it was important to mention that the document represented a feedback cycle with creative and useful information, which had previously been submitted to the Committee. It further noted the importance of the study in view of a forthcoming legislative exercise in Panama. The Delegation noted that in general terms, the document was convincing enough in the sense that it added value to the national thinking in Panama following the convening of a seminar in December 2010 for the Central American countries on IP laws and their impact on the free trade agreements which had been negotiated. One of the fundamental thrusts of that conference was specifically the efficient use of the flexibilities in patents. That had increased the Delegation's optimism and development of capacities which were vital for it in encouraging the creative focus of many of the people who were present at that event. Therefore, the Delegation felt that the document which was submitted at the CDIP meeting would be essential to continue the interests of the stakeholders, and serve as a seed which might result in fruition or not, since each Member State was sovereign and could decide to accept or not to accept the content of the study. The Delegation also expressed the wish to have information which could be valuable, and which could create currents of thinking and be converted into action. It further stated that in its national perspective, there was no point having more information if it was not assessed and if it was not feasible, what was termed as information overload might occur. The Delegation stated further that for the moment, its statement was a general point of view, since it had not had sufficient time to review the document in detail as expected. However, the Delegation welcomed the document and said it would recommend it for study by the technical staff of the department of patents and other stakeholders involved at a national level, for example, those connected to the national environmental authority, which had created a specialized office for Intellectual Property, responsible *inter alia* for the topic of genetic resources. The Delegation reiterated that flexibilities were legal tools that countries might apply or not in accordance with their own realities and development plans provided that it was still compliant with the international commitments required.

84. The Delegation of El Salvador congratulated the Chair on his re-election and the excellent dynamics that he had instilled into the work of the Committee. The Delegation also thanked the Secretariat for the preparation of the document CDIP/7/3 and the introduction of new studies as requested during the previous CDIP session held in November 2010. Specifically, as noted by other delegations, the document included five new flexibilities as regards the transition periods, the compatibility and substances existing in nature, flexibilities as regards disclosure, substantive examination, and *ex officio* IP office control of anti-competitive clause in patent license agreements. The Delegation reiterated its comments on the document which, as pointed out by other delegations such as Panama, Uruguay among others, was of such great importance that the Spanish finalized version would particularly be appreciated. The Delegation stated that the issue was handled in the National Registration Office in El Salvador, which was the competent authority to deal with that subject, and that the document had been submitted to it for examination. In support for the statement that had just been made by the Delegation of Uruguay, the Delegation of El Salvador requested that the consideration of the document should not to be closed but rather be continued in the next meeting, as Member States would have the opportunity to include the input of their respective capitals in order to make substantive comments on an issue of critical importance.

85. The Delegation of Venezuela highlighted the need to have clear cut guidelines elaborated by the Secretariat. It said it appeared to be clear and important that the Secretariat presented



what had been put forward by the Member States within the WTO because the normative source was an agreement signed in that organization. The Delegation further stated that it would appear meaningless that Member States should accept the TRIPS Agreement to be binding on WIPO, but they would not allow having as a source what had been discussed in the WTO meetings. The Delegation moreover suggested inviting WIPO to take part in the WTO meetings and vice-versa so that it would be a whole interconnected system. That would enable it to shed light for Member States on what was occurring within the WTO and in the interests of all members it would prove to be a very important contribution. The Delegation reminded the Committee that the topic in question was not totally settled or resolved within the WTO and contrary to what had been said earlier by some delegations, it would constitute a valid reason for very substantive discussions within WIPO. Accordingly, in support of the statement made by the Delegation of Bolivia, Venezuela supported many other countries that had asked for the revision of Article 27.3(b) of the TRIPS Agreement to forbid patenting of life forms. Also, as stated by the Delegation of Bolivia, Venezuela had reservations about signing the Nagoya Protocol. The Delegation also noted that in the future studies Member States should continue to have the descriptions of the progress made in the discussions of the TRIPS Council when related to discussion taking place in WIPO; that material should be restricted to having factual information only.

86. The Delegation of Pakistan thanked the Chair and the Secretariat for developing further the previous study contained in document CDIP/5/4, and for presenting the preliminary study on five other flexibilities. It observed that all those flexibilities were of critical interest to developing countries and the studies provided useful reviews of existing practices and norms in those specific areas. The Delegation further stated that it supported the statement made by the Delegation of Brazil, speaking on behalf of the Development Agenda Group, and pointed to three issues. Firstly, it said there was hope that flexibilities available to LDCs and other developing countries, under the TRIPS Agreement would be duly underscored in the legislative and technical assistance provided by WIPO. Secondly, in the context of substantive examination, it added that it would underscore the prerogative of sovereign Member States to determine their own examination procedures consistent with their national laws and conditions, such as patent quality, efficiency and cost should be respected. Thirdly, and lastly, with regard to the *ex officio* Intellectual Property Office control of the anti-competitive clauses in patent licensing agreements, the Delegation noted that it was important to take into account the fact that weak competition policies in developing countries and LDCs often made it difficult for them to address anti-competitive practices, even when they would have incorporated those flexibilities in their national laws. The Delegation concluded by expressing its hope to see those comments appropriately taken on board and added that it would also appreciate the opportunity to have the study discussed at the next session.

87. The Chair welcomed the useful discussions on document CDIP/7/3 and noted that many views had been expressed some of which were divergent. He noted that some delegations had expressed the wish to continue the discussion on the document at the next CDIP session. In view of that divergence, the Chair suggested that all interested delegations should provide their comments in writing to the Secretariat between then and three months before the eight session of the CDIP which would be held in November 2011. The Committee could then resume discussion on the document together with available comments to be compiled into a document by the Secretariat. The Chair thereafter called for comments and in the absence of any requests for the floor, he considered that his proposal had been agreed to by the Committee. He then called upon any delegations that had views on the matter to provide those to the Secretariat in writing.

#### Agenda Item 2: Election of Officers (Contd.)

88. Before moving to the other documents under agenda item 8, the Chair suggested going back to agenda item 2 to consider the election of officers and announced that there had been some partial progress and called upon the Delegation of India to make a statement.

89. The Delegation of India proposed Mr. Garikai Kashitiku, First Secretary in the Permanent Mission of Zimbabwe as one of the Vice-Chairs of the CDIP. The Delegation looked forward to the nomination of the second Vice-Chair.

90. The Chair thanked the Delegation of India and asked whether that proposal would be supported by consensus.

91. The Delegation of France, speaking on behalf of Group B, expressed its support to the candidacy of Zimbabwe as Vice-Chair of the Committee session.

92. The Chair announced that there was a proposal in favor of Mr. Garikai Kashitiku which was seconded by the Delegation of France on behalf of Group B. He believed that was accepted by all and congratulated Mr. Kashitiku, First Secretary in the Permanent Mission of Zimbabwe, and noted that the CDIP discussion would immensely benefit from his experience and talent. The Chair thereafter stated that the meeting would look forward to the nomination of the second Vice-Chair.

#### Consideration of Document CDIP/7/INF/2

93. The Chair invited the Secretariat to introduce document CDIP/7/INF2 under agenda item 8.

94. The Secretariat made some general remarks on the timeline in which the document was produced with a brief reference to its contents. It recalled that during the third session of the CDIP in 2009, a thematic project on IP and the Public Domain was approved which contained components on patents, trademarks, traditional knowledge and copyright for implementation in the 2010/11 Biennium. It noted that the thematic project dealing with Recommendations 16 and 20 included *inter alia* the scoping study on copyright and related rights and the public domain. The study was completed and made available on the WIPO webpage on 7 May, 2010. During the sixth session of the CDIP held in November 2010, the author presented her work at a side event in Room B. Moreover, the author was present during the progress implementation report of CDIP/6 and responded to a number of questions put forward by Member States. In that context, Member States requested the Secretariat to publish the scoping study as an official document of the seventh session of the CDIP which was now before the meeting. In the area of procedure and calendar, the Secretariat informed the meeting that there would be another occasion for referring publicly to the study, which would be the Global Conference on Copyright Documentation and Infrastructure. The Secretariat also informed that the thematic project on IP and the public domain contemplated that conference, which would take place between 13 and 14 October, 2011. It would comprise all the different activities with regard to IP and the public domain in the field of copyright. At that occasion there would be the possibly once again to refer and discuss the study because the objective of that conference would be the interconnecting and showcasing of all the different activities undertaken under the project, including public registration, collective management documentation and private registration as well as the study under consideration. The Secretariat further commenting on the study, noted that the first provision that needed to be highlighted was that the study was authored by Professor Sèvarine Dussolier of the University of Namur, and that the views and opinions expressed in the study were those of the author alone. The scoping study had the objective of providing assistance to Member States by raising awareness of that increasingly important issue. Moreover, the study produced essential information for the evaluation of the possible benefits of a rich and accessible public domain. Public domain was valuable from the view point of IP systems as it served a number of objectives, including providing a building block for new creations, enabling competitive imitation and low cost access to information and also promoting education and access to cultural heritage. The study by Professor Dussolier was composed of four parts. First the definition and the delimitation of the scope of the public domain, in particular a clear conceptual distinction was made between the public domain and copyright exceptions and limitations, government information, orphaned works, as well as on the relation of the public

domain to traditional knowledge. Secondly, the study contained an illustrative comparison of national legislations that directly or indirectly defined the public domain. Public domain was composed of elements that were not protected by copyright and it was characterized by the absence of exclusive rights. Therefore, the scope of copyright protection indirectly defined what could be considered public domain. The comparative analysis focused on a number of issues and brought to the conclusion that the public domain could be categorized in different components and there the Professor outlined what could be considered as taxonomy of the public domain. There was ontological public domain which consisted of ideas, facts and information, and there was subject-matter public domain, like non-original works or unfixed works, works in some legislation; there was temporal public domain depending on the duration of protection; there was policy public domain, for instance official texts by governments and there might have been, from a conceptual perspective, voluntary public domain, in cases in which the author would abandon that protection. Furthermore, the study approached as well, the conditions under which access to public domain might have been hindered or limited by other kinds of legal barriers, such as privacy and property rights, Technological Protection Measures (TPMs) and other IP rights. A third component of the study was a survey of non-legislative and private initiatives which provided for greater access, use, identification, and location of the public domain, as well as the facilitated distribution of works through more flexible licensing conditions. This was not public domain in the proper sense but they were elements that could facilitate access to the public domain and the distribution of creative content. In that context, open license or copy-left material did not fall under the public domain concept; provided greater freedom of use in different modalities and to different extents. Examples of those initiatives were the Creative-Commons, free and open-source software and open access publishing. The author identified common characteristics of such licensing schemes, which included the insertion of IP rights. All those modalities did not suppose abandonment or relinquishment of a copyright but a different mode of the exercise of copyright. Another feature would be the reverse use of exclusivity in regard to what was allowed and to what was prevented. Thirdly were the absence of discrimination and, fourthly, the viral effect. The fourth component of the study was an analysis of the role potentially played by the public domain in public policy. The author formulated a number of recommendations in regard to future activities on the public domain that might be carried out by WIPO. The recommendations referred to three areas where public policies might be beneficial. Firstly, identification of the public domain, for example for the mutual recognitions of the status of orphaned works. Secondly, activities in the area of the availability and sustainability of the public domain, for instance in the development of legal deposit systems including the interconnection of national databases. Thirdly, in the field of non-exclusively and non-rivalry of the public domain, the recommendations included the clarification of the non-enforceability of TPMs as applied to the public domain. The Secretariat informed that that was a brief outline, intending to contextualize the reading of the document that was before the Committee.

95. The Delegation of South Africa, speaking on behalf of the African Group thanked the Chair, the Secretariat and Professor Dussolier for the excellent study submitted to the Committee. The Delegation noted that expressions of folklore and traditional knowledge had been excluded in the analysis on the basis that they did not belong in the public domain. It further expressed its appreciation of the study given the fact that the regime of IP should not continue to deny exclusivity or other types of legal entitlement to the many forms of intellectual product, knowledge or cultural expressions. That statement further reinforced the importance of the system for traditional cultural expressions and traditional knowledge which WIPO was currently developing. The Delegation recalled that in the past, it had maintained that the issue of public domain should be addressed within that context. The Delegation then noted that the study had done justice to Recommendation 16 of the Development Agenda, which stated that WIPO should, "Consider the preservation of the public domain within WIPO's normative processes and deepen the analysis of the implications and benefits of a rich and accessible public domain" and Recommendation 20 that requested WIPO "To promote norm-setting activities related to IP that support a robust public domain in WIPO's Member States, including the possibility of preparing guidelines which could assist interested Member States in identifying

subject matters that have fallen into the public domain within their respective jurisdictions". The Delegation expressed its appreciation of the manner in which the study analyzed material in the public domain in relation to Recommendation 20 of the Development Agenda. It noted that there was indeed, a need for certainty in the identification of the public domain by developing tools that would help with such identification. The Delegation also agreed that there was a need for the accessibility and sustainability of the public domain and added that it understood the value of the public domain being governed by the principles of non-exclusivity and non-rivalry. The Delegation commented that there were a number of useful ideas proposed by the study as the recommendations on page 70 and 71 clearly illustrated. The study provided to a large extent, recommendations of a legal nature including a need for a law to enforce the rule of free use of material in the public domain in the absence of copyright; the need for a law to prohibit against co-modification or private capture of elements of the public domain; the need for a law to enforce the access to support and use public material without discrimination; and that the provisions in the Bern Convention pertaining to the duration of the protection of copyright and related rights should be assessed. It also noted that the 1996 WIPO Treaties should be amended to prohibit incidents to reproduce, publish, communicate or make available a work that had fallen in the public domain and a provision of enforcing TPMs to the public domain. With these suggestions in mind, the Delegation was of the view that the study should also be considered in the Standing Committee on Copyright and Related Rights (SCCR) as the relevant WIPO body to discuss the recommendations made on norm-setting. Some ideas, such as exhibitions, catalogues and cost referencing of deposited works at international level, setting up networks of information about works in order to facilitate the identification of authors of orphan works, research to identify means to promote diversification and exploitation of public domain material in terms of funding, and offer of incentives, could be further considered in the form of Development Agenda projects.

96. The Delegation of Canada thanked the Chair and the Secretariat for introducing the document in question, and believed that there was an important role for a very strong and robust public domain to play in enhancing creativity and encouraging innovation. The Delegation therefore thanked the author Professor Dussolier for preparing the Scoping Study on Copyright and Related Rights and the Public Domain and expressed its hope that other members would, like Canada, find value in the study and that it would serve as a valuable reference material. The Delegation said for instance, it found the Recommendation 1(b) of the scoping study as particularly useful. The recommendation noted that the rule of comparison of terms, also known as the rule of the shorter term as provided by Article 7.8 of the Bern Convention, was worth assessing. The rule of the shorter term provided useful flexibility to legislators. However, the Delegation noted that although the rule of the shorter term was allowed for works, generally speaking, there were no comparable cases for treaties on related rights. As such, generally, countries were required to observe national treatment in the term of protection for related rights even where the term they granted exceeded that required by the treaty and the country of origin of the protected material. The Delegation suggested that consideration could be given to including a provision comparable to Article 7.8 of the Berne Convention in respect of treaties on related rights. The Delegation of Canada recalled that it had included such a proposal in its recent submission to WIPO on a treaty on the protection of broadcasting organizations. The Delegation further observed that unfortunately the study did not adequately consider the relationship between traditional knowledge and traditional cultural expressions on the one hand, and the public domain on the other. Given that the relationship between traditional cultural expressions and traditional knowledge in the public domain was still a widely debated issue in WIPO and other international *fora*, it would have been particularly helpful to have a critical analysis of the implications of excluding traditional knowledge and traditional cultural expressions from the public domain. As no agreement had been reached to date on the role of traditional knowledge and traditional cultural expression in the public domain, the Delegation cautioned that the study should not be viewed as representative of the collective views of WIPO Member States, or pre-judge the on-going work of other WIPO committees, such as the WIPO Intergovernmental Committee on Intellectual Property and Generic Resources, Traditional Knowledge and Folklore (IGC).

97. The Delegation of Brazil, speaking on behalf of the Development Agenda Group, thanked the Secretariat for making available document CDIP/7/INF/2 during the current session. The Delegation also commended Professor Dussolier for her excellent analysis and the recommendations that she provided in her well researched study. It said considering that the Bern Convention was drafted, negotiated and first adopted in 1886 when most developing countries were still under colonial rule, the study presented a significant tool in tracing the historical roots of the public domain and the consequent impact of the institutionalization of copyright at the international level on developing countries which became signatories thereto only in recent history, in the 1950s. The exclusion of traditional cultural expressions (TCE) and traditional knowledge (TK) by Professor Dussolier in her study was also a clear manifestation of her sensitivity to the on-going discussions on the IGC which deserved special commendation. The Delegation further noted that the Development Agenda Group shared the views of Professor Dussolier as to the need to construct a positive regime at the international and national levels for the protection of the public domain against privatization, and for its preservation and better availability and use. As aptly pointed out by Professor Dussolier, a robust public domain in copyright and patent regimes would serve as a building block for the creation of new knowledge, foster competitive imitation, enable follow-on innovation and provide low cost access to information, *inter alia*. All of which would be imperative for developing countries to cope with the increasing demands of globalization. The Delegation also believed that in order to maintain the delicate balance between the protection of intellectual property rights and the developmental needs of WIPO Member States particularly developing and least developed countries, it was important for WIPO to look into the possibility of adopting normative rules to effectively enable access to enjoyment and preservation of public domain resources. In that regard, the Delegation said it was worthwhile to revisit existing norms and standards embodied in various treaties administered by WIPO in order to preserve the recapturing of the exclusivity of works that had, in the meantime, fallen within the purview of the public domain. To that end, the Delegation said it should also be necessary to review existing treaties to prohibit technical impediments to reproduce, publish, communicate or make available a work that had fallen in the public domain, such as the 1996 WIPO Treaty. Furthermore, the Delegation stated that the Development Agenda Group believed that the recommendations presented in the study were a good basis for starting the implementation of Development Agenda Recommendation 20. It requested therefore, that the Secretariat should prepare a follow-up project containing a timetable for further analysis and possible implementation of the recommendations of that study to the next session of the SCCR. It said that it was conscious that some of those recommendations would need to be carried out by other committees.

98. The Delegation of the Plurinational States of Bolivia expressed its support to the statement made by the Delegation of Brazil, speaking on behalf of the Development Agenda Group, and particularly its proposal to transmit elements of the study to the SCCR. The Delegation also thanked the Secretariat and congratulated Professor Dussolier for her excellent scoping study on copyright and related rights and the public domain. That study, as presented, was an excellent example and it did fulfill the mandate established in Recommendations 16 and 20 of the Development Agenda on public domain and contained very useful information for Member States. The study analyzed the role, function and importance of the public domain which was robust and accessible for cultural and artistic expressions identified practices which threatened it, initiatives to strengthen it and what Member States could possibly do within the framework of WIPO. Before highlighting several elements and some conclusions that were felt to be particularly important for the CDIP's work, the Delegation wished to point out that the work in question was a tool that could also be used for the patent side and that perhaps that during the CDIP it could be possible to have a revised document on patents in the public domain similar to the current study, that would analyze the importance of the public domain, analyzing practices and initiatives that had a positive or a negative impact on the public domain and identify some kind of standard-setting activities which could preserve the public domain. On the basis of the excellent and balanced work on the scoping study on copyright and the public domain, the Delegation called upon Member States and encouraged them to ensure that the Committee would also have an approach on patents and public domain in the WIPO document.

With regard to cultural creations and practices that had a negative effect on the public domain, the restriction of access to content in the public domain because of technological measures and a mention here of “technical measures which limit the use of the work for instance its reproduction or communication”, that of course was against the essence of the public domain and led to new exclusivity on rights or works which ought to be in the public domain. The study obliged Member States to have a public domain in which technological measures would protect that access. There was asymmetry at the root of that but the Delegation would not prohibit the codification of documents not covered by copyright and which were to be found in the public domain and that was an imbalance. The study and its recommendations, with regard to the non-exclusivity of the public domain, talked about legal measures that could impose new exclusivity on works which would have already come into the public domain and other negative practices for the public domain like implementation of other intellectual property rights. The Delegation further stated that it was important to note that the study concluded that the 1996 WIPO Treaty needed to be updated in order to take into account all the new technological developments for works that had passed into the public domain and more clarification would be needed to determine whether that work could be protected only if the copyright was a substantive part of the digital copy of that work in the public domain. There were very positive and substantive items in that report with regard to what could be done for normative activities in the public domain and the Delegation felt that it showed the great contribution that WIPO could make in that area. Regarding practices that had an impact on the public domain, the Delegation said it would also like to highlight practices marked in the report as having a positive effect on the public domain. Particularly, copy left and open-source software or free access and there was a protected public domain or a protected creative common. Those who were using those sources under copy left were obliged to use the same free access for anything that they used to do the basis of that source and that lead to the viral affect or the copy left effect as heard from Professor Dussolier. With regard to the free distribution of works that went through the whole chain and were therefore called viral, the mechanism seemed very relevant to the Delegation, especially when talking about the public domain. They enabled to expand the public domain exponentially and those who had free access to those creations also had the obligation to put their own derivative works back into the public domain in the same way. That model moreover, demonstrated that open licenses or copy left licenses were an alternative innovation model which did work as Professor Dussolier stated. That model of open innovation was functioning in programming, also in biotechnological research and it did not generate negative impact with regard to access to knowledge through exclusivity that was found in the patent system. Under that system, all the results of investment were freely accessible but with the commitment to providing free access to any derivatives based on it. That led to more innovation without restricting access and the use of those innovations meant that any derivative innovation was also accessible and that would result in having exponential or viral expansion of the public domain. In that context, the Delegation requested to have that part of the study taken into account and serve as a guide for the establishment of projects on Recommendation 37 in CDIP/6/6/Rev. In conclusion, the Delegation felt that the study was a very clear vision of open collaboration programs and open source and it felt that the open collaboration projects could be excellent and that future WIPO work in that field should take into account what Professor Dussolier had said on the issue. The Delegation added that there were particular recommendations that were considered relevant to the issue of standard setting activities such as the recommendation that any extension of copyright and related rights should take into account the empirical effects on the sustainability of the public domain and also the invitation to modify the 1996 treaties of WIPO in order to have information corresponding to the current situation in the public domain included.

99. The Delegation of Chile considered the document to be very clear and very well structured and was sufficiently complete to enable members to have a clear consideration of the recommendations on the importance of maintaining an adequate public domain or in other words the importance of development of new knowledge and innovation to maintain a good balance between the public domain and protection of IP. As most delegations present would know, the Delegation of Chile had been looking at that information in the CDIP and there had

been a discussion of the crucial role of the public domain in the development of IP. The Delegation expressed its satisfaction with Professor Dussolier's arguments presented in the study and among other elements, the part that highlighted the Chilean legislation on copyright and the way that legislation considered access to the public domain. With regard to that topic, the Delegation of Chile said it would like to clarify two aspects of the study so that the final version could be more specific and correct. First, as the Secretariat had just noted, the study would be discussed at the global conference in October 2011. There would be at least two paragraphs with regard to the Chilean legislation which would need to either be corrected or eliminated. The first would be the second to last paragraph on page 28 of the English version where there was a reference made to a provision of Chilean law on protection and at the time that study was being drawn up, that draft was actually being discussed. That was the most important change in copyright law in Chile in the last 20 years and it had been in force only since May 20, 2010, but it was no longer a bill or a draft, it actually had turned into a law. That was actually in force and it eliminated the peculiarity mentioned by the author at the beginning of that paragraph. That peculiarity was a provision created at a very particular moment in the history of Chile and no longer reflected the country's current reality. Therefore, the Delegation of Chile felt that that reference needed to be removed. Secondly, referring to the paragraph on perpetuity, the perpetual nature of the moral rights of authors as contained in paragraph four on page 37 in the English version, the Delegation said it understood that the study exclusively represented the opinion of the author herself and therefore it was essentially a subjective report. Nevertheless, the Delegation felt that the language used in that paragraph was not adequate because it did not correctly reflect the situation in the country and that could lead to interpretations which would be quite far from the reality. The Delegation however acknowledged not having had the time to review the document in its entirety and wished to clarify that the author stated that with regard to the perpetuity of moral rights, it was unclear and controversial. Professor Dussolier based that statement on different opinions of legal experts with regard to the provisions of the law and, the fact that there were differences of opinions among experts with regard to a particular legal provision was a perfectly normal thing in any state of law in the Delegation's opinion. Therefore, the fact that the language was unclear and controversial was considered to be inappropriate and would ask, through the Secretariat for the author to remove that paragraph as well.

100. The Delegation of India joined those delegations that had spoken before it in thanking the Secretariat for presenting CDIP/7INF/2. It also commended Professor Dussolier for the excellent, well researched and balanced Scoping Study on Copyright and Related Rights and the Public Domain. The document was illuminating in terms of the historical overview of the public domain and the in-depth elaboration of the composition of the public domain, the detailed enumeration of initiatives and tools that allowed greater access, use, identification and location of the public domain as well as the taxonomy of public domain. Recognizing that a robust public domain in copyright and patent regimes would serve as an important fundamental basis for access to knowledge, follow-on innovation and competition as already recognized by the Development Agenda Recommendations 16 and 20, it was important for WIPO to look into the adoption of normative rules to enable access to and enjoyment and preservation of the public domain and to review existing norms and standards contained in various WIPO treaties. The Delegation welcomed, in particular, the recommendations contained in the document and looked forward to serious consideration of all those recommendations. Also it supported the statement of the Development Agenda Group and joined in requesting a follow-up paper outlining a timetable for consideration and implementation of the recommendations to the next session of the SCCR. That would help ensure that high quality studies such as that would adequately be followed up rather than simply closing it after comments and moving on with new studies. The Delegation then thanked the Secretariat for conveying the information about an upcoming conference to discuss public domain. However, given the importance of the preservation and promotion of public domain and its particular relevance to the work of the CDIP, the Delegation hoped that the consideration of that well prepared study and its recommendations would continue in that and other relevant WIPO committees. In that context,

the Delegation requested that the study be kept open for further consideration of the CDIP in its next session.

101. The Delegation of the United States of America said that it had commented on the study during the last session of the Committee but other members observed at that time that they were unaware that the study would be discussed and the Committee had agreed to revisit it at the present session. For the benefit of everyone else, the Delegation repeated the substance of its intervention made at the previous session. It thanked Professor Dussolier for the preparation of her study on copyright and related rights in the public domain, which drew widely and thoughtfully on current scholarship related to the subject. The study compared national legislation and surveys and technical and legal tools that promoted access to and identification of public domain material. The Delegation also mentioned the practical approach adopted by the Secretariat in commissioning a study that would analyze good practices and tools currently available for identifying copyright and related rights content that was in the public domain. It was pleased with much of the study, having such a document exploring the many facets of the public domain and examining the laws of a representative number of countries in the Bern Convention that shaped the countries' public domain would allow Member States to engage in a more comprehensive discussion of the topic. Nonetheless, the Delegation said it had concerns about two of the studies' recommendations. The first was in relation to the recommendation to amend the 1996 WIPO treaties "to prohibit a technical impediment to reproduce publicly, communicate or make available a work that has fallen into the public domain" found on page 70 of the study. The second recommendation also proposed amending the WIPO treaty but in that instance to clarify that only technological measures protecting copyrighted works that form a substantial part of the digital content to which they apply will be protected from circumvention. Technological measures protecting public domain works with an ancillary and minimal presence of copyrighted works should not enjoy legal protection, that was also on page 70. The impetus for the first recommendation appeared to be the studies' observations that while the WIPO copyright treaty or WCT outlawed the circumvention of copyrighted subject matter, it did not outlaw the application of TPMs, to non-copyrighted or public domain subject matter and that the asymmetry should therefore be corrected. The impetus for the second recommendation appeared to be the concern expressed in the study on page 45, that even though the WCT and countries implementing it limited the prohibition of circumvention activities to technical measures applied to copyrighted and not public domain works, a technical restraint could still apply to a public domain work if the work were accompanied by a recent creation protected by copyright, in the example the author used was perhaps a short introduction to an E-book version of a Shakespeare play. In the Delegation's view those difficulties were more theoretical than real. With respect to the first recommendation, that the treaty should be amended to prohibit the application of TPMs to public domain works, the study itself provided the answer. On page 45, the author noted that "the effect of such prohibition on access to free use of public domain material should normally be inexistent since the WIPO copyright treaty in countries implementing it, limit the prohibition of circumvention activities to technical measures applied to copyrighted works. Accordingly, defeating the accessed control or anti-copy mechanism affixed to a public domain work will not be an offence". In other words, because those treaties only prohibited the circumvention of technical protection measures that applied to works under copyright and not public domain works and because the circumvention of any such measure was entirely legal, no amendment to the treaty was necessary in order to preserve and protect the public domain. The second recommendation that the WIPO treaty should be clarified to ensure that only technological measures that protected copyrighted works that formed a substantial part of the content to which they applied should be protected from circumvention, also addressed a difficulty that in the Delegation's view, was more theoretical than real. The market reality was that most works available in encrypted digital form would also continue to be available in non-encrypted, non-digital form for the foreseeable future. As long as public domain material was available elsewhere, the copyright owner of a short introduction to an E-book version of a Shakespeare play, to return to that example, would not be able to prohibit access to the public domain work nor would prospective users find it necessary to circumvent the digital lock. The Delegation of the United States therefore believed that, as demonstrated by many



aspects of the study as well as its own national experience, it was possible to have a robust public domain while adhering to the existing text of the WIPO internet treaties. It said that it would nonetheless be interested in learning more about the experiences other countries have had on the subject. It added that it did not believe that it had been demonstrated that amendments to the treaties were necessary in order to safeguard access to the public domain. Moreover the current international debate surrounding TPMs would present serious obstacles to productive discussions on that topic. Accordingly, the Delegation suggested that it would be more beneficial for the Committee to explore other steps that had been suggested in the study to preserve and strengthen public domain. The Delegation then suggested that the following projects would need to be undertaken on a preliminary basis and accordingly, it said it had three suggestions to make in that respect. Firstly, WIPO could conduct further research into voluntary relinquishment of copyrights and whether members recognize it as a legitimate exercise of authorship and copyright exclusivity under their national laws. Another possibility would be that WIPO could study the feasibility of setting-up networks of information about public domain works in order to facilitate the identification of authors of orphan works which would assist in differentiating works that truly belonged in the public domain and those that were under copyright protection, adding that it could support such a study but only if it was conducted in the SCCR. Thirdly, WIPO could undertake a study on how members could best cooperate with cultural heritage institutions and UNESCO with the aim to enhance the availability of public domain works. Any of those projects would assist WIPO and its Member States in identifying the underlying problems with the identification and availability of public domain works and suggest how those problems could best be addressed.

102. The Delegation of Switzerland thanked the Secretariat for the preparation of the documents and Professor Dussolier for her presentation of the scoping study on copyright and related rights in the public domain. The Delegation thought it was an interesting research but found itself agreeing with the observations made earlier by the Delegation of Canada that it would have been useful for the study to go into more detail on the implications of exclusion from the public domain of traditional expressions of folklore and that did not take adequate account of the work within the IGC. It stated that those issues had been in the public domain and it would have been interesting to include them in the study and also with regard to the work of the Committee. The Delegation added that it did not see the need to revisit the WIPO treaty which in its view dealt with the issue adequately. Accordingly, in its opinion, it was important to make clear that the study was the reflection of Professor Dussolier's findings and should not be endorsed by WIPO. That has also been said by other delegations and in that way it should not prejudice the work of the CDIP or any other committee. The Delegation stated that it would not agree to launch another project pursuant to those research findings and added that it would join the Delegation of the United States of America in relation to specific works.

103. The Delegation of El Salvador thanked the Secretariat for the Study and praised the efforts made by Professor Dussolier in that work. The Delegation stated that the inclusion of elements on the use of the public domain presented in a practical perspective would be of assistance to interested Member States and expressed its support for the statement made by the Delegation of India requesting to keep the document open for further study.

104. The Delegation of Algeria thanked the Secretariat for the clarity of its presentation. It also extended its thanks to Professor Dussolier for the excellent study. In that context, the Delegation expressed its support for the statements made by the African Group and the Development Agenda Group. In its opinion, that document represented an important step towards possible best practices in relation to the use of public domain works. The Delegation concluded by stating that the issue should be taken up and examined by the SCCR.

105. The Delegation of Uruguay

106. stated that within the framework of the study that had been submitted and the several proposals that had been put forward by different delegations, it would like to make a proposal of

a feasibility study for the interconnection of registration databases of copyright and related rights of national offices at a regional and global level. The importance of the public domain could not be underestimated as only a fraction of the works of the human intellect was subject to copyright compared with an ocean of works in the public domain which have been used for many years of creativity from the very existence of man. It further stated that the need to protect and facilitate the access to works in the public domain was a public policy objective which not only had been highlighted within the principles of the Development Agenda, but had been an object of special attention by other specialized agencies, for example in UNESCO, as a source of legal and free knowledge for all the nations. In that context, the Delegation thanked the Secretariat for the work that had been carried out in that respect within the Committee and proposed that the Secretariat should carry out a study on the technical and legal feasibility of interconnecting registers of copyright, whether on a regional basis or at the global level, so that interested parties could have access to information of ownership and works registered in different national databases. That initiative could also represent a very important instrument to identify the works and owners as well as a fundamental tool for the access to the public domain and also enable users to identify the works in the public domain. Likewise, that would be a tool to facilitate the identification of orphan works, many of which today were in that category and there was no possibility to carry out a search of official databases at the global level. Therefore the Delegation asked the Committee that the Secretariat of WIPO should carry out the necessary study so as to determine the technical and legal feasibility on having interconnections at national registers with information on registered owners and works, so as to facilitate the use of works in the public domain as well as identify orphan works.

107. The Delegation of Norway thanked the Secretariat for the presentation of the excellent study by Professor Dussolier. It noted that the study provided a very useful overview of the public domain in the copyright and neighboring rights area. The Delegation stated that it supported what was said by the Delegation of Canada also supported by the Delegation of Switzerland in relation to traditional knowledge and traditional cultural expression in the public domain. The Delegation believed that it would indeed be very useful if the study included an analysis on the effect of non-inclusion of traditional knowledge and traditional cultural expressions in the notion of public domain.

108. The Delegation of Pakistan appreciated the efforts that had been put into the study by Professor Dussolier and believed that it was one of the studies which could act as a benchmark for a lot of further studies that WIPO could conduct. It added that the recommendations mentioned within the study deserved further attention and in that context, it supported the other delegations that recommended further work on those recommendations. The Delegation also proposed that the Secretariat could probably produce a document analyzing the results of the implementation of the recommendations and that document could be presented at the next session of the CDIP or the SCCR, whichever the Member States would agree to. The purpose was to basically have further work on the recommendations, whether it was conducted in the CDIP or the SCCR and that was up to Member States to decide and that certainly would not be much of an issue. Secondly the Delegation thanked the Secretariat for its description and introduction to the study. The Delegation stated that the Secretariat had also mentioned convening of a global conference on copyrights infrastructure which was going to be held in October 2011. It suggested that maybe the Secretariat could also share with the Member States the preparations for the conference and what would be the content and agenda which would be discussed so that Member States could more actively participate in the conference.

109. The Delegation of Spain made specific reference to the proposal by the Delegation of Uruguay as to the exchange of data contained in public registers, with other registers or institutions or public libraries. In that respect, the Delegation considered very favorably to have such an exchange of data between the public institution which would help to have an extension of knowledge of works and contents in public domain along the lines outlined previously by the Delegation of Uruguay. That exchange would require some preparatory studies and some technical measures that would make it effective. In that regard the Delegation suggested that it

would be a good idea to have a preparatory study on costs and financing. As far as that Delegation was concerned, it was very timely and necessary to implement that idea.

110. The representative of the International Federation of Association of Film Producers (FIAPF) thanked the Chair and welcomed the progress made by the Committee in its previous sessions and expressed the desire that its work should include the setting-up of specific initiatives that would enable the integration of copyright as a stimulus to economic and social development. Within that framework the representative wished to contribute a few comments regarding the application of Development Agenda Recommendations 16 and 20, the objectives of which were to promote a robust public domain within the WIPO forum. FIAPF had the conviction that the best guarantee to nourish a rich and varied public domain in the field of movies and audiovisual work etc. consisted of reinforcing exclusive rights which enables the creators and producers to produce and disseminate existing works. The new works would then nourish the very rich fount of knowledge and culture which is the public domain. The representative noted that on the contrary, the absence of a continuous stimulation of new creation by copyright, there could be anything but the impoverishment of the public domain. More often there was a direct relationship between the vitality and popularity of a work which was found in the public domain and the initial success of that work while still under copyright. Therefore the success of a work is owed to its quality and to the fact that exclusive right would have encouraged producers and disseminators of such works to have an intensive promotion of such works so that the greatest number of users could have access to those works in equitable terms. The representative stated that without seeming to be against the objectives of the public domain, from the point of view of functionality, copyright promoted new works and their popularization, thereby making copyright the root of the public domain. The representative further called for distinction to be made between the substance of the law or in other words the limits of the protection of copyright and its transition into the public domain on the one hand and the pragmatic issue of the availability of works in public domain on the other hand. The representative also stated that as regards the availability and the making available of works in the public domain it was important to make a distinction between the work itself which was free of rights and the specific format in which the work was re-put into circulation. The development of a special edition in DVD for example of a masterpiece of silent movie would require a new important economic risk-taking that would be independent of the legal status of the work. In the context of movies, for example, restoring a version which would be presentable to the public was very expensive, particularly even more expensive if the work was long standing. Those were all the subjects which should be considered in the context of the public domain. The representative commented on the remarkable film "Sunrise" an immortal work by Mr. F.W. Murnau that needed years to restore, and the new edition on DVD could incorporate new elements such as comments by authors and film historians etc. Although it was very interesting to respect the principle of non-exclusive dissemination of works put into public domain, it was just as important to respect the rights of a DVD editor, private or public in a specific format of the specific version. Indeed in the absence of such a guarantee, there would no longer be any dynamic encouragement to put that into common heritage with the risk of impoverishment of public domain in that case. Following that logic, the representative argued that the principle of non-rivalry, suggested by Professor Dussolier in her study could be disputed. It would not necessarily be within the interests of public domain. One needed to have a choice amongst a huge variety of editions and formats of said works. In the same way, a classical author of a silent movie would have a format of a DVD or any other based on the quality of the video transfers, the editorial aspects etc. So competitions among the different editors enriched the experience of the consumer of that cultural heritage rather than impoverishing it. So people who wanted to promote the public domain should take into account the virtuous aspects of copyright and not try to get rid of some of the dynamics. The representative concluded by suggesting that questions raised here concerning public domain required pragmatic solutions to specific problems and not resorting to the creation of an international norm which was a new one that would not be desirable, nor productive to revise the 1996 WIPO treaties.

111. The Delegation of India wanted to make a brief statement on the way forward on that very good study. It recalled that the Delegation of the United States of America had rightly pointed out that several delegations were not yet ready to discuss the study substantively at the last session and in the current session delegations have had a good appraisal of the study and several comments had been made. However, in its opinion, Members States had not considered the various recommendations made in depth. Many had proposed that those recommendations were worth the consideration and analysis of Member States while at least one other delegation had expressed difficulties with some of the recommendations. The Delegation said it would support the proposal made by the Delegation of Pakistan, that at the next session of the CDIP, the Secretariat could present a recommendation along with a brief note about the kind of action that would be required to implement each of the recommendations and if required, perhaps a brief analysis or a brief factual note accompanying each recommendation could be produced so that Member States could seriously consider those recommendations. The Committee could then move forward on implementing those recommendations that enjoyed consensus. The Delegation argued that that was the best way forward and that it would help Member States take into account the many good points brought forward in that study and they would then be able to seriously consider the recommendations because in the Delegation's opinion, they deserved greater discussions and debate among Member States.

112. The Representative of the Library Copyright Alliance expressed its appreciation for the excellent scoping in study on copyright and related rights in the public domain produced by Professor Dussolier and stated that the study structured and clarified concepts in an extremely helpful manner. The representative agreed with Member States who suggested that follow up of the study was necessary in order to realize many of the useful ideas and recommendations and expressed hope that follow up would begin immediately. The representative acknowledged Professor Dussolier's recommendations relating to maintaining the non-exclusivity and non-rivalry of the public domain and agreed that anti-circumvention provisions of the WIPO copyright treaties needed to be revisited and amended because there was no legal basis for the enforcement of TPMs applied to the public domain. The fact that, as Professor Dussolier had pointed out, TPMs added two layers of protection to works in addition to copyright, they added the technological protection and to the 1996 WIPO treaties they added the protection of the TPMs. That appeared to contradict the original intention of the copyright system to allow for public domain to exist and not be interfered with. The representative then pointed out to the issue of technological restraints applying to public domain works by virtue of the presence of copyrighted elements in republished works and believed the problem was not at all theoretical and said it was very real and standard practice of content industries that should not be encouraged by anti-circumvention provisions. The representative stated that that practice too often restricted the use of public domain work in a digital environment. The representative appreciated the recommendation that Bern Convention members recognized the public domain status defined by other countries and prevented privatization of what was in the public domain elsewhere. The representative also believed that legal means should be found to prevent the recapture of exclusivity in works that had fallen in the public domains either by extended copyright terms or by TPMs. The representative further believed that it was in the power of the Member States to protect the public domain on a national level and encouraged Member States not to adopt international norms that would unduly restrict information flow of public domain works. Finally, the representative agreed that the study needed to be integrated into the work of the SCCR in particular, concerning possible solutions to identifying orphan works, that was, from the standpoint of the libraries, one of the major challenges in copyright today as they embarked upon digitalization efforts.

113. The Chair thanked the Library Copyright Alliance representative for the remarks and noted the very useful interventions and said that the Secretariat had taken note of all the issues and the aspects that had been raised specifically the proposal made by the Delegation of India on the follow up of the recommendations. He therefore called for remarks if any from the delegations regarding that Delegation's proposal.

114. The Delegation of the United States of America requested the possibility to have more time to consider that proposal properly as it noted that some would be of interest and others might be the subject of reservations. The Delegation concluded by stating that it was not really sure about what the next step would be.

115. The Delegation of Australia apologized for its uncertainty regarding what the Delegation of India's proposal was; whether it was another study with further analysis or it was about retaining that document for further consideration at the next CDIP meeting.

116. The Delegation of India offered clarifications on its proposal and suggested that the recommendations and the study be simply put forward to the next session of the CDIP for a more detailed consideration. The Delegation said it thought that might help the Member States and the Secretariat to amplify what each recommendation would mean in terms of specific set of actions that would be required to implement it, so that Member States would know what should be approved when the time to approve it would come. In essence it was just an opportunity to have a more detailed consideration of the recommendations. Of course, those would only be implemented if there was consensus amongst Member States and everyone agreed to that. The Delegation therefore said the suggestion was such that the discussion on the recommendations should continue so that there would be some sort of follow-up discussion to what had been agreed with regards to the substantive elements of the study itself.

117. The Delegation of the United States of America stated that it would be fine to continue the discussions but insisted on the fact that it would certainly be opposed to several of the recommendations and in that context, the Delegation stated that it was not sure whether it was worth the Secretariat's time to develop those into possible actionable items.

118. The Delegation of South Africa stated that in its interventions it had suggested focusing on the recommendations at pages 70 and 71, and therefore reiterated its support to the proposal by the Delegation of India.

119. The Delegation of Switzerland supported the statement made by the Delegation of the United States of America in the sense that more time was needed to consider that issue properly. At the present stage, it noted that the recommendations were contained in the document and that several delegations were expressing dissenting opinions about them. Thus, the Delegation said it did not understand nor agree yet to another document from the Secretariat to help Member States at the next CDIP session. It however said it could agree to have those documents discussed further at the next CDIP session and it insisted that it did not see the point of having a new document from the Secretariat to complete what was already available before the Committee.

120. The Delegation of Venezuela stated that in its point of view the recommendations were nothing more than that and it was up to Member States to decide upon which one would apply and how to apply it. In the Delegation's understanding of the statement made by the Delegation of India, there seemed to be 14 recommendations that deserved to be analyzed further. The main argument was not about the fact that the Delegation did not like all the 14 recommendations, but rather about having a study done by an expert for the benefit of Member States who all acknowledged that it was of value. The Delegation further argued that in that context, the proposal made by the Delegation of India was clear and reasonable and at the next CDIP session, after delegations, as well as their respective capitals, have analyzed the study, it would be possible and more constructive to discuss and segregate which one would be appropriate to apply, which one to disregard and the ones that might need some modifications before implementation. The Delegation concluded by reiterating its support and expressed its opinion on the clarity and reasonableness of the proposal.

121. The Delegation of Brazil observed that it could see the value in having a further elaboration of those recommendations. The Delegation understood from the interventions of

the Delegations of the United States and of Switzerland that they had problems with some limited points of those recommendations which referred basically to the revision of the 1996 WIPO treaties. The Delegation further pointed out that it understood that there should be no problem with the others and that the Delegation of the United States of America mentioned that it thought three of them were of particular interest. So in conclusion it seemed that it would be useful for Member States to have a further elaboration by the Secretariat on those recommendations which had some sort of consensus or did not have opposition from the delegations, so that the Committee could finally determine how to deal with them.

122. The Chair thanked the Delegation of Brazil and concluded the discussions on that document. He suggested discussing the matter briefly at informal sessions if delegations agreed to that principle, and the Committee could then follow up that matter under its future work. The Chair further stated that in his opinion, that document had provoked a lot of interest from numerous delegations and expressed his hope that all the elements raised would be brought to the attention of the author.

#### Consideration of Document CDIP/7/4

123. The session was Chaired by the Vice-Chair in the absence of the Chair who seized the opportunity to thank all the delegations for nominating and endorsing his candidacy for appointment and reassured the Committee of his readiness and willingness to preside over the CDIP in the best of his ability. He then invited the Secretariat to introduce document CDIP/7/4 on Intellectual Property and Brain Drain.

124. The Secretariat reminded the Committee that a discussion paper on the subject of IP and Brain Drain based on Development Agenda Recommendation 39 was presented to the last session of CDIP which decided that based upon those discussions a project document be prepared. The Secretariat noted that Recommendation 39 called upon WIPO to conduct studies on Brain Drain within its core mandate and as a consequence of the discussions during the last session of the CDIP, the Secretariat prepared a concept paper for the Committee's kind consideration. The paper recognized that outward skilled migration could be a true development change. The paper also made the point that the precise linkages between IP and any sort of skilled migration were not well understood. On the basis of that paper and the very thorough discussions at the last CDIP session, two guiding principles emerged and were described as follows: i) That any future work undertaken by WIPO on that important topic should be within its core mission i.e. linked to IP issues and ii) That cooperation with other international organizations within that project will be a key action. Accordingly, the project proposal had two key components which responded to the delegations' requests namely, i) A research project that sought to exploit information on inventor nationality and residence in patent documents to map the migration and high skill flows which were considered as Brain Drain proxies. That mapping exercise based on patent information would provide a partial geography of migration flows and innovators, insofar as that could be traced through patent documents. An initial idea was to use databases such as the databases of the USPTO to trace such migration flows. That study could start after successful recruitment of the project manager in the third quarter of the year. ii) The second component, falling under the guidance of Member States, would be to convene an expert workshop bringing together academia, relevant international organizations, and policymakers with a view to develop a research agenda on the important topic of IP, migration, and associated knowledge flows. The expected date for that workshop would hinge on the recruitment of the project manager, which would tentatively be in third quarter of 2012. That date would allow producing the study mentioned in the first point to be ready and commissioning of few papers that would inevitably be considered at the proposed workshop. It would also leave enough time to coordinate with the other international organizations to have them present at that meeting. The Secretariat pointed out that those two items would do justice to the requirements that were laid out by the Committee in order to build a research agenda in that field and raise awareness on that matter. The Secretariat then

concluded by inviting delegations to comment on the document and be given further clarifications on the timelines and costing required for that project.

125. The Delegation of Hungary, speaking on behalf of the European Union and its 27 Member States thanked the Secretariat for the preparation of the project proposal on Intellectual Property and Brain Drain. It suggested that before undertaking the work, it was crucial to identify anything which could provide a link between IP and Brain Drain as an evidence of that relationship. The Delegation also suggested that in relation to the present project and to any other projects which were to be undertaken, an essential first step was to carry out a preliminary study establishing what information was presently available in the identified areas of activity. It was entirely possible that the work on those subjects had already been undertaken either by other international organizations or by various other public research organizations worldwide. It would be much more efficient to make a proposal for a project once in possession of that information to ensure that the project built upon and did not duplicate work which would have already been done. Indeed, that would also facilitate the Committee to ascertain that any work in that area fell fully within WIPO's mandate. However, the proposal in the document CDIP/7/4 contained an interesting suggestion that patent data could be used as a source of information on the migration of scientists and the preliminary study of the literature could potentially be carried out in conjunction with the patent mapping exercise. It would therefore be useful for the Secretariat to provide a split between the costs of the two activities proposed in the document CDIP/7/4, namely the mapping of the scientists' migration from the patent data and the convening of an expert workshop. The Delegation added that by first conducting the research, the Committee would have an opportunity to review its conclusion before considering whether convening an expert workshop would be the most appropriate next step.

126. The Delegation of Brazil, speaking on behalf of the Development Agenda Group thanked the Secretariat for presenting the project proposal on Intellectual Property and Brain Drain as requested by Member States at the last session of the CDIP following discussions on Development Agenda Recommendation 39. The Delegation welcomed the project and fully supported the proposed activities namely i) a research project to exploit information on inventor's nationality and residence in patent documents to map the migration of scientists and ii) convening of an expert workshop bringing together academia and other international organizations and policy makers with a view to developing a research agenda on IP, migration and associated knowledge loss. The Delegation further stated that it was also happy to note the research project and the proposed research agenda would be submitted to the Committee for further consideration. It believed that the linkage between IP, migration and Brain Drain, which were currently not fully understood, were important and worth exploring. The proposed research project and workshop would hopefully shed some light on those interesting linkages and help developing countries understand better ways of intensified retention of a skilled manpower and perhaps assist them in identifying measures to reverse Brain Drain and move towards some brain gain. The involvement of UN bodies such as the IOM, ILO, UNCTAD etc, would undoubtedly contribute to the outlining of a sustained research agenda focusing on the IP dimension of migration flow, as it was an appropriate way of moving forward in those under researched areas. The Delegation concluded by congratulating the Secretariat for drafting a pragmatic and well intentioned project and looked forward to its adoption in that session without further delay.

127. The Delegation of South Africa, speaking on behalf of the African Group, welcomed the project of IP and Brain Drain and thanked the Secretariat for its effort in preparing the document. It noted that the issue of Brain Drain had a critical impact on the development of the African continent as many of its talented and skilled researchers and scientists were leaving the continent to apply their knowledge and skills elsewhere due to a variety of reasons. As a result, the institutions for which they would be working and which very often also became the IP right holders and who should be the principal beneficiaries, were unable to harness the reward of the investment made in their development, whether monetarily through the employment opportunities that their work might bring. It was evident that the effect of the phenomenon had

been under-estimated in the past and that the subject at hand had not been well assessed or understood especially in the area of IP and development. The Delegation therefore requested WIPO through the implementation of the Development Agenda Recommendation 39 to assist in transforming the existing Brain Drain into brain gain. The Delegation then expressed its views on the two proposed project activities namely i) a research project that sought to exploit information on inventor's nationality and residence in patent documents to map the migration of scientists and ii) convening of an experts' workshop bringing together academia and other international organizations and policy-makers with a view to developing a research agenda on IP, migration and associated knowledge laws. The Delegation further stated that the African Group considered those two project activities as merely a starting point for the implementation of Recommendation 39 as the activities themselves could not completely transform Brain Drain into brain gain. It was not clear if those activities would address the challenging question of how to retain and attract researchers back to their countries of origin, or address how sending countries would benefit from the migration of their professionals mindful of the fact that many Africans were working for research departments of universities and companies abroad. It noted that their innovations were often patented by those institutions. Targeted activities for research institutions would have been preferable. Researchers and their institutions, supported by adequate material and equipment could conduct research towards the furthering of creativity and innovation which was limited on the continent. Many inventors, with no facilities and access to IP institutions were forced to go abroad to protect their IP rights in order to continue their research. The Delegation believed that WIPO's activities in that regard would have a significant impact on brain gain and development. The Delegation therefore requested the Committee to consider adding that category of activities in the implementation of Recommendation 39. In respect of the research activity that sought to exploit information on inventor's nationality and residence in patent documents to map the migration of scientists, the Delegation found the idea very interesting and therefore supported its implementation. It said nevertheless that it was concerned that the methodology that was to be used to conduct the project might not yield the expected results as many African researchers had changed their citizenship. It therefore asked how would it be possible to identify those researchers that had changed nationalities or hold dual citizenship? Similarly, limiting the scope of the project to patent documents raised many questions such as which patent databases would be used? Would it be country specific or WIPO specific? Which period would be considered? How would the issue of patent application deadlocks be considered in the situation? Considering that some innovations and inventions were not patented but had very useful sources, how would that be addressed? Similarly the Delegation added that it believed that the project should not limit itself to patents but that copyright and related rights should also be considered. It said however that it was aware that it was just the first phase of the project and therefore, requested the points that had been raised to be considered. In future, concerning the second activity of the project, the Delegation said it welcomed the workshop and believed that the project should have as one of its objectives to make actionable recommendations for the Committee.

128. The Delegation of Spain thanked the Secretariat for the document on IP and Brain Drain. It also expressed its support to the statement made by the Delegation of Hungary, speaking on behalf of the European Union and its 27 Member States and added that in its view, it was important to carry out a preliminary study as described in CDIP/7/4 on the nationality and the residence of the researchers and scientists. In that respect, the Delegation noted that there were limits to the study as had been pointed out by a number of delegations already, and that there should be an inquiry carried out regarding the scientists as pointed out in the fifth section of the draft document. The Delegation argued that it might be early to adopt other activities such as experts' workshop with other international organizations as long as information from the aforementioned studies was still unavailable. The Delegation suggested that it was necessary to evaluate to what extent the various studies were carried out by developing countries to identify the damages that would have actually been carried out by the Brain Drain. It noted the existence of a link between IP and Brain Drain and suggested continued rising of awareness on the issue. Furthermore, as previously stated it wished to underscore the fact that the budget should be broken down on the basis of the various activities that had been contemplated. In



that way, the Member States would be able to better understand the configuration of the various activities.

129. The Delegation of Colombia stated that a full fledged representation or mapping of the presence of the scientists should be achieved as that would be of great assistance to policy makers in various countries. However, the Delegation noted that a number of other delegations had already put forward precise information that would have to be borne in mind when drafting such a project. In that respect, the Delegation requested the Secretariat to take note of all the information so as to have a better implementation of the project.

130. The Delegation of the United States of America believed that project on IP and Brain Drain would begin to identify and gather information on some of the intellectual property issues related to the important challenge of Brain Drain. As stated at the last CDIP, the Delegation said it was very supportive of the expert workshop proposal, which would be the basis for a follow-up of CDIP project consisting of research activities and developing recommendations. In its view, that approach best fitted WIPO's mandate in relation to Recommendation 39 that prescribed studies on Brain Drain to be conducted and make recommendations accordingly. Regarding the research project, while a direct link between IP and migration would be hard to assess from a patent application data available in the PCT, the Delegation argued that the research project could at least provide useful background information about migration patterns into the work of the experts' workshop. Since information was already available to WIPO through the PCT statistical database and potentially through national patent databases, the Delegation said it could not support the research project proposal. It also agreed that WIPO should work with the relevant international organization in that effort including the International Labor Organization, International Organization for Migration and the World Bank, as that collaboration would also help to fulfill implementation of Recommendation 40.

131. The Delegation of Pakistan thanked the Secretariat for the draft project proposal on IP and Brain Drain. The Delegation welcomed the project and said it would support both of its components on the research project as well as on the expert workshop. Furthermore, as mentioned in the project proposal, no empirical researches were available at WIPO and few academic studies existed on the topic. It said it would appreciate it if the results of the project and the workshop would be presented to that CDIP. The Delegation noted that on the research project, a logical follow-up activity would be to conduct a survey of the scientists identified and along with that, discuss those issues in the next session of the CDIP. The Delegation then urged Member States to adopt the project during that session.

132. The Delegation of Mexico thanked the Secretariat for submitting the project document and said that it would await the outcomes of the exercise so as to see the way forward in the area of the Brain Drain. As regards the title of the project and the various objectives, it sought clarification from the Secretariat while pointing out that at the beginning of the document in section 1, only Recommendation 39 was indicated. However, in the revised document, an additional Recommendation 40 has been added.

133. The Delegation of Algeria thanked the Chair and expressed its support to the delegations of South Africa and Brazil respectively for their statements on behalf of the African Group and Development Agenda. The Delegation also thanked the Secretariat for having prepared document CDIP/7/4 on Intellectual Property and Brain Drain. It noted that the project description pointed out that the migration of qualified workers to certain parts of the world was motivated by high level of protection of intellectual property in those regions. However, the Delegation said in its view, that was a subjective viewpoint and it should not be necessarily considered as the position of WIPO. The Delegation argued that the migration in question was essentially due to socio-economic factors that prevailed in developing countries and educated elements often chose to migrate to rich countries where they would be offered more promise. The link between Brain Drain and the IP system as understood so far, resided in the fact that the latter was a factor for transmitting knowledge, expertise and know-how of a number of

skilled persons of the country of origin. In section 2.1 of the document which read as follows: "In addition, governments have instituted various policies to curtail economically harmful Brain Drain, or at least minimize associated losses, and to encourage "brain gain" outcomes". The Delegation requested more information on such measures and what was their contribution to stem the tendency for the phenomenon of Brain Drain and also transforming it out into brain gain. The project on the theme IP and Brain Drain within the framework of the implementation of Recommendation 39 should seek to identify ways and means of making it possible for developing countries to draw benefit from the knowledge of their own educated elements who were working in the industrialized countries. That was the Delegation's view of the two activities proposed in the projects to map the migration of research scientists and also the holding of an expert workshop on the theme in question. However, the mapping of research scientists being the final result of the research project could be bias in nature due to the fact that those trained specialists originating from the developing countries often acquired the citizenship of the host country. Furthermore, the scope of the mapping was limited because it would only concern research scientists who had filed patents and not those who worked in the humanities or social sciences. Regarding holding of an expert workshop, the Delegation considered that due to the diversity of backgrounds of the participants, such a workshop would be a very good opportunity to exchange views and experiences when it came to making available information and knowledge. It said that was a very good opportunity for WIPO to strengthen its role working together with other organizations, such the International Organization for Migration and UNESCO. From that standpoint, the activities embodied in the project were the first step for implementation of Recommendation 39. On the basis of the results of those activities, the Delegation suggested that other fields of action could also be examined in the future when it came to drafting a roadmap to make it possible to help decision-makers in developing countries to further draw benefit from their trained specialists working abroad.

134. The Delegation of the United Kingdom thanked the Secretariat for a very clear and well thought out project proposal and aligned itself with the statement made by the Delegation of Hungary on behalf of the European Union and its 27 Member States and also the comments made by Spain. The Delegation believed that the Brain Drain was an important phenomenon and one of a number of complex migration and development linkages which many people desired to better understand. The Delegation therefore welcomed the opportunity to consider a project which addressed that key Development Agenda recommendation. It noted that gaps and limitations in the available data on skilled migration posed a significant difficulty when studying the Brain Drain and welcomed the interesting and novel approach to using patent data as suggested in the project proposal. Using patent data to map migration of scientists had the potential to generate new information about migration flows and could contribute significantly to understanding the topic. The Delegation further stated that it could also be extremely useful to other international organizations with core expertise in migration and Brain Drain issues and therefore fully supported that element of the project. It however observed that as stated in the project document, the outcome of work at the present stage remained uncertain and there was a risk that data might be incomplete or biased. Therefore, approving an expert workshop as part of the project seemed to assume a positive outcome from the research exercise which could not be assured at the moment. The Delegation stated that once there was further information at hand, the Committee might determine alternative ways to take the agenda forward. Indeed a survey might be a logical next step or the Committee might consider WIPO's patent mapping research fed into discussions on migration and Brain Drain that were ongoing at other international organizations. The Delegation therefore suggested that the results of the first project activity on the patent mapping exercise would need to be presented back to the CDIP before considering the next steps. Delegates would then be in a more informed position to consider a range of possible ways to take it forward based on the available data. It therefore requested the Secretariat to clarify the split of the cost between those two activities in the projects so that they might be considered independently and hopefully, to allow Member States to move forward by approving parts of the projects which had received consensus within the Committee. The Delegation looked forward to seeing results in that interesting and original piece of research on such an important topic.

135. The Delegation of Panama congratulated the Chair and thanked the Secretariat for making available the document under consideration which contained the thematic project focusing on IP and Brain Drain. The Delegation noted that the project was based on the various guidelines that had been arising from the specific recommendation of the Development Agenda. It said it was happy to receive such a project proposal and noted that it was important to share information regarding coordination with institutions working on specialized matters of migration such as the International Organization on Migration (IOM), the World Bank and the ILO as well. It stated that such coordination was imperative as highlighted in the Committee on many occasions. The Delegation also aligned itself with what had been said at the earlier session of the Committee, and informed that in Panama the National Secretariat for Higher Education, Science and Technology known as SINASIT, had obtained the approval of the office of President of the Republic and had included the subject in its Strategic Plan for Science and Technology and Innovation for the period 2010 to 2014, a special project for repatriation of talents and skill sets in the area of research and development. The Delegation stated that the project would seek to turn around the Brain Drain to bring back to the country of origin scientists of very high quality who had been working abroad for a number of years. It noted that there would necessarily be costs for the organizations that would be responsible for welcoming, receiving and hosting the research scientists and as such the country would have to work very hard in forging mechanisms that would not only be interesting but also innovative as well in order to alleviate the problem of the drain of highly qualified skill sets. The Delegation informed that the work was based on a research program that looked at the basic principles of the theme of Brain Drain. All of that would be linked to other initiatives carried out by a governmental body that would be part and parcel of those strategies such as the establishment of an innovation centre that would be put together with the Georgia Institute of Technology in the United States. It said Panama was making itself ready for the building of the centre by carrying out training, research work and various other activities. In that way the country hoped to train people from the private enterprises also. What the country would need to do was to increase its competitiveness especially in the specific case when it came to logistics. As the country saw it, the mapping of the presence of scientists who had moved to other latitudes was something very important. People would not be necessarily working in their country of origin therefore they had to be followed to where they had gone to be brought back. The Delegation said that was the special aspect of the Brain Drain that had to be borne in mind. There would have to be important incentives to bring people back home. Also, there would have to be important initiatives in the home countries that would attract highly creative minds.

136. The Delegation of China said in its view, it was important that an in-depth study was carried out on the issue of IP and Brain Drain in developing countries. It said it was pleased to see that the document proposed a detailed project implementation program that laid a good foundation for future work on the subject. The Delegation said it supported in principle the content of the project and hoped that the study activities carried out under the project would give full consideration to regional representation in order to assure that the results of the study would be widely used by as many developing countries as possible.

137. The Delegation of India congratulated the Chair on his re-election and thanked the Secretariat for presenting a well prepared draft project proposal on intellectual property and Brain Drain as requested by Member States at the last CDIP session. It noted that following discussions on Development Agenda Recommendation 39, it welcomed the proposed project and fully supported the two proposed activities therein namely a research project that seeks to exploit information on inventor nationality and residence in patent documents to map the migration of scientists, and secondly, the convening of an expert workshop bringing together academia, relevant international organizations and policy makers with a view to developing a research agenda on IP migration and associated knowledge flows. The Delegation was also happy to note that the results of the research project and the proposed research agenda would be submitted to the Committee for further consideration. It believed that the linkages between intellectual property, migration and Brain Drain, though currently under researched, are highly important and worth exploring. It said that there was a large expatriate community of talented

Indians abroad that contributed significantly to innovation and scientific and technological development in several foreign countries. The Delegation would therefore be very interested in better understanding the various aspects of the intersection between intellectual property and migration of skilled manpower. It said the proposed research project and workshop would hopefully shed more light on the interesting linkage and help developing countries understand and evolve better ways of retaining and attracting skilled manpower. The involvement of specialized UN agencies such as the IOM, ILO, UNCTAD, etc. which had expertise in cross-cutting areas of migration, development and labor, would undoubtedly contribute to the outlining of a suitable research agenda. The Delegation also stated that in its view, focusing on the IP dimension of migration flows was an apt way of moving forward in such a new area. In conclusion, the Delegation congratulated the Secretariat for drawing up a well considered and useful project and looked forward to its adoption in the current session of the CDIP without delay.

138. The Delegation of Venezuela thanked the Secretariat for the document on Intellectual Property and Brain Drain for consideration by the CDIP. It said it supported the statement of the Delegation of Algeria particularly regarding paragraph 3 on more protection of patents. The Delegation stated that IP protection as an end in itself rather than as a means to other things was a problem as the Delegation of Algeria had pointed out. It said the topic of Brain Drain was linked to socio-economic and political factors as well as difference of economic levels and asymmetry in power that involved also armaments and shedding of blood. The Delegation suggested that in order to know the origin of the inventors and scientists it would be useful to know their original nationalities. The Delegation noted for instance that in several developed countries there were some very high level athletes, but their countries of origin were not known. In the majority of cases, as the Delegation of Algeria had stated, the inventors had actually taken up the nationalities of their new countries of residence so getting the relevant information about them would be difficult as it would be in the cases of the athletes. It said of course the issue was a very complicated one.

139. The Delegation of Norway thanked the Secretariat for preparing the project document in order to better understand the possible links between IP and Brain Drain. It said it could support both parts of the project namely the mapping exercise and the proposed workshop. On the mapping exercise the Delegation realized that there were some challenges but it found the idea very original and refreshing, especially as it would come from the information at hand in WIPO which it said would be interesting. It also noted that in the description of the workshop, its objective was to identify a research agenda on IP and migration, and suggested that in intensifying its cooperation with other UN bodies on such a broad topic, it would be essential that WIPO maintained its role of providing IP-related assistance to the discussions in accordance with its core competence and mission.

140. The Delegation of Egypt congratulated the Chair on his election and associated itself with the delegations of South Africa for the statement it made on behalf of the African Group and of Brazil on behalf of the Development Agenda Group, as well as the statement made by the Delegation of Algeria. The Delegation stated that IP and Brain Drain was one of the issues of considerable importance to it as it was to other developing countries. Going to the document the Delegation noted that first it would like to echo what had perhaps been pointed out by the Delegation of Mexico on the recommendations under the project. The Delegation believed that Recommendation 40 was in a manner superfluous to the project because it could be noted that Recommendation 39 already stipulated that any action undertaken under that recommendation should be in cooperation with relevant international organizations, and as pointed out by a number of delegations, the two most relevant international organizations would be the International Labor Organization (ILO) and the International Organization for Migration (IOM). Those two organizations were not mentioned in Recommendation 40. The Delegation noted that Recommendation 40 did not specify certain organizations to the exclusion of others but it believed that some clarification was needed as to why the Secretariat felt that Recommendation 40 should be included in the present project. With regard to the brief description of the project

as presented in the document, the Delegation of Egypt noted the two aspects of the project and quoted the second sentence under the brief description of project which said “how Intellectual Property rights affects migration flows and subsequent human capital formation is poorly understood”. The Delegation noted the double causality, and stated that it wanted to understand the reverse side of the phenomena which was how IP rights taken out by foreign corporations and institutions other than the country of origin of the scientists and researchers that have contributed to such IP rights. The Delegation noted that it had been reflected in the second page under the introduction in the last sentence in paragraph three and quoted it as “vice versa out of migration of skilled workers can impact on the effectiveness of the IP system in reaching its goals of promoting innovation and technology transfer”. It said what was contained there was an acknowledgement that it was a two-way stream, and what should be understood however, was how IP rights taken out by foreign corporations and institutions with the contribution of scientists from developing countries could impact these developing countries. Returning back to the brief description of project at the very end of the text in the box, the Delegation observed that the last sentence referred to “the results of the research project and the proposed research agenda would then be submitted to the Committee on Development Intellectual Property for further consideration”. The Delegation said what it was proposing was just to be through to the language of Recommendation 39 and to add four possible recommendations accordingly. It said that was the language of Recommendation 39 which it was seeking to implement in that project. In the second page of the project document under section 2, point 1, at the very bottom of the page, the penultimate paragraph, the last sentence read as follows: “In line with Development Agenda Recommendation 39, the workshop and the envisaged research agenda will focus on IP relevant dimensions of migration flows rather than Brain Drain issues and migration policy in general”. The Delegation said of course that was the intent why the issue of migration would be dealt with, since there was an entire international organization dealing with that. The Delegation said it would like to add that, with reference to IP relevant dimensions, it suggested including “and impacts” on migration flows. Again the last sentence in that section referred to the proposed results of the research project and the proposed research agenda would be submitted to the CDIP for further considerations, and in that regard the Delegation wanted to add “and recommendations accordingly”. Finally, it said that its last question would be on the issue that was already raised by at least one Delegation, which was the issue of the nationality and inventor residence. The Delegation was of the view that that would be probably the key in undertaking the research, the key factor that would need to be decided on how to collect the information considering that some jurisdictions required or requested nationality while others did not. It said there was the even more complicated question of dual nationality. A lot of developing country nationals had dual nationality and it could so happen that a whole body of researchers and scientists would not be covered simply because it had dual nationality. The Delegation therefore thought that that was an element that would need to be considered and perhaps some of the thoughts on how to handle that factor might be heard from other delegations. Apart from that, it said it was a good project and thanked the Secretariat for producing it and hoped that it would be approved at the current session.

141. The Delegation of Morocco congratulated the Chair, and as it was the last to speak, it did not wish to repeat all that had been said so far by other delegations, and gave its support to the statement made by South Africa on behalf of the African Group, and also summed up Morocco’s position on the issue under consideration. The Delegation observed that the project and its related activities must focus on three main points. First, it must identify the consequence, the impact of Brain Drain on intellectual property as a first undertaking. Second, it should identify the people who were involved and in that regard, and the Delegation agreed with everything that had been said in order to broaden the criteria, using all the ways and means possible to identify the people who made up the bulk of the Brain Drain. Third, the Delegation stated that the project should be able to identify the origin and sources of the Brain Drain so that appropriate programs could be crafted to help those countries and regions that had been affected. Fourth, a number of recommendations should be drafted which should focus on different ways and means to reverse the Brain Drain and see to it that the source countries or countries of origin,

could welcome back those resources. The Delegation hoped that those four items would be embodied in the project.

142. The Secretariat thanked all the delegations for their thoughtful comments and suggestions to the project proposal at hand. It noted that it would be very important to agree on expectations with regard to the project proposal and emphasized the concern to focus the project on IP-related issues as such, in the context of Brain Drain, and not necessarily extending it beyond the remits of WIPO. It recalled the sequence of events by noting that Recommendation 39 expressed interest in the links between Brain Drain and intellectual property and said in no way did the Secretariat imply that IP was the sole driver of Brain Drain or brain gain but that the recommendation in question had called for analyzing of that particular relationship. The Secretariat also stated that to pursue that relationship, it proposed a scoping paper for discussion at the last CDIP that also responded to the comments of the Member States, and which was based on extensive, prior research on existing literature and projects on that exact relationship between IP and Brain Drain. The Secretariat stated that it did its homework, and looked at what existing contributions were available in the academic or in the policy community. Except for one or two exceptions, it did not find detailed studies on that matter which in essence meant that WIPO was starting afresh and it also meant that the Organization had a very interesting project on its hand that nobody else had looked at before. Reacting to the inputs made by some delegations, the Secretariat noted that as requested by the last CDIP, it had gone back to the drawing board and tried to see what two items it could propose that could illuminate the relationship between IP and Brain Drain. The Secretariat said the first item was the proposed mapping exercise and the other one was a workshop where other existing work items would be taken into consideration. In its view, those two issues were likely to go hand in hand for three reasons. First, the mapping exercise as ably suggested by some delegations would have limitations given changes in nationalities and inventors that were not mentioned in patent documents, therefore based on future discussion in the CDIP, just considering the mapping study would most likely not be productive. Secondly, the workshop would enable the Secretariat to identify, with the future research agenda in mind, other linkages that would have to be taken into consideration. The Secretariat also noted that the project would be brought back to the CDIP with a result in hand on both the study and the workshop and thereafter, the CDIP could take up particular suggestions as offered by the African Group or the Delegation of Egypt. Issues like impact of the exercise could be looked at, at a particular point in time when a clear understanding of linkages was obtained and it would be possible to quantify those linkages. The Secretariat therefore suggested that the step-by-step approach seemed to be the most sensible course of action in terms of managing the expectations and providing the necessary elements to the CDIP to make decisions on how to take that project forward. Another follow-up project could be designed if so required. Responding to the specific questions raised by the delegations, the Secretariat noted that as regards Recommendation 40, it was included in the project document on the basis of feed back received from the Member States during the last CDIP meeting where delegations insisted that other UN organizations should be made to contribute to the project. Therefore, in order to reflect the wishes of the Member States the Secretariat included that recommendation in the project but it will however, drop the reference to it if the delegations so wished. The Secretariat explained that it had tried to address the question in an indirect way and admitted that the suggestion to split the research was based on the idea that no prior research had been undertaken to identify existing strands of work and was also based on the understanding that the mapping study would provide sufficient input to flesh out a future research agenda. It further stated that those two assumptions would have to be revisited; first that no prior research had been undertaken and that no existing studies had been found, and; second, neither in academia nor in policy had the topic been addressed. The Secretariat therefore explained that the mapping exercise alone given its limitations and given other interactions in IP and migrations would not do justice to fleshing out of a future research agenda. In that sense, it did not believe that sequencing it in a different way would make sense and suggested that if delegations so wished, a split budget could be submitted without any delay.

143. The representative of FILAIE congratulated the Chair and informed that the FILAIE brought together 23 artist's rights management societies, with membership drawn from Latin America, Spain, and Portugal. The organization had a number of affiliates and many artists among them. The representative said the first question that he would like to ask was in regard to Recommendation 39 in the sense that there was a distinction between intellectual property and industrial property rights. The representative stated that as presently crafted, the project document on the recommendation made no mention of artistic works but it looked at the practical aspect and the system of patents only. The representative also stated that FILAIE appreciated that there was a study being planned on Brain Drain and of course since its field of work was artistic work it had to note that the Brain Drain was constant and very hard to fight against in countries where artists could be an important source of revenue and economic and social development of the population and the community. The representative observed that having their artists with them created a certain atmosphere of creativity and of course many artists moved on to the international scene and in the majority of cases when that happened, the individuals emigrate and work in a different part of the world. While FILAIE acknowledged that such artists needed to have that kind of opportunity, it also stated that their places of origin would no longer benefit from their activities. The representative also observed that interpretations of live works and also works which were broadcast or recorded were linked to an increasing industry. The representative referred to the phenomena of the Beatles that became so important for United Kingdom even it became larger than that country's automobile industry. Now talking about industrial property rights, the representative said that the same thing was happening with Brain Drain that happened in the artistic works and IP. Therefore, the representative declared that some way of addressing that issue was needed.

144. The Delegation of Spain thanked the Secretariat for the explanations that it provided and took the opportunity to reiterate the opinions expressed by other Member States which had been addressed by the Secretariat. With regard to its previous intervention regarding the workshop of the experts as being premature at the present stage, the Delegation observed that it was not objecting to such a workshop, but that perhaps in the light of the initial study carried out and then complemented by the survey among the scientists and innovators who were discovered as a result of the first study, perhaps a workshop could be held at a later stage. Given that and on the basis of the opinion of the majority of Member States, the Delegation said it was not opposed to approving the project with the workshop included, but the workshop should not be thought of until the first phase of the project had been worked through. The Delegation stated that on the basis of the explanations presented by the Secretariat, it would like to first underline what had been confirmed by the Secretariat that the aim of the Secretariat in designing the project was precisely to explore the existing relationship between Brain Drain and intellectual property, and therefore, the Delegation reaffirmed that the objectives of the project ignored the reality of the issue and as such it could not be really used to evaluate the project itself or be confirmed as an objective. With regard to the budget, the Delegation noted that independent of whether the proposal was divided or split into two with two independent budgets, the budget would have to be divided between the different exercises in order to ascertain the financial implications of each stage of the projects. The Delegation thereafter requested the Secretariat to provide the Committee with that information.

145. The Delegation of the United Kingdom thanked the Secretariat for its very helpful explanation, which demonstrated some of the linkages between running the research projects and the workshop that would enable those results to be analyzed. The Delegation took note of the interest that was shown in the project. The Delegation also reiterated the comments made by the Delegation of Spain that a break down of the cost of particular programs would allow an assessment of those items for approval. The Delegation recalled its initial statement that the project was a very important piece of work and that it was in a position to approve it in both parts. As a general point, the Delegation noted that it would not wish to be put in a position whereby it would have to approve conferences and more expensive expert forums without the necessary work having been done upfront.

146. The Delegation of Mexico also thanked the Secretariat for its explanation and noted that inclusion of Recommendation 40 was appropriate since it did include the relation of WIPO with other international organizations that would be involved in the proposed study on the Brain Drain. The Recommendation should be reflected in paragraph 1 of the project so that there would be no incongruity between the two.

147. The Delegation of El Salvador thanked the Secretariat for drawing up the project and also for presenting it in greater depth. It stated that the project was of great importance and a very interesting one as other delegations had noted. The Delegation supported the inclusion of the recommendations as a very clear way of identifying the project beyond its description and the objectives. The Delegation joined other Member States in supporting both the report and the meeting of experts.

148. The Delegation of India noted that both parts of the project were important because it saw them in many ways as complementary. With respect to the first component, there was an inherent risk that the research project would be partial and biased, simply because the entire information would not be available in the existing patent system. In the Delegation's view, that was a smaller component of the larger treatment that an issue as complex and new as IP and Brain Drain would deserve and the larger complement and the more important one was the convening of an expert workshop where experts from different intersecting specialties could get together and discuss what kind of a research agenda would be required. It noted that the fundamental first step of the patent profiling was a corollary of the project that could contribute to the understanding of the project but that could not substitute for the drawing up of a more comprehensive research agenda on the issue. For that reason, the Delegation agreed to both elements of the proposed project and looked forward to understanding and cooperation from other delegations. If there was a concern among Member States about whether there was value for money with regard to the expert workshop, the Delegation took note of that point and pointed out that the deliberative strategy of the project itself had proposed that the success of the second activity, which was the convening of an expert workshop, would depend on the active participation of other international organizations and migration experts. The Delegation added that careful prior consultations with relevant institutions and sufficient time for organizing the expert workshop would increase the chances of high quality participation. As Member States, delegations could address that concern by putting on record their preference that sufficient prior consultation be undertaken with the concerned international organizations and the relevant experts prior to organizing the workshop, and to also look at ways of minimizing costs, as it seemed that the said international organizations were located in Geneva and therefore, there would not be too much of travel cost component involved other than travel costs for a couple of international experts. It was noted that such expenditures were commonly incurred in different WIPO activities without objection in different contexts. The Delegation looked forward to both the components of the project being approved in the present session.

149. The Secretariat thanked the delegations for their useful comments. It stated that when drafting that particular project proposal it had the discussion of the last CDIP and its conclusions in mind. Referring to the report of that session, particularly paragraph 254, in which it was agreed that the Secretariat would conduct a mapping study and one workshop that would bring together international organizations working in a field of Brain Drain, the Secretariat said the opinions of the delegations on formally consulting other organizations had been taken on board. In that sense, the Secretariat said it would focus on patents and the sequence of those two projects reflected the decisions and comments of the delegations at the last CDIP. Secondly, just from the analytical and technical point of view, it did not think that it would be recommendable to associate one project with the other as the Delegation of India had pointed out and as explained previously, that the mapping study was not the sole input to a potential workshop. While one input might be a side input, it might well be concluded that there were too many limitations on the patent data to actually map those flows, so it would be misleading to base the discussions in the next CDIP and try to shape a research agenda solely on that mapping exercise. The Secretariat noted most importantly that it reflected the discussion and



agreement of the last CDIP. With respect to the comments of the distinguished Delegation of Mexico regarding Recommendation 40, the Secretariat said it would be most happy to retain that Recommendation reflecting the Delegation's wishes and would appropriately amend paragraph 1 of that the project.

150. The Delegation of Ethiopia thanked the Secretariat for producing the thematic project proposal on intellectual property and the Brain Drain which was aimed to address WIPO's Development Agenda Recommendation 39. The Delegation expressed its full support for the statement made by the Delegation of South Africa on behalf of the African Group, and noted that as a developing country, the issue of outward migration of skilled professionals and the associated Brain Drain phenomenon was a matter of serious concern to its country. It stated that there were a great number of skilled professional Ethiopian citizens in various developed countries who could have added value to the overall development of their country of origin. In that context, the Delegation supported the project proposal on IP and the Brain Drain.

151. The Chair stated that, having listened to the various comments and inputs made by the Committee, there appeared to be general agreement on the fact that the project was an important one. The project would actually add more value in terms of the profile of the Organization's work because it was a grey area where nobody had yet ventured. Given the explanation by the Secretariat, the Chair noted that it was unclear how the meeting should proceed in the light of different opinions with regard to the implementation aspect of the project. He also noted that there was general agreement on the subject matter of the project because it was a decision that was taken in the last session of the CDIP, but with regard to the elements contained in the project, there seemed to be differences. However; those different views were not so far apart, as with the Delegation of Spain whose concern was that it would not wish to prejudge the first component with regard to the first activity resulting in a negative outcome. The Chair however noted that that was a grey area in which there could be all possibilities and into which WIPO would be very happy to venture in collaboration with other international organizations in line with their areas of competence. With regard to the sequencing, as noted by the distinguished Delegation of the United States, the explanation given by the Secretariat might offer some clarification with regard to the dimensions or perspective of the Secretariat. In light of those various comments that were not so divergent, the Chair proposed options that the Committee might want to pursue. The first option could be to take into consideration the explanation given by the Secretariat, if satisfactory, the Committee could proceed to approve the project on the basis that all the comments and the inputs that each and every Delegation had made regarding the project would be duly taken on board. The second option would be to request the Secretariat to further refine the project, although that would again pose technical challenges because the Secretariat had tried to develop a project proposal based on the comments that it had received from the CDIP. The Chair noted that the Secretariat would need clear guidance on the specific elements that would need to be addressed if it was going to produce a revised version of the project based on such specific guidance from the Committee. The Chair suggested that it was important to focus on the subject matter, which was the linkage between Brain Drain and intellectual property. The remaining outstanding issues if any would be addressed as the Secretariat ventured into the grey area. The project raised many possibilities, and the question of the Delegation of Spain regarding the possibility of failure of the workshop could also give rise to the question regarding the possibility of its success. Therefore the Chair noted that since the project document itself had acknowledged that there were some dynamics that might be encountered, it was suggested that a flexible approach should be adopted. The Chair would be guided by the Committee with regard to how to move forward, since a project had been proposed and a few comments that were of a more technical nature had been made.

152. The Delegation of Spain noted that, in line with its earlier intervention, the project could be adopted, bearing in mind the Delegation's earlier observations with regard to the objectives which should not prejudge the possibility of any failure on the part of the project. Noting that things were still open, the Delegation would take back the gauntlet that it had thrown earlier.

153. The Delegation of South Africa, speaking on behalf of the African Group, expressed preference for a scenario involving option one, which would approve the project and take into consideration the interventions by Member States. It recalled also that in its previous intervention it had made it clear that it would like both activities to be approved, as it attached great importance to the workshop which would determine the eventual agenda on addressing intellectual property and development.

154. The Secretariat pointed out that as a matter of practice of the Committee, the project could perhaps be adopted while the Secretariat would revise the project document taking into account the observations made by the Delegation of Spain. All the projects adopted during the last session of the Committee were revised and placed on the WIPO Development Agenda website, and the same practice could be followed in respect of the present project.

155. The Delegation of Egypt requested, with reference to a revised version, that the Secretariat should take on board not only the comments made by the Delegation of Spain but also its own comments as well as those of other members of the Committee.

156. The Chair agreed with the Delegation of Egypt and stated that the Committee would approve the project and the Secretariat would produce a revised document in which all the comments that had been expressed would be duly reflected. The Chair requested the Committee to approve the document CDIP/7/4 on the understanding that the explanation from the Secretariat was accepted. The document was so approved.

#### Consideration of Document CDIP/7/5

157. The Chair invited the Committee to consider document CDIP/7/5 on the project on Patents and Public Domain, and invited the Secretariat to introduce the revised project document.

158. The Secretariat introduced document CDIP/7/5 entitled "Revised Project on Patents and the Public Domain". It reminded the meeting that it was asked to present an additional project on patents and the public domain, which would address in particular three elements, namely: 1) the important role of a rich and accessible public domain, 2) the impact of certain enterprise practices in the field of patents on the public domain and 3) possible norm-setting activities at WIPO on the public domain. The Secretariat noted that at the last session of the CDIP, it had submitted a project covering those three issues as requested by the Member States and during discussion of the document, several proposals had been made by Member States. The Secretariat had included those comments because it had been asked by the Committee to present a revised project at the current session and it did so with the present document under consideration. The Secretariat highlighted two issues: firstly, that it was asked in particular to flesh out the kind of categories of enterprise practices that could be envisaged to be studied because it was felt that the previous wording had been too general, and secondly, that it wished to bring to the attention of the Committee that it was trying to specify in greater detail the objective of the micro-level study on patents and the public domain that had been provided in phase 1 of the project.

159. The Delegation of Uruguay thanked the Secretariat for its presentation and requested some clarification with regard to the project under discussion. It sought to know which types of enterprise practices would be focused upon in the study. It also wanted to know what would be the hypothesis at the outset on the incidents of those practices and access to the public domain. The Delegation also inquired as to whether the study would then look at those practices or other types of behaviors in the public domain in addition. Regarding the second point, on norm-setting activities at WIPO, the Delegation sought information as to any influence the comparison of legislation might have had on those norm-setting activities. It inquired further as to what were the different areas where WIPO might be able to act in its norm-setting activities. Finally, it asked whether WIPO could act in other areas, such as Patentscope, investigations, training, etc.

160. The Delegation of Hungary, speaking on behalf of the European Union and its 27 Member States, thanked the Secretariat for preparing the revised project proposal on patents and public domain. The EU and its Member States voiced the opinion that a well functioning patent system should strike a balance between the rights of patent holders and public access to information. The Delegation recognized the importance attached to the issue of the relationship between patents and the public domain, however it emphasized that the SCP should be the appropriate venue to consider the possible results for the studies to be prepared in the framework of the current project. In that respect, the EU and its Member States considered it important that the studies on patent practices should be reported to the SCP which was the WIPO body responsible for discussion of patent issues. The Delegation of Hungary reiterated that those comments made on behalf of the EU and its Member States did not include individual comments that the EU Member States might wish to add on the subject.

161. The Delegation of the United States stated that it continued to have fundamental concerns with the project proposal to undertake an analysis of the impact of certain enterprise practices in the field of patents and the public domain. The Delegation said it was unable to support the project as presented. It noted as an initial matter, the project's objectives, methodology and practical applications were not clear. While some of the enterprise practices proposed to be studied had been mentioned in the introduction in section 2.1 of the project document by way of examples, there was no clear definition of those terms and topics. The Delegation further noted that some of the proposed topics were very narrow and some were very broad. In fact, it said, some of the terminologies were prejudicial. It also noted that the introduction to the project had mentioned patent trolls and patent thickets and also attempted to extend the terms of protection by claiming substantially the same subject matter as possible areas of study. The example of so-called patent trolls illustrated the flaw inherent in the proposed study. The Delegation explained that patent trolls, more accurately called non-practicing entities, either obtained patents on technology they had developed, or invested money in buying patents from others. Their business model was to solicit royalty payment through licenses from companies that made or used products or services incorporating technologies covered by the patents in question. The Delegation said it was important to look at such non-practicing entities from a historical perspective, and stated that it was precisely the ability of American innovators to specialize in invention while leaving the manufacturing and sales to others that enabled the United States to develop an innovative and successful economy. An early crucial element of the United States patent system was that it did not simply encourage people to participate in inventive activity, but that it made it economically feasible for them to do so by creating a market in which inventors with little or no capital could license their discoveries to enterprises that could commercialize those inventions. That allowed ordinary shop keepers, mechanics and artisans to generate income from inventions and to become full time inventors. That in turn generated even more innovation, so that by 1860, the number of new inventions patented in the United States was seven times greater than other countries with the same population. Indeed, the Delegation observed, Thomas Edison, arguably the United States' greatest inventor, licensed most of his technology rather than commercializing them himself, therefore he was a non-practicing entity. Non-practicing entities had a place in the United States patent system, as long as their practices did not rise to the level of anti-competitive behavior, in which case the United States anti-trust laws would be triggered into action, otherwise they should continue to be able to practice their business models. The Delegation also stated that to the extent there were any abuses, solutions could be found at the domestic level through litigation or other initiatives. It noted therefore, that the issue would not be appropriate for any norm-setting at international level. The Delegation also stated that in its view, condemning patent trolls would not add any value to the study. It also stated that patent thickets and reclaiming substantially the same subject matter, the issue was really one of incremental innovation and patent quality. The Delegation stated that so long as patent offices were able to grant high quality patents, it should not matter that there were many patents in a particular field or that they were granted for patents or improvements over existing technology. An improvement patent protects the improvement, and does not extend the patent term of the underlying technology. Since patent quality was an item on the work program of the SCP, the Delegation said it did not believe that the CDIP project

should go forward. Given WIPO's limited resources, the Delegation felt that duplicative work on the subject in the Committee would be wasteful, inefficient and would not add value. The Delegation also pointed out that the only methodology mentioned in the project description was surveys, and stated that based on the past experiences with various surveys administered by WIPO, the number of Member States responding to surveys was usually quite low, and some of those responses were not complete. That did not allow the Secretariat to form a clear and balanced view of the issue. With respect to phase 2 of the project which involved consideration of patents and the public domain in the context of norm-setting activities, the Delegation stated that it would like to recall an important principle adopted as part of the Development Agenda which was the safeguarding of national implementation of intellectual property rules, as reflected in Recommendation 22. It said each Member State should have policy space which should enable it to freely determine what constituted acceptable and unacceptable patent practices as long as those practices did not violate international norms and agreements.

162. The Delegation of the Netherlands thanked the Secretariat for the revised document on patents and the public domain and aligned itself with the statement made by the Delegation of Hungary on behalf of the EU and its 27 Member States. With regard to enterprise practices, the Delegation stressed that in practice there could be several hybrid models used by companies and institutions. Those hybrid models might combine one or more of the listed enterprise practices. To reach a result that reflected the practice, those hybrid models should also be taken into account. The Delegation therefore said it supported the remarks made by the Delegation of the United States on anti-competitive practice and anti-trust laws.

163. The Delegation of Panama thanked the Secretariat for the document CDIP/7/5 Rev and said that it was important that the Committee moved forward on the project. The Delegation stated that during the previous session of the CDIP, a number of delegations including the United States of America stated that a study of those types of practices with regard to patents might command the competency of the SCP. The Delegation said it shared that view, and reiterated that it was important to take into account that the said Committee specialized in patents. Therefore, the Delegation was of the opinion that there should not be overlap in activities. It said it wanted to have complementarities but it did not wish to see overlap in the work of the committees. The Delegation said it recognized that the project was an initiative coming from the CDIP that had as one of its objectives, to enable the Committee to go deeper into an analysis of the different ties or links between the patent system and public domain enable the CDIP to understand the consequences of enterprises and their practices. The Delegation therefore welcomed the project and appreciated that the time table that had been set up for studies was one that had enabled the Committee to work through the first three quarters of 2012. It further noted that the project would cost only 150,000 Swiss francs, which it said could balance with the conference where 108, 000 Swiss francs would be used.

164. The Delegation of Japan thanked the Secretariat for the hard work in preparing the document. It stated that in order to ensure efficiency in WIPO, duplication of work had to be avoided. In that sense, the Delegation shared the concern expressed by the Delegation of the United States about the proposed expansion of the study on patent and the public domain. It noted that there was a dedicated committee in WIPO for the patent regime, which was the SCP. It therefore said it was concerned that expansion of the study would cause duplication of tasks between the SCP and the CDIP. It cautioned that even in the SCP, care should be taken in considering whether such study was needed or not.

165. The Delegation of France said it supported the statement made by the Delegation of Hungary on behalf of the EU, and noted that as it was taking the floor for the first time in its national capacity, it would like to thank the Secretariat for the revised project document on patents and public domain. The Delegation said the document responded to the different concerns that were raised during the last session of the CDIP but believed that it did so only partially. Specifically, the Delegation observed, more information should be provided by the Secretariat on the interaction between the proposed project and the one that was already

underway. The Delegation said it remained reticent in adopting a new project on the public domain while the one that was underway was still to be concluded. The Delegation said that it seemed useful if the Secretariat drew up a list of enterprise practices that were referred to in phase 1 of the project. It said it still had questions about the modalities of that part of the study in phase 2 of the project, and noted that if that aspect referred to some norm-setting activities, then they should come under the purview of the SCP and not that of the CDIP.

166. The Delegation of Bolivia observed that the project still needed clarification while recalling that Recommendations 16 and 20 were adopted by all Member States, and that the project document before the Committee reflected the contents of those recommendations. The Delegation said it seemed to have the impression that some delegations were trying to renegotiate the contents of those recommendations of the Development Agenda. It said the revised document on patents and the public domain was drawn up by the Secretariat on the basis of the mandate of the CDIP as it was adopted in the fifth session - a mandate that received the support of the Members of the Committee. The Delegation also said the project document would enable the Committee to, first of all, look at the important functions that a rich and accessible public domain could play, and secondly the positive or negative impact on the public domain that some enterprise practices might have in the field of patents, and thirdly the possible norm-setting activities within WIPO in order to preserve and to broaden the public domain. Those elements, the Delegation noted, quite simply reflected the content of the recommendations on the public domain that were adopted by all Member States. The project document drawn up by the Secretariat did not therefore go beyond that mandate that was agreed. In fact those elements were part of the copyright and public domain project that was adopted during the fifth session of the CDIP. The same elements were looked at in the excellent study that was carried out by Mme. Dussolier who presented that study in the last CDIP session. The Delegation said the study represented an excellent demonstration of what could be done for patents in the public domain. It was very difficult for the Delegation to understand why it was acceptable for the copyright aspect of that issue, but not for patents. It said it heard concerns that had been raised with regard to the fact that the project document was analyzing practices that would have an impact on the public domain. It said, however that it was important to clarify that what was being done was the same thing that was done in the copyright and public domain study. The purpose was to analyze the practices and the initiatives that might contribute to enriching the public domain, as well as looking at those practices that might have a negative effect on the public domain. In the past, delegations had requested more details on the practices that would be studied but now they were stating their concerns with regard to those details that had been presented to them in the projects. The Delegation stated that it had no difficulties in maintaining the general language of the project without specifying the details as had been stated in the mandate that was adopted by the fifth session. It said also it did not see how the Committee could debate possible activities such as norm-setting activities or activities to preserve the public domain, as set out in Recommendations 16 and 20, without analyzing the practices that did have an impact on the public domain negatively or positively. The Delegation recalled further that the debate was one that had been underway since the fourth session of the CDIP. The project document had already been revised twice by the Secretariat in order to meet with the concerns that had been raised by members. What remained now was to adopt the project. The Delegation said it was flexible as to the language that would be used, but insisted that the content of the relevant recommendations and the mandate that was defined by the CDIP during its fifth session must be retained. It also recalled that during the fourth session of the CDIP, in a constructive spirit, a part of the project on public domain was set aside despite the concerns of the Delegation, with the understanding that complementary activities would be proposed. It said it hoped that those delegations that still had reservations or were reticent about the project might show the same flexibility so that that very important project could begin. The Delegation opined that the implementation of the Development Agenda could not just be blocked indefinitely, and said it viewed it unfortunate that no progress had been made in consultations with those delegations that blocked that project in order to try and see how their concerns could be met within the framework of the mandate that had come out of the fifth session of the CDIP. It therefore hoped that a solution would be found

before the end of the current session and adoption of that very important project would be possible.

167. The Delegation of Ecuador thanked the Secretariat for the project document and underlined its importance as part of the work being carried out by WIPO in the implementation of the Development Agenda, specifically with regard to the latest state of the art technology in patents, as something that was really important to developing countries. According to the Delegation, the information that would come out of that study would be very valuable as it would enable delegations to reflect on the situation and determine what the realities were at present. It said that should also be applicable to the initiatives on the establishment of the technology and innovation support centers. The Delegation pointed out that the results of the use of information in the field of patents in order to support development and to assist small and medium enterprises (SMEs), thereby enabling their growth in individual countries, should be apparent. It therefore believed that the study on patents and public domain should be considered as an important study that should be approved by countries because it would provide them with assistance in generating patent systems that would prove useful and in fact that would fulfill the very reason for their establishment. It also said that the study could become a mechanism for national development.

168. The Delegation of Brazil said it would make two suggestions on the project document on behalf of the Development Agenda Group. First, the Delegation suggested that the micro-level study on patents and the public domain should include a section on national practices that had been successful in curbing those enterprise practices that might have an adverse effect on the public domain. It therefore suggested that the first part of the project should include a section on national practices. The second suggestion was in regard to promoting norm-setting activities related to intellectual property and the public domain, as dictated by Recommendation 20. A report on the findings and conclusions of the activities undertaken under the project should be provided to the CDIP. Member States would then deliberate on additional activities that might be undertaken to implement the recommendations and discuss any possible norm-setting activities in that area. Speaking in its national capacity, the Delegation wanted to know from the Secretariat, what many delegations had said, about not duplicating efforts, and stated that as far as it was concerned, the SCP was not discussing the issues of patents in the public domain. The Delegation also noted that there were five issues in the SCP agenda and the public domain was not one of them. The Delegation sought to understand if there was any project in the SCP currently being developed that covered all the aspects of the current project.

169. The Delegation of Thailand thanked the Secretariat for preparing the document on the project on patents and the public domain. The Delegation stated that it was one of the real proponents of the three elements set forward in that project which it hoped would be very beneficial to many developing Member States. The Delegation noted that as there were many patents in the public domain, the project would also help to clarify and deal with issues pertaining to patents in public domain, in which Member States still lacked common understanding. It also underscored the importance of the inclusive process of norm-setting activities. At the same time, the Delegation said in its view, the implementation of norm-setting activities or guidelines should not increase the burden of intellectual property offices, and WIPO should also ensure that any technical assistance needed to meet the required norms or guidelines was provided, particularly for the developing Member States.

170. The Delegation of the United Kingdom thanked the Secretariat for the project document and aligned itself with the Delegation of Hungary and its statement on behalf of the European Union and its 27 Member States. The Delegation reiterated its position that the SCP was the primary forum for norm-setting on patents. As such, that Committee would need to be instrumental in the analysis of any studies in patents and public domain. With respect to the specific proposal, the Delegation noted that the latest provision of the project document took into account some clarifications on the types of practices that could be considered under the study in phase 1. However, it still had some questions on the methodology. The Delegation

said the proposal suggested that case studies and empirical analysis would be undertaken which might be based on, for example, surveys. That methodology was still somewhat unclear to the Delegation. It therefore asked the Secretariat to clarify what type of empirical research was envisaged and what might be surveyed. The Delegation also noted that phase 2 of the project would depend on the outcomes of the study and the macro level study already under way. It noted that that had been the case for the copyright in the public domain study, which had been discussed the day before, and noted that some lively debate would probably follow in the Committee as well as in the SCP. The Delegation suggested that the Committee should review and discuss the outcomes of those studies before deciding on the appropriate next step, and also the appropriate forum for addressing norm-setting aspects of patents that supported a robust public domain.

171. The Delegation of India remarked that, in line with the statements made earlier by other developing countries, it regarded the project under consideration as very important, and as one of the key projects for early implementation. In that respect, the Delegation reiterated its earlier statements in preceding CDIP sessions. Regarding the need for the project, the Delegation was of the view that all the members of the CDIP knew that those very real issues existed in the real world and were being discussed, rather animatedly, outside WIPO. If WIPO chose to ignore those and pretended that they did not exist, the Organization would be doing a disservice to Member States and to itself. Also, an opportunity would be lost to make the patent system a more effective tool for promoting innovation and growth everywhere, which was a key mandate of WIPO. It also recalled that the Committee had discussed the project at length in its last two sessions, and that the document had been revised twice. In fact, the Delegation stated that the list of enterprise practices was provided at the last session by the Secretariat. The Delegation was therefore surprised and disappointed that the meeting seemed to be going backwards instead of forwards on that project. The Delegation further stated that it did not see the rationale of the point that there was perhaps duplication between the project and the study on patent quality in the SCP. It should be remembered that the project was in the context of patents and public domain and was in the context of pursuing and implementing two specific Development Agenda recommendations. It observed that only the CDIP was mandated to implement the Development Agenda recommendations. Indeed, if the study was found useful it could always be forwarded to the SCP through a recommendation to the General Assembly at a later stage, where it would go so far as to say that it could complement and enhance the SCP's discussions. However, the Delegation noted that the project had to begin in the CDIP. It also stated that, as the Delegation of Bolivia had rightly pointed out, Recommendation 16 asked for deepening the analysis of the implications and benefits of a rich and accessible public domain. By that it was not meant that the study should focus only on the negative impacts of enterprise practices on the patent system. The Delegation of India said Member States wanted an objective study that gave a balanced account of the contributions that those enterprise practices were making to the patent system, and also acknowledge the manner in which they might be impeding a smooth, balanced and well-functioning patent system. The Delegation said it had taken the point of the United States that the right definitions could perhaps be used, and call them non-practicing entities, and that would not take away from what was being referred to, while also adding the historical perspective. The Delegation was of the view that all members of the Committee would be more enlightened if the study would incorporate that element and also show the positive effects of full time inventors and their place in the patent system. It also indicated that the study could also explain from what point the positive effect could turn into a negative effect by becoming an anti-competitive practice. In the Delegation's view, that would simply enhance the understanding of Member States of the real issue in the intellectual property market outside WIPO. Similarly on the issue of patent thickets, the Delegation said it agreed that it could be incremented innovation if patents were of high quality, and that could be acknowledged in the study. At the same time, there would be the need to look at the other side of the picture. The proposed that the project could take on board the comments made by the delegations, including the suggestion by the Delegation of the Netherlands for including hybrid models. The methodology could be elaborated by the Secretariat, but at the end of the day there would be no reason to block the project. Similarly, on Recommendation 20, which explicitly asked WIPO to

promote norm-setting activities related to intellectual property that supported a robust public domain in WIPO's Member States, the Delegation noted that the Committee had to consider that Recommendation. Looking at the project proposal, what it proposed was very modest. It simply said that an experts' panel or a conference would be organized, that the findings of the study proposed in part one would be discussed and there would be exploration of ideas and suggestions that could promote norm-setting activities related to patents. It also supported a robust public domain in WIPO's Member States. The Delegation's concern was that the meeting seemed to be prejudging and passing judgment and trying to cross the bridge before it even saw that bridge. It suggested that there should first be the experts' panel and workshop so that their findings could be examined. There should first be an agreement on the norm-setting that the Member States wanted to do, if any, and then they could come to the issue of which would be the right forum, whether in the CDIP or the SCP. The Delegation was of the view that there was no need to consider that stage. It suggested that the meeting should simply go ahead and implement the project and see to it that the Development Agenda recommendations were translated into a work program in the Committee. To sum up, the Delegation was open to suggestions for improving and modifying the project to take on concerns of Delegations, however it very much hoped that no Delegation would block the adoption of that project keeping in mind that it had already been discussed extensively in the last two sessions and bearing in mind that the project was important to several developing countries, including India.

172. The Delegation of Switzerland thanked the Secretariat for the revised version of the project document. The Delegation agreed with the statement made by the Delegation of Hungary on behalf of the European Union, and by the delegations of Japan and the United States respectively. The Delegation said it would also like to voice its concern as regards accepting the project at present because it was still waiting for the results of a study and project which were underway. The Delegation said it also shared the view that if norm-setting activities should be prolonged then it would be up to the SCP which would be competent to deal with it because it had the necessary expertise.

173. The Delegation of Nigeria joined other developing countries that had spoken on the issue before the Committee and gave its support to their positions. The Delegation supported the initiative on the project survey, and analysis on good practices and available tools for identifying content that was in the public domain. It was critical and important to developing countries, as it represented a way of addressing real issues that promoted innovation and growth. It would also engender much interest in development of technology. The Delegation therefore suggested that work on the implementation of the project should proceed since the CDIP had demanded the development and facilitation of implementation of that project within the Development Agenda.

174. The Delegation of El Salvador agreed with all the developing countries that had spoken before it. It thanked the Secretariat for having prepared the revised version of the project, noting that in-depth effort had been made in bringing out that document which had included the comments and remarks made by numerous delegations within the framework of the previous CDIP meeting. The Delegation also pointed out that the project was very interesting and attractive, and inquired as to how the Secretariat would implement it. The Delegation observed that at first the project looked very simple, as it would involve a macroeconomic study while the second stage would be consideration of norm-setting activities. It said it believed that a process had been embarked upon about which some Member States had expressed some doubts regarding its extension, but the Delegation was of the view that by the end of the week it would be proven that the project was feasible taking into account its importance. The Delegation then stated that it was a bit lost with regard to the implementation calendar and it reminded the meeting of the importance of the question of patents and public domain for developing countries.

175. The Delegation of Panama stated that as stated before it was in favor of the project because it served as an action plan for development which was a task that corresponded to the recommendations included in the document. Moreover, the Delegation believed that it was a



CDIP initiative and as such, as noted by the Delegation of India, it should not be blocked. At a later stage, the results of the study could be transmitted to the SCP for discussion.

176. The Delegation of Egypt associated itself first with the statement made by the Delegation of Brazil on behalf of the Development Agenda and stated that it fully shared the position that was expressed by various developing country delegations, particularly by the delegations of Bolivia and India. The Delegation of Egypt noted that the issue of the public domain was clearly one of the recommendations of the Development Agenda, and as such it did not fall outside the limits of the CDIP. The Delegation focused on what was increasingly and worryingly being said about the concept of duplication. It appeared to the Delegation that whenever a topic seemed not to head towards tighter intellectual property or did not head towards more benefits for rights holders, it became automatically a duplication of efforts. The Delegation said it had sensed that in more recent sessions and suggested that the meeting needed to go back to the mandates of the CDIP which provided that Member States needed to implement the 45 Development Agenda Recommendations. The Committee had agreed at the very beginning, as proposed by the Director General, to proceed in terms of projects in implementing those 45 Recommendations. The Delegation noted that of course it could be claimed that any activity that pertained to all fields of intellectual property that were included in the 45 Recommendations could be a duplication of effort, but surely that was not the sense of the entire activity that was being performed in the CDIP. The Delegation noted that Member States were there to support development and intellectual property and the issue of the public domain was one of the 45 Recommendations of the Development Agenda. Therefore to say that what was being done was a duplication of effort with the SCP would not take the Committee anywhere.

177. The Delegation of Bolivia signaled that there was a problem with the language or the wording in the Spanish version of the document. It pointed out that there were corrections that were not made in a number of places in the document such as in the brief description of the project in section 2 that said "the impact of certain enterprise practices in the field of patents on the public domain". In the English version it was correct, but the problem was in the Spanish version that was not correct. The Delegation said the corrections had not been made and they would be found at pages 2, 3 and 4, where the wording in Spanish needed to be corrected so that it could be similar to the wording in English where it read "the impact on the public domain". Furthermore, the Delegation pointed out that in page 4, when one talked about the micro-level of study, there was a reference to the study analyzing the practices that provided the Committee with the benefit, but in the description section, it talked about studying practices that had an impact on the public domain, be it a positive or negative impact. The Delegation noted that it would be well for the meeting to reflect that as well in phase 1 of the micro-economic study, so that it would indicate that the Committee was going to look at those aspects which could foster a rich and accessible public domain, as well as those that had a positive or negative impact, because that was clear in the rest of the document.

178. The Delegation of China stated that as regards the patent system and its impact on the public domain, certainly the studies on enterprise practices in relation to the public domain were of extreme importance. Such studies helped in developing an analysis concerning the relationship between the patent system and the public domain. That was very important for the intellectual property and, as such, the Delegation said it would appreciate further in-depth studies in that connection.

179. The Delegation of South Africa speaking on behalf of the African Group underlined its support for the project and requested that the comments of Member States should be considered when the meeting moved forward on it. The Delegation also noted that Recommendation 16 had actually mandated the CDIP to undertake activities concerning the public domain. It reiterated also that the African Group was very happy with the document produced by Professor Dussolier regarding copyright and public domain and the Group felt the same way about the current project. Therefore, the Delegation highlighted its concern about references to duplication and noted that its understanding was that each committee had a

separate mandate, and that the CDIP had a specific mandate as well, which consisted of implementing the 45 Recommendations of the Development Agenda. That, the Delegation reiterated, was a concern to the Group and it would like the project to be approved in the current session of the CDIP and hoped that an agreement on approving the project would be arrived at.

180. The Delegation of Indonesia associated itself with the earlier statements made by all the developing countries, and stated that the project was very important for the implementation of the Development Agenda recommendations, and therefore, it did not see any reason why the project could not be implemented as soon as possible. It therefore believed that there was no strong reason to delay its implementation.

181. The Delegation of Brazil stated that it had raised a question which it wanted the Secretariat to answer. It said it was not aware of any project that was dealing with the public domain and the patent system in the SCP. It believed that the Delegation of Egypt was right in suggesting that such arguments should not be raised every time. It also agreed with the Delegation of Bolivia in inviting the Chair to hold informal consultations on the project because it had been considered for a while and it was time that an agreement was reached. The Delegation reiterated its position and requested to know if there were details about such a project being discussed in the SCP.

182. The Secretariat replied to the questions from the Delegation of Uruguay, which it believed referred to the types of enterprise practices and other types of behavior that were planned to be dealt with. It recalled that the term enterprise practices had been agreed upon in the Committee which forwarded it to the Secretariat to deal with. The Secretariat had originally given two or three examples of what that could be, but it was not asked to give more examples because the terms of reference were not sufficiently clear. It reiterated that that was the action it had taken in the present document. The Secretariat drew the attention of Member States to the examples that it had given, stating that they were certainly not an exhaustive list. The idea of the study would not only elaborate on the non-exhaustive list that had been given, but would also identify other practices and as noted by the Delegation of India, the project would identify and explore both the negative and positive sides of those practices. The Secretariat noted also that it might be a bit difficult at that point, before it even undertook the work, to say what an exhaustive list would be. Referring also to the second question of the Delegation of Uruguay related to norm-setting activities, the Secretariat said it did not mention other activities such as Patentscope for example, simply because in the mandate that it received from the Committee, the third point was norm-setting activities and not others. With respect to the intervention of the Delegation of France that asked about the relationship between the broader general study on the public domain, the Secretariat stated that it did not yet have that study available, but was sure that it would be made available as soon as possible. In principle, it noted that the general study would look at the relationship in a broad manner between the patent system and the public domain. It would explore things like interplay between the patent system and the preservation of the public domain, but it would not, according to the mandate of that broad study, necessarily go into the details of the three points that had been requested in the present project. Experts mandated to undertake the broad study might also touch on some of those issues that were not as yet known, but they surely did not have the mandate, so there would be no real overlap between the two studies, at least not from a formal point of view. As regards the question from the Delegation of Brazil on whether the Secretariat had a project on the public domain in the SCP, the Secretariat stated that the mandate of the SCP was to deal with any question that was related to patents and patent law, be it norm-setting or not. That was not specified, one way or the other. Therefore, the Secretariat did not have a specific project that dealt with public domain or that would bear the name "public domain" for example. However, it said it had to be noted that at least in an indirect way certainly the subject of public domain had been touched upon in different areas, for example, the work that was being done or had been started in exceptions and limitations which certainly had a bearing on public domain. Another example could be the topic that the Secretariat would probably soon address, namely the quality that was also requested at the last SCP. In conclusion, the Secretariat was of the view that there was an

indirect link but that it was not in the sense that there was a project that was entitled “public domain” in the SCP at present. Concerning the question by the distinguished Delegation of the United Kingdom on the methodology or the survey relating to the micro-level study, the Secretariat stated that it might not be explicit in the project paper but as could be seen in the budget line of that project proposal, the Secretariat was considering having the assistance of the experts to prepare that particular study. It however stated that it would not like to prejudice in any way the methodologies that the experts would find as most appropriate to conduct the survey. Nevertheless it pointed out that at present, since it was looking into the specific issues such as the impact of certain enterprise practices in the field of patents in the public domain, the Secretariat would need to look into the real world situation. That was why it was probable that the survey would be one of the methodologies which would be appropriate to find out, first of all whether there were real world problems existing, and if so, what those problems were, and what were the positive and negative effects. The Secretariat also posited that the survey could be a literature survey to discover what kind of information already existed, what kind of research had already been done in that area etc. In addition, there could be more to the surveys in the sense of interviews or the questionnaires directed at obtaining information from various stakeholders, and certainly from the enterprises because it would involve the enterprise practices, but not only from enterprises but also from the policy-makers as well as any third parties, and any organizations which might be relevant in looking at the issue.

183. The Chair thanked the Secretariat for the detailed clarification and stated that he believed the Committee had had much discussion on that project which had been under consideration since the last session of the CDIP. He said the project had been presented and discussed in the right forum, and that lots of elements had come also from the Secretariat. The Chair then called for the Committee’s considered and precise opinion on the future course of action that needed to be taken.

184. The Delegation of the United States thanked the Chair for his efforts and also expressed its appreciation for all the comments that had been made by the Member States. It however informed the meeting that it was under instructions from Capital and therefore, it was unable to support the project.

185. The Delegation of Nigeria strongly supported that project and remarked that it did not see any reason why it should be delayed. It therefore called on all delegations to look at it positively so it could move forward.

186. The Chair stated that if there was no further request for the floor he would like to take a little time to have informal consultation to consider the project at least for the time being, and to come back to the Committee.

#### Consideration of Document CDIP/7/6

187. The Secretariat introduced the project proposal from the African Group contained in document CDIP/7/6 on “Enhancing South-South Cooperation on Intellectual Property and Development among Developing Countries and Least Developed Countries”. It informed the meeting that the proposal was first presented by the Delegation of Egypt in November 2010, and as a result of the discussions held on that occasion, the Committee took note of the content of the proposal and agreed to discuss it at its seventh session. It was also decided that the Delegation of Egypt would further elaborate on the project document with the assistance of the Secretariat and in consultation with other Member States. As a brief introduction to the project, the Secretariat noted that experiences and successes that many countries in the South had achieved in specific areas of intellectual property for development, could provide valuable impetus, ideas and the means for other countries in the South to address similar concerns and challenges. It observed that South-South cooperation could increase the flow of information, resources, expertise, knowledge and so on between and among developing countries at reduced cost, and foster transfer of technology and capacity building among developing

countries in the area of utilizing intellectual property for development as key component for the development of the South. The Secretariat also stated that South-South cooperation had been widely recognized as a key mechanism for the development agendas of the countries of the South and enjoyed broad based support from both the donor community and the developing countries. It said there was a need to intensify efforts directed towards institutional capacity building including through the exchange of expertise, information, documentation and experiences between and amongst the institutions of the countries of the South. That was why the project would aim to develop means to channel those efforts of different actions for promoting South-South cooperation in the area of intellectual property in order to achieve tangible results. The Secretariat noted that there were several recommendations of the WIPO Development Agenda that could be useful to that initiative, such as those aimed at promoting development-oriented intellectual property technical and legal assistance (Recommendations 1 and 13), reinforcing and strengthening institutional capacity building (Recommendation 10), reinforcing and strengthening domestic innovation capacity building (Recommendation 11), facilitating access and dissemination of knowledge and technology and the use of intellectual property flexibilities (Recommendations 19 and 25), and better understanding the link between IP and competition policies (Recommendation 32). The Secretariat suggested that the project would contribute to enhancing the ability of developing countries and least developed countries to share information, and promote understanding of practical initiatives on utilizing intellectual property as a tool for broader public policy and development goals. The objectives of the project were indicated in the project document that had been submitted for discussion and they included better understanding of intellectual property and its potential contribution to development; identifying priorities and special needs of developing countries and least developed countries in crucial areas; better informed socio-economic context; sensitive decision-making on intellectual property policies at national and regional levels in the South; promoting better protection of domestic creations; the promotion, transfer and dissemination of knowledge and technology transfer for development; capacity building and increased capacity for developing countries to share knowledge and information in the areas of intellectual property and development. The delivery strategy proposed by the African Group for the implementation of the project consisted of the organization of two inter-regional meetings and two annual WIPO inter-regional conferences. It shall also include provision of training and capacity building activities in various fields through the introduction of a new functionality in the existing WIPO-IP Development Match-making Database to enable match-making on needs and offers coming from developing countries and LDCs, and to give more visibility to that kind of cooperation. Those functionalities would be added upon the completion and review of the match-making database to increase the use of resource persons from developing countries and LDCs, leading to increase in sharing of experience. It shall also include development of a dedicated web page on the WIPO website on South-South cooperation on intellectual property and development. The dedicated web page would aim at facilitating the identification, development and promotion of opportunity for collaboration and cooperation between and among countries and regions in the South on the one hand, and South-South-North triangular cooperation on the other, and development of an interactive Web Portal Visual Network among intellectual property offices, universities, public research institutions and other NGOs in developing countries and LDCs, to foster the building of an institutional link and collaborative research project to enhance access to knowledge on the transfer of technology. Lastly, the Secretariat noted that the proponents had called for the establishment of a focal point on South-South cooperation in WIPO to coordinate with the UNDP Special Unit for South-South cooperation to follow up on all the above-mentioned activities and also to coordinate with UN system-wide activities in that field.

188. The Delegation of South Africa said it would augment the presentation by the Secretariat of the proposal and started by prefacing the presentation with a brief overview of South-South cooperation within the UN system. It recalled that promoting South-South cooperation had been a long-standing priority for the United Nations that could be traced back to the 1978 United Nations Conference on Technical Cooperation Amongst Developing Countries held in Buenos Aires, Argentina, which produced the Buenos Aires Plan of Action for Promoting and Implementing Technical Cooperation Amongst Developing Countries. That Plan of Action

provided for the first time the conceptual framework and practical guidelines for South-South cooperation objectives and created the High-Level Committee on South-South Cooperation. Fundamentally, the Plan of Action called upon all UN Organizations to promote and facilitate technical assistance amongst developing countries. One of the key recommendations of the Plan of Action was the creation of the special unit for South-South Cooperation hosted by the UNDP. Since then, efforts to implement the Buenos Aires Plan of Action had languished and reports by the High-Level United Nations Conference on South-South Cooperation showed disappointment in the efforts by UN Organizations. However, the Delegation said recent years had witnessed a renewed momentum in the UN toward strengthening South-South cooperation. That came against the background of greater economic dynamism in the South characterized by the increasing role of emerging economies in global economic governance, and expanded trade and technical cooperation between and among developing countries including between middle income developing countries and LDCs. Reflective of that was the convening in 2009 of a High-Level United Nations Conference on South-South Cooperation in Nairobi, Kenya which commemorated the 30th anniversary of the United Nations Conference on Technical Cooperation Amongst Developing Countries. The Nairobi outcome document was subsequently endorsed by the UN General Assembly Resolution 64/222 in December 2009. In an effort to reinvigorate the United Nations development system to support and promote South-South cooperation, paragraph 21 a) of the Nairobi outcome document “Urged the United Nations funds, programs and specialized agencies to take concrete measures to mainstream support for South-South and triangular cooperation to help developing countries at their request and with their ownership and leadership”. Paragraph 2 (k) further stated as follows: “Emphasize that South-South cooperation needs adequate support from the United Nations funds, programs and specialized agencies including through triangular cooperation and call upon all relevant United Nations Organizations to consider increasing allocation of human, technical and financial resources with South-South cooperation as appropriate”. It was within that context that the African Group was encouraged to promote South-South cooperation in WIPO as a specialized agency of the United Nations. The African Group also saw the need to take ownership and leadership by submitting a project proposal for the consideration of the CDIP entitled “Enhancing South-South Cooperation on IP Amongst Developing Countries and Least Developed Countries”, aimed at the implementation of the WIPO Development Agenda Recommendations 1, 10, 11, 13, 19, and 25”. The Delegation recalled that as mentioned in its general statement, the African Group proposal resulted from the proposal made by the Delegation of Egypt at the last session of the Committee. The African Group worked closely with the Secretariat in modifying the document in line with the decision made at the last session of the Committee. It said it should be noted that the title of the project had since been slightly amended to read “Enhancing South-South Cooperation on IP and Development” as mentioned before. The rationale for the amendment of the original title was to better capture the objective as a project of South-South cooperation. The Delegation also said the purpose of the project was still the same as outlined by the Delegation of Egypt that, 1) it was aimed at maximizing the benefits that had been derived in developing countries and LDCs in the last few years in using intellectual property for development taking into account the social and economic characteristics of the countries in question and their needs and 2) that the project was in the context of South-South cooperation as one of the main thrusts of international cooperation and that the project gave added value and would enable countries to implement the WIPO Development Agenda and respond to the needs of the developing countries and the LDCs. Against that background, in its first two years, the project would include the following activities and events: (i) holding of two inter-regional meetings of three days duration each involving developing countries and LDCs to foster the sharing of national experiences including historical experiences and information on the process of design of national intellectual property policy and legislation on the use of intellectual property flexibilities, and (ii) holding of two annual WIPO inter-regional conferences on South-South cooperation on IP and Development to be held in Geneva each lasting one day immediately before the General Assembly. The project would also include the introduction of new functionalities in the existing WIPO intellectual property development match-making databases to enable match-making on the needs of developing countries and LDCs to

support and assist one another in training and capacity building activities including in the training of patent examiners and other IP officials and competition authorities and sharing of information among intellectual property offices. The project would also increase the use in WIPO technical assistance and capacity building activities of resource persons and experience sharing among developing countries and LDCs. A dedicated page would also be established on the WIPO website, the purpose of which would be to present a vital facility to all developing countries including LDCs on WIPO activities in the area of South-South cooperation. The project would also include the establishment of an interactive web portal among intellectual property offices, universities, public research institutions and civil society organization in developing countries and LDCs. The Delegation requested that most importantly, the Secretariat should appoint a focal point on South-South cooperation and establish links and coordinate with the UN Special Unit for South-South Cooperation as the designated UN system focal point for such cooperation. The designated focal point would also follow up on the above-mentioned activities and coordinate with the UN system-wide activities on South-South cooperation. The Delegation said those were the activities that it wanted to emphasize under the proposed project. It further stated that the project proposal submitted by the African Group to the Committee aligned WIPO as a UN specialized agency with current priorities, practices and recommendations of the UN system as well as within initiatives taken by the UN specialized agencies and programs for strengthening South-South cooperation. In particular, it would enable WIPO to implement a recommendation of the Nairobi outcome document which was agreed upon by all UN Member States and specifically the request addressed to all the specialized agencies to take concrete measures to mainstream support for South-South and triangular cooperation to help developing countries at their request and with their ownership and leadership. In conclusion, the Delegation extended its sincere gratitude to the Secretariat for the support it provided to the African Group in consolidating the project, and also called upon all the Member States to support the project.

189. The Delegation of Mexico thanked the African Group for tabling such a project which demonstrated the interest of Member States to ensure that the implementation of the Development Agenda would be successful. It noted that cooperation between intellectual property offices was a very important step given that it was a parallel step that complemented all cooperation activities carried out under the auspices of WIPO. The Delegation focused on fostering technical cooperation and emphasized that it was important to set up a framework for cooperation on the North-South basis as well as South-South basis, and it should be regulated by bilateral or regional agreements between the different offices. The Delegation also stated that it was important to focus on the needs of each country and not to adopt a one size-fits-all approach. It said there were many examples of cooperation agreements between Member States of WIPO that included organizations that did not require additional budget or additional activities from WIPO. The Delegation further noted that all those increased South-South cooperation activities would provide a framework of support in the Southern hemisphere where already one such structure was in place between Latin American countries and the majority of the Central American isthmus as well as Cuba, Colombia the Dominican Republic and members of the ARIPO Organization. As a result of that project, Mexico was carrying out in-depth analysis of patent requests made by many countries to ensure that such activities were done within an appropriate timeframe. To date, such requests had been received under the agreement between ARIPO and the Latin American Region. That was proof of the fact that huge increases in financial or human capital resources were not needed in order to review those new requests under such regional agreements. The Delegation believed that having a project in place which allowed for the South-South cooperation would enable Member States to fulfill their development goals. It would allow them to increase their capacities for approval of patent applications as well as improve development opportunities. The Delegation observed that such an outcome would also be a good thing for WIPO and for overall development which aimed at better use of intellectual property as a tool for fostering development in the developing countries. As regards the framework of the project proposal, the Delegation noted that there were good ideas contained in it that could enable the Committee to improve upon. But it cautioned that the project should neither have added budget costs nor to encompass other

projects, given that the budget had already been approved. It therefore said it would not support the request for an increased budget because it thought that the proposal was made to support the implementation of all of the activities, which would include activities such as inter-regional meetings. The Delegation also noted that such activities could happen within the context of conferences the likes of which had already been held in WIPO. It gave the example particularly of development-focused intellectual property conferences which already had budgets in place to support them. The Delegation suggested the improvement of existing databases in WIPO to ensure that the project enjoyed great success, and to focus on the requirements of the individual projects that were tabled before the CDIP as part of such cooperation agreements that would also take into account the needs of Member States. A third point that the Delegation made was in respect of increasing the number of technical cooperation activities aimed at promoting and enhancing South-South cooperation involving WIPO regional offices. The regional support and partnership offered by WIPO were generally aimed at promoting development among developing countries and LDCs, which the Delegation said it would like to see continued. It also believed that there should be a section in the project on supporting the achieving of the MDGs in WIPO's South-South cooperation interactive web page. The Delegation said it also believed that the interactive platform should be something that involved those participating countries in South-South cooperation because they could identify their goals and the way they needed to cooperate with other bodies as well as having a better idea of how to keep within budget. The Delegation once again thanked those who had put forward the project proposal and believed that many of the goals contained therein could be achieved within the projects that had already been approved and within the existing budget meant for promoting development linked to intellectual property.

190. The Delegation of Egypt expressed appreciation for the Secretariat's support to the African Group in preparing the project document and the excellent presentation of the project. The Delegation fully associated itself with the statement made by the Delegation of South Africa on behalf of the African Group and noted that the current proposal of the African Group entitled "Enhancing South-South Cooperation on IP and Development among Developing Countries and Least Developed Countries" in document CDIP/6/6 was based on the project proposal that was initially submitted by Egypt during the sixth session of the CDIP last November as document CDIP/6/11. The Delegation noted that the proposed project currently constituted the first such project presented by the African Group and indeed from the developing world. It was also the third such project from a Member State with the first two coming from Japan and the Republic of Korea, both of which were supported by the African Group. The Delegation noted that the Development Agenda was the product of an intensive process of consultations among Member States that had resulted in the adoption of 45 Recommendations by the WIPO General Assembly of 2007. The Delegation believed it was critical that Member States guided the Development Agenda implementation and it was in that spirit that the African Group presented that important project. It noted that developing countries and LDCs were increasingly using intellectual property as a tool for economic development. In recent years that had included innovative means of deploying intellectual property in a balanced manner, taking into account their particular socio-economic conditions and different levels of development. As a result of that, an independent body of knowledge and experience on development-friendly intellectual property had emerged in developing countries including LDCs. The current project would therefore attempt to harvest and exchange valuable knowledge and experience on intellectual property and development through enhanced cooperation in that area among developing countries and LDCs. The project would also enhance the ability to share information and promote understanding of the practical initiatives that developing countries and LDCs could utilize to ensure that intellectual property became a tool to achieve broader public policy and development goals. The Delegation noted the important aspect of the project that emphasized South-South cooperation that could surely play a significant role in achieving the objectives described under the relevant Development Agenda recommendations. It said South-South cooperation was one path among broader avenues of cooperation that ran parallel to North-South cooperation. In fact, the Delegation noted that the vehicle of South-South cooperation had been a long-standing priority of the United Nations system, and an outstanding item on the

agenda of the UN General Assembly. South-South cooperation had also been long recognized as a key means of effecting technical cooperation as pointed out by the Delegation of South Africa in the 1978 Buenos Aires Plan of Action for Promoting and Implementing Technical Cooperation among Developing Countries which was endorsed in a new General Assembly Resolution 33/134 that stated as follows: "The entire United Nations development system must be permeated by the spirit of technical cooperation among developing countries and all its organizations should play a permanent role as promoters and catalysts". The High-Level United Nations Conference on South-South Cooperation held in Nairobi in December 2009, reaffirmed the key role of UN specialized agencies in supporting and promoting cooperation among developing countries and to take concrete measures to mainstream support for South-South cooperation. In conclusion, the Delegation called on all Member States to support the project for its unique value to developing countries and LDCs. It suggested also that fears that had been expressed that the project might be a duplication of efforts and concerns about budget increases or allocations to South-South cooperation clearly were not warranted. The Delegation then posed the question as to why was it that the entire United Nations system thought it not a duplication of efforts and decided to allocate funding for South-South cooperation, and wholeheartedly adopted that approach to technical cooperation. The Delegation then called upon WIPO not to be left out in the cold.

191. The Delegation of Brazil, speaking on behalf of the Development Agenda Group, welcomed the project on South-South cooperation on IP and Development among developing countries and LDCs that was proposed by the African Group. It stated that the Development Agenda Group had already supported the project when it was first presented by the Delegation of Egypt at the last session of the Committee, as it also did in its opening statement. As a group consisting of developing countries, the Group was supportive of the promotion and strengthening of South-South cooperation within WIPO. It said that the proposal was an important component of international cooperation for development primarily because developing countries stood to share common views on national development activities and priorities when faced with similar development challenges. The project proposal presented by the African Group would seek to harness that cooperation within the context of intellectual property and development. The Delegation welcomed the call for the establishment of a focal point on South-South cooperation within WIPO as well as the other activities outlined in the delivery strategy of the project. It said that would place WIPO at the same level as other UN Organizations and Specialized Agencies, such as UNCTAD, UNDP, UNIDO, FAO and the ILO which had established within their respective mandates new units and work programs to support and promote South-South cooperation. It also said that the project presented an opportunity for greater South-South cooperation that would foster knowledge sharing through the exchange of experiences and best practices. In conclusion, the Delegation said the DAG supported the proposal made by the African Group and hoped that it would be approved.

192. The Delegation of Indonesia associated itself with the statement made by Brazil on behalf of the Development Agenda Group and expressed the view that the project proposal by the African Group on enhancing South-South cooperation on IP for development among developing countries and the least developed countries was indeed a good idea that would bring benefit to promote development-oriented intellectual property technical and legal assistance. Therefore, it said it supported the project proposal and added that it attached great importance to South-South cooperation which had existed for more than three decades and which had contributed to economic growth and well-being of the people. It also noted that the idea of appointing a focal point for South-South cooperation in the Secretariat as outlined in the project was a pertinent one and would ensure the sustaining of South-South cooperation activities in WIPO.

193. The Delegation of Algeria aligned itself with the declarations made by the regional grouping to which it belonged and recalled that the Director General had indicated in his initial report in April 2009 contained in document CDIP/5/2 as follows: "Proposals from Member States that could contribute to Development Agenda implementation may also be of immense value to the process in order to enhance the member-driven nature of the implementation phase



and ensure that activities and projects respond to the real concerns behind the recommendation". Based on that perspective, the African Group had tabled a project on South-South cooperation in the field of intellectual property to support the development needs of developing countries and LDCs. The draft under discussion was aimed at strengthening the capacities of Southern countries in the field of intellectual property in all of its aspects such as the protection of creations, collective management of copyright, the effective and efficient use of flexibilities provided for in international instruments, transfer of technology, etc. The Delegation said it did not share the opinion that the proposed project would duplicate projects that were already up and running in WIPO. Quite the contrary, it noted, from its own point of view that the afore-mentioned project would be complementary to the diverse activities carried out under the Development Agenda. The specific focus of the project stemmed from the fact that it promoted the exchange of best practices and experiences between countries of the Southern hemisphere that have broadly similar needs and levels of development. The appointment of a focal point responsible for South-South cooperation at the Secretariat level would enhance the facilitation of the implementation of the project and would allow WIPO to follow in the foot steps of other specialized agencies in the United Nations system to make its contribution on the issue to which developing countries attached a great deal of importance. The Delegation finally hoped that the project would be approved during the present session of the CDIP.

194. The Delegation of India aligned itself with the statement made by the Delegation of Brazil on behalf of the Development Agenda Group and fully supported and welcomed the proposed project on South-South cooperation contained in document CDIP/7/6. It also welcomed the submission of the project by the African Group based on a project proposal made earlier by the Delegation of Egypt. The Delegation believed that such submissions strengthened the member-driven character of Development Agenda implementation and hoped that the trend would be further strengthened in future CDIP sessions. That way, the Delegation noted, Member States would take greater ownership of the implementation of the Development Agenda and for that reason too, it welcomed and supported the current proposal just as it welcomed and supported the proposals of Japan and the Republic of Korea. The Delegation noted that as had been eloquently outlined by the coordinator of the African Group and the Delegation of Egypt, South-South cooperation was already recognized as an important leg for international development. Indeed the Delegation noted; South-South cooperation, North-South cooperation and triangular cooperation were seen as complementary and useful processes. The dramatic and exponential growth in South-South trade in recent years as a component of the overall global trade had further enhanced the urgency and the importance of South-South cooperation in various domains. The United Nations had also mandated the promotion of South-South cooperation and that was already being integrated in several other UN specialized agencies. In the Delegation's view, it was now time to bring that into the world of intellectual property and into WIPO as a specialized agency of United Nations. The Delegation said it attached great importance to South-South cooperation and had been actively engaged in various South-South cooperation initiatives. From its experiences, the Delegation found that the successes and methods followed by some developing countries provided a relevant and useful template and best practices and lessons learned to other developing countries. Since the circumstances, the reality and challenges in developing countries and LDCs were fairly similar, certain experiences had greater resonance, usefulness and immediate relevance for developing countries. Such countries would relate to the ways and measures adopted by other developing countries in leveraging intellectual property to overcome domestic challenges and promote socio-economic growth and development. Therefore, in the Delegation's view, the proposed project had great merit and was indeed the first such initiative to leverage on advances made by some developing countries in the field of intellectual property and in integrating intellectual property into overall development. The Delegation also said it found that the project adopted a very logical sequence in the first inter-regional meeting that it proposed regarding the important issue of sharing of historical experiences and best practices, as well as lessons learned that had been addressed. In its view, it was important to learn from the methodologies adopted by most successful developing countries and to try and replicate those as far as possible in various countries. It said the proposed meeting gave such an opportunity. The conference proposed

after the first inter-regional meeting would open up the issue to all Member States and would allow different perspectives to be presented. Similarly, the second inter-regional meeting proposed would follow logically and would focus on South-South cooperation at a more concrete and specific level in terms of training and capacity building. That would be followed by an open conference where all Member States, groups and other stakeholders could comment upon and contribute to the ideas explored in the inter-regional meeting. Again those initiatives would rightly be complemented by three specific contributions to be made by the WIPO Secretariat. Number one would be the establishment of a web page to facilitate such cooperation. Number two would be the creation of a virtual network of South-based institutions and organizations, while number three would be the establishment of a focal point in the Secretariat to coordinate the project and initiatives. The Delegation said as far as the issue of budgetary provision was concerned, it believed that it was indeed a non-issue. There had been several inter-regional meetings held in the context of other committees to facilitate ongoing work. It therefore believed that this was the first initiative introduced in WIPO to promote South-South cooperation and at a very modest budget, which was not a factor that should impede the adoption of the project at an early date. Given that the project had been discussed earlier, the Delegation urged the cooperation of other delegations in speedily finalizing and adopting the project.

195. The Delegation of Uruguay thanked the Delegation of South African for presenting the project on behalf of the African Group and expressed support for the statement made by the Delegation of Brazil on behalf of the Development Agenda Group with regard to the project. As a successful example of South-South cooperation, the Delegation cited a project which included eight countries of South America with the support of WIPO whose objective had been carried forward in connection with intellectual property offices in order to facilitate the exchange of information and to harmonize criteria for examination. The Delegation stated that a workshop of patent examiners of the eight countries had been held in Geneva that proved to be a great success. It also cited another example which involved an exchange with countries in the Middle East held in Lebanon in 2008. Those examples showed the importance of such initiatives for developing countries and why it would be good to institutionalize within WIPO an area dedicated to promoting South-South cooperation.

196. The Delegation of China expressed appreciation for the proposal made by the Delegation of South Africa on strengthening South-South cooperation in order to promote economic development in developing countries and LDCs. The Delegation noted that it too was a developing country as far as intellectual property development was concerned, and that it was facing a lot of challenges. For that reason, it would continue to strengthen exchanges and cooperation with other developing countries particularly in the area of exchange of experiences and information in order to promote innovation and socio-economic development in those countries. It stated that the proposal made by the African Group provided the Committee with a platform for discussing promotion of development through the development of intellectual property systems which could also help to concretely implement the Development Agenda as well as to promote South-South cooperation, and ensure prosperity and development for the countries concerned. For those reasons, the Delegation supported the present proposal.

197. The Delegation of France thanked the Delegation of South African for the project on strengthening South-South cooperation on IP and Development and gave some initial reactions and comments on the project. It noted that South-South cooperation was a trend which was increasing particularly among emerging countries and developing countries and that was reflected in the work of the UN system. Nevertheless, the Delegation noted that other UN Organizations particularly those based in Geneva like UNCTAD carried out their South-South cooperation work in a general format in the presence of all delegations and also integrating the complementary dimension of North-South cooperation and triangular cooperation. The Delegation said it would therefore be difficult for it to accept an approach which would be discriminatory in a way in WIPO and would be contrasting with what was happening in other organizations. On that subject, the Delegation sought clarifications from the authors of the

project because there had been various interpretations on the issue. It noted that the Delegation of India for instance, had said at one time that the proposed conference would be open to all Member States but that did not seem to be the impression gained from the Delegation of South Africa. With regard to holding inter-regional meetings and conferences over a period of two years of the project, the Delegation stated that that seemed rather ambitious and noted that there were already two requests with regard to the added value of high-level conferences to be held just a few weeks after the inter-regional meetings which had been held on the same subject. Moreover the Delegation had questions with regard to whether the project took into account the work of the technical assistance bureau of WIPO, particularly at the regional level and therefore asked to what extent the project was actually making redundant or duplicating work. The approach put forward by the Delegation of Mexico was particularly interesting one because it aimed to maximize the use of existing frameworks. The Delegation was aware of the significant needs of developing countries particularly LDCs with regard to intellectual property matters and technical assistance projects were needed, as had been pertinently underlined by the Delegation of Morocco during the opening of the current session. The Delegation said it wondered why the current project which actually contained no concrete technical assistance measures was being put forward as a priority by the African Group. It said it would welcome any responses that the Group might provide to its questions and concerns.

198. The Delegation of Australia stated that it generally supported South-South cooperation and indeed welcomed the opportunities to engage with the regional neighbors and learn from their experiences on intellectual property. It informed Members that Australia had co-hosted with WIPO a workshop on the Madrid System. The Delegation sought clarification from the Secretariat on the staging of the project and its review. The Delegation noted that an important feature of good management was staging project review and sought to better understand the indicators of success in the project. It said the project review schedule described the evaluation on completion of the first stage of the project, however looking at implementation time line, it seemed as though the first stage of the project was also a finalization of the project. Therefore, it seemed as though the project specification was incomplete or that the project was ongoing and open-ended and therefore, was not really a project. The Delegation opined that a project would need an end point and stated that if the document before the Committee was the first stage of the project, then clarification was sought as to what was envisaged under a possible second stage. The Delegation also inquired as to how the shortlist would relate to the content of a possible second stage noting that there were no indicators of success explicitly relating to the delivery strategies a) and f), and also there were no specific indicators for delivery strategies for stages b) c) d) and e).

199. The Delegation of Colombia expressed its support for the project, which it considered extremely important in particular as it related to Recommendation 10 of the Development Agenda which was also in line with Colombia's national development plan, and the importance that it attached to South-South cooperation as one of the engines driving collaboration and development. The Delegation stated that the deficiencies in intellectual property institutions would mean that cooperation with WIPO and with other Member States would be favored as a means of lowering expenditures for developing countries and LDCs if they so desired.

200. The Delegation of Nigeria fully associated itself with the position of the African Group as presented by the Delegation of South Africa. It stated that the African Group proposal related to the implementation of Development Agenda Recommendations 1, 10, 11, 13, 19, 25 and 32, which were premised on maximizing the use of intellectual property for development in the various countries and to promote and facilitate technical assistance among developing countries. Against that backdrop, the Delegation reiterated its support for the project as outlined by the African Group.

201. The Delegation of the United States thanked the Delegation of Egypt and the African Group for preparation of the project proposal on enhancing South-South cooperation on IP and development among the developing countries and LDCs. It appreciated the initiative shown by

the sponsors of the project but nonetheless it had several fundamental concerns that prevented it from supporting the project at that point. The first concerned the mandate of the CDIP. The Delegation noted that WIPO Member States engaged in difficult negotiations over a period of four years to reach final agreements on 45 Recommendations, which now constituted the Development Agenda. It also noted that nowhere in those recommendations that were adopted unanimously by WIPO's 184 Member States was there anything remotely resembling the establishment of a South-South cooperation sector in the WIPO Secretariat. The Delegation also said it shared the concerns of other delegations about the exclusive nature of the proposal. WIPO sponsored meetings and conferences should in its view, allow all Member States to attend and to participate. The Delegation's second concern was with regard to possible duplication of activities. It noted that the Director General's report prepared for the present session of the Committee highlighted the extensive array of programs, meetings and activities being carried out for the benefit of developing countries and LDCs which were pursuant to the Development Agenda projects and initiatives. It said the progress reports prepared for the previous meeting of the Committee also provided additional details on WIPO's efforts in those areas. Those reports demonstrated that WIPO's technical assistance activities were meeting the principles established in Cluster A of the 45 Recommendations. They were development-oriented, demand-driven and transparent, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States as spelt out in Recommendation 1. The Delegation therefore did not share the view that there was as the proposed project claimed in section 2.1 quote "An independent body of knowledge and experience on the strategic use of IP for development" unquote, in the South, that was not being reflected in the Secretariat's technical assistance activities. The proposed establishment of the South-South cooperation focal point within the Secretariat would also in the Delegation's view overlap with the current activities of the Development Agenda Coordination Division. In addition, it said there might be further overlap with the Division for LDCs. The proposed project noted in section 2.3(a) (i) on page 6 that "one of the inter-regional meetings would discuss issues of IP governance". The Delegation noted that those discussions would be quite similar to the WIPO governance discussions that were currently taking place among all Member States. It said it would appreciate further clarification on the intention behind that component of the proposal. It also stated that one final concern was related to cost and noted that the project proposed a budget of almost a million Swiss francs over a 24-month period. Nearly 500,000 Swiss francs would be spent on third party travel for two inter-regional meetings with two other conferences preceding the General Assemblies. If the purpose of those meetings was to allow developing countries and LDCs to share national experiences and to exchange information on the process and design of national intellectual property policy and legislation, the Delegation did not see why those objectives were not being or could not be met by meetings, activities and programs already taking place within existing budgetary resources devoted to Development Agenda implementation. It concluded that, as the Delegation of Mexico had earlier very eloquently noted, many of the proposed activities could also be carried out within the framework of existing regional cooperative agreements without additional financial outlays by WIPO.

202. The Delegation of Hungary on behalf of the European Union and its 27 Member States welcomed the opportunity to further consider the project on enhancing South-South cooperation as proposed by the African Group. The Delegation said that the EU acknowledged the importance of South-South cooperation in general and the potential such cooperation may have in relation to intellectual property. The Delegation said it believed that the project should focus on encouraging South-South cooperation within WIPO's existing technical assistance programs and avoid duplicating existing tools and processes. It stated also that the EU and its Member States, were somewhat surprised to know the seemingly secluded setting in which such cooperation was suggested to take place. In that respect, it said it would like to better understand why the project components proposed to exclude certain Member States that may also have valuable experiences to share from participation in such cooperation and notably from the proposed inter-regional meetings. While the question of participation was an important issue, it said it would like to seek clarification on it, while it believed that there were other issues

such as project funding that should be discussed further. The Delegation also believed that the CDIP should consider how that kind of cooperation was approached in other UN organizations. Finally, the Delegation said that the EU and its Member States considered it important that the results of the project should come back to the CDIP where they could be monitored and evaluated.

203. The Delegation of Spain expressed its appreciation to the Secretariat and to those countries that had promoted the project document, and said it understood that the project incorporated the South-South dimension within the framework of political cooperation as promoted by WIPO in line with the existing experiences in many other international organizations, thereby bringing WIPO in line with those other organizations. The Delegation considered the project to be something that was very interesting and one that would enrich the experience of WIPO. It particularly found interesting the inclusion of new roles and new functions within the databases aimed at responding to the needs of developing countries. The Delegation welcomed the inclusion of triangular cooperation in the project proposal, which it noted, was also a dimension in the policy of cooperation that was promoted by WIPO. Nevertheless, looking at those triangular cooperation opportunities, the Delegation stated that their character restricted the nature of some of the activities that had been proposed in the project. As far as it was concerned, the Delegation noted that it would be useful if the sponsors of the project could provide it with more information about such activities. It said a great deal could be learned about the outcomes of sharing of experiences with cooperation partners. The Delegation therefore welcomed the opportunity of such cooperation which it noted, currently existed within WIPO in the form of the established Trust Funds to promote such cooperation. The Delegation highlighted the principle that where possible there should be the inclusion of such new dimension in WIPO's cooperation policy which should not imply duplication of existing structures. For that reason it asked for an effort to be made to ensure that the new review was conducted within bodies responsible for cooperation in WIPO as already been pointed out by the Delegation of the United States. The Delegation cited as examples, those bodies responsible for implementing the Development Agenda. Referring to the organizing of four different inter-regional meetings or conferences as proposed in the project, the Delegation stated that it understood that those conferences might not be the most effective way of carrying out projects of that kind, in the light of experiences in WIPO in recent years. The Delegation averred that rarely did such conferences end up with specific outcomes and that they were very expensive to organize. It therefore suggested exploring the possibility of other interesting options that had already been suggested, for example, by the Delegation of Mexico for other forms of cooperation and working together maybe through online mediums. The Delegation stated further that it would need convincing of the need to organize more than one such face-to-face inter-regional conference or meeting. The Delegation had some difficulty when looking at the budget for the project in determining what the cost laid out in the proposal corresponded to. It said it had in the past insisted on the need for desegregated costing in previous sessions of the CDIP when specific issues were being discussed. It noted that such costing was very complicated for Member States and very complex to interpret the way they were. The Delegation therefore requested the Secretariat in its presentation to make sure that a better desegregation of the figures was made in order to enable comprehension of whether the budget corresponded to certain activities proposed in the project. The Delegation welcomed the opportunity to have a better breakdown of where the costs were linked to different activities, and requested a breakdown be made available during the week or in the future.

204. The Delegation of Switzerland thanked the African Group for the tabling of the project proposal. The Delegation recognized and supported the need for South-South cooperation on a general basis and the potential link that it had to the issue of intellectual property and development. It believed that the project was aimed at fostering South-South cooperation within the technical assistance activities that already existed under the WIPO umbrella. It noted that it was a positive thing as long as it avoided duplication with other instruments and mechanisms that already existed for such activities in WIPO, and underscored the importance of avoiding such duplication in order to maximize the benefit of resources used by the Organization for

development. The Delegation also noted that the amounts required for executing the project had been provided in detail, and suggested that it should be reviewed to encompass more inclusive activities that would be open to all Member States of WIPO. It noted that the current proposed activities were somewhat restricted and suggested that all Member States stood to benefit from sharing experiences that would enable them to better understand the need in terms of technical cooperation. The Delegation said that such an inclusive approach had been adopted by other organizations. It stated that it had made that point informally in bilateral talks with other delegations during the week, and inquired as to what the specific added value of the project would be, and also, what would be the specific outcomes that would result from the project and the instruments as well as the indicators that were currently on the table. The Delegation requested more detail on those points, particularly the indicators of success and the specific outcomes expected over the long-term. As far as it was concerned, the Delegation said those points were directly linked to the activities suggested for the inter-regional meetings and the related travel costs. It suggested that such exchanges could take place within the CDIP setting, which actually enabled the Member States to expand their participation. The Delegation also recalled the suggestion made in particular by the Delegation of Uruguay that South-South cooperation activities were actually carried out under the auspices of WIPO and therefore, in order to maximize the Organization's resources, Member States should avail themselves of such existing activities in the field. The Delegation therefore stated that it would add its voice to that of other delegations that had spoken before it, stating that it would be useful to use the current resources that WIPO already had available in terms of human capital and financial resources in order to ensure that the South-South technical cooperation activities were adequately carried out. It also stated that following on from the ideas raised by the Delegation of Mexico and the four points that it made, the Delegation was of the view that those suggestions were extremely relevant. It reiterated its commitment to follow up the development of the project in order to ensure that South-South cooperation was strengthened within WIPO.

205. The Delegation of the United Kingdom thanked the African Group for its submission of the project proposal, and aligned itself with the statement made by the Delegation of Hungary on behalf of the EU and its 27 Member States. The Delegation also stated that it was pleased to see the high level of interest amongst Member States in the South-South cooperation proposal in the area of intellectual property. It recognized that the experiences, successes and difficulties which countries in the South had had in implementing appropriate national intellectual property strategy and building innovative capacity could provide valuable ideas and lessons for other countries in similar context. As many other delegations had pointed out, the Delegation saw the proposal as complementary to North-South and triangular cooperation. Many aspects of that project were relevant to all Member States and should as far as possible fit within the existing WIPO tools for fostering technical cooperation and sharing experiences. The Delegation therefore said it had some initial suggestions to make on the specifics of the project. As others had also noted, the Delegation believed the regional meeting should be open to all WIPO Member States. All Member States potentially had valuable experiences to share and perhaps more importantly to learn from others. That might also enable the development of new partnerships and programs of work, which would otherwise not have been conceived of. It also suggested that instead of holding of a new annual conference in Geneva the results of the regional meetings could be reported back to the CDIP in the first instance. Under points 2.2(b) and (e) where it was proposed to amend the WIPO match-making database and to set up a web portal exclusively for South-South cooperation, the Delegation said it applauded the idea of encouraging more South-based technical assistance cooperation to register in the database and encouraging network building amongst South-based institutions. However, it said it would again like to see those tools open to all Member States and to avoid creating separate strands of North-South and South-South cooperation tools. By allowing a wide participation, the Delegation said it would be more likely to increase the completeness and the usefulness of the information contained in those tools. It welcomed the discussions being conducted and hoped that they would ensure that South-South cooperation would be addressed in such a way that would have a maximum impact for those developing countries and least developed countries seeking tangible results in the areas of technical assistance in capacity building.

206. The Delegation of Japan stated that it appreciated that South-South cooperation was very important and noted that specific activities of cooperation with developing countries were however, divided into two categories: i) cooperation activities being currently led by developed or developing countries, or ii) cooperation activities to be led in the future by developing countries. In addition, the Delegation observed that the second category was composed of two sub-categories, one of which covered activities necessary to be conducted through WIPO programs and, the other of which covered activities that were not necessary to be conducted through WIPO programs. From that viewpoint, the Delegation said it should be thoroughly considered, so as to avoid duplication of tasks between the current proposed project and existing WIPO activities, whether or not each of the specific activities of the proposed project was necessary to be done through a WIPO program. Furthermore, it stated that even if they should be implemented through South-South cooperation in the future, it should be determined through thorough deliberation whether or not they should be immediately implemented as a WIPO program. As for the exclusion of some members, the Delegation said it shared the concern shown by previous speakers including the delegations of France, United States and Hungary.

207. The Delegation of Tajikistan thanked the Secretariat for the preparation of the document and the African Group for proposing the project. The Delegation supported the project proposed by the African Group on enhancing South-South cooperation on intellectual property and development for developing countries and least developed countries. It stated that the problems mentioned in the project document also occurred in Tajikistan and that it would like to take the opportunity to request technical assistance particularly with regard to the IP and Brain Drain project.

208. The Delegation of the Netherlands thanked the African Group for the project proposal. It acknowledged the importance of South-South cooperation in general and the potentials that such cooperation might have in relation to intellectual property. The Delegation aligned itself with the statement made by the Delegation of Hungary on behalf of the EU and its 27 Member States and noted that most of the budget seemed to relate to meetings only. It therefore was not clear what a budget would be for the other emphasized activities. The Delegation also requested the Secretariat to provide further clarification on the breakdown of the budget with regard to the activities included in the project proposal.

209. The Delegation of India speaking on behalf of the Asian Group stated that the Group recognized the importance of South-South cooperation and the need to enhance it. The Group therefore welcomed the project and supported it in principle.

210. The Delegation of Pakistan thanked the Secretariat for the project document and the African Group for its formulation, and recalled that the project had been presented in its earlier phase in the last session of the CDIP. The Delegation therefore aligned itself with the statement made by the Delegation of Brazil on behalf of the Development Agenda Group and by the Delegation of India on behalf of the Asian Group. The Delegation viewed South-South cooperation as an important component of international cooperation for development primarily because the developing countries tended to share some common views on national development strategies and priorities when faced with similar development challenges. And in that respect the Delegation said it viewed the project as a very important step forward and hoped that by working on the project and finalizing it, WIPO would also join other United Nations organizations and specialized agencies such as UNCTAD, UNDP, UNIDO, FAO and ILO, which had established within their respective mandates a work program to support and promote South-South cooperation. It concluded by reiterating its full support for the project in its current form.

211. The Delegation of the Russian Federation thanked the authors of the draft project and the Secretariat for the document on enhancing South-South cooperation on intellectual property and development among developing countries and least developed countries. The Delegation

supported the development of that kind of cooperation and recognized its topicality and importance. The Delegation noted that the current document contained a great number of important and very useful things such as exchanging national experiences and information on establishing intellectual property systems, training and capacity-building for protection of intellectual property. The Delegation believed that exchange of experiences on a South-South basis in the area of intellectual property would also be very important. With regard to the creation of South-South cooperation coordination centre which could be looked at, many delegations had spoken about the fact that it was vital to avoid duplication of existing activities. It said it had heard many delegations refer to that but it also pointed out that the authors of the project had stressed the necessity of fostering cooperation while avoiding duplication. The Delegation also stated that it based its views on the fact that such cooperation needed to be developed in a way that would avoid the duplication in the framework of activities that were being carried out in the Organization. The current document was formulated in rather a general way and it was suggested that perhaps it could be re-worked slightly in order to provide more information about which particular and specific kinds of activities would be looked at within the framework of the proposed project. With such information, the Committee could determine the way in which the project would develop and also look at the issue of the creation of a coordination centre or unit for South-South cooperation within the WIPO Secretariat. Of course, that would be with the understanding that such activities would not duplicate activities being carried out by existing structures and the Delegation hoped that the authors of the project would provide additional clarification and further develop the document along those lines. The Delegation also suggested that alongside the initiatives that were presented, others might be looked at in the future and obviously they should include the maximum involvement of all stakeholders in order to have successful implementation of such cooperation in the future.

212. The Delegation of Papua New Guinea congratulated the Chair on his excellent stewardship in moderating the meeting. The Delegation welcomed the project proposal presented by the Delegation of South Africa on enhancing South-South cooperation and lauded the good initiative. It hoped that tangible results from such a project would be achieved and its effect would be extended in terms of experiences to developing intellectual property institutional capacities among developing countries of the Pacific Region.

213. The Delegation of Venezuela thanked the Secretariat for providing the document and stated that it had no problem with supporting the project presented by the African Group. The Delegation sought to understand what exactly was meant by duplication of efforts, and stated that since the CDIP was a Committee that dealt with issues of human rights and development, it would clearly have to duplicate practically everything that it did. The Delegation also observed that everything that was done in the CDIP would also be dealt with in other committees or other organizations because they were interrelated in the fundamental principals of the UN system. That meant that not only the work that was being done at WIPO in the intellectual property arena, but also the objective of the activity and the philosophy behind it were needed to carry the work forward. The Delegation further noted that the aim of the project was cooperation, and that it was not the only activity that it proposed. It said the project also referred to such things as implementation or establishing technology transfer. The Delegation said when there was talk about development, on which the developed countries had been working for a long time, it was not very long ago that developed countries were calling the developing countries the "Third World", which meant those countries were on the outside or just a third leg that was observing and not involved. The Delegation observed that if that kind of characterization were to be accepted then the CDIP would have no point or reason to exist, and it would need to disappear in each of the aspects of its work. The Delegation was of the view that the aim of the proposed project was to foster development, facilitate the transfer of technology, and to enhance cooperation to provide technical assistance without simply being just a carbon copy of the development within developed countries and implanted in developing countries. The Delegation further stated that it had not seen clear evidence of duplication in the project or what it actually meant. It said there was a call for Member States to review the topic of patents in the WTO, which of course was duplication of what was happening in the WTO itself. The Delegation said



everybody was saying that there should not be duplication but it said it was important to understand and to know the objective of the CDIP, since development of course was intimately related to the project that was being presented.

214. The Delegation of South Africa thanked all Member States for having gone through the document it had presented to the Committee for its consideration and particularly commended those Delegations that had supported the project. The Delegation referred to the question posed by the Delegation of France and others and stated that the questions could be clustered and that it would not have to respond to each one Delegation by Delegation. On the issue of exclusion, the Delegation posed the question whether all meetings of WIPO were open to all the membership of the regional groupings? The Delegation said answers to that question would serve to actually respond to the issues raised about exclusion. The Delegation was under the impression that there were meetings of WIPO where there were various limits and restrictions in place regarding participation. Therefore, it said there was nothing new and no precedent was being set, although on that point the Delegation said it stood to be corrected. The Delegation agreed with the Delegation of India which had cited cases of regional meetings in WIPO that had restricted membership. It therefore, said the annual conference would be open to all the membership of WIPO but the difference would be that it would still be South-South event as far as speakers and observers from the developed countries were concerned. In terms of the sequencing of the meetings, the Delegation stated that the sponsors of the proposal had actually explained the issue to their partners. It was not actually going to be held a few weeks before or a few weeks after the annual conference. The difference was that at regional level, there would be fewer participants who would be mainly experts, while the annual conference would tap into the advantage that would be provided by the attendance of the WIPO Assemblies so it would be possible to leverage the participation in the Assemblies so that everyone could benefit from what was discussed at the regional level. The Delegation stated that it had already presented the concrete measures, and there was no need to go over them and repeat what had been said. The document had stated clearly what would be the benefits to be derived by Member States and that was why most LDCs and developing countries present at the meeting had supported it, because they realized the concrete measures that would be derived. As regards duplication, the Delegation had actually cautioned against that on the previous day, and wondered where the duplication was arising from. It understood that the call for the creation of a focal point would lead to duplication. The Delegation however pointed out that it never made references to a focal point on South-South cooperation. The only thing that it had called for was a focal point within the Secretariat consisting of one individual who would be tasked with the file on South-South cooperation, and not the creation of a new unit in WIPO. The Delegation welcomed the suggestions that the outcome of the regional meetings should be presented to the CDIP and acknowledged that the idea had been that whatever was discussed at a regional level would also come back to the CDIP and be discussed by Member States. The Delegation observed that the project was a very important issue to the sponsors and that it was crucial to them and they would like equal treatment accorded to it. As with all Development Agenda projects, the project on South-South cooperation also had a specific budget and the Delegation saw no reason why it should be funded differently from other projects. The project should be funded from the regular budget of WIPO and that should be flagged at the meeting. It would not be acceptable if it were otherwise. The Delegation also noted the specific questions from the Delegation of the United States that needed clarification. As to why the sponsors of the project made references to intellectual property governance, the Delegation explained that it was an exchange of information on institutional structure of intellectual property institutions at the national level. That arose because of differences in intellectual property governance and different levels of understanding of intellectual property matters. Structurally, the Delegation stated that it was referring only to institutional matters that did not refer or seek to discuss WIPO. That was why the Delegation said they were emphasizing the exchange of information at the regional level so as to benefit from each other's experiences. The Delegation cited the case of Brazil as an example, and stated that that country was well organized when it came to intellectual property matters. Therefore some countries would look toward Brazil for experiences that would benefit them. Where South Africa did not have the same institutional

organization as Brazil, it could benefit from sharing of experiences with the latter. The Delegation explained that that was what it had in mind when it spoke of intellectual property governance as one of the issues in the project. Those were the preliminary responses to the questions which were posed to the Delegation.

215. The Secretariat dealt first with a question posed by the Delegation of Australia regarding indicators, for example, for activities 2.3(a) and 2.3(f), and stated in fact the activities under section 2.3(a) were the organization of inter-regional meetings and the two annual conferences and for that the Secretariat had proposed to the African Group and it was accepted to have two indicators of successful completion, namely level of attendance and feedback from participants. The Secretariat noted that as far as a performance indicator for successful completion for activity 2.3(f) was concerned, that is, the proposal to appoint a focal point in WIPO Secretariat on South-South cooperation, it thought that there would not be any need for a specific indicator because the successful indicator would be the appointment of such a focal point who would deal with the whole implementation of the project over the two year period at least, and then of course the functions of the focal point would be further discussed when the completion and the implementation of the project was discussed in the CDIP. A number of other questions regarding the structure of the budget for the activities proposed by the African Group had been posed by many other delegations. The Delegation of Spain and other delegations had raised questions regarding the structure of the budget which, as the Secretariat noted, would follow what had been done for all other Development Agenda projects approved by the Committee. It would follow exactly the same structure where the items of expenditures have been identified following the differing categories that were also indicated in the Program and Budget of the Organization. The first category for non-personnel resources was travel and fellowships. In travel and fellowships would be staff missions and third party travel, then contractual services and equipment and supplies. As far as the first item of expenditure travel and fellowships was concerned, in order to propose an estimate to the African Group about the cost of the activities indicated in the delivery strategy of the project, WIPO based its estimation on actual costs, travel costs, of similar inter-regional meetings organized by the Secretariat during last year and after that it proposed the breakdown by third party travel in which it included financing of travel costs for government officials coming from each region plus China. In that manner, the Secretariat followed the practice in WIPO as far as the funding of government officials was concerned for standing committees and other meetings organized in WIPO. As far as contractual services were concerned, the second item of expenditure, the Secretariat stated that it included the activities related to 2.3(b) and 2.3(d), mostly 2.3(b), in the matchmaking database which under the project would include a new functionality regarding South-South cooperation. The databases were in the phase of being finalized and reviewed and the funds provided would complement what had been done under the project approved by the Committee for the establishment of such database. Regarding conference arrangements and payment of honoraria for expert speakers, the Secretariat noted that practical arrangements for the organization of the inter-regional meetings and the annual conference such as interpretation costs, organizing a reception, perhaps the funding of coffee breaks, etc would be involved. As far as expert honoraria were concerned, it would include honoraria for six experts coming from each region, plus China to participate in those two inter-regional meetings, and the two annual conferences. Personnel resources would include the appointment of a special labor contract at a P2 level for 2 years. At the current time in the Secretariat there was nobody performing that function and the special labor contractor would contribute and would start working principally on activity 2.3(d) and 2.3(e).

216. The Delegation of Egypt thanked the Secretariat for the explanations it provided and stated that as had been so well noted by the Delegation of South Africa, there were three elements that arose from Group B's reaction to the project proposal. Those were exclusion, duplication and cost. With regard to the issue of exclusion, the Delegation of Egypt noted that it was a bit strange to ask that question, and in answer, it would like to share a joke or proverb from Egypt with other delegations by making it trans-regional. Ali, Sara and John decided to go on a trip in the desert. Unfortunately as it happened often they got lost and it was getting a bit

hot, they were getting thirsty after their water ran out but somehow they bumped into a magic lantern, from which a genie came out. The genie said to the three of them that they each had one wish to ask and would be given. Ali asked to be sent back to his home to be with his family and the genie granted his wish and he was reunited happily with his family. Sara was very studious so she told the genie to take her back to the library because she needed to practice for her examinations. The genie sent her back and she found herself in the library studying. Then came John's turn and realized he was all alone and said he could not stay alone like that and begged the genie to bring Ali and Sara back. The Delegation of Egypt said that that was exactly what was happening in the CDIP. It said the notion of exclusion did not mean that there would not be a North-South cooperation framework, but only that the South-South cooperation should also not be prevented or denied. On the issue of duplication, the Delegation said it had a real concern about repeated calls in this respect. The Delegation recalled that the day before, the same calls were made and in the current session too they were repeated. The Delegation asked the Group B delegations to identify if they could and provide the meeting with the list of places where efforts were being duplicated and the sponsors of the project would be very happy to deal with it. The Delegation said the proposal should not just be dismissed by saying that whatever was being done had already been done before. It was a serious issue and in fact, it bordered on the unproductive. With regard to the third element, concerning the cost of the project, the Delegation of Egypt noted that the project cost was actually beneath the average allocation for Development Agenda projects. The Delegation recalled from the report made by the Director General that so far 19 projects had been developed at a total cost of 22 million Swiss francs. That meant that on average each Development Agenda project would cost more than one million Swiss francs. Yet, the proposed project on South-South cooperation would cost less than one million and in fact, Member States would get more value for their money on that project because it aimed to implement seven Development Agenda recommendations. Therefore in implementing that project, seven Development Agenda recommendations would be addressed and implemented at the cost of implementing two recommendations. Before concluding, the Delegation of Egypt said it would like to make a few more points. It stated that the Delegation of the United States had dismissed the idea of an independent body of knowledge on intellectual property in the South, and the Delegation responded that that was extremely incorrect. The Delegation asserted that the countries of the South had an independent body of knowledge with regard to intellectual property; they had their own legislation, their own experts and their own approach to dealing with intellectual property and socio-economic development. The Delegation said it would seek some clarification from the Delegation of the United States on its statement. The second issue raised concerned a question posed by the Delegation of Australia whereby the Delegation had pointed out that it was not very clear as to the initial stage or where the project would end. By way of clarification, the Delegation of Egypt pointed out that the project was a first step, and that it was the only project of the Development Agenda that adopted the phased approach. The last session of the CDIP had adopted the project on technology transfer which had been identified as a first stage. Now, there was no agreement on where to proceed further until a study and an evaluation have been conducted as regards the first stage of the project. In respect of the current project proposal, the sponsors had set clearly what the first stage would be as well as what would be at the end through an evaluation that would be decided again in the CDIP. The Delegation hoped that the Committee would not get lost in the desert, as that would entail a loss for the other committees as well.

217. The Delegation of Spain thanked the Secretariat and sought clarification about the challenge posed by the Delegation of Egypt. The Delegation said if it remembered correctly, what had been attributed to Group B were actually individual statements made by the Members of that Group and therefore, they were not speaking as Group B jointly. The Delegation of Spain reiterated that as far as it was concerned the tangible idea of the program, the idea underlining or underpinning the program was a very good one and that should be clear from the outset. However the answer given by the Secretariat did not seem acceptable. Although it agreed that the same budget structure was adopted for other programs, the one proposed for the current project was unacceptable. The Delegation considered there were internal structures

of the document presented by WIPO and then also there were the presentations to the States that needed to have the relevant and sufficient amount of data in order to be able to calculate the cost of the project and to be able to oversee and monitor its outcome and results. The Delegation stated that what it was arguing against was what the Secretariat had presented as the structure adopted for other programs that was unacceptable. The Delegation had reiterated and insisted at various junctures that the current proposal as presented in its present layout was not acceptable because there was a lack of sufficient detail about the programs. The Delegation sought delineation and a more precise explanation as to why the project was being adopted, and called for different structure to be presented for the project.

218. The Delegation of Algeria addressed certain points that were made by several delegations from Group B, particularly those that asserted that the current project was discriminatory in nature and exclusive or restricted. The Delegation believed that the needs of developing countries were not the same as those of developed countries, and the level of their development was also different, as such the nature of the project was determined by that characteristic at least, on one hand. On the other hand, the project of the African Group did not set a precedent, and it was noted that there were certain meetings in WIPO that were open just to countries from a particular region. The Delegation noted for instance, that the meeting of the International Administrations of the PCT encompassed only 17 countries and that those 17 countries were the only ones that took part in its deliberations. Therefore, the Delegation averred that the African Group was not setting any precedent in its present proposal. With reference to statements that the project was redundant, the Delegation noted that from its perspective, the project would add value due to its structures. It stated that the technical assistance provided by WIPO provided a framework for that and also allowed for greater visibility and provided guidance for the activities tailored to the needs of developing countries. With reference to statements that had been made concerning the cost overrun of the budget of the project, the Delegation noted that since the setting up of the CDIP, 19 thematic projects had been launched alongside various other related projects and never had the budget issue been raised. The Delegation therefore wanted to see equitable and fair treatment given to all the projects, including the present proposal, and for the present proposal to be treated in the same way as all the other recommendations of projects that had been launched under the Development Agenda. The argument concerning the budgetary costs or budgetary implications was superfluous and demonstrated a lack of political will by certain delegations to call a spade a spade. The Delegation invited all Member States to demonstrate flexibility to ensure that the project was adopted during the current session of the CDIP.

219. The Delegation of the United States gave a quick clarification in reply to a question from the Delegation of Egypt, and noted that the esteemed Delegation of Egypt might have missed part of its intervention. Basically, the Delegation had described the numerous projects that had been implemented through the CDIP and noted the progress reports that had been prepared which had specified that they were development-oriented, demand-driven and transparent projects that also took into account priority and special needs of developing countries especially LDCs as well as different levels of development of the Member states. The Delegation also said given the interventions in the current session from the delegations of Mexico, Uruguay and other countries describing various existing projects and initiatives that were ongoing, the Delegation did not share the view that there was an independent body of knowledge and experience on a strategic use of intellectual property for development in the South that was not already being reflected in the Secretariat's technical assistance programs and in other activities.

220. The Delegation of Barbados thanked the African Group for the proposal for promoting development of intellectual property in the South. The Delegation stated that perhaps a distinction needed to be made between South-South cooperation in IP and Development and IP in the South. It acknowledged the need for a greater development of intellectual property in the South and believed that there was much more that could be done for developing countries generally. The Delegation also stated that given the need for some countries to have access to information, advice and guidance, there was therefore a natural tendency to look towards WIPO

for guidance in those areas. Since there were few organizations which had those specialized skills in the area of intellectual property and development, it was logical to expect WIPO's assistance on those activities. The Delegation noted that perhaps there were some other international organizations that dealt with some of those issues and suggested that it might probably be useful to examine some of their approaches. It was aware that the South and the least developed countries in particular, had experienced considerable difficulties in developing greater intellectual property skills, knowledge, training and capacity-building, and that there was a need for them to exchange experiences. There were a great deal more of those experiences among developed countries of the North and the East. The Delegation said it recognized that there was more work to be done in order to meet some of the concerns which had been expressed by some of the delegations but that they all seemed to agree that there was a need for a greater development of intellectual property in the South. The question therefore was how that should be done. There was a need for some initiative so that there would be encouragement for intellectual property development and work on that approach must be continued which could gain wider support. The Delegation noted that perhaps the issue was one of terminology and suggested that perhaps intellectual property development in the South was what should be focused upon so that South-South cooperation in intellectual property could follow from that initiative.

221. The Delegation of Brazil expressed its general concern and noted that many of the projects discussed were still pending and therefore wondered how the Committee could move forward so that it could end the meeting on Friday at reasonable hour. The Delegation inquired if the Chair had any plans of inviting consultations or encouraging groups to consult with each other.

222. The Delegation of India reiterated what had been stated by the Delegation of Brazil, and also noted that because in the current session of the Committee, Member States had discussed at length at least three projects which had not been concluded so far, it requested the Chair to enlighten the meeting about how it would proceed. With regard to the current project proposal, and the discussion that had been held, the Delegation found it surprising that in the CDIP that was all about intellectual property and development, which in effect translated into IP development in the South as the Delegation of Barbados pointed out, certain delegations seemed to have fundamental problems with the project. The Delegation noted that the current project was the first project in WIPO where South-South cooperation in IP was being discussed. The Delegation noted that in principle, South-South cooperation had been accepted everywhere and when it was brought into the intellectual property domain, a surprising lack of political will was demonstrated. It stated further that the objections or issues that had been raised against the project had been adequately responded to by the Coordinator of the African Group and the Delegation of Egypt. The discussion had given the impression that there was a lack of commitment to seeing South-South cooperation happen. The Delegation left the issue at that and hoped that the project would be finalized alongside the other two projects before the conclusion of the meeting and looked forward to a plan of action that would make sure that, that did happen.

223. The Delegation of South Africa responding on the behalf of the African Group added to the statements of the Delegation of India and flagged that the African Group saw it as very important to get closer to adopting the project because it seemed there were a number of interventions which were rather confusing to the Group. On the issue of duplication, the Delegation requested that such cases should be pointed out to it, and regarding the budget, it said it thought that that had been resolved and appealed to the Group B members to actually understand that the project was developed by developing countries for their specific needs, and therefore it called upon the developed countries to understand that concern. With regard to the inputs into the project and the final outcomes, the Delegation noted that such issues would be discussed at the CDIP. Therefore the issue of exclusion did not arise and it had already been clarified. The Delegation hoped that there would be the political will to adopt the project and move it forward.

Consideration of Document CDIP/6/9

224. The Secretariat responded to some of the remarks made by the delegations and recalled that Development Agenda Recommendation 34 requested WIPO to conduct a study on constraints to intellectual property protection in the informal economy including the tangible costs and benefits of intellectual property protection, in particular, in relation to the generation of employment. At the sixth session of the CDIP, the Secretariat presented a concept paper or a non-paper to the CDIP to lay out some of the key issues that underlined that recommendation from an economic point of view. The Secretariat again from an economic point of view, said there were two dimensions behind the study. One was to layout which areas of the informal economy generated intangible assets. The second link in that non-paper was the link between intellectual property in the informal economy as it arose in the context of piracy and trademark counterfeiting. Those were the two dimensions of study that could be envisaged from an economic point of view while looking at that particular recommendation. The Secretariat said it also had suggested two different methodologies to approach either of those two topics or both topics. One was the conduct of an original, rigorous, empirical investigation to identify the use of IP or the absence of use of intellectual property in the informal economy, and the second one was to base research on more anecdotal studies and case studies in a particular number of countries. It said it noted throughout the paper and also in previous Committee discussions that studying the informal economy in an empirical economic way was inherently difficult because of the absence of any kind of data that would underlie such analysis. Therefore it stressed that empirical investigation that was done originally by actually going into the field and collecting data, would be highly difficult and complex to undertake. For that reason, the Secretariat said it would lean toward conducting case studies, if anything. At the last CDIP meeting, it had indicated that it wished to be guided by Member States and be realistic as to what could be achieved on that particular recommendation. It recalled that there was a very good discussion but the Chair decided to postpone the discussion to the present session of CDIP. The Secretariat said however, that it had not been tasked to develop another non-paper or a specific project proposal, therefore the discussion and the direction of the CDIP recommendation were in the hands of delegations and the Secretariat was looking forward to directions that the Member States might offer to it.

225. The Delegation of South Africa speaking on behalf of the African Group, welcomed the working document on intellectual property and the informal economy and noted that the African economies were endemically characterized by the informal sector and the majority of its population worked in that sector. The Delegation stated that the informal sectors in African countries were also characterized by various assortments of creative and innovative works. It cited the example of medicines used for treatment of various ailments that were produced and sold in the informal sector. It observed that due to a variety of factors, those operating in the informal sector were unable to protect their inventions through the intellectual property system, and stated that the African Group believed that a number of activities could be undertaken by WIPO to assist in the facilitation and introduction of the intellectual property system in the informal sector. With reference to the working document, the African Group first noted that the description of the relationship between intellectual property and the informal economy in paragraph 3 should be reviewed. The reason was that firms and enterprises in the informal sectors in Africa actually paid specific taxes in their various countries, which may not necessarily include sale or income taxes, as suggested in that paragraph. The Delegation also noted that in contrast to the conclusion of paragraph 3, the African Group was also of the view that the informal sector was unable to acquire, maintain and defend its intellectual property rights. It was due to, but not limited to insufficient knowledge and unfamiliarity with the intellectual property system, a lack of capacity in national intellectual property offices to render sufficient support to the informal sector and the cost involved in accessing the intellectual property system. The African Group also believed that the matters of enforcement raised in paragraphs 5 and 6 were currently being addressed in the ACE. It noted that a variety of activities including studies were being conducted on enforcement as it related to the informal sector in that Committee. Finally, the Delegation said the African Group looked forward to a

fruitful engagement on activities that the ACE was currently undertaking. Regarding the possible directions of a CDIP project on intellectual property and the informal economy, the Group believed that activities should be undertaken with a focus on informal and tangible assets and lack of access of informal operators to the intellectual property system, and suggested that the project could help identify inventions and innovations made in the informal sector, report on success stories of innovative activities in the sector, establish how inventors in the informal sector might protect their intellectual property assets and lastly but not the least, commission studies on how to bridge the gap between the formal and informal sectors.

226. The Delegation of Brazil speaking on behalf of the Development Agenda Group stated that it would try to answer some of the questions raised in paragraph 10 of the document. Concerning the first question, the Delegation believed that the substantive directions of future work under Recommendation 34 should focus on the first aspect of the question, namely on informal intangible assets and lack of access of informal firms to the intellectual property system that would better reflect Recommendation 34. Some additional questions that should be answered by the studies could be the following (i) how innovation occurred in the informal economy and (ii) whether the intellectual property assets were protected by models other than the traditional intellectual property models. The study could also analyze whether registration of intellectual property and maintenance costs may constrain those firms and individuals from using the intellectual property system in the informal sector. With regard to the second question, the Delegation stated that case studies could first be conducted so that they would be used to illustrate the questions as had been suggested before and could also serve as a basis for deliberations on activities that might be undertaken under that recommendation. Other studies could then follow in a second phase.

227. The Delegation of Bolivia thanked the Secretariat for the document on intellectual property and the informal economy. It noted that the document raised a number of relevant questions that were fundamental in nature especially when it came to the basic orientation of future work to be done within the framework of Recommendation 34. The Delegation stated that the wording in Recommendation 34 could indeed be subject to erroneous interpretation that could go against the Development Agenda, especially if it could be interpreted that the recommendation called for reformulating and strengthening the enforcement of intellectual property in the informal sector. That was why the Delegation had a number of questions especially regarding paragraph 6 on page 2, with which it was not really comfortable. The Delegation said it did not think it opportune within the framework of Recommendation 34 to work on the question of piracy in the informal sector when it came to reformulating policies to have effective enforcement as it was contained in that paragraph. The Delegation suggested that in future, within the framework of Recommendation 34, work should proceed in a spirit of how to understand the informal sector, which should focus on first of all, analyzing what sort of impact could be generated by strengthening and monitoring intellectual property in informal sector especially when it came to development aspects such as job creation and income generation for people, as pointed out in paragraph 5 on page 2. The Delegation also stated that there was the need to evaluate whether or not the instruments of intellectual property could be useful in the informal sectors as well and if they could contribute to the prospect of development in that sector. Such evaluation should include questions such as "what would be the possible source of growth and impediments to the use of intellectual property in that sector?"; "what would be the expected problems to arise thereof?"; "what conflicts and costs would be generated from such an activity?" The Delegation stated that it was very important to underscore those points and noted that Recommendation 34 did not seek to introduce intellectual property in the informal sector but rather to assess and evaluate the opportunity of implementing it and to measure any possible advantages and benefits. The third point that the Delegation wished to make was in respect of what had already been pointed out by Development Agenda Group on the models of innovation within the informal sector and alternative protection measures to intellectual property. Lastly, the Delegation stated that the Development Agenda should not be used to introduce enforcement of intellectual property in the informal sector or for carrying out studies on supposed activities of piracy or forgery in that sector.

228. The Delegation of Mexico thanked the Secretariat for the submission of the document on intellectual property and informal economy. It said the informal economy was a very complex and all embracing theme and noted the comments of the various Member States such as Brazil and Bolivia that had suggested that a working program was needed to deal with Recommendation 34. The Delegation observed that within the framework of the study proposed in document CDIP/6/9, it looked at intellectual property and socio-economic, fiscal and political themes but they were not within the mandate of WIPO. It suggested working with other international organizations such as ILO that had presumably carried out studies on the sector. That could give some idea on how to orientate the study on the informal sector focusing on intellectual property. The Delegation said it should also be borne in mind that national policies be considered as work evolved in those different bodies. It stated that it was possible that the fight against piracy would be more difficult when it came to the informal economy. The Delegation informed that in Mexico, the authorities had developed a national policy with regard to the issue that was linked more to taxation and economic measures than to the protection of intellectual property. It stated that in order to face the various problems raised in document CDIP/6/9 especially in respect of small-scale firms that could be dealt with by implementation and also a follow-up of intellectual property and trademarks as well. Regarding document, the Delegation said that could be extended to more countries where piracy was on the front line, and suggested that discussions on protection of IP should be continued in the proper committee when it came to enforcement.

229. The Delegation of Nigeria thanked the Secretariat for the document and noted that the debate had been quite interesting on that issue. It stated that it would definitely support the project and noted that most developing countries more or less relied on the informal economy which substantially contributed to their economies. The Delegation noted that the issue had already been captured by the coordinator of the African Group in trying to elaborate that key question. It was necessary to take a step back and return to the decision, which stated that the purpose of the recommendation was to assist Member States in creating substantial national programs which in effect meant that the study would provide an insight into how informal economies could generate more development and production, and effectively deal with intellectual property-related issues. The Delegation also noted that the issue touched on fundamental aspects of development and growth for most developing countries. So in effect, it was a very important area that was yet unknown in terms of its impact, its breadth and extents. Therefore the Delegation said it supported the idea of a study which would give insight and enable countries on their own to draw from those studies in developing national programs which would create other dynamics and their complementary effects. The Delegation noted that at the end of the day, the top beneficiary would be WIPO as well. So the Delegation said it would support the document that had been prepared by the Secretariat. Although it was seemingly a short document, it was however a very impressive document which the Secretariat as usual had produced in an excellent fashion. The Delegation hoped that the real work would be conducted under the study which could bring out all the facets that were yet unknown with regards to the issue which would be very helpful in the actions to be taken on development.

230. The Delegation of Venezuela thanked the Secretariat for preparing the document and supported to the statements made by the Delegations of Bolivia and Mexico and the comments made by the Delegation of Brazil on behalf of the Development Agenda Group. The Delegation stated that the present document was perhaps lacking in clarity of definitions. It noted that in the Spanish language, piracy was something that occurred on the high seas involving ships. But when viewed in relation to actions like copying of records that were not original, the Delegation was of the view that there usually was only one original copy of a record anyway, while all the rest were copies or authorized copies of that original. The Delegation sought a clear definition of an unauthorized reproduction of a work. Confusion could otherwise arise because the term piracy in the Spanish language had nothing whatsoever to do with what was being called as such in that document or in the CDIP as relating to non-authorized or unauthorized reproduction of a work. The Delegation also stated that the issue under discussion was in relation to the informal economy, and opined that under the labor laws in



Venezuela, informal economy was very broadly defined. Therefore, a freelance lawyer or attorney who was not actually working for the state or a given company would be considered as working in the informal sector. Similarly, a doctor who was not working in the hospital and who owned his own practice would be categorized as such. That definition also applied to people engaged, for example in the sale of merchandise or traveling salesmen as it were. The Delegation noted that such a viewpoint could also be discerned in Recommendation 34, which could apply to a physician or a vendor selling equipment that was unauthorized or that had been perhaps reproduced in an authorized way. It noted therefore that very clear definitions were required in order to achieve full understanding of the various elements that were involved while looking at the document on intellectual property and the informal sector.

231. The Delegation of Hungary speaking on behalf of the EU and its 27 Member States thanked the WIPO Secretariat once again for the discussion paper on intellectual property and the informal economy. It said the EU and its Member States would like to take the opportunity to consider the opinion that had been expressed by other delegations on the potential of the study on the issue. However, the Delegation noted that the key issue that had been suggested should be fully considered. The informal economy was vast and diverse, covering many sectors and geographical areas and with varied relationships to intellectual property. It would therefore be difficult to get data which reflected the whole economy and consequently difficult to make recommendations which applied to the whole of informal economy. The Committee may therefore in its deliberations wish to consider more specific areas of focus for immediate attention.

232. The Secretariat thanked the delegations for providing clear directions on the work both with respect to the scope and methodology. In terms of scope, the Secretariat said there were two choices to be made. One was to focus on the informal economy broadly, while the other would involve focusing on piracy and employment. It was understood from the comments of the distinguished delegates that the preference was to study the informal economy more broadly and understand how innovation was taking place in the sector, as well as how access and lack of access to intellectual property might constrain innovation. The Member States' input gave the Secretariat the direction of work as stated in the initial non-paper. It would not be an easy task to study how innovation took place in the informal economy but examination of existing literature and existing studies would have to be made to see what they had to say about the topic and identify experts in the field and then make an appropriate project proposal to the next CDIP. In terms of methodology, the Secretariat understood from the delegations' comments that an anecdotal study would be done as the first part of the project. The anecdotal study would be more of a case study than any immediate broad-based empirical project involving the collection of data on a broad country basis which would be immensely difficult and expensive to undertake.

233. The Delegation of Bolivia stated that the meaning had been well explained by the Secretariat and now things had become far clearer to the Delegation. The Delegation enquired whether the CDIP was going to work on how the lack of access to intellectual property could constitute an obstacle for the informal sector, and stated that the result of the study should not be prejudged. Intellectual property could be an obstacle but it could also be something positive and therefore, the study should not prejudice or overshadow the utility of intellectual property for the informal sectors. It therefore noted that Recommendation 34 looked at the costs and benefits of access facilitated or provided by intellectual property in the informal sector.

234. The Delegation of Ecuador thanked the Secretariat for the comments on the document and commented on the term "informal economies" in many countries. The Delegation was not sure if it had the same understanding as other delegations, but it would prefer the term "popular economy" or "economy of solidarity" because the term informal economy would vary from one country to another.

235. The Secretariat noted the comments of the Delegation of Bolivia, and stated that it would strive to reflect them in the project proposal. On the comment of the Delegation of Ecuador and also reflecting the comment of Venezuela, the Secretariat said it did not have the Spanish translation at hand, but it said it could have been translated as “tertiary economy” rather than informal economy. The Secretariat said the traditional definition of “informal economy” might mean unregistered businesses that were not incorporated and, for that reason, most of the time did not pay various forms of taxes and potentially did not satisfy certain health or product safety or other forms of standards. The Secretariat added that it understood from the rich discussions that took place at the last and current sessions of the CDIP that in the context of developing countries, “informal economy” was not always to be equated strictly with illegal activities *per se*, and that it was important to have a nuanced view, a non-legalistic view and a more pragmatic view looking at sectors where economic values created might escape the tax regime but still be invaluable in such a way that innovations were created in different ways than in the formal economy. Therefore in the project proposal, the Secretariat would try to reflect on that and clarify definitions, and remove ambiguities that were linked to those definitions so as to reflect the comments of the delegations of Venezuela and Ecuador.

236. The Delegation of Venezuela thanked the Secretariat for the explanations provided and said it was reassured by its comments. It noted that the text in the Spanish language seemed actually to reproduce what was contained in the Development Agenda Recommendation 34. The wording was the same and what the Secretariat had said was closer to reality because in Venezuela the informal sector could be a physician or a lawyer who paid taxes of course, and was recognized or had authorization or were listed in the directory. The Delegation called for discussion on the terms because they were very important for understanding. It therefore underscored that the term of piracy or “pirateria” in Spanish did not actually reflect what was being discussed in the CDIP.

237. The Chair believed that there had been a very interesting discussion on the paper on intellectual property and the informal economy, and suggested that there was a proposal for consideration of the project in the next CDIP session. Therefore in the absence of any objection, he said he considered the decision as adopted. The Chair then said he would move on to document CDIP/6/10 on Future Work Program on Flexibilities in The Intellectual Property System. Before resuming discussion on that document, the Chair said he would like to thank the Secretariat for making a very successful presentation of the previous document. The Chair thereafter invited the Secretariat to introduce the document.

#### Consideration of Document CDIP/6/10

238. The Secretariat invited the Committee to consider the document CDIP/6/10 entitled The Future Work Program on Flexibilities in the Intellectual Property System. It recall that the document contained in part one Work in the Area of Patents and in that context, the Committee had already had the opportunity to consider document CDIP/7/3 on Patent Related Flexibilities in the Multilateral Legal Framework and their Legislative Implementation at the National and Regional Levels. Part two of the document contained the stocktaking of WIPO’s activities relating to flexibilities in the intellectual property system. Part three of the document contained the strategy for WIPO’s technical assistance in the area of flexibilities. In respect of the third item, the Secretariat informed the meeting that the internal coordination for integrating flexibilities into technical assistance activities undertaken across the Secretariat had been commenced and was on track. The webpage on flexibilities including the roadmap to WIPO’s work on flexibilities and links to resources on flexibilities produced by both WIPO and other international intergovernmental organizations had been completed and had been posted online in English and was currently being translated into all official United Nations languages. The Secretariat also stated that the database containing links to enable users to perform searches of national legislation relating to flexibilities had been created and completed by WIPO’s Information and Communications Division and was now at the stage of importing the data into the database which would be presented to the Committee for consideration in the next session.

Further, steps had been taken to raise awareness of the strategies on those flexibilities across the relevant areas in the Secretariat and relevant programs would organize regional activities relevant to the subject of flexibilities in intellectual property system where appropriate. The Secretariat finally reminded that the document CDIP/6/10 was considered by the Committee at its sixth session and that the Committee requested that it should be considered at the current session. Accordingly the Secretariat said it would welcome comments of the Committee on the document.

239. The Delegation of Brazil took the floor on behalf of the Development Agenda Group, and welcomed document CDIP/6/10 presented initially at the sixth session of the CDIP in response to the call of Members States at the fifth session to prepare a work plan in the area of flexibilities. The Delegation said the Group had already made some comments on the document in the last session and would like to add to those comments. It said the Development Agenda Group noted that flexibilities were pivotal for guaranteeing a balanced intellectual property system. Accordingly the three elements of the future work program as proposed in document CDIP/6/10 should reflect those important dimensions. The first of those elements was work done in the area of patents. In that area, the proposal only referred to document CDIP/5/4 Rev. and CDIP/7/3 on which, the Delegation said, it had already commented. It hoped that its suggestions were appropriately reflected in the revised version of the document. With regard to the second element on stocktaking of WIPO's activities relating to flexibilities in the intellectual property system, the Delegation said that the annex to document CDIP/6/10 only provided a general description of the activities undertaken by WIPO, the nature of its output and a general description of the impact of the activities. It did not however give detailed analysis of how flexibilities had been addressed in the undertaking of such activities. For example, the annex showed that WIPO had provided written comments to countries in different regions on patent, utility models, integrated circuits and undisclosed information. And the comments had been used as inputs by the authorities of those countries in considering the revision or implementation of legal framework. Moreover, information on how flexibilities had been addressed in workshops organized by WIPO did not reveal the outputs of the program. Such information alone did not provide an assessment of the extent to which those activities addressed the use of flexibilities and the practical aspects of implementing them while taking account of the needs and priorities as well as the different levels of development of the countries. Without any knowledge of that crucial aspect, it was not possible to develop a work program on flexibilities because it did not shed light on areas where improvement was required. The Delegation also noted that whilst the annex also provided information on the studies conducted in other committees, that information should not be considered as the views of those bodies. One important issue that could be raised in that regard was that of overlap with other committees such as the SCP. It must be emphasized that the studies being conducted in the SCP were of factual nature whilst the studies on patents and other flexibilities in the CDIP were for the purpose of enabling developing countries to effectively make use of flexibilities in practice and should therefore examine the problems faced by them in implementing flexibilities. The Delegation also noted while the studies in the SCP were intended to formulate a program for the SCP, the studies in the CDIP should be meant for the technical assistance, capacity building and standard setting activities of WIPO. In that sense the work in the CDIP would complement the work in the SCP and other Committees. As for the third element on technical assistance in the use of flexibilities, the Delegation said that the proposed strategy was commendable, but noted however, that flexibilities should be incorporated into not only technical assistance activities but also in WIPO's legislative assistance tool kit, its advisories on national intellectual property strategy and its capacity building activities. A key issue in the work of incorporating flexibilities into the technical assistance program would be ensuring transparency so that adequate focus on flexibilities was guaranteed. The Delegation also stated that the work program may also usefully include case studies on successful national experiences on using flexibilities to achieve broader public policy objective such as innovation, public health, food security, science and technological development, education, access to knowledge and access to culture. Those studies should focus not only on how Member States implemented flexibilities in their national laws, but also how those provisions were used to meet the above-mentioned

public policy objectives. The survey of national legislative experiences related to flexibilities in the intellectual property system could be a basis for guaranteeing information on the case studies as suggested. Those studies should also be submitted to the CDIP for comments before publication and comments provided by Member States could be included as an annex to the studies. As suggested with respect to the case studies, the proposed surveys should also focus not only on how Member States were implementing flexibility in the national laws but also on how they used those provisions to meet broader public policy objectives. Such an exchange of practical experiences on how to use of flexibilities would be very useful for Member States. While appreciating that the WIPO website was not already showing a webpage on flexibilities in the intellectual property system, the Delegation suggested that a website dedicated to flexibilities should be more comprehensive and include an element similar to that developed in the IP-Advantage website where stories of the IP users were presented. It suggested also that the case studies and successful examples such as those suggested earlier could be included in the new website. Finally, the Delegation stated that the work program on flexibilities in the intellectual property system was very important and an on-going process. It was not a one-time implementation activity therefore the Delegation requested that the Secretariat modify the document to incorporate the suggestions made by Member States and present it at the next session of the CDIP.

240. The Delegation of Pakistan thanked the Secretariat for the project document which was presented to the sixth session of the CDIP, and appreciated the work that had been carried out on the third element starting from the beginning of the document as mentioned in the first part of CDIP/5/4 and other documents presented to the session where the five flexibilities were mentioned. With regard to part B, where there was a stocktaking of WIPO's activities relating to flexibilities in the intellectual property system, the Delegation said it particularly appreciated that part because it gave an interesting overview of activities in the annex to the study. The Delegation said the only impression that it got while looking at the rest of the annexure was that it was a very general description of the activities undertaken by WIPO. However, it said it believed that there was need for a detailed analysis of how the flexibilities were being addressed in undertaking those activities. The Delegation also said as regards part C, which dealt with technical assistance in the use of flexibilities, it appreciated that the website had been uploaded as a webpage on WIPO website and it was also very interesting to go through the website. The Delegation praised the Secretariat's effort in creating the website but suggested that more work needed to be done to develop it. It had just some specific rubrics mentioning various parts, but if somebody needed to go through the flexibilities specific to a subject, it became difficult to navigate through the page because it only referred to most of the documents of various committees rather than giving more specific views of the Member States on the use of flexibilities. The Delegation therefore called for further improvement of the website.

241. The Delegation of the United States said it appreciated the constructive discussion that Member States held on the proposed work program on flexibilities at the last session of the Committee. It also thanked the Secretariat for the hard work that went into preparing the initial proposal and for the skill with which it moderated those discussions. The Delegation said it believed that the elements of the work program on which Member States had agreed to at the last meeting, provided excellent foundation for the Committee's future work on flexibilities. As it understood from the discussions, and based on paragraph 282 of the draft report, Member States agreed first that there was a need for concrete information on flexibilities to assist countries in understanding and using flexibilities particularly those in the TRIPS Agreement in a practical manner and that WIPO should avoid duplication of its work on flexibilities amongst committees, and that it should establish a page on its website devoted to flexibilities that would include a database on provisions of national laws, and implementation of flexibilities at a national level containing Member States' experiences. The Delegation further said the website would include links to the extensive body of work on exceptions and limitations produced for the SCCR as well as to relevant parts of national copyright laws. The CDIP was also to review the information before it was placed in a database, which would include links to literature on flexibilities produced by WIPO and other international organizations in the field, as well as

information on materials used in WIPO's training presentations, workshops and seminars. WIPO was to incorporate information on flexibilities in its technical assistance program on a demand-driven basis, and would include information on flexibilities in its advice on national intellectual property strategies and capacity-building activities. National and regional seminars would be organized by the Secretariat to facilitate the exchange of practical experiences among Member States on flexibilities, and finally, any financial resources to implement activities would be presented to the CDIP for approval. The Delegation said while it supported organizing and making more accessible the studies and resources on flexibilities that WIPO had already produced in various committees, it would not support any additional surveys at the present time. For that reason, the Delegation said it would not support the inclusion of case studies in the flexibilities database to the extent that those studies would be based on survey results. At the last meeting, there was also a proposal for an inter-regional level seminar in Geneva, to enable an exchange of information, and experiences on flexibilities among Member States in international organizations, NGOs and civil society, and the Delegation did not see the need for such a seminar at present. The Delegation concluded by saying that there would be ample opportunity for Member States to exchange practical experiences during a national or regional seminar.

242. The Delegation of Pakistan apologized for taking the floor once again and said that it aligned itself with the statement made by the Delegation of Brazil on behalf of Development Agenda Group and would definitely support the proposal of keeping the revised document until the next session of the CDIP.

243. The Delegation of Australia thanked the Secretariat for preparing the study and noted that as described in the factual information in the annex, WIPO normative committees were working on flexibilities in areas of their respective expertise. Those normative committees determine the right agendas and as a general comment, the study should not be revised in a way that would divert those normative committees from their work.

244. The Delegation of India stated that it attached high importance to the project proposal for evolving a future work program on flexibilities in the intellectual property system. The Delegation had made detailed comments to that effect at the last session of the Committee. Therefore it would not be repeating those comments but would align itself to the statement made by the Delegation of Brazil on behalf of Development Agenda Group and in particular it would like to request that a revised document be prepared and presented for the next session. It hoped that in the revised document, the comments made by the Development Agenda Group as delivered in the statement by the Delegation of Brazil would be taken on board.

245. The Secretariat thanked all the members of the Committee for their very useful, clear and helpful comments on document CDIP/6/10. As requested, the Secretariat said it would revise the document taking into account the comments made by all delegations for submission to the next session of the CDIP. In clarifying and responding to some of the specific points that had been raised, the Secretariat said in particular, that the web page on flexibilities in intellectual property system was posted a week before, and therefore may not have come to the attention of the delegations and that it was for the moment only posted in English because it had only recently been completed, but assured that translation was underway. The Secretariat apologized for the absence of other language versions for the moment. The Secretariat would closely coordinate with all divisions to ensure that the web page was an ongoing and progressive document and resource for Member States. In particular, for example, the Development Agenda Coordination Division (DACD) would ensure that the technical assistance activities that were conducted by various Divisions of WIPO, and the output of seminars which were relevant to the issue, would be reflected on the web page and included among the resources. The Secretariat also took note of the comments of the Delegation of Pakistan in terms of ways to improve the website and would certainly take those comments into account as it continued to develop the website in future. It also reiterated that the database that had been mentioned had structurally been created and was in the process of having data imported to it. It

would contain the information already prepared by various areas of WIPO reflecting implementation of flexibilities at the national level. That again would be an ongoing document as further information became available, it would be included in the database. Nonetheless, the Secretariat said it would collate and prepare a submission for the consideration of the Committee at its next session with the content of the database prior to its publication. As such, it reiterated that the document would be revised taking into account Member States' comments and would be submitted for their consideration at the next session of the Committee.

246. The Delegation of South Africa noted that the African Group had also made interventions in the last session of the CDIP and therefore it would not wish to repeat what it had said the last time. The Delegation would appreciate if the Secretariat would incorporate its interventions made at the last session.

247. The Chair said the meeting had heard the Secretariat what the future work program on flexibilities and intellectual property system would be. Therefore, the document would be revised and made ready for the next CDIP. As there were no objections, it was so agreed. The Chair then proposed that the Committee should consider the next document CDIP/6/12 Rev. Proposal for CDIP New agenda item on Intellectual Property (IP) and Development and requested the Secretariat to introduce it.

#### Consideration of Document CDIP/6/12 Rev.

248. The Secretariat recalled that a proposal from the Delegation of Brazil on behalf of the Development Agenda Group was made to the last session of CDIP, and that the document was issued as document number CDIP/6/12. Subsequently, the Delegation of Brazil requested a minor readjustment to clearly show that the document was a proposal presented on behalf of Development Agenda Group and not only the Delegation of Brazil. Accordingly the document now bore the number CDIP/6/12 Rev.

249. The Delegation of Brazil recalled that in the last meeting of the CDIP, it presented the document and understood that all delegations were aware of the proposal, and they would have held consultations on it and understood it clearly. The Delegation requested the Secretariat to provide some more information on the conference because one of the elements being discussed was the Conference on Intellectual Property and Development. The Delegation stated that the conference was already reflected in WIPO's 2010/11 Program and Budget biennium, and inquired if the Secretariat could explain a little bit about the resources that were already in the budget concerning preparations for the conference. The Delegation also recalled that one of the proposal contained in the document was for Member States to take the time during the CDIP meetings under the proposed new agenda to discuss the situation. Alternatively, for instance, the Delegation said it would propose informal consultations to be held to prepare for the conference, to have the time to suggest speakers whereby a meaningful conference could be held. It therefore requested the Secretariat to kindly explain a little bit of the process and the budget of the conference.

250. The Delegation of France speaking on behalf of Group B thanked the Delegation of Brazil for the proposal contained in document CDIP/6/12 Rev. and said it would like to reiterate its position already expressed in the last CDIP concerning the creation of a new agenda item entitled IP and Development-related issues. The Delegation stated that in its view, the entire work of the CDIP was related to intellectual property and development. Alongside the projects that were being discussed in the Committee and were being adopted and implemented, the CDIP could also decide while considering its future work to discuss intellectual property and development-related issues under *ad hoc* items or to adopt new specific projects. Also the Delegation noted that Item 7 of the current Agenda provided a slot to *inter alia* discuss the implementation of all Development Agenda recommendations. For all those reasons, the Delegation did not think that there was any specific need to create a new standing agenda item on IP and Development related issues as proposed in the document presented by the

Delegation of Brazil. As far as the contents of the documents were concerned, the Delegation noted the interest expressed in the seminar series on the Economics of Intellectual Property and the request for an interactive exchange with the Chief Economist of WIPO, and suggested that such an exchange should take place on the margin of the next CDIP, for instance as a lunch event. Concerning WIPO's contribution to the UN MDGs, the Delegation recommended that a concrete project be proposed. Finally, on the preparation of the Conference on Intellectual Property and Development, the Delegation said it agreed that it should be dealt with within the CDIP. But it said it would have a preference to discuss that under future work in the framework of the CDIP's five day meeting which could offer sufficient time, provided efficient use of the time was made. It said for instance, the regular CDIP sessions could start on time and not have long coffee breaks, which would allow for considerable additional time for such a discussion.

251. The Delegation of South Africa speaking on behalf of the African Group stated that the Group would like to reiterate its position made at the last session of the Committee to introduce a standing agenda on IP and Development in line with the decision of the General Assembly that established the CDIP. The Delegation said the third pillar of the CDIP mandate was to "Discuss IP and development related issues as agreed by the Committee as well as those decided by the General Assembly". It therefore believed that once adopted the agenda item should discuss how WIPO would address the Development Agenda Recommendation 40 which requested that WIPO should intensify its cooperation on intellectual property-related issues with the other United Nations Specialized Agencies, such as the WTO, WHO, UNCTAD, and UNEP in order to strengthen coordination for maximum efficiency in undertaking development programs. Additionally, the Delegation noted that the proposed new agenda item would provide a platform to discuss the role of WIPO in the achievement of the UN MDGs towards which it believed the Organization was in a position to contribute substantially. The Delegation reiterated the African Group's support to the proposal made by the Development Agenda Group in that regard.

252. The Delegation of India speaking on behalf of the Asian Group stated that the members of the Group hoped that a new agenda item that allowed discussion on the important inter-linkages between intellectual property and development would be inscribed in the next session of the CDIP in November 2011. The Group noted that out of the three elements of the mandate of the CDIP adopted by the WIPO General Assembly in 2007, the first two elements were correctly reflected in the CDIP agenda, namely "Develop work plan for the implementation of the adopted recommendation" and "Monitor, assess, discuss and report on the implementation of all recommendations and for that purpose coordinate with relevant WIPO bodies". The Delegation noted however, that the third element namely "Discuss IP and development related issues" was yet to be addressed in the Committee, even though it had been mandated by the General Assembly. In the Group's view, therefore, the Committee would be remiss in complying with the General Assembly mandate if it did not address the key issue of intellectual property and development. Indeed, the Delegation observed, it was difficult to understand why the Committee should shy away from discussing the inter-relation between intellectual property and development which was in fact a primary rationale behind the establishment of the Committee. Under the new agenda item, the Asian Group proposed that the three useful issues which had so far not been addressed be discussed. Firstly, discuss preparation for the international conference on integrating development into intellectual property policy-making which had already been budgeted for in the current biennium. Secondly, discuss the report of the seminar series on the Economics of IP being convened by the Chief Economist of WIPO. Thirdly, discuss WIPO's involvement and contribution to intellectual property-related work in other international bodies and *fora* as so implied in the Director General's report. The Delegation said in its view, discussions on those topics would be both necessary and useful in understanding better the inter-linkages between intellectual property and development. In parallel with those discussions, Member States could also consider and agree on other relevant issues that could be discussed under the agenda item.

253. The Delegation of Pakistan fully supported the statement by the Delegation of Brazil on behalf of Development Agenda Group and the Delegation of India on behalf of the Asian Group. Looking at the mandate given by the General Assembly to the CDIP, the Delegation had a very clear understanding of what the mandate was, which was in three very clearly defined parts with three very different areas of work and approaches. When put together with the agenda of the CDIP, what was seen missing was the third element of the mandate of the CDIP. Looking at the Committee's agenda it would be seen that the first five items were the regular administrative items of any agenda. The remaining two other items pertained to the development of a work program for the implementation of the adopted recommendations which was the first element of the Committee's mandate. Monitoring, assessing, discussing and reporting on the implementation of the Development Agenda recommendations were the second element of that mandate. The Delegation noted that what was missing from the agenda of the CDIP was that third element of the mandate given by the General Assembly to the Committee which entailed discussing it under the IP and Development related issues. The mandate was not limited to discussing and implementing projects and developing a future work program, which was already being taken care of. The Delegation said it was a clear violation of the mandate given by the General Assembly which the Member States had to implement, and urged the Committee to come together and not shy away from discussing what had already been given by the General Assembly as a mandate to the Committee. The Delegation noted that clearly different issues had been proposed by the Development Agenda Group, including the WIPO seminar series, the Conference on Intellectual Property and Development and any other issue which the Member States would like to bring up. Finally, the Delegation said that it was interested in hearing from the Secretariat on the status of the preparations and the budget with regard to the conference.

254. The Delegation of Algeria associated itself with the statement of the African Group and the Development Agenda Group respectively and recalled that at the meeting of the WIPO General Assembly in October 2007, Member States entrusted the CDIP with three missions that constituted the mandate of the Committee. The Delegation observed that so far, Member States had succeeded in implementing two pillars of the said mandate, the first being the definition of the work program for the implementation of the adopted recommendations, while the second pillar dealt with the adoption of the Coordination Mechanism, Monitoring, Assessing and Reporting modalities on the implementation of the Development Agenda. The Delegation urged that however, Member States should also deal with issues concerning intellectual property and development and which should indeed be part of a standing item on the agenda of the Committee in order to embark on those discussions. It supported the proposal by the Development Agenda Group that the deliberations under that item should include the seminars on economics of intellectual property, the contribution of WIPO to the UN MDGs and finally the preparation of the future Conference on Intellectual Property and Development. The Delegation said it was also in favor of the proposal of the African Group to examine the report of the experts from the High-Level Task Force on the Right to Development, noting that discussions did not entail any budgetary implication and that they dealt with the CDIP as a platform for the exchange of views on questions related to intellectual property.

255. The Delegation of Bolivia fully supported what was expressed by the Delegation of Brazil on behalf of the Development Agenda Group, and by Pakistan, Algeria and others as well, and noted that what had been said added a lot of value to the call for a standing agenda item on IP and Development. The Delegation said it was true that everything being done in the CDIP had to do with intellectual property and development as stated by Group B, but added that the Committee would have to draft its working program and assess implementation and coordinate activities. According to the Delegation, what was needed was a forum for discussions and debates on the various aspects of development and intellectual property. Therefore at least three things had a lot of added value as expressed by the Development Agenda Group and in the future it would also like to be able to complement other things as well and focus on matters such as cooperation between WIPO and other international organizations. The Delegation therefore stated that it was in favor of the proposal.



256. The Delegation of Hungary speaking on behalf of the EU and its 27 Member States recalled what it had said in its opening statement, and said it really appreciated the suggestion made by the Delegation of Brazil on behalf of the Development Agenda Group and acknowledged that it was important that the CDIP recognized the WIPO format whereby issues relating to intellectual property and development were discussed. However, the Delegation felt that it was the overriding goal of the Committee and that adding an agenda item to that effect would not only just repeat the title of the Committee, but would also suggest that the Committee existed to discuss issues other than intellectual property and development. It would be more effective to add on an active basis, specific agenda items related to individual issues coming under the general issues of intellectual property and development as necessary.

257. The Delegation of Indonesia aligned itself with the statement made by the Delegation of Brazil on behalf of the Development Agenda Group and the Delegation of India on behalf of the Asian Group, and stated that the issue of an additional standing agenda item in the CDIP entitled IP and Development was pertinent. It said that was clearly stated in the mandate of the General Assemblies for the CDIP.

258. The Delegation of Egypt said it supported the statement of the Delegation of Brazil on behalf of the Development Agenda Group and of the Delegation of South African on behalf of the African Group. It also supported the inclusion of the agenda item on IP and Development to fulfill the third element of the mandate.

259. The Delegation of Venezuela expressed its support for the statement made by the Delegation of Brazil on behalf of the Development Agenda Group and everything that had been said concerning the addition of another agenda item on IP and Development.

260. The Secretariat responded to the various interventions by noting that the Delegation of Brazil and some other delegations had asked for details about the conference and reminded the Committee that in the Program and Budget for Program 8 for the year 2010 and 2011 on page 63, Member States had approved holding a conference on intellectual property and development. The Secretariat also reminded that the issue was raised by the delegations at the last session of the CDIP and the Member States had decided that the present session of the CDIP, that is CDIP/7, should discuss that matter further. The Secretariat further stated that as the process entailed the matter to be discussed during the current CDIP, it clearly had not been able to make any progress in terms of preparing for the conference. It said that it was already the month of May and that it would be a challenge to try to organize the conference before December. Therefore, from that point of view the Secretariat would appreciate it if a clear decision and guidance was given to it. It informed the meeting that it had kept approximately 110,000 Swiss francs as a budget for the conference.

261. The Delegation of Pakistan noted that the Secretariat had very kindly taken the blame on that issue but stated that in reality it was the Member States who stood to be blamed because they were the ones to decide on the issue and were still very far from a decision. It said it had a quick question to ask and noted that at the moment it was becoming very difficult even to start preparing for it and agreeing to add it to the agenda. It then asked about the possibility of having the conference in the next financial year, and asked if that would be a possibility and how Member States would consider that issue?

262. The Secretariat thanked the Delegation of Pakistan and replied that it was obviously in the hands of Member States and that if they felt that it was a bit late in the year to hold the conference, Member States could possibly decide that it be postponed until the next Biennium. Obviously, the Member States would have to put it to the Program and Budget again to consider such a proposal.

263. The Delegation of Spain requested clarification from the Secretariat as to what the allocated 110,000 Swiss francs would be used for and how it would be appropriated for holding the future conference.

264. The Secretariat answered that the amount was obviously estimation and the primary expenditure was for convening a conference that would entail speakers who would attend, and to cover their travels and honoraria. Of course if the Member States so decided, some of their representatives would be covered in terms of travel to attend the conference. Besides that there would not be any expenditure if the conference was held in Geneva. If it was held outside Geneva, then again it would depend on what conference services would be offered by the host country and other miscellaneous expenditures. That was basically what appeared in the Secretariat's estimation but once all the details became known, they would be included in the budget.

265. The Delegation of India said it was clear that from the discussions that it had not seen the progress that was required to hold the conference in the current financial and budget year. It therefore suggested that rather than hastily preparing a conference just because it had been budgeted for, the Delegation would propose and recommend that the budgeted amount be carried over to the next financial year so that the conference could be held next year. At the same time, the Delegation was of the view that for a well prepared conference with meaningful discussions and productive outcomes, to be convened, it was important that preparation should start and perhaps in the next session of the CDIP Member States could include that in the agenda for discussion. The Delegation also said that given that the CDIP sessions were held only twice a year, perhaps the Committee could discuss it in one or two sessions only so that an early start could be made towards the preparation for the conference. It suggested that at the November session of the CDIP Member States could initiate discussions on the conference and recommendations to that affect to be incorporated in the draft Program and Budget document which would be presented to the Program and Budget Committee, and delegations could then approve the amount at that meeting and hopefully, a successful conference would be convened next year.

266. The Delegation of Barbados thanked the Delegation of India and expressed appreciation for the latter's intervention which it said gave a good clarification on the issue and showed what was possible and what was not. The Delegation also said while it agreed that it would have been preferable to hold the conference this year, it would seem that given the preparation time and the quality of conference that Member States would want, that it would be a little bit impractical to expect it to be put into place that year. Therefore it supported the recommendation by the Delegation of India that the Committee should seek to have funding in the next year's budget and propose to have the conference in 2012.

267. The Delegation of Spain stated that it found what had just been said was right on the mark bearing in mind the very early stage of the preparation of the proposed conference, and suggested that it would be better to postpone it till next year and hence it was in favor and endorsed the remarks of the Delegation of India.

268. The Delegation of Brazil supported the idea of having enough time to prepare for the conference and also believed that in order to have a meaningful conference, there should be good documents on which to base discussions so that the conference could be approached with subject matters for discussion and a good understanding of the subjects so as to make progress. The Delegation therefore suggested that the Secretariat should prepare such documents or could engage external experts to do so. It also said it thought it would be a good idea if countries gave their suggestions on topics they would wish to discuss in the conference and the sort of documents they would like to have for the discussions. It said that deadlines, for example, of two months from now could be set for countries to submit proposals on subjects and documents that they would like to see in order that the Committee would have a good basis for discussion.

269. The Delegation of Pakistan said that in view of the explanation given by the Secretariat, it would definitely like to support the postponement of the conference until next year. It noted that what it was about to say had just been mentioned by the Delegation of Brazil, on the need to prepare for the conference, and suggested that Member States could definitely work on the agenda of the conference and move forward on the issue. Lastly, the Delegation said it would insist that that agenda item should be considered in the next session of the CDIP for endorsement.

270. The Delegation of India thanked the delegations that had expressed support for its proposal and in turn, expressed its support for the proposal by the Delegation of Brazil to invite countries to suggest topics for discussion during the conference within a stipulated deadline. The period of two months as suggested by the Delegation of Brazil seemed acceptable to the Delegation of India. It noted that it could perhaps be a little longer than two months as long as such proposals would be submitted before the next session of the CDIP.

271. The Delegation of Ecuador said it was in favor of the position of the Delegation of Brazil as it was very important to establish various areas or themes that would be dealt with and discussed in the proposed conference.

272. The Delegation of Indonesia said it supported the statement made by the delegations of Brazil and India, and thought that the Committee would need to discuss the agenda item and the topics as soon as possible, so that they could be implemented in the conference by early next year.

273. The Chair noted that a lot of time was taken in the discussion although he said he noted that the Delegation of Venezuela had said something particular about a possible consensus that the conference should be held next year and the details should be appropriately reflected in the next Budget. In the case of the proposal for the new CDIP agenda item, the Chair said he sensed some divergence of views on that issue and suggested that there was need for further discussion possibly in the next CDIP session. The Chair then invited delegations to an informal session.

274. The Chair briefed the session of the informal meetings. He said three important issues were discussed namely i) the Coordination Mechanism ii) Intellectual Property and Branding project and iii) the Project on Patent and Public Domain. On the Coordination Mechanism, he reported that a convergence was emerging in a very positive manner, and that the negotiators met again and agreed on that. He stated that the Delegation of India proposed a text which the rest of the delegations had embraced. He also noted that the project on Brain Drain was adopted during the plenary session of the CDIP, and noted however that there was still some points that needed to be clarified. Therefore he drew attention of the Committee to the paper containing some bullet points that had been circulated, and suggested that if there were no disagreements, the text should be finally adopted. As there was no problem regarding that issue, the Chair congratulated the meeting on the adoption of that text. On the Project on Patents and Public Domain, the Chair stated that there were divergent positions. Therefore he said it would be revisited and the Committee would continue discussion on that issue. Likewise the Chair noted that the project on South-South cooperation again lacked consensus and suggested that it too be reviewed in the plenary. The Chair notified the meeting of his absence during the afternoon session owing to his preoccupations with the UNCTAD conference that would be held in Turkey. He said he would be missing the interesting discourses and negotiations but he was sure that the cooperation and understanding that all the delegations had demonstrated toward the Chair would also be extended to the distinguished Vice-Chair. The Chair thereafter thanked the delegations for their sincere understanding, cooperation, and for helping him to steer the whole process and wished them success during the course of the session.

275. The Chair welcomed the delegations back to the resumed session and thanked them for waiting patiently as the delegates were engaged in informal consultations. He proposed to give a quick run down of what was discussed in the informal consultations. He said delegations addressed the issue of the Coordination Mechanism, which was not a new issue and it had been there for sometime now, and on which delegations had taken certain positions. He observed that it was a continuation of what the Committee had already discussed on that issue. The Chair stated that the discussions were based on two draft proposals submitted by the Delegation of India and Group B and in the end, it was agreed that probably the consultation would have to be continued in order to reach consensus on the various elements of the Coordination Mechanism. The Chair said the consultations seemed to have stuck on two elements. One was the issue of whether there should be a specific agenda item entitled "Report on the Committees' work on the Implementation of the Development Agenda" and the other issue was "what were the other relevant WIPO bodies to report on that issue". Therefore, in the consultations it was agreed that discussions should continue in informal setting with a view to specifically addressing those two elements, so as not to re-open what seemed like an emerging consensus. The Chair also informed that delegations had discussed the paper that was circulated during the meeting on the project on Intellectual Property and Brain Drain. He hoped that all delegations had had a closer look at it, and noted that it merely reflected points that were revised in the project. He said that during the informal consultations there were general agreements as to approving the project pending elements being reflected in the paper as they needed to clarify certain misconceptions that were derived from some of the statements. He said that situation was duly taken note of and that delegations had approved the project on the basis of the paper that was prepared. The Chair stated that discussions also took place on the Project on Patent and Public Domain, and informed the meeting that the decision had not really changed much but he believed that it would continue to be discussed based on the different papers on the topic. He said that delegations had full engagement on that issue, but based on what was discussed earlier, he believed that the informal consultation came down to one comment made by the Delegation of the United States that some adjustment could be made on the text based on two conditions. One was the dropping of the normative component of the project and/or the introduction of the inclusion of the traditional knowledge on which there were objections from many delegations. Then secondly there was a consensus that might present a starting point for addressing the first phase of the project in which the comments of the Delegation of the United States could be taken on board concerning the second phase, which was the normative component. The European Union and several African Group delegations supported that approach but the Delegation of the United States would like to hold further consultations on that since in its view that was a new initiative. It appeared therefore that more reflection would be needed at the next session on the Committee. As regards the project on South-South cooperation, the Chair noted that it had had extensive discussions and a lot of comments were made on it in previous discussions in informal consultations. Time constraints in the informal consultations did not allow much to be achieved. Therefore the Chair suggested that discussion on it should continue during the future sessions of the Committee as a lot of comments had been received. The Chair also said there were discussions on the document of the agenda item on IP and Development on which the Committee would recall there was a document that had been prepared, namely CDIP/6/12 Rev. The Chair informed that the EU members had indicated that they were not prepared to extend the agenda item discussions but their preference was to discuss it at the next session of the CDIP. Other regional groups had also made comments and it seemed there was the need to continue discussions on that issue at the next session of the CDIP. The Chair noted that the meeting was not far from reaching agreement as many delegations had mentioned that that was actually the last part of the mandate of the CDIP. The Chair noted that that was a general presentation of what had been discussed in the informal consultations and suggested that the meeting should return to the project on South-South Corporation, because the Delegation of Egypt had requested to speak on the subject and for its statement to be recorded. On that note, the Chair said the informal consultation was halted on that issue in order to allow the Delegation of Egypt to address the issue.

276. The Delegation of Brazil said it had a question for clarification regarding the Chair's summary of the situation regarding the conference on intellectual property and development. The Delegation said it understood that there was an agreement in the plenary that more time would be given to delegations to propose subjects for discussion until the next CDIP. It said that agreement had been reached so the only thing that was not clear was under which agenda item the conference on intellectual property and development would be discussed at the next CDIP.

277. The Chair acknowledged that the summary that he provided was just a run down or a reflection of how the informal meeting went. He said he was not giving a report of the argument but noted that the Delegation of France had made specific reference to that agenda item.

#### Consideration of Document CDIP/7/6 (Contd.)

278. The Delegation of Egypt noted that the project on South-South cooperation had already been presented in CDIP/6 in late November of 2010, and it was well received by a majority of delegations and the decision that was taken in CDIP/6 was that the Delegation of Egypt would consult with Member States and the Secretariat to present the project to the seventh session of the CDIP and that was precisely what it had done. The Delegation said in the meantime it proposed that the African Group adopted the project and so it was done with some modifications made with the help of the Secretariat. The Delegation stated that the project was based on the implementation of seven Development Agenda recommendations and also entailed the fulfillment of an important function that WIPO, as a specialized agency of the United Nations, was requested to fulfill and that was to undertake a stream of work on South-South cooperation and to ensure that in order to conduct that a focal point would be appointed to be responsible for that issue. As such, the Delegation said the project was presented and contained a number of elements that were precisely and perhaps presented with crystal clarity on the section of the delivery strategy, that entailed three key elements namely i) the organization of meetings in which it had been indicated that the developed Member States would be welcome to join, ii) provision for a dedicated website and for the IP matchmaking database to reflect a facility for linking up and supporting South-South cooperation, and iii) inclusion of the establishment of the focal point in WIPO Secretariat who would be a person who would act as project manager as well as the liaison with other agencies of the United Nations in the area of South-South cooperation. The Delegation said it had presented that project and had received substantial support for it from the CDIP in its present session. It however noted that delegations of Group B had raised three critical issues, namely the issue of duplication where they believed that the project duplicated activities undertaken in different areas of the Organization's work, and also exclusivity concerning the claim that South-South cooperation was exclusive and did not engage all Member States in its work, and finally the issue of cost. The Delegation thought that it had replied profusely to those issues whether in the opening statements or during the informal sessions, of which there were no records. It said on the issue of duplication, it had requested information on exactly where the proposed project was duplicating work in other WIPO activities but it had not received an answer. Secondly, the Delegation said it also requested to know how the activity would be exclusive if in the normal conduct of WIPO business, inter-regional meetings were only attended by participants from those particular regions concerned. It said it also mentioned that the conference itself would be attended by all Member States and would take place in Geneva. Concerning the cost, the Delegation said it noted that the cost for the project, which was below one million Swiss francs, was in fact below the average allocation of funds for the Development Agenda projects that had been adopted so far. The Delegation therefore; believed that there was no genuine desire to move forward on the project and also believed that the alternative for breaking the deadlock was to resort to the Rules of Procedure of the Organization. It therefore said it would request the presence of the Legal Counsel to explain to the meeting what the Rules of Procedure were, and pointed out in particular to Chapter 6 Rule 25 on voting and related rules.

279. The Chair declared that the meeting would request the presence of the Legal Counsel.

280. The Delegation of Venezuela said it was taking the floor to support what was said by the Delegation of Egypt and to revisit what was mentioned by the Delegation of India in the informal consultations. The Delegation observed that agreement had been arrived at after which Member States went into the session of the Committee in order to move ahead with what had been agreed upon. It however noted that the agreement was called into question afterward thereby causing the meeting to lag behind. It said that was the reason why it considered the request raised by the Delegation of Egypt as important and to ask that those matters be put to the Legal Counsel to provide the meeting with the necessary explanations.

281. The Delegation of Spain said it would try to put things into perspective regarding what was said by the Delegation of India, which it respected and whose position it understood. The Delegation of Spain said it would like to nonetheless specify a number of items that it considered to be very important and referred to three things. First, it concerned the conference cost and budget. The Delegation stated that as regards the other things, it was its understanding when it came, for example, to the Internet portal that should not raise any problem. As regards appointment of a focal point for the project as provided for beforehand, it said it was sure that there was no problem. However, the Delegation said when it came to the conference and invitations to the different countries that wished to attend, it was its obligation, as also raised by another Delegation in the informal consultations, to propose that the conference could be an initial conference of a general nature to be held in 2012 and an inter-regional one in 2013, and then to draw conclusions from both of them to lead to the other conferences that had been proposed. The Delegation stated that what it had suggested was that the meeting needed to look at things on a biennial basis, as WIPO's budget was a biennial budget. It therefore said it was prepared to accept a conference of a general nature and to end with one inter-regional conference. When it came to attendance, the Delegation said it suggested, as referred to by the Delegation of Egypt that all delegations who considered the conference useful should be allowed to participate. Regarding the inter-regional conference, the Delegation said in so far as there were two opposed positions, one stating that only the States concerned should be there and the other saying it should be open to all States, perhaps the meeting could take a middle of the road approach proposing that the States directly concerned with the inter-regional conference could extend invitations to any other States that would be interested. According to the Delegation, that would be a middle of the road approach and a golden mean, as it were, because there would be delegations taking part in the inter-regional conference that could extend invitations and not just having the developed countries of the North who were interested in matters of development, so it should go beyond that. Regarding costs, the Delegation underscored what it had said before to the effect that what was more important was not the cost per se, but what the Delegation considered as the return on investment as it were, or what the concrete product of the investment would be like. It therefore suggested that the first step was to source the funds, allocate them to the first two conferences and see what the results would be.

282. The Delegation of the United States of America said it also wanted to emphasize as much as the Delegation of Spain had done, that it was very interested to see some form of the project move forward and observed that the issues had been more around the details. It said that it had expressed several times and in several informal meetings its concerns as to things that it would propose as changes but that in no way would it try to stop the project from moving forward, or suggest that WIPO should not have a South-South cooperation project focal point and activities related to that focal point. The Delegation noted that looking at the delivery strategy as it stood currently, it would not ask for any changes whatsoever in section 2.3 b) through f) of the project document. It said all of those points were acceptable to it, and observed that they would all be good actions that would contribute to the South-South cooperation endeavor in the project. The Delegation stated however, that its changes were located in section 2.3 a) and said it would just like to make a couple of points as indicated also by the Delegation of Spain, as an interesting way of looking at the attendance at the meetings. The Delegation was of the opinion that all

WIPO-sponsored meetings and conferences that would be under the South-South cooperation project should be inclusive of all WIPO Member States. The Delegation recalled the intervention of the Delegation of Spain on that point and said it would like to hear more from it on how that suggestion might work. The Delegation reiterated that it believed that in general, inclusiveness was very important to it. Concerning the establishment of a focal point, the Delegation said it had been consulting with many other delegations and the Secretariat, and noted that basically, the Secretariat including the DACD should explore whether the WIPO South-South cooperation focal point could be appointed within the existing staffing of WIPO. The Delegation said it did not think that would be a difficult request for the Secretariat to explore, so that the focal point could come from that existing staffing. If the Secretariat decided that such would not be possible, then the Delegation said it would show flexibility on that item. The Delegation said its third point concerned the conferences themselves, and its initial proposal was to focus primarily on having the conference activities on the margins of existing budgeted events. The Delegation recalled the proposal made by the Delegation of Mexico on the idea of extending the time allowed for the Intellectual Property and Development conference next spring, and allowing there to be a separate conference on the margins or adjacent to the South-South cooperation conference that would occur possibly in advance of the Intellectual Property and Development conference. It observed that there would be quite a bit of savings and synergies of having the two events adjacent to each other. Again, the South-South cooperation conference would focus on those issues specifically. The Delegation also said it thought it would be good to have a conference on the margins of the General Assembly in 2012, but a different version had already been proposed by the Delegation of Spain. Therefore it would be interesting to hear from the Delegation of Spain how it thought that would work. The Delegation however was of the view that they were far apart in their positions, and that it would be willing to accept in full, sections b) through f) of the proposed document which formed the majority of the proposal. It said however, that it had just three points that it wished to raise, namely the issue concerning the explanation by the Secretariat as to staffing, then the matter of the inclusiveness of the meeting on which many delegations in the meeting had expressed their views, and finally on the actual nature of the conferences themselves.

283. The Secretariat noted that there was a general agreement up to now on the need for the South-South cooperation project. The details and language of the project may still need to be worked out, but the fundamental difficulties that the Secretariat said it could foresee was on the issue of staff proposed to the Secretariat, as to whether it could work with two or three different heads as long as they were dedicated to address the exercise and could elaborate on that. The Secretariat also said it observed that there were some fundamental differences with regard to the participation in the inter-regional meetings on South-South cooperation, as well as on the issue of the conference itself and whether it would be on the margins of another meeting or not. It noted that there was some kind of understanding that the concerned States needed to take advantage of the convening of the General Assembly so that the South-South cooperation conference could take place on the margins of that meeting or a day before it. Although there seemed to be a general agreement on that, the Secretariat still highlighted the need to address the question of the participation by the other non-South member countries in those inter-regional meetings.

284. The Delegation of France said it would be brief and that it just wanted to go along the same lines as the Delegation of the United States. It said that with regard to informal consultations, it had heard a lot of proposals which were constructive and recalled that several delegations from Group B made proposals for amendments including on a French proposal which called for adding a triangular cooperation to the project and to having meetings that would be open to all. The Delegation also noted that there was a very constructive proposal made by the Delegation of Brazil, which made it possible to think that the meeting was going in the right direction in terms of constructive exchanges without listing all the other proposals that have been made by others. The Delegation also stated that it could not recall any instance where any project was adopted by the CDIP without making some amendments to it. It said it was normal for the project from the African Group to be likewise amended with regards to its

modalities. Even if the principle was not being questioned by anybody, the Delegation said it would like to ask the Chair in view of the intervention made by the Delegation of Egypt if it would be possible to grant a five-minute break in order to have a very brief consultation of Group B.

285. The Chair pointed out that in view of an earlier question by the Delegation of Egypt that required the presence of the Legal Counsel, he would like to allow the Delegation of Egypt to formally put the question to the Legal Counsel before he would attend to the request by the distinguished Delegation of France to adjourn the meeting for five minutes.

286. The Delegation of Egypt said its request for clarification was that should a delegation put forward the proposal contained in document CDIP/7/6, should that delegation propose placing a vote for the approval of that document? And in light of Chapter 6 of the Rules of Procedure, could the Legal Counsel share with the Committee how the process would be and what the voting process would essentially entail and how the motion itself would be phrased? The Delegation of Egypt said that was the intention of its question for the Legal Counsel. It further stated that bearing in mind that it still had the floor it would like also to refer to the interventions that were made by the Delegations of Spain and United States of America. First, with regard to the Delegation of Spain, the Delegation of Egypt said it did notice that the Delegation of Spain had been extremely positive. It said the two Delegations held an informal consultation and it seemed that what had been discussed in that informal consultation had been very well stated by the Delegation of Spain. With regard to the Delegation of the United States of America, the Delegation of Egypt noted that it seemed to have pinpointed specific issues that were more precise than what had been heard during the informal consultations. The Delegation of Egypt then inquired from those two Delegations if they believed that there was a way forward for the project to move on a consensual basis and be adopted hopefully in the current session.

287. The Legal Counsel stated in response to the question asked by the Delegation of Egypt, that if he understood the Delegation correctly, it wanted to know the process under WIPO rules when a Delegation would request a vote. Before answering, the Legal Counsel said he was surprised that the meeting had already reached that stage, noting that in general, when it came to decision-making, such decisions were taken by consensus in WIPO. Having said that, the Legal Counsel affirmed that it was the prerogative of delegations to request for votes specifically. He further explained that under WIPO Rules of Procedure as delegations would know, when one delegation requested a vote, before that vote would in fact be conducted, it must be supported by at least one other delegation and then if there was support from at least one other delegation then the meeting would go generally by a roll call. If there was no specificity or clarity after the roll call, delegations could still request before the roll call for a simple show of hands. If that did not satisfy the Chair or delegations, the delegation could request a vote specifically by roll call and that would mean going in alphabetical order starting with a country whose name would have been chosen and the voting would proceed one by one. But then of course that would depend on what the motion on the vote was.

288. The Delegation of South Africa stated that it had put the proposal mindful of the objective and the nature of the project and that it had reached out to other delegations informally and bilaterally before the formal session of the CDIP. It said those delegations had raised a number of issues that it said it was able to clarify and it was unfortunate that today the delegations had found themselves unable to move forward on the fundamental issue of whether the project should be open to others or not, noting that by nature South-South cooperation was meant for developing countries. The Delegation therefore agreed that it was a thorny issue because other outstanding issues could easily be resolved, since it had been acknowledged that the annual conferences that had been proposed could be open to others, taking into consideration of course the comments that were made in the CDIP. The Delegation of South Africa said it wanted to highlight the disappointment of the African Group at reaching that stage where there was no agreement on the issue. It inquired as to when an agreement would be reached, and wondered whether it would indeed be possible that an agreement would ever be reached at the eighth session of the CDIP. The Delegation also asked whether it would be possible to agree



today if the meetings that should be held at the regional level should be open or not. Furthermore, it said it had posed the question to those delegations that had highlighted the point whether all meetings of WIPO were inclusive of the membership of the Organization but it did not get an answer to that. The Delegation concluded by pointing out that the only issue was whether the meeting should be open or not open to all, that was where the difficulty lay, and if that could not be resolved presently, it did not know how that could be done at the next session of the CDIP.

289. The Delegation of Spain said it would like to come back to the questions raised by the Delegations of the United States of America and Egypt. Overall with regard to the interventions from the Delegation of the United States of America and from its own side, the Delegation thought that there was no doubt that it was open to dialogue. The fact that clarifications and specificities had been sought on certain issues or the fact that a program based on what had been said had been presented did not mean that it was opposed to anything. The Delegations of the United States of America and Spain fully supported and had never said that they were against the program of South-South cooperation. They did support it and had always supported it. With regard to the concrete questions put to the Delegation, it stated the following: concerning assistance, the Delegation of Spain said the problem was an extreme one. It said it was talking about the inter-regional meetings. It seemed that there was general agreement with regard to a conference but there did not seem to be agreement on inter-regional meetings. Now the proposal and the meeting that had been held with the Delegation of Egypt was to have a medium-term position to only invite the countries of the region to take part in that meeting, but also other interested States from the North who wish to cooperate could be invited as guests without active participation or the right to vote, as it was done in other fora. That, according to the Delegation, was a concrete proposal which it had made. With regard to the number of conferences, what the Delegation could say was that one major conference plus four inter-regional conferences could be held, while looking at it not from a financial point of view, but from an overall point of view. What the Delegation of Spain was proposing was to hold one global conference open to all Member States in 2012, and one inter-regional conference in 2013. Now if those were both approved and if there were other countries which wanted to take part in the inter-regional conference, they could take that opportunity. The Delegation further explained that the first inter-regional conference might arrive at conclusions that might modify the approach or even the format of the conferences, which was why the Delegation said it suggested that it would be in agreement to one initial global conference and one inter-regional conference. The Delegation further stated that it could approve the project with those modifications. It also observed that it was a fact that the Delegation of the United States of America had suggested that if there was nobody within WIPO who could carry out the necessary role of focal point, what would be required would be the selection according to the extant rules of such a person. The Delegation said it was not against that post, but it reiterated as it had done in different fora that the usual rules for contracting staff be observed in that particular case and in all others. Finally with reference to the question posed by the Delegation of Egypt, the Delegation of Spain noted that the Delegation of Egypt had felt that that was not stated in the informal meetings earlier. However, the Delegation of Spain said it would like to reiterate that it had made that quite clear previously.

290. The Chair noted as he had mentioned before, that delegations could be very creative and could come up with one or two or even three inter-regional meetings. He however stated that as long as the fundamental problems and differences on the participation existed, the matter would not be solved. He said he would like to see that kind of engagement during the informal sessions which unfortunately had not taken place. Noting that such engagement was not even present in the plenary, he said he would welcome a scenario that would ease the approach in the informal session where delegations could easily arrive at a compromise of some sort since already there was compromise to have the conference open to all WIPO Member States like other conferences. He observed that the problem rested with the issue of participation in the inter-regional meetings, and stated that whether the inter-regional meetings would take place or not, the question that still remained was whether the participation would be open to all States or

limited to a few countries only. The Chair said he did not know whether the meeting would try to explore whether the invitation to other interested delegates could be accepted, and asked who would extend such invitation. He reiterated that South-South cooperation was a complement to North-South cooperation, and noted that there was no way South-South cooperation would ever replace North-South cooperation. He said it was a point that had been discussed in many UN organizations and hoped that delegations could lead the Committee toward a possible solution to the issue.

291. The Delegation of Venezuela thanked the Delegations of Spain and the United States of America for their flexibility. It further thanked the Legal Counsel for clarifying the issue of voting. On that subject, the Delegation stated that of course the issue of voting did come up as the meeting was unable to find consensus. The Delegation reiterated that it maintained its support for the Delegation of Egypt and declared that if the meeting chose to go the way of voting, it would need to follow the rules regarding that.

292. The Delegation of South Africa in response to the Chair's proposal on being creative stated that it had indeed talked to the Delegation of Spain about the issue and then actually raised it in the African Group. The Delegation however noted that it would not like to see precedents created in the Committee because it was a known fact that there were meetings which were limited to certain members of the Organization and the Delegation cited the example of the PCT international searching authority meetings. It said it respected that because some countries were not members of that group of countries that had offices responsible for search and examination at the international level. The Delegation therefore reiterated that it was a matter of precedence because if the meeting went along that route then other countries would also want that to be applied across the board. Finally, it stated that its understanding was that some countries did not want that. So that was why the Delegation was saying that it would like to maintain its position that the inter-regional working groups should remain closed.

293. The Delegation of the United Kingdom stated that it had heard some very constructive dialogues and noted that the Delegations of the United States of America and Spain had both put forward some interesting options which could be explored. The Delegation of South Africa had asked if an agreement could be reached on that issue in CDIP/8. The Delegation of the United Kingdom believed that was possible given that it felt the two positions were not that far apart. Therefore the Delegation suggested that it would be preferable to it that the meeting would be able to continue having some discussions on that very valuable project which it supported in principle.

294. The Delegation of Egypt said in light of the fact that it had actually asked a question of the Delegation of the United States of America, it would give that Delegation the floor first.

295. The Delegation of the United States of America said it believed the question was regarding whether or not a way forward toward consensus could be found, and reiterated that it did still find the exclusivity issue rather difficult to accept. It however said it had shown a lot of flexibility on the focal points, a lot of flexibility on the conferences, but unfortunately the exclusivity issue still remained for it a bit of a puzzle. In fact, the Delegation stated that it did not know if the meeting could ask the Legal Counsel the degree to which that would be normal for a WIPO sponsored event to be limited in that way. The Delegation asked if there was a precedent for that within the rules for a WIPO sponsored meeting that would exclude Member States in that particular manner because that really was the key issue that was holding the meeting up.

296. The Chair observed that, as he had indicated earlier, the whole issue was centered on the exclusive nature of the inter-regional meetings. With regard to the conference, he said it was very clear that it would be an open meeting. He noted that as the Legal Counsel was now presently available the Delegation of the United States of the America could perhaps rephrase its question to him. He recalled that the discussion on the project envisaged the holding of inter-

regional meetings among the countries of the South and there was also a question posed by the Delegation of the United States of America whether any standing rules which governed the participation of Member States in inclusive or exclusive meetings in WIPO existed with regard to other regional, inter-regional or even working groups. The Chair inquired if such rule applied to all the WIPO committees.

297. The Legal Counsel apologized for coming at the tail end of the discussion on the issue. He noted that the question that was posed to him as he understood it was whether there were any rules in WIPO that specified that meetings could be convened that excluded certain Member States and the short answer to that was no. The Legal Counsel affirmed that no such rule governing that existed and that he was not aware that there was anything that said that meetings could be convened that excluded certain Member States. The Legal Counsel also stated that he was not aware of any rule that said there could be meetings with or without certain Member States. The Legal Counsel further remarked that he believed the idea was to be as inclusive as possible and it was hard for him coming into the discussion to say something could or could not be done, especially having no idea what specific project or specific activity was being proposed in that context. The Legal Counsel regretted that he could not be of much help in that area.

298. The Chair thanked the Legal Counsel and said indeed he had been of much help. He said the Legal Counsel's intervention answered the question that was posed by the Delegation of South Africa on participation of non-PCT members in the meetings of its Working Group, and it was very clear that there was no standard rule that said one could or could not participate. The Chair said he believed that if the rule was to be followed, then delegations should do so. He said it was time that a decision was made since the practice and rules in WIPO were very clear. Sometimes they did not go hand in hand, which was a dilemma, and the Chair said he did not wish to ask the Legal Counsel to try and distinguish the difference between the practice and the rule perhaps he might not have an answer to that one. He then said he would like the interventions to focus on the way forward because the meeting could spend the whole night debating that issue.

299. The Delegation of Egypt stated that its primary aim was to move on with the project and that it had heard some positive comments from the Delegations of Spain and the United States of America. They were positive in the sense that the two Delegations were really keyed in on what would be the focus of the discussion, contrary to some more conceptual issues that would get the meeting nowhere either in the present session of the CDIP or at its next session. The Delegation of Egypt remarked that it had noted that the Delegation of Spain for example had a specific concern on invitees and a specific concern on how many conferences would be held, and now it spoke also on how many inter-regional meetings would be held. The Delegation said those two Delegations had said that while they could accept the idea of a focal point yet they had a preference that WIPO would find that focal point within its existing staff. The Delegation of Egypt said it fully supported that. However, it suggested that if that was not possible, it would fully support what the Delegation of Spain had said about proceeding with proper mechanisms for hiring the focal point. The Delegation said those were issues that could be resolved in half an hour if the Delegation of Spain and other delegations believed that it would be useful to resolve those issues in half an hour or in whatever substantial rational amount of time. Then the meeting could go ahead and find a consensual way forward, but not to bring in issues of concepts that were muddled and that were not very clear and not to the point. It noted that there was no guarantee that delegations would deal with the issue in the next session of the CDIP and would find a resolution. In that regard, the Delegation of Egypt said it thought the Delegation of Algeria had a proposal to which it would give its support as well.

300. The Delegation of Algeria remarked that it had been in Room B following the discussion and now that it was in Room A, it thought that it was completely different. The Delegation opined that the meeting was almost there having heard the different views from the Delegations of the United States of America, Spain and Egypt respectively. It said it could not really see the

big difference since there was agreement on the focal point, and if there would be a narrowing down on the number of conferences, the meeting would still have only one issue from its point of view; which was the inter-regional or the regional conferences. The Delegation expressed complete agreement with the Legal Counsel on the point when he said that WIPO did not convene any meetings where it excluded some Member States. It said it completely agreed with that and noted that when regular meetings were convened, no members were excluded. But when the meeting was regional by its nature for instance when it was a meeting of Africa, it would be for Africa, and when it was for the Least Developed Countries, it would be for LDCs, when it was for Group B, it would be for Group B etc. Therefore, the Delegation said it did not see how other Member States would be excluded. But it acknowledged the interest of the Group B to see how things would work in the proposed inter-regional meetings. For that reason, the Delegation of Algeria proposed that the conference could have two parts – the first part would consist of the opening and presentations where possibly even those members who were invited would come and make statements. Then the second part, which might be only exclusive to the countries of the South only to discuss the issues of interest to them. The Delegation believed that its proposal could be acceptable and concluded by saying that as far as it was concerned, the project on South-South cooperation was one of the projects that was very important to it. It said it believed that the Members of Group B knew that even in other fora South-South cooperation was being advanced as a means of seeing how the countries of the South could help each other and work on the issue of intellectual property. Therefore, the Delegation believed that it was in the benefit of all that the current project was concluded and agreed on.

301. The Delegation of France said it simply wanted to point out that in order to examine those proposals that had been put before the Committee it would call for the suspension of the meeting as it had earlier called for, so that it could speak with the Members of Group B very briefly for about five minutes.

302. The Chair agreed that he could always grant the request for suspension, but he said he was trying to seize the momentum, pointing out that the context in which the Delegation of France had requested to suspend the meeting had been overtaken by events. However, the Chair said since there seemed to be an interesting idea that was emerging, which he would also want to reflect upon before he could decide to adjourn the meeting for five minutes.

303. The Delegation of Germany said it had a short question for the Secretariat and inquired as to the basis on which the financial calculations about the number of meetings and their natures as well as the participation were arrived at. The Delegation observed that if it was to be enlarged, then it would mean that the financial calculations would have to be changed dramatically. Therefore, it wanted to know if there would be a larger participation, and what the calculations would be based upon.

304. The Chair responded that indeed whatever changes were made to the current project the budgetary implications would be taken into consideration in order to adjust it accordingly whether it was going to increase or decrease the budget. He said the Secretariat would duly take note of those dynamics. He noted that there had always been an outstanding request from the Delegation of Spain in terms of the breakdown of the budget therefore, it was not only limited to that project. The Delegation of Spain had repeated it on several occasions and he believed the Secretariat was still working on that one.

305. The Delegation of Spain stated that it wanted to pinpoint a couple of things. First of all, it recalled that the meeting was talking about focal points and noted the only thing it meant to say was whoever the focal point might be, he or she should be selected in accordance with the rules in WIPO. The Delegation's second point was in connection with the invitations and remarked that it was not just a matter of inviting Member States to the inter-regional meeting so that they could speak, but the guests invited from the donor countries ought to be given the chance on the first day to say what they would like to say. The Delegation said it was not a matter of

asking them to take part in the meetings, probably not all of them might be there, but at least some of them could attend to listen and observe. The Delegation clarified its position and stated that far from suggesting that the invited countries would be able to speak, but at least they could attend to listen and observe the proceedings.

306. The Chair addressed the element that had been raised by the Delegation of Spain on the issue of the recruitment or the hiring of the person who would serve as the focal point. To be quite frank, as the Chair, he said the discussion would be rather misplaced if the meeting should concentrate on that point. He noted that there was an approved budget with the understanding that the Secretariat knew exactly what it would do in terms of hiring, and if it would need to reallocate the human resources. He suggested that that point could always be entrusted to the Secretariat to do and he thanked the Delegation of Spain for raising it. He said however there was a different forum for such discussions when it came to the movement or the hiring of people. The Chair also noted that the Delegation of Spain had made an interesting intervention with regard to the participation. He said he saw a slight variance in what that Delegation had initially suggested, that all that was needed was to be a part of the process, but now it seemed the Delegation would like the participants to be continuous observers in the whole process. The Chair said he was trying to zero in on the area where there would probably be a consensus, and so was trying to reflect on that vis-à-vis other meetings because the meeting was not trying to create anything new. He stated that it was a standard UN practice even in the different fora around Geneva. There were certain meetings that were limited and gave the example of the WIPO Program and Budget Committee (PBC), where he said his own country, Zimbabwe, was just an observer and did not take part in its meetings as active participant. The Chair also noted that there were other committees in WIPO whose meetings had specific membership that participated and contributed in those meetings. There were likewise certain meetings in which not all the members participated. He therefore called on delegations to be realistic and not to make extreme demands and allow the common practices to always guide them. The Chair said he had always maintained that sometimes wisdom could guide people and urged that in that particular instance, delegations should allow wisdom and the practice that was used elsewhere to guide them. He concluded by hoping that with that constructive mood that he could sense, the meeting could now reach some understanding with the proposal by the Delegation of Algeria and called upon the Delegation of Venezuela if it could provide that silver bullet solution.

307. The Delegation of Venezuela stated that it could not provide a silver bullet solution, but that it was trying to understand the desire of some delegations to participate in the meetings when WIPO had other means to make all the information available. However, in view of the holistic approach of that study, perhaps GRULAC, Group B, and all other people in WIPO should be able to deal with all of their questions in the current meeting. The Delegation noted that by doing so, a lot of money could be saved. The issue should be dealt with publicly so that everybody could be well informed about what was said.

308. The Delegation of France stated that it had met with Members of Group B in order to be able to make a constructive proposal. The Delegation also noted that the spirit that evening was very positive and said Group B would like to conclude the meeting on a positive note. That was why the Delegation affirmed, it would like to propose some amendments to the project which it hoped would be acceptable to everyone and would enable the members of Group B to rally behind the project. That would be to foresee as indicated previously by the Delegation of Spain, just one conference which would be held prior to the inter-regional meeting and that would be followed by an inter-regional meeting, and for both those meetings, Group B would like participation to be open in order to follow the current WIPO practice. The Delegation also said it would like to make a specific proposal with regard to a textual amendment regarding the openness of the meeting, and suggested taking up page 6 under 2.3 and paragraph (a), the second to last sentence of little paragraph (a) "participants from regional and international governmental organizations of developing countries". The Delegation apologized for not giving the exact wording right away, but suggested coming back to it later if that would be appropriate but it said it was sure that a wording to amend the text could be found. The second point that

the Delegation wanted to make concerned the creation of a focal point in the Secretariat of WIPO, and suggested that the focal point should be established within the framework of the resources already existing for the Organization's budget or for its human resources as far as possible. It said that would echo the intervention that had been made by the Delegation of the United States of America on finding flexibility for requesting the Secretariat to envisage the possibility of establishing the focal point on the basis of existing resources, and if that would be impossible it could proceed differently. The Delegation reiterated that it did not have time to prepare actual wording to propose for the meeting on that but those were the two points that it wanted to present in order to champion a sincere spirit of compromise to find a solution.

309. The Chair said the meeting had heard the Delegation of France's presentation. He noted that the Delegation would work on the language of the project, but in terms of the principle of what it was going to suggest had already been indicated which could be in bullet form that would read "participation in the inter-regional meetings shall be open". The Chair said he believed that he already had an idea of the language that the Delegation of France was going to propose. He suggested that there could be brief interventions and gave the floor to the Delegation of Algeria.

310. The Delegation of Algeria spoke on the exclusivity of the proposed meeting following the proposal that it made earlier that was supported by some delegations. The Delegation could show some flexibility at least for the proposal that it was making on its own behalf and suggested that the meetings could be open but with different status which would mean that the countries of the South would have full membership and those of the North would have observer status so that they could have the opportunity to follow all the discussions, but with the differentiation between the status of the countries. That seemed to the Delegation a way toward resolution of the issue. As regards the proposal made by the Delegation of France on behalf of Group B, the Delegation of Algeria noted that if it was to be rephrased in French, it would give a more correct sense as follows "the establishment of a focal point to the extent possible within the framework of existing human resources". The Delegation said the proposal of the Delegation of the United States of America aimed at firstly seeing whether there were existing human resources that could actually fill that position and if that was not the case that there could be external recruitment. The Delegation of Algeria concluded by stating that the idea had been proposed by the Delegation of France, but that it would prefer that phrase should start with "to the extent possible within the framework of existing human resources".

311. The Delegation of Egypt said it was very appreciative of the effort that Group B had put in its short meeting. It said what it had heard was very positive and of course prior to making any announcement it would need to consult with the African Group on that proposal. Therefore the Delegation said it would defer to the Coordinator of the African Group, the Delegation of South Africa, to request for a few minutes to consult among the African Group. The Delegation of Egypt stated that what it saw was basically what was based on the discussion that the Delegations of Egypt, South Africa, Spain and the Russian Federation had, and it was something that could possibly be moved forward. Making just one point of clarification, the Delegation of Egypt said it would rather that the inter-regional meeting preceded the conference because the inter-regional meeting was at the level of the day-to-day operation involving the professionals, while the conference would involve high-level officials. It therefore stated that it would be a good idea to begin at the operational level and rise to the political level. But then again the Delegation said it would defer to the Delegation of South Africa and perhaps a meeting of the African Group as the authors of that proposal could be convened. The Delegation then reiterated its appreciation for the Group B on its position.

312. The Delegation of Venezuela said it was pleased with the flexibility that had been shown, but it said it could not accept the ending of interpretation for the meeting in any of the six languages. It noted that the meeting had a whole week and suggested that delegations could have used the time available to them wisely and not had coffee breaks. The Delegation said the meeting could have really used the available resources in a more efficient way and that it could

not accept the movement away from the six language interpretation. It reiterated that it was absolutely opposed to that on the principle that all languages were equal and some were not more equal than others.

313. The Delegation of the United States of America stated that it just wanted to briefly note that the intervention by the Delegation of Algeria was very encouraging and it would like to hear more from other delegations in the room about how they felt about that idea, but that the Delegation found it to be a very encouraging possible way forward.

314. The Delegation of Spain said it supported what was said by the Delegation of Venezuela and reiterated that the meeting could not be continued without interpretation into all the UN languages. Secondly, it cited the proposal that was made by the Delegation of the United States of America, and like that Delegation, the Delegation of Spain also found the proposal made by the Delegation of Algeria to be a very positive one.

315. The Delegation of South Africa said it understood that the meeting was pressed for time but requested that the meeting be adjourned for two minutes to agree on the proposal either from the Delegation of Algeria or from Group B because it did not have the mandate of the African Group. After the break, the Delegation of South Africa reported that the African Group had met and it was joined by other like-minded countries in the discussion of the proposals made by both the Delegations of Algeria and France. The Delegation said the African Group had noted that Group B had proposed that there should be one conference and one inter-regional meeting. The Group could agree to have one conference as suggested by Group B. However, the Delegation said the African Group would like to retain the two inter-regional meetings. It said the Group also took note of the participation issue and declared that it was flexible on it and would allow Group B countries to participate both in the inter-regional meetings and the conference as observers. Regarding the issue of the focal point, the Delegation of South Africa said it supported the wording provided by the Delegation of Algeria by way of amendment made to the proposal by the Delegation of France. Those were the three points the Delegation said, that the African Group had wanted to provide as feedback.

316. The Delegation of Spain said it would simply like to be sure that it had understood properly what the Delegation of South Africa had just said. It wanted to understand that there was acceptance that the Member States who were not from the South could attend as observers both at the conference and in the inter-regional meetings. It then asked if indeed that was the decision and if it could be made to be more precise. It asked whether the Member States from the North could only attend the conference and not the inter-regional meeting as observers.

317. The Delegation of France as the Coordinator of Group B thanked the Coordinator of the African Group for its proposal. It declared that the meeting was very close now to an agreement and hoped that it would not slip through the fingers of delegations. The Delegation reported that Group B also met briefly during the break and said the Group could also demonstrate some flexibility regarding the order of the meetings because earlier it stated that the order of the meetings preferred by the authors of the project would be to have the inter-regional meetings first of all and then the conference afterward. The Delegation of France said it could accept that order. Then, regarding the proposal from the Delegation of Algeria, Group B could accept that only in part. By this it meant that the observer status that would be proposed to Group B could be applied to the inter-regional meeting. However, as regards the conference to be held just before the General Assembly that would be open to the participation of all Member States with full status. Now in so far as the African Group saw that project as an initial phase, the Delegation of France understood that after that initial phase there could be other subsequent ones. The Delegation believed that those could be acceptable for the time being to remain limited, have one single inter-regional meeting at which the developed countries would have observer status, and one conference with open participation extended to one and all. Finally,

the Delegation stated that it understood that when it came to the focal point, the meeting could accept the language that was proposed by the Delegation of Algeria and hoped that was clear.

318. The Delegation of the United States of America said it would echo the understanding of the Delegations of Spain and France particularly on the issue of the openness of the conference itself, the one that was going to be on the margins of the General Assembly. The Delegation had discussed the issue of openness to all Member States and it would not see that as having a different status for developed countries, whereas it said it thought it was in agreement that the inter-regional meetings would have just observer status for developed countries attendees.

319. The Delegation of South Africa noted that even before the meeting adjourned for a bit the African Group was flexible as from yesterday and had maintained that the annual conference would be open to non-developing countries to participate as observers. The Delegation said it was just reiterating that point because now the issue as noted was around the inter-regional meetings and the Delegation noted that the meeting really had to think hard because the African Group wanted to reach an agreement. The Delegation stated that the Group had said it was not comfortable with the idea at all. But it had to actually think about it and be flexible, and that was why it said that there would be observers as well. But the Delegation could not recall agreeing to the annual conference to being open-ended like there was no status. It said that would be a real addition unfortunately. It said the Group wanted two inter-regional meetings and was happy that Group B was willing to consider that there should be the inter-regional meetings first before the annual conference. The Delegation said that was what the African Group wanted. It also said it agreed with the proposal on the focal point, and also with the language provided by the Delegation of Algeria. It said therefore, that it had explained what it meant by both meetings being open. They would be open on the basis the developed countries would be observers at both meetings. The Delegation said that had been a very difficult decision to arrive at.

320. The Chair said there was the need to arrive at some sort of understandable decision because as far as he was concerned, although the meeting was making progress he noted however that some might see it as otherwise. He stated that in his view, the more the issue was discussed the more other issues would come up. He said he saw no prospect of heading towards any solution although delegations were almost there and were actually about to reach agreement on the issue of participation in the inter-regional as suggested by the Delegation of Algeria and seconded by various delegations that such participation should be in an observer capacity. The Chair noted also that the creation of the focal point within WIPO on that issue was also being discussed. He reiterated that he saw no flexibility on the outstanding issues although he stated, it was a standard practice in WIPO, as in every other organization that everything had to be done within existing resources and if needed, an adjustment would be made accordingly. He observed that a new dimension on the issue of participation seemed to have been brought into the discussion as well. In view of the divergences of opinions on that score, he wondered if discussions should continue over that issue. The Chair said he had heard numerous interventions underscoring the importance of South-South cooperation and urged the meeting not to deviate from that. As far as he was concerned, participation really was a minute component if agreement on the overall objective of the project to enhance South-South cooperation would be reached. He therefore called upon delegations to be very practical and noted that sometimes wisdom could also be misleading. He however stated that he believed wisdom would not mislead the meeting. He therefore called upon delegations to use their collective wisdom to do things that were practical that would enable results to be found. The Chair did not want the discussion to head towards where the meeting was heading at that moment. The Chair then appealed for understanding so that the discussion could head towards the right direction.

321. The Delegation of Spain said it would be brief given that the hour was late. It stated that it was speaking on its own behalf and that it would not be opposed to there being a general conference and two inter-regional meetings during the first biennium from the point of view of the budget. The Delegation reiterated that it would not be opposed to two inter-regional



meetings and one conference in the first two years that is, in 2012 and 2013. But it pointed out that it could not renounce the idea that the conference should be open to all Member States where they should have the same status. It said it would not be opposed to having the status of observers at the inter-regional conference, but in the global conference it said it would be absolutely unacceptable that some States would have one status and others would have another status.

322. The Delegation of Monaco said that was exactly what it wanted to say with regard to the openness of the conference. If the Delegation recalled correctly, during the informal consultations, it had been quite clearly stated that in order to explain the difference between the inter-regional meetings and the annual conference, that the inter-regional meetings were destined for countries of the South to exchange their experiences and that the annual conference would enable them to give a kind of reporting or feedback of those results and then all States would have the same status at that conference. And that was quite clearly stated. So the Delegation said it was quite surprised, astounded really, that members of the African Group were going back on that at that stage. Now in a spirit of flexibility, the Delegation said of course only in its own capacity but noting that others in Group B had agreed, they would be contented with just an observer status in the regional meetings, which it said was rather an inelegant solution but which they accepted in the spirit of compromise. However, with regard to the annual conference, the Delegation of Monaco said it had understood that it would be open to all Member States and with the same status, and said it believed that that was what the African Group had previously stated.

323. The Chair stated that if the discussion was to be continued, he would pose the question to the proponents of the project. He noted that the Delegations of Spain and Monaco were in support of two inter-regional meetings and one conference provided that the conference would be open to all WIPO Member States on an equal footing but the inter-regional meetings would only be limited to the countries of the South but according the countries from the North an observer status.

324. The Delegation of South Africa said it seemed the issue would have to be referred back to the African Group since it was the Group's proposal. It said however, in response to the Delegation of Monaco, it would like to clear the issue and stated that the Delegation of South Africa was representing 53 African States therefore the Delegation would not take the floor and say the things that the Delegation of Monaco had referred to. It said its recollection was clear, and that it never said that there would be an annual conference that would be open to all members on equal footing and on equal status. The Delegation of South Africa asked where the Delegation of Monaco got an idea that was not actually correct and was disturbing for the Delegation.

325. The Chair urged that the meeting should make use of the limited time at its disposal, and only to respond to questions that were of substance. After declaring that he would exercise his right as Chair to deny the floor to certain delegations who wanted to react, the Chair noted that there was no point in going round in a circle over that matter. He said he thought the meeting had isolated the one critical component of the issue which was the issue of participation in the inter-regional meeting, but now he said he understood that the African Group needed to consult on the status of participation in the conference. He therefore declared that it would not be productive to continue engaging in that discussion, pointing out that the meeting still had a long agenda item of the summary of the Chair to discuss. He therefore thought it was a fruitful engagement to go in that direction and suggested that in view of ongoing consultations, the meeting should consider the future work of the Committee.

326. The Delegation of Angola said it would firstly like to draw the Chair's attention to the fact that every country had the right to speak, and that the Chair ought to keep that principle in mind, and not to try to restrain countries from speaking or to try to silence them. Secondly, the Delegation said it would like to make a proposal having discussed with certain of the members

of the African Group. It said it could accept the proposal to have a conference with equal participation open to all Member States and to have the two inter-regional sessions. It said that the offer was made as a compromise since it seemed the Delegations of Spain and Monaco were flexible on the idea of holding two inter-regional conferences where the Northern countries could have observer states, and where there would be one conference open to all Member States.

327. The Chair thanked the Delegation of Angola and stated that he indeed duly respected the rights of the Member States, but assured that he also had read the Rules of Procedure in terms of at what point the Chair would allow intervention by Member States.

328. The Delegation of Monaco said it was taking the floor once again because it seemed that there was some confusion with regard to what it said earlier. The Delegation said it was talking only about the openness of the conferences and it did not say anything at all about the number of conferences, whether inter-regional or general. It said it wanted that to be quite clear. And since it still had the floor, the Delegation said it would like to take the opportunity to say that it had never stated that the Delegation of South Africa had specifically made those statements, but they were nevertheless statements that had been made perhaps by the Delegation of Egypt, to the effect it believed that the conference would be open to all Member States on an equal footing.

329. The Delegation of the United States stated that it was very happy that it would be able to support the proposal by the Delegation of Angola.

330. The Delegation of Egypt said first of all, it would like to apologize to the Delegation of Monaco, for not listening to what it said when it mentioned the name of Egypt. The Delegation said if it was not mistaken, it thought the Delegation of Monaco had mentioned that during the informal meetings, the Delegation of Egypt had said that the conferences would be open. The Delegation of Egypt averred that it had said nothing of the sort and also pointed out to the Delegation of Monaco that unfortunately in the informal meetings no records were kept, which was the problem of dealing in such meetings. The Delegation of Egypt thought however that was a side issue that the Delegation of Monaco could take up bilaterally. Right now it said, the meeting was focused on what the Delegation of South Africa and some of the other delegations said they had serious concerns with.

331. The Delegation of Australia took the floor to thank the Delegation of Angola for its suggestion and to give its support to that suggestion as a positive way to reach a swift outcome on the discussion so that all could go home in view of the time situation.

332. The Chair thanked the delegations for their interventions, and inquired whether he could get the comment of the African Group with regard to the suggestions made by the Delegation of Angola, supported by the Delegations of the United States of America and Australia, with regard to observer status in the two inter-regional meetings and unlimited participation in the conference for all other delegations.

333. The Delegation of South Africa responded that it could not actually get the mandate because some members of the Group had different points of view. There were two positions given to the Coordinator so it said it was not in a position to give an answer to the Chair at that time.

334. The Chair stated that perhaps as he had indicated earlier, the most productive way to move forward probably was to start considering future work. He said the meeting could always revisit the issue if the Delegation of South African would have a new mandate on that specific issue, and get back to the meeting at a later stage.

335. The Delegation of Egypt observed that sometimes it was useful to take breaks, while it also agreed that sometimes it was not so useful especially when they became too long. But it

said it would be wise if the Chair would ask for a five-minute break at that particular point in time, noting that the meeting was very close to reaching an agreement.

336. The Chair agreed that constructively used, sometimes five minute breaks could be productive. He therefore said he would encourage delegations to effectively use those five minutes bearing in mind that he had been granting five minutes breaks that did not produce anything. He said he hoped that when the meeting resumed the situation would not be the same. He therefore asked the meeting to take a five minute break.

337. The Delegation of Spain said it had a very concrete and tangible question that was really important in so far as WIPO was concerned, and requested to know from the Delegation of Angola what was the difference between the proposals of the two Delegations?

338. The Chair said he believed the difference was the same in the sense that the Delegation of Spain made the proposal which apparently very few delegations appreciated but taken up by the Delegation of Angola.

339. The Delegation of Angola reiterated its pragmatism in such matters and noted that that was not the position of the African Group of course, but at a certain stage realism should prevail and delegations should have their feet on the ground. That was the why Delegation proposed a compromise solution to try and get the project approved very quickly. The Delegation said it seemed to it that members of the other groups were willing to assert that as a way forward. It said the problem was to have two inter-regional meetings with observer participation and then the conference which would be open to all participants. The Delegation said that was its proposal in order to try to reach a compromise. Of course if there was no consensus on the proposal, the Chair would have to find another way to solve that problem.

340. The Chair thanked the Delegation of Angola for its brilliant suggestion, which he noted had been suggested earlier on by the Delegation of Spain.

341. The Delegation of South Africa said it managed to obtain from the African Group and other like-minded countries an understanding regarding the issue. The Delegation said according to what had emerged, there should be two inter-regional meetings one of which would be closed to observers and restricted to developing countries and LDCs only. That would be followed by an annual conference which would be open and on equal footing for all the membership of WIPO. Afterwards there shall be the second regional meeting at which the developed countries shall have an observer status. In that way, the Delegation noted, a balance had been found whereby both closed and open sessions would be held. It said it agreed with the Chair that there was not much time left and there were other agenda items to consider. It stated that that was the Group's last proposal on the issue, which it said seemed to be balanced.

342. The Chair thanked the Delegation of South Africa for the proposal and said he would like to share with the rest of the members the predicament that the meeting might face if it continued on that path. He observed that by the time the agenda item where the Chair's summary and future work would be discussed, there might not be interpretation and stated that he would not like to prejudice the non-English speaking delegations of the opportunity to reflect on the Chair's summary with interpretation. Therefore he requested that the meeting could go to the discussion of the Chair's summary since it seemed everyone knew what was being discussed in regard to the other issue. He suggested that delegations could pick up copies of the summary outside the meeting room and digest it and then come back with their responses so as to clean the document up. Thereafter the Chair stated, the meeting could come back to what the Delegation of South Africa had proposed.

343. The Delegation of Egypt asked the Chair whether he was proposing that agenda item 8 should be left alone for now.

344. The Chair explained that perhaps there were differences of interpretations in terms of leaving or suspending and then coming back. He said it could be a matter of semantics or interpretation but what he had suggested was that given the practical situation or the scenario that the meeting was going to face, the meeting could consider the Chair's summary and the future work without interpretation if the meeting chose to go down that route where there would be no interpretation for the Chair's summary. He said he did not force the endorsement of any view but just gave the scenario. So if the meeting was in agreement with the scenario to move to the Chair's summary without interpretation, and to proceed to future work, otherwise the meeting could continue discussing agenda item 8 on the South-South project.

345. The Delegation of Egypt thanked the Chair for his clarification and stated that it would like to bring that issue to a close before moving on to future work or consideration of the Chair's summary. The Delegation said its proposal would necessitate reference to the Rules of Procedure therefore it would really urge the Chair to remain on agenda item 8 until it became clear because it would have to be reflected anyway in the future work and the Chair's summary. The Delegation therefore said it was willing to leave agenda item 8 at that stage.

346. The Chair said he was in the hands of the delegations, but noted that he did not have any different interpretations to the Rules of Procedure. He explained that he was only trying to make the situation clearer, and said indeed, the meeting could spend the whole night discussing agenda item 8 if it so wished and then proceed to discussing the summary of the Chair and many issues without interpretation. If that was the case, he said he would just sit there and allow the meeting to proceed.

347. The Delegation of Chile said it also considered that it would be very important to conclude discussion on agenda item 8 and for that reason it would like to respond to what was pointed out by the distinguished Delegation of Angola earlier. It noted that Angola's proposal had been supported by the Delegations of Australia and the United States of America, and thought that it was the best way forward to try to move toward a common consensus. The Delegation said it listened very carefully to the most recent proposal made by the Delegation of South Africa on behalf of the African Group which it said was actually hard to understand in terms of its substance, whereby the first meeting would be a closed meeting. The Delegation said it was hard to understand the reason or rationale for that and because of that, it said the proposal made by the Delegation of Angola supported by the Delegations of the United States of America and Australia, would be the most reasonable way forward at the time where it could lead to a final agreement and approval of the project.

348. The Delegation of Nigeria stated that it seemed the meeting was moving towards concrete understanding on the issue and noted that already the positions were narrowing, and so it would be better to take advantage of the opportunity to conclude that matter. The Delegation said the position of the African Group on the project proposal on enhancing South-South cooperation and intellectual property and development among developing countries and least developed countries was very clear. The conference related to those would give an opportunity for the developing countries and LDCs to meet. It noted that already, it was becoming apparent that from very hard positions, delegations were moving toward some form of understanding. They were reviewing their positions and therefore the meeting could move quickly given specific timelines so that the problem of lack of interpretation could be accommodated.

349. The Chair stated that he intended to conclude the issue concerning the agenda item and gave the floor to delegations that wanted to speak.

350. The Delegation of France speaking on behalf of Group B said it would like to reply to the comment or last proposal made by the African Group. It said the Coordinator of the African Group had addressed the question of balance or equilibrium, but according to the Delegation, what was proposed was a little imbalanced and asymmetrical as it pertained to the two inter-regional meetings, whereby one would be open and the other one would be closed and then the

global meeting to be open to observers was a bit of a difficult balancing act. The Delegation of France therefore reiterated the view of Group B that all members should be able to take part in all the meetings. It said it understood that in so far as the conference went, the African Group had demonstrated quite a lot of flexibility accepting that the conference would be open and it thanked the Group for that. The Delegation said that its understanding of the matter was that there would be full participation of all Member States, and that all Member States would have the same status within that conference. The Delegation said when it came to the inter-regional meetings, the mandate given to it by the Members of Group B was very clear. It said at the very least, the developed countries should benefit from being given the status of observers at both the proposed meetings.

351. The Delegation of Spain stated that it was speaking on its own behalf alone and would be brief. It said on several occasions, it had been asked to give in and it did so, for example on the database, on the focal point, and also on holding two inter-regional meetings, and on all those points it had given its affirmation. Therefore, it noted that basically, it accepted everything. The Delegation also noted that when it had proposed arriving at an agreement from the basis of an inter-regional meeting and one conference with the exclusive condition that the inter-regional should be open to observers, another request was filed to have another inter-regional meeting to which it agreed. That meant basically the Delegation had agreed to everything that was put before the meeting. The Delegation said the situation was that every time it agreed on something, then more conditions were brought up. It said in the interest of pure logical coherence regarding what the African Group had been defending, either they should have said no to the position of observers in the two regional meetings or said yes. The Delegation said it did not stand to reason to say that in one meeting some countries shall be given one status and in another meeting they are given a different status. The Delegation called on the Chair to take note of the situation, and reiterated that as far it was concerned, which also seemed to be the position of Group B Member States, all the demands put forward had been accepted by them, but stated that everything had its limit. The Delegation said it had been asking for the same thing all the time, namely an observer status in the inter-regional meetings, but it seemed even that had been refused to them. It said consequently, in that case, it would have to declare that the matter had gone too far and that it could not accept that final proposal by the Delegation of South Africa. The Delegation of Spain said with due respect to the Delegation of South Africa, that what it was doing was a way of endeavoring to obtain more than what was possible. Therefore, it said it did not think that would be favorable to an agreement.

352. The Delegation of Venezuela said it considered that in the interest of consensus, what had been pointed out by the Delegation of Chile a moment ago could smoothen the way toward agreement. The proposal seemed to have received the support of the Delegations of Angola, Spain and the United States of America which it said it would also be ready to support. The Delegation said that would be a good way forward and affirmed it would be really a pity to miss that opportunity.

353. The Delegation of South Africa said it would like to explain the proposal that it had put before the meeting. It noted that the proposal was not only from the African Group, but also from the like-minded countries, and as it stated previously, it would be very difficult for members of the groups to change the principle, the main principle of enhancing South-South cooperation. The Delegation said other countries must understand as it had explained it time and again that in essence, the project that had been proposed was for South-South cooperation. Therefore it was not a proposal for triangular or North-South cooperation. The Delegation also observed that the proposal was actually a complement of North-South cooperation, and said that it would like to proceed under the impression that all delegations were on the same wave length, only to realize that it was not the case. The Delegation said the proponents of the project had agreed to holding three meetings and also according observer status to the developed countries, only to be met with a condition that the annual conference had to be open. The Delegation saw no reason why developing countries and LDCs could not come together on a common platform to discuss and exchange experiences without actually looking over their shoulders. The inter-

regional conference would logically report to the open conference where attendance would be for all countries. That meant that the outcomes of the first conference would be presented to the second annual conference. Then the annual conference would report to the CDIP and then the final meeting, which would be the one regional meeting, would take place. So that was the logic actually. The Delegation said it wanted to bring the matter to an end before proceeding to consider the paper before the Committee which was the Chair's summary.

354. The Delegation of Monaco said first and foremost, it would like to express its complete support for the statement made by the Delegation of Spain, and agreed entirely with what that Delegation had said. The Delegation observed that it was from a small country, the smallest country in fact in the world. It was highly likely that some associations and NGOs might have more members than its country had citizens. However, with respect to the issue of who should be granted an observer status or who would be shut out of a conference, the Delegation did not know for what reasons the doors would be shut and access denied to some Member States of WIPO. It noted that all Member States should be granted access to the meetings. Denying them would go well beyond the principle of sovereignty of States.

355. The Chair affirmed that indeed the Delegation of Monaco's sovereignty would be respected, but requested the Delegation to read some of those things in the right perspective and in the right context. He did not want to assume that any delegation was proposing to limit the sovereignty of another State at the CDIP by submitting and proposing a project that was meant for a specific group of countries. Noting that Monaco was not from Africa or Latin America, the Chair asked that delegations should try to understand the distinction being made between WIPO meetings and inter-regional meetings. The situation must be put in the right perspective, and the Chair said he would not want to engage in those discussions. He urged the meeting to focus on what had been proposed and delegations to comment on those proposals only. He suggested that interpretations should not be given and where delegations had doubts in terms of meaning, they should seek clarification and not add political statements.

356. The Delegation of Mexico said it would simply like to support the statement or the proposal made by the Delegations of Angola, Chile, Venezuela and Spain. It said it was very important for the meeting to make substantive progress on a theme that was very important for its country and for all the countries in Latin America, and also for the developing world generally. Therefore, the Delegation reiterated that it would like to see the project brought forward and become successful.

357. The Delegation of India said it did not agree with the statement made by the Delegation of Spain, regarding the flexibility that had been shown so far from one particular side. The Delegation said it would recall the facts, and noted that the original proposal had two inter-regional meetings which were fully closed. The proposal as presented a short while ago by the Delegation of South Africa had one meeting which would be closed while another meeting would be held which would be open to observers. The Delegation said the second aspect of the original proposal was that there would be two conferences. However, the meeting had agreed to only one conference. Thirdly, the two conferences were originally supposed to have the participation of the Northern countries only with observer status. Now the Delegation of South Africa was willing to look at the full participation of the developed countries. Fourthly, regarding the focal point, again the Delegation of South Africa had indicated its flexibility. The Delegation of India therefore failed to see how flexibility had been shown by only one side. It also failed to see why there was an opposition to one meeting, just one inter-regional meeting, that would be among the countries of the South. Frankly, the Delegation said it did not understand why. It asked whether there was mistrust, or opposition to the very idea that Southern countries could meet among themselves? It reiterated that the proponents were only talking about just one inter-regional meeting. Everything else would be open, and the reports of the meetings would be presented at three levels where all countries would have the opportunity to consider the outcomes of the closed meetings. They would also have a role in deliberating on what was discussed as well as in decision-making. Summarizing the situation, the Delegation of India

said first of all, there would be the open conference, where the Delegation of South Africa had proposed full participation of all countries. Secondly, in the CDIP all States were equal and everybody had a voice. Likewise in the WIPO General Assembly everybody was represented. Therefore, the Delegation asked why it was not possible to accept just one meeting where Southern countries could speak among themselves. It said the Delegation of Monaco had raised the point about State sovereignty. The Delegation of India said it believed it was also the sovereign right of countries to meet among themselves, and hoped that that right would be respected.

358. The Delegation of Slovenia said after listening to all kinds of compromises, it really thought that finally, the meeting was coming to an agreement. As it had already mentioned several times, the principle of inclusiveness was the basic principle of multilateralism. And even though it had agreed to accept the observer status, it was now again being asked to be excluded from a WIPO meeting. It said therefore, it was obvious that the proposals made by the Delegations of Angola and Spain, which from the Delegation's point of view had received a lot of support, it too would support those proposals.

359. The Chair was still of the view that, as he had indicated earlier, the whole issue was about participation which had been confirmed by the arguments of delegations. It was either to be an open or closed meeting. He said also that if there was to be a working group and not to have an inter-regional meeting, the question would still be - would it be open or closed to the developed countries? The Chair concluded that there was no point in continuing further discussion on the issue because all the different and diverging views had been expressed, and he did not believe that an agreement would be reached in the current set up.

360. The Delegation of Egypt said it had really tried hard and it would not be repeating what it had already said. It observed that the positions were very close but only that some countries wanted to take away the rights of some members from having their own meetings. The Delegation said just as the members of the African Group had their own meetings, others such as the Asian Group, GRULAC, Group B and so forth have their own meetings also. The Delegation said it had shown sufficient flexibility to be willing to have open conferences, and one of the inter-regional meetings to admit all members that were not from the South as observers. The Delegation also said it had explained why it would like to have the first inter-regional meeting as a closed meeting, because that would be the very first step towards cooperation among the countries of the South. The Delegation made one last plea that the meeting was very close to reaching an agreement on that issue and urged that a consensual approach be adopted, and it hoped to hear from other Member States.

361. The Chair said he had listened to all the interventions and thought that there was some sort of understanding on how to proceed forward. He stated that he did not need convincing about the importance of South-South cooperation as he was from a developing country himself. He said he was also aware that certain programs were especially targeted towards certain countries because of their specific natures or specific levels of development. As such, he said there was no need to convince him, but that it was important for delegations to convince each other about the issue. He said if however, delegations could not convince each other at the meeting, maybe another forum should be sought where they could possibly convince each other. The Chair then observed that the Delegation of Egypt was looking at the booklet on the Rules of Procedure and perhaps it would use that to convince other delegations as to how to proceed.

362. The Delegation of Egypt said he would like to refer to chapter 6 of the General Rules of Procedure on voting, and proposed that the meeting should move according to Rule 25 to adopt document CDIP/7/6. In addition to that, the Delegation proposed that according to Rule 27, the meeting should move through a roll call vote.

363. The Chair said he was looking for concrete suggestions to move forward or to put that issue to a final rest. He informed the meeting that the Legal Counsel of WIPO had intimated to him that once a motion was raised it would need to be seconded by a Delegation.
364. The Delegation of India said it wished to second the proposal from the Delegation of Egypt.
365. The Delegation of South Africa also said it wished to second the motion by the Delegation of Egypt.
366. The Delegation of Indonesia said it would also wish to second the proposal made by the Delegation of Egypt.
367. The Chair reminded the meeting that at some point during the proceedings, delegations had been informed that as required by the Rules of Procedure, once there was a motion raised to conduct a vote on an issue, that motion was immediately acted upon. Therefore having received endorsement by three other delegations, the Chair noted that in view of the motion by the Delegation of Egypt for a vote, he would have to suspend the discussions and proceed to the request that had been made in line with the Rules of Procedure.
368. The Delegation of France requested that the vote should be carried out in the form of a secret ballot.
369. The Chair said there was a point of order from the Delegation of Egypt.
370. The Delegation of Egypt, referring to the Rules of Procedure, said that voting according to the Rules of Procedure on a proposal or an amendment could not be conducted in a secret ballot. The Delegation stated that there was no provision for secret ballot, while noting that such could only be conducted with regard to elections.
371. The Chair said before giving the floor to the Delegation of Spain, he would acknowledge the presence of the Legal Counsel, and said he would not allow anyone else to interpret the Rules of Procedure according to how they felt it applied to them. He said the meeting should be guided by the Legal Counsel.
372. The Delegation of Spain referred to Rule 28 of the Rules of Procedure, which clearly specified that when there were decisions concerning States, such as the proposal made by the Delegation of Egypt which concerned States, because it involved the rights of States among other things to participate in a meeting or not, therefore the proposal made by the Delegation of France should apply. The Delegation of Spain said it thought it was fair and very clear that the matter involved the right of the States and one of the points of the proposal by the Delegation of Egypt was about that. It therefore said it supported the proposal made by the Delegation of France.
373. The Chair said he had called the Legal Counsel to give his opinion. He said he should be allowed to do so otherwise the meeting would end up having different interpretations to something that was known. The Chair then called on the Legal Counsel to take the floor.
374. The Legal Counsel stated that the Rules of Procedure provided that a delegation could request a vote and if that request was supported by a second delegation, it would be put to the vote. The distinguished Delegation of Egypt had requested a roll call and not a show of hands and that had been seconded by some delegations. The Legal Counsel stated also that the distinguished Delegation of France had in turn requested a vote but in the form of secret ballot. He explained that Rule 28 of the Rules of Procedure specified that all elections and decisions concerning States or individuals shall be voted on by secret ballot. The distinguished Delegation of Spain had taken the position that the vote on the table concerned States and as such it could be subjected to a secret ballot. The Legal Counsel observed that he could not



recall this having been done in practice but that it was clearly an interpretation and in the view of the Delegation of Spain the issue concerned States. Therefore, the Delegation of Spain had requested a secret ballot, and if that was seconded by a second delegation, that would mean that it had to be subjected to a secret ballot. The Legal Counsel however pointed out that should the meeting decide to go to a secret ballot that would not be possible at the present time, because there was a whole separate annex to the Rules of Procedure concerning secret ballots. It would be necessary to get lists of the delegations that were entitled to vote, and also there would be a need to elect tellers, and a need for specific ballot papers for a secret vote.

375. The Delegation of India said it did not agree with the interpretation that had been given in respect of the provision for secret ballot in Rule 28. It stated that it was very clear that a secret ballot was called for when the name of a specific individual or the name of a particular State was involved. The Delegation said there was a reason for that and pointed out that it was because a particular State had been named and where the Members do not want that State shamed by the result of the vote, so a secret ballot is held. The Delegation thought that was the basic and fundamental rationale for a secret ballot. In the present project, there was no reference to any particular Member State, hence, there was absolutely no basis or foundation for a secret ballot. The Delegation, therefore, said it could not agree to a secret ballot.

376. The Delegation of Philippines said it just wanted to clarify a point. It said the motion that had been tabled by the Delegation of Egypt was a call for the voting on the document CDIP/7/6, and that it did not call for the voting on participation or non-participation of certain Member States in a particular meeting.

377. The Delegation of Slovenia said it believed the explanation from the Legal Counsel was clear enough for everybody, and since Rule 28 referred to decisions concerning States and if a State was not allowed to participate in a meeting, that decision would concern the specific State. Besides, the Rule did not mention a specific State; it just said all elections and decisions concerning States. The Delegation reiterated that the explanation from the Legal Counsel was quite clear, therefore it said it would also second the proposal made by the Delegation of France on the secret ballot.

378. The Legal Counsel clarified that what he referred to was the interpretation given by the distinguished Delegation of Spain to Rule 28. He said it was for the Member States sitting as the CDIP, to interpret WIPO's Rules of Procedure as they saw them, while noting that there were clearly different views on the issue.

379. The Delegation of Venezuela stated that previously it had spoken about transparency and trying to find a consensus. Now it could see that the position of the Legal Counsel was very difficult. The Delegation thought that as regards all interpretations about rights, any country could say today one new thing and tomorrow it could say another interpretation. It referred the meeting back to the Legal Counsel's advice which arose from Rule 28, and noted that where it concerned States or individuals, that rule was in reference to the condition of the State within WIPO whether the States would be thrown out, or whether they would be admitted. The Delegation said the Rule under question that called for secret ballot was quite clear, however, the fact was that it could affect transparency. It observed that the Delegation of Egypt was right to make the proposal that it had made, and that a vote involving show of hands should be conducted. The Delegation said in its view, it did not think that any other form of voting would be the most transparent way forward.

380. The Chair observed that all along, he thought the meeting was about inclusiveness and transparency, but suddenly he seemed to sense something totally different from what had been transpiring all day. He said he would give the floor to the Delegation of Egypt on the motion that it raised to go to a vote which was seconded by other delegations followed by a motion raised by the Delegation of Spain on a matter of procedure and interpretation of the rule.

381. The Delegation of Egypt stated that it was extremely surprised by the interpretation of the Legal Counsel. It said it would take the matter up with the UN Legal Counsel, while it believed the interpretation was extremely unprofessional. The Delegation of Egypt said it also believed the fact that even if the secret ballot was to have taken place, it seemed there was no preparation on that score therefore it thought that was a matter of incompetence on the part of the Secretariat. Having said that, the Delegation said it would like to move to Rule 19 on suspension of the meeting. It said it did call for a suspension of the meeting and accordingly, it hoped that the Legal Counsel would be able to read that Rule, so that the motion would be immediately put to the vote.

382. The Legal Counsel stated that according to his understanding, the distinguished Delegation of Egypt had requested for a suspension of the meeting. He repeated for the record that he did not interpret Rule 28 but specified that that was the interpretation of the distinguished Delegation of Spain.

383. The Chair said perhaps the Delegation of Egypt was referring to the interpretation of the Delegation of Spain. He noted that since there was a motion to suspend the meeting and in accordance with the Rules of Procedure, he would have to put the motion to suspend the meeting to the vote, which he said, he would be very happy to oblige. Referring to the Delegation of Venezuela, the Chair said he would have to check with the Legal Counsel if once a motion had been made to suspend the meeting the Chair could still continue with the meeting. He said the last time he checked, the meeting could not proceed under such circumstances. The Chair apologized to the Legal Counsel for putting him in the spotlight but said he needed his guidance so that everybody could go home. The Chair then declared that he had been informed by the Legal Counsel that a show of hands would suffice if the meeting was to be suspended or not. The Chair therefore requested the attention of all delegations and informed them that unfortunately, according to the Rules of Procedure, they could then revisit that issue because it had already been requested as a point of whether the meeting should be suspended or not. The Chair then asked those delegations who were in favor of the motion to suspend the meeting to raise their countries' flags. He noted that it seemed a majority wanted the motion to be carried and therefore declared the meeting suspended.

#### Resumed CDIP Seven Session

384. The seventh session of the CDIP was resumed on November 14, 2011, presided by Ambassador Md. Abdul Hannan, Permanent Representative of Bangladesh.

385. The Chair welcomed all the delegations to the resumed Seventh Session of the Committee. He acknowledged the presence of the Deputy Director General, Development Sector of WIPO, Mr. Geoffrey Onyeama who was representing the Director General of WIPO, Mr. Francis Gurry. The Chair announced that the meeting would consider the last agenda item of the seventh session which was consideration of the Summary by the Chair. He stated that copies of the document had been made available outside the meeting room for delegations and that he looked forward to the support of all delegations for its speedy adoption. The Chair then called upon the Secretariat to read out the Summary by the Chair.

386. The Secretariat thanked the Chair and noted that given that the document was available only in English language the reading would be at dictation speed as follows:

COMMITTEE ON DEVELOPMENT AND INTELLECTUAL PROPERTY (CDIP), Seventh Session, Geneva, May 2 to 6, 2011, and November 14, 2011

Draft Summary by the Chair

1. The seventh session of the CDIP was held from May 2 to 6, 2011. The session was attended by 99 Member States and 33 Observers.
2. The Committee unanimously re-elected Ambassador Md. Abdul Hannan, Permanent Representative of Bangladesh, as Chair, and elected Mr. Garikai Kashitiku, First Secretary, Permanent Mission of Zimbabwe, as Vice-Chair.
3. The Committee adopted the Draft Agenda as proposed in document CDIP/7/1 Prov.2, with some amendment.
4. Under agenda item 4, the CDIP decided to admit, on an *ad hoc* basis, one non-governmental organization (NGO), namely, the Association of Students and Researchers on the Governance of Island States (AECG), without implications as to its status for future CDIP meetings, for a period of one year.
5. Under agenda item 5, the Committee adopted the Revised Draft Report of the sixth session, contained in document CDIP/6/13 Prov., with amendments by one delegation to its own statement.
6. Under agenda item 6, the Committee took note of a number of general statements highlighting the importance of the Development Agenda.
7. Under agenda item 7, the Committee considered document CDIP/7/2 entitled Director General's Report on Implementation of the Development Agenda. A number of delegations noted that the Director General's Report, in their view, reflected his commitment to the implementation of the Development Agenda. In this context, the Director General noted that the agreed Development Agenda projects will be fully integrated into the Program and Budget for 2012-2013. A number of delegations requested greater details of the various projects and an evaluation of the impact of those projects pursuant to the Development Agenda recommendations. In this respect, the Director General noted that the Committee would in due course be provided with an evaluation of the effectiveness of completed projects.
8. The Committee considered document CDIP/7/3 entitled Patent-Related Flexibilities in the Multilateral Legal Framework and their Legislative Implementation at the National and Regional Levels – Part II. During the discussion of this document divergent views were expressed. It was decided that the document continue to be considered at the eighth session of the Committee (CDIP/8). Delegations were requested to provide their comments in writing to the Secretariat until three months before CDIP 8 (i.e., to provide comments by August 15, 2011). It was agreed that at its next session, the Committee would resume discussions on the document together with the comments received by the Secretariat.
9. The Committee considered document CDIP/7/INF/2 entitled Scoping Study on Copyright and Related Rights and the Public Domain. The Committee agreed that during its next session the recommendation section of the document would be further discussed.
10. The Committee approved the project proposal entitled Intellectual Property and Brain Drain, contained in document CDIP/7/4. The Secretariat was requested to prepare

and post online a revised version of the Project proposal taking into account the comments made by all Delegations.

11. With respect to document CDIP/7/5, entitled Revised Project on Patents and the Public Domain, the Committee considered a significant number of comments representing diverse views, and decided to revisit the matter at a future session.

12. With respect to document CDIP/6/9, entitled Discussion Paper on Intellectual Property (IP) and the Informal Economy, the Committee agreed that the Secretariat would develop a project document taking into account the different views expressed by delegations for consideration at its next session.

13. The Committee considered CDIP/6/10 entitled Future Work Program on Flexibilities in the Intellectual Property System. The Committee agreed that the Secretariat would revise the document, taking into account the comments of the delegations, for consideration by the Committee at its next session.

14. Following discussions, the Committee agreed that the Proposal for a CDIP New agenda item on Intellectual Property (IP) and Development, contained in document CDIP/6/12 Rev., would be discussed at the next session of the Committee. On the issue of the organization of an international conference on intellectual property and development, the Committee decided that the conference should be postponed and that the funds necessary to organize the conference should be allocated accordingly in the Program and Budget for 2012/13. Further, the Committee decided that the preparations for such international conference should be considered by the Committee at its next session.

15. The Committee considered document CDIP/7/6 entitled a Project Proposal from the African Group on Enhancing South-South Cooperation on Intellectual Property and Development among Developing Countries and Least Developed Countries. Due to a lack of agreement on the way forward on this project proposal, the meeting was suspended on May 6, 2011.

16. The seventh session of the CDIP was suspended on May 6, 2011, was resumed on November 14, 2011. The Committee then adopted the following decisions:

(i) The Committee adopted the Project on Enhancing South-South Cooperation on Intellectual Property and Development Among Developing Countries and Least Developed Countries as amended taking into account the comments made by Members during CDIP/7, with the understanding that the TORs for the meeting must be decided upon before any work on the meetings was undertaken, at regional coordinators level before the end of 2012. With respect to this project, the Committee agreed that the meetings would be open to developing countries, least developed countries and other interested Members; and

(ii) The Committee set a deadline of February 6, 2012, for submission of comments on document CDIP/7/3 on Patent-Related Flexibilities in the Multilateral Legal Framework and their Legislative Implementation at the National and Regional Levels – Part II. It was agreed that the document would continue to be considered at CDIP/9, together with Members comments received by the Secretariat by the agreed date.

17. The CDIP noted that the Draft Report of the seventh session would be prepared by the Secretariat and communicated to the Permanent Missions of the Member States, and would also be made available to Member States, IGOs and NGOs, in electronic form, on the WIPO website. Comments on the Draft Report should be communicated in writing to

the Secretariat as soon as possible, preferably eight weeks before the next meeting. The revised Draft Report will then be considered for adoption at the beginning of the ninth session of the CDIP.

18. This summary will constitute the Committee's report to the General Assembly.

387. Finally, the Secretariat informed that after its adoption, the draft Summary by the Chair would be translated into all the working languages and also be made available on WIPO's website.

388. The Chair thanked the Secretariat for reading out the statement and believed it was clear to everybody and upon request he gave the floor to the Delegation of South Africa.

389. The Delegation of South Africa stated that it just had two suggestions to make regarding the Chair's Summary. It said in view of the fact that paragraph 15 of the document ended with the phrase "the meeting was suspended on May 6, 2011", paragraph 16 should start with "the seventh session of the CDIP was resumed on November 14, 2011" until the end of the paragraph to avoid repetition. The Delegation also suggested that in paragraph 16 section (i) January was missing, therefore it should read as "January 2012".

390. The Delegation of the United States suggested that with regard to section (ii) on page 3, it thought it might be worthwhile to add a new sentence that would read as follows: "It was agreed that the document would continue to be considered at the Ninth Session of the CDIP together with Member States' comments received by the secretariat". The Delegation said it suggested that addition because the current text in paragraph 8 indicated that the study would be discussed at the eighth session of the CDIP during the week. It stated that it was not prepared to discuss that document presently therefore, the Committee should set the deadline for February 6, 2012 and then resume discussion on the document after those comments would have been received by the Secretariat.

391. The Delegation of Egypt stated that with regard to paragraph 16, section (i) in line 5, it could see from the distributed document that there was a reference to the meetings, which it thought was read by the Secretariat but was not reflected in the printed document. The Delegation said it would appreciate having it included in the document.

392. Following those interventions, the Chair called for the adoption of the Summary by the Chair and in the absence of further comments from the floor, he declared the document adopted with the amendments from the floor. The Chair thereafter brought the proceedings of the seventh session of the CDIP to an end. He declared that delegations had achieved together another successful session of CDIP and expressed his particular thanks to all the delegates for their flexibility and consideration. He noted that the session had contributed greatly towards making progress in mainstreaming the WIPO Development Agenda in all WIPO activities and implementing the 45 Recommendations through concrete measures.

[Annex follows]

## LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

### I. ÉTATS/STATES

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

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