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GENEVA

PROVISIONAL COMMITTEE ON PROPOSALS RELATED TO A WIPO DEVELOPMENT AGENDA (PCDA)

Third Session
Geneva, February 19 to 23, 2007

REPORT

Adopted by the Meeting

1. The WIPO General Assembly, in its session held in September-October 2006, reviewed the positive discussions held during the two sessions of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), emphasized the need to continue discussions on the proposals submitted and placed in the six clusters during the IIM/PCDA process, and decided, *inter alia*, to renew the mandate of the PCDA for one year. It was also decided that the PCDA would hold two five-day sessions in a manner that allows for structured in-depth discussions on all 111 proposals made during the sessions of the IIM and PCDA in 2005 and 2006, taking into account the decision of the 2005 General Assembly on the deadline for submission of new proposals. The General Assembly decided that in order to facilitate the task and streamline the process for detailed examination of all proposals in an inclusive manner, the PCDA should undertake an exercise:

- (a) to narrow down the proposals, in order to ensure that there is no repetition or duplication;
- (b) to separate the proposals which are actionable from those which are declarations of general principles and objectives; and
- (c) to note those proposals which relate to existing activities in WIPO and those which do not.

In this regard, the Chair of the General Assembly was requested to produce, in consultation with Member States, initial working documents.

2. The Third Session of the PCDA was held from February 19 to 23, 2007.

3. The following States were represented: Afghanistan, Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Barbados, Belarus, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Burkina Faso, Cambodia, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Haiti, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kyrgyzstan, Latvia, Lesotho, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Mongolia, Morocco, Nepal, Netherlands, Nicaragua, Nigeria, Norway, Oman, Papua New Guinea, Paraguay, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Rwanda, Senegal, Singapore, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Viet Nam, Yemen, Zambia and Zimbabwe (106). Palestine was represented in an observer capacity (1).

4. The following intergovernmental organizations (IGOs) took part as observers: African Intellectual Property Organization (OAPI), African Union (AU), Eurasian Patent Organization (EAPO), European Community (EC), International Atomic Energy Agency (IAEA), International Labour Office (ILO), International Telecommunication Union (ITU), League of Arab States (LAS), South Centre and the World Trade Organization (WTO) (10).

5. Representatives of the following international non-governmental organizations (NGOs) took part as observers: Asian Patent Attorneys Association (APAA), *Association pour la promotion de la propriété intellectuelle en Afrique (APPIA)*, Center for International Environmental Law (CIEL), Central and Eastern European Copyright Alliance (CEECA), Centre for International Environment Law (CIEL), Centre for International Industrial Property Studies (CEIPI), Civil Society Coalition (CSC), Committee of Nordic Industrial Property Agents (CONOPA), Consumers International (CI), Electronic Frontier Foundation (EFF), Electronic Information for Libraries (eIFL), European Commercial Patent Services Group (PatCom), Free Software Foundation Europe (FSF Europe), Friends World Committee for Consultation (FWCC), *Fundação Getulio Vargas (FGV)*, Institute for Policy Innovation (IPI), International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), International Center for Trade and Sustainable Development (ICTSD), International Chamber of Commerce (ICC), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Film Producers Associations (FIAPF), International Federation of Library Associations and Institutions (IFLA), International Federation of Pharmaceutical Manufacturers Associations (IFPMA), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Literary and Artistic Association (ALAI), International Policy Network (IPN), International Publishers Association (IPA), International Trademark Association (INTA), International Video Federation (IVF), Knowledge Ecology International (KEI), Library Copyright Alliance (LCA), *Médecins sans frontières (MSF)*, Organization for an International Geographical Indications Network (ORIGIN), The Federalist Society, Third World Network (TWN) and Yale Information Society Project (ISP) (37).

6. Following discussions by the PCDA, it was decided that representatives of Yale Information Society Project and Knowledge Ecology International would attend the meetings of the PCDA as *ad hoc* observers.

7. The list of participants is attached to this report.

Agenda Item 1: Opening of the Meeting

8. The session was opened by Mr. Sherif Saadallah, Executive Director, who welcomed the participants on behalf of the Director General of WIPO, Dr. Kamil Idris, and proceeded to seek nominations for the positions of Chair and Vice-Chair.

Agenda Item 2: Election of Officers

9. The Meeting unanimously elected Ambassador C. Trevor Clark (Barbados) as Chair and Ambassador Muktar Djumaliev (Kyrgyzstan) as Vice-Chair.

10. The Chair thanked the meeting for the privilege and for having entrusted him with such a challenging assignment. The Chair stated that any success in this endeavor had to be the result of the work of the Committee, the Chair's role being confined to providing guidance and facilitation of the discussion. The Chair expressed confidence that if the spirit of the Committee was a willingness to make progress on the discussion that had been on-going for the previous two and a half years, progress could be made. The Chair explained that due to a prior commitment that morning, he proposed that the proceedings for that day be structured in the following way: the Secretariat would first take up the next item on the Agenda, namely the accreditation of NGOs. The meeting would then be adjourned to permit the coordinators to meet with the regional groups to decide how the meeting should proceed that week. The Chair suggested that the discussions should proceed on the basis of the working document prepared by Ambassador Enrique A. Manalo, Chair of the General Assembly. If that was acceptable, the Committee should proceed to discuss the clusters in that document. The Chair went on to say that wherever there were areas of difficulty, he wished to consult with the delegations concerned to see if a compromise could be reached. The Chair concluded by saying that he would meet with the regional coordinators at 2:30 p.m. that afternoon so that he could be informed of the views of the Committee and that the formal sessions could begin at 3:00 p.m. The Chair added that international discussions were often frustrated by procedural difficulties and, should such difficulties be encountered, he asked that he be allowed to work through them with the coordinators outside the meeting room in order for the time of the Committee to be primarily devoted to discussing substantive issues

11. The Chair submitted for the consideration of the Committee two NGOs which had applied for *ad hoc* accreditation to attend the meetings of the PCDA, and requested the Secretariat to provide their names. The Secretariat said that the two NGOs were Knowledge Ecology International, Washington D.C., and the Yale Information Society Project, Yale Law School, from the United States of America. As there was no objection, the NGOs were admitted to participate, as *ad hoc* observers, without implications as to their status for future WIPO meetings.

Agenda Item 3: Adoption of the Agenda

12. The Chair proposed the draft agenda (document PCDA/3/1 Prov.), and as there were no comments, it was adopted.

Agenda Item 4: Consideration of Proposals Submitted by Member States

13. The Chair reported on his consultation with the group coordinators stating that they had agreed to proceed with their work by using Ambassador Manalo's initial working document as the basis for the discussions. It had been agreed, as decided by the General Assembly, that that session would focus its efforts on Annex A. The Chair observed that in Annex A there were six clusters. He suggested that the meeting could cover about two clusters every day thus enabling to complete the examinations of the clusters by the following Wednesday or early Thursday. That would give him the opportunity to prepare a draft based on the emerging consensus. This document would be first discussed with the coordinators and the delegations that had submitted proposals. The results of those discussions would then be submitted to the General Assembly. The Chair added that he was extremely encouraged by the demonstrated willingness of the coordinators to work together in order to achieve some concrete results by the end of the week.

14. Speaking on behalf of the African Group, the Delegation of Algeria expressed its gratitude and support to the Director General, Dr. Kamil Idris, for his commitment to the development of intellectual property (IP) throughout the world and particularly in developing countries. While assuring the Chair of its active support, the African Group wished to reaffirm the importance it devoted to the question of the action plan for development, and its desire to contribute in a positive and constructive manner to the on-going discussion on the development agenda. Drawing up an action plan for a solid and effective development plan would enable members to promote an international system for IP, which would be well-balanced and adapted to the requirements of developing countries. Such a system would encourage research, transfer of technology and the stimulation of innovation, and could then truly be a catalyst for the growth process in the countries concerned. The Delegation recalled that the African Group had submitted a detailed and ambitious proposal for the action plan for development. That proposal was aimed at reiterating and developing the points of use already contained in the recommendations of the Millennium Summit for Development, as well as the action plan for the New Partnership in the Development of Africa (NEPAD) and in the Doha Declaration of the G-77 Countries. Since the relevance of the content of said proposal had been clearly demonstrated throughout the previous meetings, the Delegation did not wish to make additional comments on its substance. What was important at that stage was to be able to achieve a consensus on the recommendations to adopt and on the essential strategy to implement them. As to the substantive examination of the said proposals, the African Group reiterated its idea of having the 111 proposals reviewed in a detailed, exhaustive and objective manner. No proposal should be ignored nor put on a secondary level, it added. The working method as announced in decision WIPO/GA/33/10 of the 33rd Session of the WIPO General Assembly would enable members to manage in a systematic and rational manner the 111 proposals by adopting the following procedure: first, to examine the 40 proposals included in Annex A so as to limit the number, to see to it that there was no overlapping, no redundancy, which would in turn facilitate and rationalize the detailed examination of all the proposals without any exclusions. Secondly, to

separate the proposals which were actionable from those that were declarations of principles and general objectives, while taking into account the proposals already taken up by the existing activities of WIPO. Consequently, the meeting should aim at concluding recommendations on the proposals that were amenable to convergence. The African Group felt that in the light of the previous meetings, as well as informal consultations that had taken place, an agreement on the majority of the proposals which were on the agenda of the meeting was possible. It invited, however, all Member States to show flexibility and a constructive approach since they had reached a crucial stage in the process for preparing a plan of action for development. The Group suggested the following four measures : (a) to set aside half a day for the review of each and every one of the groups of proposals, which at that time were organized as clusters; (b) to request the Chairman to submit a proposal in the light of the discussions and on the basis of the document of the Chair of the General Assembly; (c) to involve the representatives of the regional groups and the sponsors of the proposals in the reformulation of the latter; and (d) to devote the last two days for finishing touches on the recommendations. It appreciated the task carried out by Ambassador Manalo of the Philippines and was convinced that it would serve as a basis to reformulate the 111 proposals, so as to reduce them and enable them to take into account the substance of each and every one of them, thereby guaranteeing the achievement of the objectives of the development agenda. Finally, a comprehensive examination of those proposals would enable the Committee to discover that some of them presented the same idea, included the same concerns, and focused on common objectives. Consequently, by dealing with such a task in a rational manner and putting together similar proposals and eliminating repetitions, the actual number of questions to be examined could be reduced considerably. The African Group wished to endorse the conclusions proposed in the document drawn up by the Chair. It considered that that procedure was part and parcel of the approach it had always advocated for carrying out of the plan of action for development, in other words, a detailed examination and a gradual implementation, to which the African Group would contribute. The African Group agreed on the fact that the program of such an examination would include stages, thus leading to its adoption as an overall proposal at the end of the process. That meant that amongst the 111 proposals, there would be those on which members could immediately reach consensus, in other words, accept to submit them to the next WIPO General Assembly for a decision. With that view in mind, the remaining proposals would be examined in the medium and long-term. The African Group wished to indicate that a well-balanced procedure required an overall approach. Therefore, technical assistance was not the only part of the plan of action for development to be taken into account. Evaluation activities, transfer of technology and norm-setting also had to be considered.

15. The Delegation of Bangladesh, speaking on behalf of the Asian Group, expressed its sincere appreciation to the Chair of the General Assembly, Ambassador Manalo, for his hard work, objectivity and in-depth understanding of the issues, which were clearly reflected in the informal working document that was circulated among members. The Asian Group considered it a good basis for future work at the PCDA. The Asian Group had taken note of the initiative of the Government of India for a meeting attended by 22 representatives of WIPO Member States from all regional groups on IP and Development, which had been held in New Delhi, from February 5 to 7, 2007, and the discussion on the possibility of narrowing the proposals contained in Annex A of the Chair's working document to be considered by the PCDA. The Asian Group was fully committed to the PCDA and supportive of the Chair's role in moving the process forward by addressing substantive issues. The Group understood that that session would address proposals contained in cluster A. Asia being a vast region, there could be divergence of opinions

and views on particular issues, but the entire Group looked forward to a fruitful engagement in the PCDA, for reaching consensus on an effective development agenda for WIPO. It reiterated that mainstreaming of the development agenda in WIPO represented the fundamental position of the Asian Group. In that process, it was ready to work with other Member States, in order to play a constructive role in reaching consensus on the way forward. It noted that there was a call for further narrowing the proposals that were contained in Annex A. There were duplications that could be avoided and similar proposals that should be merged. It was of utmost importance to the Group that the process be inclusive, balanced and took into account the different stages of development of the WIPO Member States. In that context, the Group emphasized the importance of all six clusters and the need for paying attention to all the proposals contained in Annex A. The Group was of the view that PCDA sessions should conclude with an actionable, concrete and result-oriented outcome. Having mentioned that point, there were areas to which the Asian Group attached importance and which needed to be highlighted. Those included, first, making technical assistance more effective, demand-driven and development oriented. Second, ensuring that norm-setting activities addressed the various development levels and needs of developing countries and least developed countries (LDCs). Third, considering norm-setting activities in areas that had significance for Asian countries, for example, genetic resources, traditional knowledge and folklore. Fourth, preserving existing flexibilities that were provided, *inter alia*, in agreements such as the TRIPS Agreement. Fifth, considering ways to protect and expand the public domain and regain space for public policy in a manner that was supportive of public interest objectives of developing countries and the LDCs. Sixth, ensuring greater involvement of all relevant stakeholders in WIPO activities, and greater cooperation between WIPO and relevant international organizations. The Asian Group also stressed the importance of technology transfer for development and periodic assessment of WIPO activities, particularly their development dimension. Members of the Asian Group looked forward to contributing during the PCDA by elaborating their views on those and other issues, when substantive discussions were held on specific proposals.

16. Speaking on behalf of the Group of Countries of Latin America and the Caribbean (GRULAC), the Delegation of Barbados thanked Ambassador Manalo for his excellent work in preparing an initial working document in accordance with the mandate of the 2006 General Assembly. It added that GRULAC accepted that initial working document as the basis of the Committee's work. GRULAC also thanked the WIPO Secretariat for its assistance in moving the process forward. During that session of the PCDA and the session which would be held in June 2007, GRULAC would continue to work constructively with the aim of reporting to the 2007 General Assembly with recommendations for action on those proposals which had been agreed, as well as on a framework for continuing to address and where possible to move forward on the other proposals following the 2007 General Assembly.

17. The Delegation of Italy, speaking on behalf of Group B, recalled that members were entering into the third year of discussions concerning the proposal on a development agenda at WIPO, after the initiative was first launched during the General Assembly in 2004. Members had had the opportunity to begin a useful exchange of views during the Inter-sessional Intergovernmental Meetings (IIM) process and continued that exchange during the two sessions of the PCDA in 2006. There was no doubt that the entire membership of WIPO had taken ownership of the work of the PCDA. Group B welcomed this and, to that end, stressed that it believed there was a need to proceed in a focused manner to achieve tangible results. The

Delegations of Group B would be working in a constructive spirit to achieve those results. Group B believed that the starting point should be the decision of the General Assembly of 2006. On that occasion, it was recalled that Members had agreed on a straightforward procedure to address the proposals set out in Annex A at the PCDA meeting of February 2007, and address the proposals set out in Annex B at the June 2007 meeting. In that context, the mandate of PCDA was limited in time and would finish at the following General Assembly. It would give a wrong signal to spend another year without presenting concrete recommendations to the General Assembly. Accordingly, Group B was ready to enter into in-depth discussions concerning the proposals contained in Annex A. In this regard, it appreciated the efforts made by Ambassador Manalo, as well as those of the International Bureau, in producing the working documents, developed on the basis of the mandate given to the Chair by all WIPO Members States, during the last General Assembly. Group B was of the view that Ambassador Manalo's initial working document constituted a good basis for discussion. It stated that Group B was looking forward to exchanging views on the proposal of Annex A with all Members. It was important that the debate should be balanced and inclusive, focusing at that stage on analysis of the 40 proposals included in the six clusters. Group B was hopeful that, at the end of the process, those proposals, which enjoyed the agreement of every Member State as a result of an in-depth and inclusive debate, had a realistic chance of final approval. Members should not let that opportunity pass.

18. The Delegation of China declared that, in the past discussions concerning the WIPO development agenda, many useful points of view had been expressed, particularly concerning the relationship between IP and development. Delegations had expressed most sincerely their views, and that had in turn enabled members to further develop mutual understanding. The Delegation was happy to see that the discussions had become more detailed. In the current world, with the progressive development of globalization and the interdependence of States, the problem of development had become a major challenge for the international community, including developed countries. On that issue, China advocated that States should be inspired by all development models, so as to be able to promote coordinated development as regards to economic, political, cultural and social aspects, and thus achieve a harmonious world. The IP system was one of the important tools to promote development by encouraging and by protecting inventions and technological innovations. That system had been able to free people's creative forces and that was the very driving force of developing countries and societies. During the new technological, industrial and scientific revolution, countries must use that system wisely to be able to promote harmonious development of the society, economy and culture. WIPO, as a UN specialized agency entrusted with IP matters, had the responsibility of providing a platform and a forum, so that Member States could discuss the different development models which suited them, thus enabling all the countries to benefit from the IP system and make their contributions for a harmonious world. The Delegation, as in the past, was adopting a positive attitude to take an active part in the discussions on the WIPO Development Agenda. It hoped that Members would all join together in a constructive spirit, so as to be able to achieve a consensus as quickly as possible. Before concluding, the Delegation noted that on the previous day, China had celebrated the Chinese New Year, a traditional and important day for 1.3 billion Chinese people. They celebrated that event every year, and on that occasion enjoyed a seven-day holiday. That explained why several delegations from that same region could not take part in the meeting. 2007 was the year of the Pig, a symbol of prosperity, luck and success. The Delegation hoped

that all the delegations shared its joy and happiness, and wished them all a very successful meeting.

19. The Delegation of the Russian Federation, speaking on behalf of the Group of Caucasian, Central Asian and Eastern European Countries, declared that matters concerning the determination of the parameters for the WIPO Development Agenda were extremely important. For that reason, it welcomed the opportunity to continue discussing those matters within the framework of the Provisional Committee. The Group had played an active part in the work of the previous two sessions of the Committee, and had tried to make a robust contribution to moving forward. It considered that the Committee had succeeded in doing significant work on categorizing and compiling proposals received from Member States. The fact that they had done so on a cluster basis was in itself a step forward towards determining a WIPO Development Agenda. In that connection, the Delegation expressed its sincere gratitude to the Chair of the WIPO General Assembly, Ambassador Manalo, for having drafted the document which the regional group accepted as a sound basis for work at that session of the Committee. In the decision taken at the 33rd Session of the WIPO General Assembly, Members had received a very specific indication to the effect that at that session the Committee was required to do the following: (1) it should focus and narrow the scope of the proposals it had received in order to avoid any overlap or duplication; (2) it should separate the proposals in two groups - those as regards with which real actions could be taken and those that were declarations of general principles and goals; and (3) it should take note of the proposals that related to WIPO's current activities as opposed to those that did not relate to its current activities. The Delegation thanked the Government of India for organizing the International Meeting on IP and Issues Related to the Development Agenda, held in New Delhi from February 5 to 7. It believed that thanks to that event, it was possible to have a useful exchange of views and ideas about the initiatives relating to the WIPO Development Agenda. It stated that through joint efforts, and with a constructive spirit being shown by all interested States, the Committee would succeed in making real progress in that important area.

20. The Delegation of Poland, speaking on behalf of the Group of Central Europe and the Baltic States, thanked and congratulated the Government of India for organizing a very useful meeting related to the work of the PCDA, and to the proposals presented that far. It praised India's serious efforts on questions related to the WIPO Development Agenda. It believed that the work the participants of the New Delhi Meeting had embarked on, as well as its outcome, should be taken into account as a guide for eliminating overlapping proposals and narrowing them down, in order to avoid any repetition or duplications. The Delegation stated that the Group of Central Europe and the Baltic States had been closely following the IIM/PCDA process since its very beginning. The Group regarded development questions as a very important topic in all international fora and, in that way, attached great importance to the successful outcome of the present process in WIPO. It also pointed out that at the last meeting in 2006, a consensus on a number of proposals was within reach, and it regretted that it had finally not been achieved. The Delegation perceived, however, that the differences persisting with regard to those proposals were not substantial. It hoped that a consensus, necessary in order to bring the process out of the current slow down, would soon emerge. In that context, the Delegation appreciated the tremendous and useful work done by Ambassador Manalo and by the International Bureau that had resulted in the preparation of the excellent working document for the following two PCDA meetings. That was an excellent basis for the Committee's work. The Delegation was of the

opinion that, as already decided by the General Assembly, the Committee should concentrate on proposals set out in Annex A, while the remaining part should be subject to the Committee's deliberations at a later stage. The Delegation finally stated that it was too early at that stage to present its position on any particular proposals, but that it was looking forward to engaging in the ensuing debate in the spirit of cooperation, open-mindedness and consensus building.

21. The Delegation of Germany, speaking on behalf of the European Community (EC) and its 27 Member States, recalled that, as already pointed out during the previous General Assembly, it was the view of the EC and of its 27 Members States that the Committee should move forward with a view to achieving concrete results. In that regard, the Delegation expressed its sincere thanks to Ambassador Manalo for the consultations he had undertaken in his capacity as Chair of the General Assembly, and also appreciated what he had put on paper in preparation of the third session of the Committee, a good basis for discussion. The Delegation pointed out that development was one of the most important challenges of the time, and WIPO was already committed to promoting development. Although in the past the Committee was not able to agree on specific recommendations to be presented to the General Assembly, the EC continued to be committed to discuss the various proposals with an open mind and in a constructive spirit. The Delegation stated that, for practical reasons and in line with the decision taken by the General Assembly, the EC and its Members States believed that the Committee could focus first on the 40 proposals contained in Annex A. The Delegation hoped that this would accelerate the process. It was looking forward to coming up with coordinated views and assessments with regard to individual proposals, but at that stage it could already confirm its commitment to engage in a fruitful debate. It stated that since it wanted to achieve concrete results, the impact of the various proposals, including their budgetary implications, would also have to be assessed. The Delegation promised, on behalf of the EC and its Member States, that it would listen very carefully to the views of other groups and individual delegations to identify a common ground where a consensus could be reached.

22. The Delegation of Morocco thanked the Director General of WIPO for his commitment to the process underway and to the success of the Committee's work. The Delegation associated itself with the statement made by the Delegation of Algeria on behalf of the African Group. The Delegation pointed out that, given the importance of IP as a strategic instrument for development and wealth creation, it wished to reiterate Morocco's commitment to the WIPO Development Agenda. It stated that it saw it as an effective instrument that would allow them to benefit from proper and full use of the global IP system. Indeed, when it came to development, the choices made by Morocco put men and women at the heart of the development process. That was the conviction of Morocco and it had been shown in a number of ways. His Majesty King Mohammed VI had launched a program very much in line with the Millennium Development Goals, and was trying to bring Morocco in line with those goals. His Majesty's overall intention was to ensure that they could have economic efficiency, social cohesion and equitable sharing of the fruits of development which, to a large extent, was assisted by IP which had a strategic role to play in that regard. The Delegation welcomed the decision taken in October 2006 by the WIPO General Assembly to renew the mandate of the PCDA for another year, in order to make it possible to continue to discuss all of the matters in a methodical and rational way. It stated that 160 proposals had previously been identified, the purpose being to reduce their number and to draw a distinction between those upon which action could be taken, and those that enunciate general principles. It pointed out that the Committee should remember

that that decision directly arose out of the spirit of consensus, the goodwill that had been shown by all delegations wishing to take the process forward. The Committee had that day, more than ever before, a valuable asset, which was a collective commitment, and all should make use of that in laying the foundations for that kind of development, as they sought to fully integrate IP development issues within the work done by WIPO. The Delegation stated that that was an opportunity the Committee had that day, which it should grasp, as it might not appear again, and that the Committee should in particular note that some of the major players at the last General Assembly had declared that after two years, they were disappointed to see that nothing concrete and pragmatic had been achieved in the framework of the work the Committee was doing. The Delegation advised the Committee to be aware of what was at stake, and of the challenges it faced. It stated that the Committee needed to ensure that the renewed mandate did not go the same way as the two previous mandates in terms of concrete outcomes. The Delegation paid tribute to the work done by the Chair of the General Assembly for drafting a working document for the Committee. His experience, expertise and abilities, recognized by all, were undoubtedly a great asset for the Committee, and contributed to success in its work. By simplifying proposals and highlighting areas of duplication and overlap, he had streamlined the work of the Committee and had drawn a distinction between the proposals on which work could be done, and the other proposals that were merely declarations. The Delegation added that the Committee thereby had a very sound basis for a very methodical discussion to take place, in order to achieve tangible results. The identification by the Secretariat in the same document of those proposals that related to current activities was also particularly useful. On the question of the modalities that the Committee should follow, and how it should proceed so as to achieve consensus on some proposals, the Delegation was of the view that efforts should focus first and foremost on Annex A, secondly on identifying duplications and overlaps in proposals - focusing on the document from the General Assembly - and then looking at the proposals upon which a consensus did appear to be emerging on the one hand, and those on which there were still divergences. It should do so by going through the questions, cluster by cluster, in accordance with the order in the working document. As its fourth proposal, the Delegation called for a small drafting committee, involving a small number of countries, to be set up. The countries involved would be interested in starting drafting work on proposals on which agreement had been reached, and they would group proposals that had something in common. The Delegation added that another suggestion was for the Committee to reach a decision on a gradual implementation process, for proposals agreed upon either in the short, medium or long-term, taking into account related administration and financial constraints. In the Delegation's view, a WIPO Development Agenda was something that had to be implemented through a gradual approach. The Delegation called for a general commitment, within the framework of the Millennium Development Goals, with a slightly different approach to the particular Development Agenda in order to ensure that it did not just become another program. It was thus highly relevant to have a declaration on that issue at the following General Assembly. A political signal as well as a global vision already exist either for developed or developing countries. Such a commitment was comprised in the statement by the Heads of State and governments of G-77 and China at the end of South Summit held in Doha in 2005 calling, among others, upon WIPO, as a UN Specialized Agency, to integrate the development dimension in all its activities. For developed countries, the Delegation noted the communiqué from the group of industrialized countries, issued at the meeting held in Munich in 2005, highlighting the importance of going beyond the issues of capacity building to go into greater detail in ensuring deeper understanding of the interrelationship between IP on the one hand, and economic, social and cultural development on the other. There was an increasing

convergence in recognizing that IP was at the heart of development and that dimension was recognized in both the North and the South. It was time for all to work in a real partnership, constantly renewed, in order to ensure that everyone could benefit from the IP assets.

23. The Delegation of Argentina, speaking on behalf of the delegations of Argentina, Bolivia, Brazil, Cuba, the Dominican Republic, Ecuador, Egypt, Iran (Islamic Republic of), Kenya, Peru, South Africa, Tanzania, Uruguay, Venezuela, and Sierra Leone, known as the “Group of Friends of Development”, stated that it did not wish to dwell on the substance of the issues contained in the “Manalo” document, since their group had been the main driving force behind the Development Agenda. It particularly welcomed the statements made by the Delegations of the African and the Asian Groups, and took note of the importance they attached to some of the specific clusters contained in those documents. It also welcomed the statements made by the Delegations of Italy, on behalf of Group B, and Germany, on behalf of the EC, and the constructive approach they had adopted in their preliminary reviews. The establishment of the PCDA reflected the need to integrate the development dimension in policy-making on IP protection. The Delegation stated that they had an important General Assembly mandate to fulfill. In that regard, it was necessary to achieve a balance among the different clusters of proposals. There was a big challenge in front of them. The Delegation reiterated the commitment of the “Group of Friends of Development” to engage in a constructive discussion, in order to achieve a substantive outcome for the PCDA process. It thanked Ambassador Manalo for the working document produced which it considered valuable, useful, and a good basis for work, but the Delegation believed that attaining the objectives of that process necessitated going beyond analyzing the proposals one by one. The Delegation also thanked the Secretariat for the support given to the Chairman to finish that document. It found the column referring to the current WIPO activities related to the proposals very instructive. It also pointed out that some of them were carried out on an *ad hoc* basis or fulfilled only partially. In cases where those activities contributed to the Development Agenda goals, the Delegation wished to see them institutionalized, and become a regular feature on the Organization’s agenda. It stated that it understood the General Assembly’s mandate as a whole. It expected a comprehensive result after the analysis of all the clusters of proposals in the meeting. In that regard, it considered that additional clustering could be done in order to facilitate the work, as there was still much overlapping among many proposals. The Delegation also believed that there was an overlap among a number of Annex A and B proposals. It called for concrete and applicable results by the end of that session. It also expected that in the following PCDA meeting, they would be able to work out all the remaining proposals. That way, the PCDA would report back to the 2007 General Assembly with a draft resolution to be adopted. In doing so, the Development Agenda would be mainstreamed in WIPO’s activities and committees in a cross-cutting way. The Delegation stated that it was convinced that that exercise was truly member-driven. It reiterated its commitment to contribute to a constructive and useful discussion in order to achieve the goals of the Development Agenda.

24. The Delegation of Ecuador reiterated its willingness to cooperate with the Chair with the work of the PCDA. The WIPO Development Agenda had gone through several stages and the Delegation felt that it had matured sufficiently so as to be able to yield specific outcomes. It saw a great deal of interest in the document prepared by Ambassador Manalo and the Delegation thanked him for his conviction. It was an excellent basis for discussions. The Delegation also expressed its gratitude to the Secretariat for its cooperation and hoped that that constructive

attitude would continue. Along those lines, the Delegation wished to support the points made by the Delegation of Argentina on behalf of the “Group of Friends of Development”, as well as the declaration of GRULAC expressed by the Delegation of Barbados. The Delegation of Ecuador had also seen the clear-cut and very positive attitude of all the regional groups and it hoped that it would greatly help the discussion and, if possible, reach conclusions that week. The Delegation stated that following the work that week and the PCDA meeting in June, they would be able to submit to the General Assembly of 2007 specific proposals and a realistic and pragmatic approach to the WIPO Development Agenda.

25. The Delegation of Ethiopia associated itself with the statement made by the Delegation of Algeria, speaking on behalf of the African Group. The Delegation expressed its thanks to Ambassador Manalo for the remarkable work he had done, for his leadership in the General Assembly, and his subsequent efforts in preparing the initial working document. Even though the Delegation may have had some questions, which it intended to raise at a later stage, regarding how some of the proposals were designated as objectives, it believed that the initial working document could be the right platform on which to base the deliberations during the week ahead. The Delegation also noted the work done by the Secretariat in providing information on existing WIPO activities. The information, as contained in the Annexes, was a useful indication as far as the performance of the Organization was concerned. It revealed quite clearly that given the necessary mandate and resources, WIPO could have performed much better. The Delegation stated that it was then in a better position to learn the limitations WIPO was facing. For example, it stated that in spite of the fact that WIPO had managed eight funds-in-trust (FITs) arrangements for developing countries, its activities in Africa were funded only through budgetary and extra-budgetary resources. That was a clear indication of one of Africa’s proposals for the establishment of a trust fund within WIPO, with a view to providing specific financial assistance to African countries and LDCs. WIPO required a revitalized mandate and a robust and sustainable funding mechanism should it wanted to embark on a meaningful development-related action. It was important to demonstrate that WIPO was a development partner of all Member States, including developing countries. It had become increasingly imperative that the Member States of WIPO devised a method by which WIPO could play a role in addressing and reversing the challenges of brain drain. WIPO also had to be institutionally and legally prepared to facilitate technology transfer and support small and medium-sized enterprises (SMEs) in African countries, so that WIPO could help these countries achieve the Millennium Development Goals. In a way, the PCDA was attempting to inject a significant dose of reform into the substantive work of WIPO. The successful outcome of that session aimed at the PCDA in general. They had the ability to transform the Organization into a development agency. The Delegation believed that it was in the interest of all Member States, and as such they had to allow that process to succeed. Regarding the measure of work for that session, the Delegation believed that the proposal put forward by the Delegation of Algeria was the right approach to follow.

26. The Delegation of Iran (Islamic Republic of) supported the statement made by the Delegation of Argentina, on behalf of the “Group of Friends of Development”, as well as the statement made by the Delegation of Bangladesh on behalf of the Asian Group. It expressed its appreciation for the work of the Secretariat and of the Director General of WIPO in the area of IP and development. The Delegation thanked Ambassador Manalo for his excellent work, which it believed should form the basis of deliberation of the PCDA meeting that week. The Delegation

also believed that Ambassador Manalo had fulfilled the General Assembly's mandate and so the PCDA would be able to focus better on its work. In that respect, the Delegation was favorable for a cluster-by cluster rather than a proposal-by proposal approach. The Delegation stated that the PCDA needed to allocate time in such a manner, so as to cover all clusters within the timeframe agreed upon in the General Assembly.

27. The Delegation of Indonesia associated itself with the statement made by the Delegation of Bangladesh on behalf of the Asian Group, and reiterated its support for the mainstreaming of the Development Agenda in WIPO. In order to be effective, IP should be dealt at different levels of development in Member States. The 'one size fits all' approach should be applied only if proved effective. It would also prevent developing countries from obtaining the benefit of the IP system, it added. Two important ways of assisting developing countries in the field of IP would be technical assistance and capacity building. The Delegation was of the view that there should be a system that would allow continuous evaluation and assessment of those activities. That evaluation would provide WIPO with valuable information and benefits, which would be useful for ensuring the effectiveness of the program. The Development Agenda should not be strictly confined to issues of technical assistance. It should also take into account the importance of norm-setting, of the relationship between IP and public interest, the use of technology, the increased participation of stakeholders in WIPO's activities, and the relationship between the work of WIPO and progress that had been achieved in other fora. The Delegation further stated that the PCDA should proceed with the discussion on Annex A which would, among others, encompass the issues that were mentioned. The Delegation thanked Ambassador Manalo for his efforts in preparing all the relevant documents. The Delegation declared that the proposals should be further streamlined to avoid duplication. However, that should also be carried out in a balanced and inclusive manner.

28. The Delegation of Pakistan associated itself with the statement made by the Delegation of Bangladesh, on behalf of the Asian Group. The Delegation also expressed its sincere appreciation to the President of the General Assembly for his hard work in the preparation of the informal working document for the meeting, which provided a good basis for future work at the PCDA. The Delegation stated that it was fully committed to the PCDA mechanism and supported the Chair's role in moving forward by addressing substantive issues. The Delegation believed that the Development Agenda discussions in WIPO formed an important milestone. It added that development was a shared objective of the international community which should not be allowed to be undermined or diluted by the difference of opinion on the ways and means to achieve that objective. The PCDA should have a meaningful and structural discussion on the Development Agenda that could produce concrete results. The Delegation felt that the most important issue at the heart of the Development Agenda was the need to ensure that the IP system provided Member States, at different levels of development, with the necessary policy space to meet their development needs. The Delegation felt that there was room for further rationalizing the proposals in Annex A. The process, however, should be inclusive, balanced, and should take into account the different stages of development of the WIPO Member States. In that regard, proposals contained in all six clusters of Annex A deserved due attention. The Delegation attached particular importance to making technical assistance more effective, demand-driven and development-oriented. The Delegation stated that preserving the existing flexibilities that agreements such as the TRIPS Agreement could provide *inter alia*, considering ways to protect and expand the public domain and policies, and ensuring greater involvement of the stakeholders

in WIPO activities, were very important. The Delegation also wished to underline the importance of transfer of technology for development. The Delegation underlined the three clusters of concern it had referred to during discussions at the previous sessions of the PCDA and at the last WIPO Assembly. Those three areas of concern were, first, the impact of IP on the prices and availability of essential products, such as pharmaceuticals, textbooks and software. Many of those products were often priced out of the reach of consumers. That might not be solely attributed to IP, but WIPO needed to play a role in identifying better ways to afford textbooks, education software and essential drugs. Second, the often constrained efforts of IP on access to technology and a country's ability to innovate and compete also presented another cluster of concern. Third, the persistent misappropriation of traditional knowledge and biological resources of the developing countries. WIPO's on-going work in that area should be conducted expeditiously to reach an international legally-binding instrument incorporating the principles of prior informed consent, equality and benefit sharing. The Delegation declared that there was clearly a need to examine existing IP instruments with a view to furthering their development impact. Equally important was the need to put in place procedures that allowed normative initiatives to be taken within WIPO and to be addressed on the criterion of whether they contributed to the development goals. In that regard, the idea of a development impact assessment merited serious consideration. Such development impact assessment would ensure balanced norm-setting and would greatly facilitate efforts to evolve consensus on norms, which might be urgently required to meet the new challenges. The Delegation had suggested those in the last two sessions of the WIPO Assembly. The Delegation understood that the issue of impact assessment had partially been addressed in the four proposals contained in Annex B. The Delegation, however, felt that assessment should not be a scale for re-prioritizing the Development Agenda and WIPO Secretariat might be requested to undertake impact assessment of the proposals contained in Annex A.

29. The Delegation of Colombia expressed its gratitude for the document that Ambassador Manalo had drawn up. The document complied with those three tasks that had been pointed out in the decision. The Delegation felt that the activities which were outlined had already been carried out by WIPO, but the activities which were *ad hoc* should have a more general mandate, and should be more carefully reviewed. The Delegation was of the opinion that it was a valuable document and the PCDA should continue with it. The Delegation reiterated that the PCDA should focus on Annex A and recalled that there were 40 proposals in it. Some of the columns also made a reference to Annex B, and that could later lead to complications. The Delegation also reiterated that its proposal was to highlight the developmental aspects in the IP system, and that such system had to gain further credibility and encourage promotion of creativity and development. The Delegation believed that excessive protection of IP could lead to abuses, which went against that credibility, and called on Member States to take those elements into account when considering the proposals. That had already been said in the second inter-sessional meeting, that is, to take the development aspect into account separately from industrial property and copyright. That would encourage new creations and, at the same time, enable cultural development and growth of national economy. The Delegation declared that the proposals related to copyright should be more distinctive. The PCDA should have more distinctions between industrial property, copyright and traditional framework of IP. The PCDA should begin to identify how the transfer of technology should be dealt with in the most efficient way in the process of promoting intellectual property rights (IPRs), as well as the generation of social well-being. The transfer of technology should be a focal point for the working group, and the

PCDA should include it as an important element in the management and good practices. The Delegation believed that developing countries also had a certain degree of responsibility.

30. The Delegation of El Salvador endorsed the declaration made by the Delegation of the Barbados in the name of their regional group. The Delegation declared that El Salvador was a country committed to human development. The Delegation stated that it was committed to the Development Agenda and its final objectives and the achievements. The Delegation understood that El Salvador should have the responsibility of its own development. Substantively, in accordance with the mandate provided by the General Assembly, the Delegation committed itself to the technical assistance which would take the PCDA to the common objectives, since the topic of development was an essential component. It should also include human development objectives reflecting the aspirations of all the Member States of the Organization. The Delegation thanked the Secretariat for the preparation of the document produced by Ambassador Manalo.

31. The Delegation of South Africa associated itself with the statements made by the Delegation of Algeria, on behalf of the African Group, and the Delegation of Argentina on behalf of the "Group of Friends of Development". The Delegation also extended its gratitude to Ambassador Manalo for the excellent document he and his team had produced. The implementation of the Development Agenda could convert significantly to the attainment of the Millennium Development Goals, by facilitating the transfer of technology and access to knowledge and information, crucial to developing countries in stimulating innovation and creativity. In order to achieve that objective, it was imperative to implement the obligations to transfer technologies as determined under the TRIPS Agreement. The Delegation supported the establishment of a robust Development Agenda that could bring a greater balance within the present IP System. Although the discussions and negotiations regarding the Development Agenda had not progressed according to the expectation of the Committee, the Delegation was pleased to note that substantial parts of the issues had been covered in that process. In that connection, the process allowed for frank and open discussions on difficult issues. The Delegation declared that the challenge before the PCDA then was to reach agreement on key elements for early implementation. That would require a mixture of technical assistance and substantive issues. The best approach would be to select issues from each cluster, with a view to achieving the required balance. Technical assistance and capacity building were very important for developing countries, and the Delegation recognized that the WIPO Secretariat had worked hard to implement it. The Delegation wished to emphasize that there were strong connections between proposals contained in all clusters. The Delegation also believed that norm-setting, technology transfer, and other broad development issues should be at the forefront of implementation. The Delegation pointed out that those issues were at the core of development focus in all developed countries which had achieved development. It was, therefore, important to preserve the very principles that Member States could learn from developed economies during their own economic development. The recent Singapore Diplomatic Conference, with its resolution on broad development issues, had demonstrated the existence and advantageous use of politics amongst the Member States. In that regard, the Delegation was calling for the institutionalization of the best practices within WIPO in administering legally-bounded international instruments. The Delegation stated that the participation of developing countries should be an integral component of formulating an IP regime that would impact on the development objectives. For example, developing countries should be included in the signatories

to a treaty for IP protection that would likely have an impact on developing countries, such as trademarks, copyright or indigenous knowledge systems. Participation in such treaties would stimulate and encourage developing countries to protect IPRs, as they would see themselves as owners of the IP system. The advantages of a fair and credible IP system would be immeasurable and the Delegation, therefore, strongly encouraged Member States to make progress to achieve that goal.

32. The Delegation of Brazil stated that Ambassador Manalo's matrix provided suggestions on how to streamline proposals that were similar or redundant, and that it constituted an appropriate starting point for the present meeting. It acknowledged the contribution from the International Bureau which had provided information on activities being carried out that could be considered relevant to the Development Agenda process. That useful set of information had been added to Ambassador Manalo's matrix and would be used as a point of reference for discussions. The Delegation said that notwithstanding specific views that different members may have had, Ambassador Manalo's document, *per se*, was a resounding statement on how much had already been achieved by countries engaged in a high profile debate on IP and development. The Delegation stated that a number of initiatives taken by WIPO members and the International Bureau, in response to concerns raised in the Development Agenda, could already be accounted for. It cited, as examples, the establishment of a senior post and a broad structure for IP and Development within the Secretariat, colloquia on such issues as IP flexibilities (there had been one on the previous Friday), as well as the Open Forum in February 2006 on the Substantive Patent Law Treaty (SPLT). The Delegation stated that the opening up of WIPO committees and events to greater participation from civil society groups broadened the range of stakeholders allowed to influence the debate, in addition to more and more proposals coming from developing countries on substantive issues relevant to the IP normative process. Those proposals touched on issues that were crucial for a more balanced approach to norm-setting. Among them, the Delegation mentioned the protection and promotion of the public domain, broader approaches to enforcement issues that took into account social, economic and development realities of countries, access to knowledge, as well as the balance between protection of private rights and the pursuit of legitimate public interest objectives in developing countries. The Delegation pointed out to another example of past achievements, namely the Director General's outline for the 2008/09 Program and Budget, which made a welcome distinction between technical assistance on the one hand, and IP and Development on the other – each area, commanding separate program blocks. The Delegation welcomed these developments and wished to stress the on-going and progressive nature of the Development Agenda. The Delegation mentioned its commitment to a balanced debate during the third and fourth sessions of the PCDA, with a view to achieving substantive outcomes for the General Assembly of WIPO in 2007. It exhorted the Committee to capture the agreement of members on the existing sets of proposals to the fullest extent possible, while pointing to a process for follow-up, continued debate and negotiations in the future - especially on those items on which they may be able to reach a consensus. The Delegation concluded by stating that the Development Agenda was not a mechanism for undoing IP but rather a platform for developing countries and other stakeholders to achieve greater ownership of the system, so that their concerns, priorities and realities could help shape it. By making IP more meaningful to a broader constituency worldwide, the Development Agenda would in fact lead to a more effective regime, one that would be better suited to face the challenges of a changing world, as they progressed in the 21st century, through rapidly changing patterns of technological production, innovation, growth and development.

33. The Delegation of Botswana wished to recognize the work of Ambassador Manalo in producing the text which it found useful as a basis for discussions during the present session. The Delegation explained that it firmly associated itself with the statement delivered earlier on by the Delegation of Algeria, speaking on behalf of the African Group. The Delegation attached great importance to the on-going work within the Committee, particularly as it related to one of the core challenges it faced as a nation state – that of development. The Delegation wished to stress what it considered as critical in the short-term, namely: elements of norm-setting, technology transfer, capacity building, and development-oriented technical assistance, among others. The Delegation hoped that streamlining proposals related to these elements into appropriate clusters would help in narrowing down the scope with a view to avoiding unnecessary overlaps. It wished to reiterate its commitment to continue to engage positively towards a positive outcome, not only during that week in question, but also in the future. It believed that failure to conclude work in that Committee during that year was not an option. The Delegation emphasized that in order to work against time to conclude the task which had started two years before, a spirit of cooperation and flexibility had to be maintained. In conclusion, the Delegation reiterated its support for the program put forward by the African Group, based on the text prepared by Ambassador Manalo. It also declared that it would intervene at a later stage on substantive elements of discussion.

34. The Delegation of the Republic of Moldova stated that it did not wish to associate itself with the statement delivered by the Delegation of the Russian Federation, speaking on behalf of their regional group.

35. The Delegation of the Philippines wished to express its support to the Asian Group's statement delivered by the Delegation of Bangladesh on its behalf. The Delegation further wished to convey Ambassador Manalo's sincere thanks to all Member States for their kind words of appreciation and expression of support for his paper as a basis of that Committee's work. It added that Ambassador Manalo was greatly honored to have been able to contribute to moving the PCDA process forward. It also acknowledged the Secretariat's work in undertaking a massive survey of its activities in order to complete the paper. It relayed Ambassador Manalo's hopes that Member States would have a positive recommendation to the General Assembly the following September. The Delegation also hoped that the Chair could harness the broad support given to Ambassador Manalo's paper and use the momentum to take the process to a positive outcome. Finally, the Delegation stated that it was confident that the Committee could achieve a measure of success under the leadership of its Chair and further hoped that Member States were prepared to engage in a serious and meaningful consideration of the proposals.

36. The Delegation of Japan associated itself with the statement made by the Delegation of Italy on behalf of Group B. As one of the countries to have achieved economic development through utilizing IP systems, Japan recognized the importance of IP and development issues. The Delegation stated that Japan had made a voluntary contribution of approximately 2.5 million Swiss francs every year to help economic development, mainly in the Asia-Pacific region. The Japan WIPO Office had been established through these voluntary contributions in Tokyo the previous year, where a collaborative empirical research project on the influence of IP systems and economic development was being conducted by researchers from various countries. The Delegation was expecting that project to clarify the relationship between development and IP.

The Delegation further asserted its conviction that the concept and realization of intellectual creation cycles were essential for economic development through IP. The intellectual creation cycle was a dynamic cycle where IP was created, then protected, and finally exploited. Turning to the PCDA, the Delegation stated that the 40 items in Annex A could generally be considered as a good basis for discussions. The Delegation hoped that the agreed items would be carried out in a timely and appropriate manner. In that context, it noted that the implementation process should be conducted efficiently and effectively in cost and resources, for example, by effectively utilizing activities that had already been undertaken in WIPO. The Delegation called attention to the fact that the unique feature of the Organization was that 90 per cent of the entire income came from users' payment for the use of the PCT, Madrid and Hague systems. It further stated that users' interest should be borne in mind when WIPO's activities were discussed, including in that exercise. Finally, the Delegation thanked Ambassador Manalo and the WIPO Secretariat for their efforts to arrange and prepare documents for the meeting, and hoped that there would be a constructive discussion during that week.

37. The Delegation of the Republic of Korea stated that, as a country that had developed economically thanks to the IP system, it recognized the importance of the PCDA to developing countries and LDCs. According to WIPO, Korea had filed the fourth largest number of PCT applications in 2006. The Delegation explained that that achievement had been made possible due to the active promotion of innovation, sound education policy and systematic enforcement of IPRs. The Delegation stressed that it was willing to share its development experience related to the utilization of the IP system with other Member States. In that context, it hoped that they could reach a tangible and realistic consensus on the Development Agenda during that meeting. On the other hand, recognizing the importance of the Development Agenda, it also hoped that the said Agenda would meet the substantial needs of developing countries and LDCs. In that regard, it was confident that the discussions would be conducted in an efficient manner and with principles. It expressed its willingness to continue to work closely with WIPO and other Member States in assisting further development of developing countries and LDCs.

38. The Delegation of Canada reiterated its commitment to the ideas at the heart of the development agenda and the process by which it would shape how WIPO would respond. The Delegation was encouraged by what it considered as a positive spirit and a willingness to engage more than ever to find a common ground. The Delegation pointed out that its objectives for the week was two-fold: it first hoped to identify where and how they agreed and find a middle ground when they encountered diverging views; and to capture the agreement while preserving the spirit in which all proposals were made. The Delegation noted the support expressed by members for proceeding in a very constructive manner, and it fully endorsed the proposed routes set out by the Chair. It believed that at that stage, each proposal should be examined individually, to ensure that it was given the full consideration it deserved. The Delegation recognized that some other proposals gave rise to questions on how to implement and what the resource implications might be, but it was confident that the meeting would be able to approach those questions at the right time, in a responsible manner, taking such considerations into account. It hoped that the meeting would focus that week on the initial step, the broad brush strokes that could provide direction for the General Assembly.

39. The Delegation of Switzerland associated itself with the statement made by the Delegation of Italy on behalf of Group B. The Delegation reiterated its commitment to the establishment of

a working framework – a framework that would allow the Committee to deal with the various proposals, in order to take the necessary decisions in the interests of WIPO and all of its members. It declared that the working framework had finally emerged after two years of work at the last General Assembly, and it was convinced that 2007 would allow the meeting to fulfill the mandate the Committee had been given. In fact, the Committee could not allow itself once again to go back to the General Assembly in 2007 without specific recommendations. The Delegation thanked Ambassador Manalo for the consultations he had undertaken with the various regional groupings and for an extremely useful working document he had submitted, which would allow the Committee to make progress in considering the various proposals in Annex A at that session, and the proposals in Annex B at the next session, with the purpose of putting the recommendations to the next WIPO General Assembly. The Delegation stated that the indications on the proposals that had common objectives, as contained within the document, would make it possible for the Committee to regroup the proposals in order to give a common response to proposals in a given group. It declared that the information provided by the International Bureau on activities already underway, or scheduled for certain proposals, also gave members some ideas of what was already going on within WIPO, and what could be further improved in the activities on development. The Delegation pointed out that, since the outset of the process, WIPO already had a development agenda. It added that the document prepared by Ambassador Manila and the information provided by the International Bureau constituted an excellent basis for their work, and an excellent basis for allowing the Committee to embark upon the consideration of Annex A. The Delegation was delighted to note that that view was shared within the Committee. It thanked the Delegation of India for organizing an informal meeting in New Delhi earlier on in February. The Delegation explained that that meeting, in which it was able to participate, was extremely interesting and productive. It added that the meeting was extremely valuable in the light of the work they were doing that week. The New Delhi Meeting allowed participants to have an open discussion on the various groups of proposals, and to try to move on to streamline Annex A proposals, so that the proposals with the same purpose would all be together, which would eliminate duplication. The Meeting also enabled them to identify which proposals were already being implemented, which was in fact exactly what the Committee was asked to do by the General Assembly. The Delegation pointed out that the exercise undertaken in India was very useful and profitable and it showed all that they could indeed make significant progress at that PCDA meeting. The Delegation joined other delegations which had noted the value of that kind of work, which was fully in line with the mandate of the Committee.

40. The Delegation of the United States of America supported the statement made by the Delegation of Italy on behalf of Group B. The Delegation believed that the documents provided would facilitate the consideration of proposals contained in Annex A of the General Assembly's decision. The Delegation pointed out that for more than two years, there had been an extensive debate on new proposals relating to WIPO's development work. It believed that they had an excellent opportunity to achieve consensus on improvements to WIPO's development activities that were supported by all. The Delegation believed that improvements had already been achieved and that the debates, including the 500-page plus document detailing WIPO's development efforts that was prepared by the International Bureau for the 2005 Assemblies, had publicized WIPO's current and past activities with regard to development. The Delegation pointed out that the document demonstrated that WIPO development assistance was indeed demand-driven and had grown significantly over the years. It stated that the Committee had agreed on the strengthening of Member States oversight of WIPO, an improved budgetary

process, and enhanced transparency, that would facilitate the functioning of WIPO in all areas. The Delegation explained that the Committee had the opportunity to achieve more. The Delegation pointed out that it had supported many general principles such as: WIPO should be member-driven; WIPO services and assistance should be demand-driven; WIPO should demonstrate good governance, transparency and accountability in all its activities. The Delegation stated that it could not, however, support proposals that would, for example, mandate WIPO to ensure that full flexibility existing in international agreements were taken full advantage of, rather than the existing optional approach, or proposals that would mandate that certain preordained provisions were included in all WIPO treaties, without regard to their appropriateness. The Delegation said that it had concerns about proposals that would require WIPO to ensure certain things. Neither the United Nations (UN) nor its agencies were typically tasked with ensuring anything, as that was the sovereign responsibility of each Member State. The Delegation had indicated its position on the 111 proposals and pointed out that it had signaled its support for newest proposals, including those general principles and actionable items. The Delegation stated that the 2006 General Assembly had tasked the Committee to bring back to the 2007 General Assembly agreed proposals with recommendations for action. The Delegation pointed out that several speakers had referred to the development agenda, as if it had already been adopted. In fact, the Committee was discussing numerous proposals relating to an improved development agenda for WIPO, not “The Development Agenda”. The Delegation believed that that was an important distinction in acknowledging WIPO’s on-going development work. It would continue to constructively engage in the discussions and seek to achieve positive realistic results.

41. The Delegation of Sudan stated that for the lack of time it would deposit its intervention in writing to the Secretariat.

42. The Delegation of Jordan thanked the Secretariat of WIPO for its efforts and excellent work. It stated that it would continue to cooperate with the Chair so that the Committee could march forward and achieve progress. It also stated that several Member States were in need of the assistance provided by WIPO to the countries, and so urged the Committee to cooperate together in order to reach positive results.

43. The Delegation of the African Union congratulated Ambassador Manalo on the excellent quality of the documents submitted for the PCDA and stated that it would certainly guarantee success in their work. The Delegation also endorsed the statements made by the African Delegations, in particular those of the Delegation of Algeria, as coordinator of the African Group, and expressed concern about the success of work of the Committee, given that questions on IP development were very close to the hearts of its Delegation. It recognized the fundamental role played by IP for the development of Africa and made mention of the 8th Summit held in January 2007 in Addis Ababa, Ethiopia, where heads of States and governments of African countries had decided to create a Pan African Organization on IP. The structure of that new Pan African Union would be based on that of OAPI and ARIPO in order to ensure future development of IP in Africa. The Delegation reiterated that the conclusion of the Development Agenda within WIPO would continue to favor and promote the development of IP within Africa, and that the new Pan African IP Organization which had just come into being could also work towards that end. The Delegation believed that a development agenda should have, as its primary goal, free sharing of the benefits and wealth generated by IP amongst all countries and all

intellectual property Offices (IPOs) of the world. It also believed that the work done by Ambassador Manalo, in consultation with the regional groups, was a good basis to take the work of the PCDA forward. The Delegation stated that streamlining the proposals was useful and would allow for faster progress in future, due to the fact that some proposals were concrete, whereas others were declaratory in nature. The Delegation also attached great importance to all the clusters within which the proposals were grouped, and believed that a holistic approach should be adopted in discussions on all proposals, whether they related to capacity building, technical assistance, technology transfer or standard evaluation activities or institution aspects, since they were all equally important. The Delegation wished the meeting every success and stated that it was of fundamental importance that the PCDA reached an agreement on the working methods in order to come to an immediate consensus. It concluded by stating that its Delegation, and Africa in general, expected a lot from that meeting and that they were counting on results being achieved by the work of the PCDA, so that their people could benefit from sustainable development and enjoy the fruits of IP.

44. The Delegation of Nigeria commended the Director General of WIPO, Dr. Kamil Idris, and the entire Secretariat for their continued cooperation with Member States and the timely preparation of documents to assist in the deliberations. The Delegation also commended WIPO for the valuable work that it has been doing over the years with respect to cooperation for development, particularly in developing countries and LDCs. The Delegation complimented Ambassador Manalo for providing Member States with a comprehensive document on the various clusters, in conformity with the mandate of the General Assembly. The Delegation believed that the Chair's document was a rational basis for work in the 2007 sessions of the PCDA and that Ambassador Manalo had faithfully endeavored to meet the mandate given to him by Member States at the General Assembly of 2006. It was also instructive to note that the method of work proposed and adopted had been presented by the African Group. The Delegation fully associated itself with the statement made on behalf of the African Group by the Delegation of Algeria, and supported the work program proposed for that session of the PCDA. The Chair's remark the previous day on international meetings getting tied down on matters of procedure had also been expressed by several ambassadors in Geneva, in connection with the apparent lack of progress in several processes in WIPO, including the PCDA process. The Delegation fully shared that view and believed that the current meeting was the time for action regarding the establishment of a development agenda in WIPO. The Delegation believed that Member States had reached a very critical stage in the negotiation on the development agenda process after two years of discussions. New and innovative strategies needed to carry the process forward towards its logical outcome. Therefore, opportunities for ensuring the fruition of the development process should be explored and utilized. It was in that spirit that Member States had noted the recent international meeting held in New Delhi, India, which had provided the possibility for making some progress towards addressing the 40 proposals contained in Annex A of the Chair's document. It was the Delegation's view that the entire list of 111 proposals could not be implemented as a package. Therefore, a rational and acceptable modality for the adoption should be considered. The long-term objective of the PCDA was to establish a mainstream development agenda in WIPO on a permanent and sustained basis. For that reason, the Delegation called upon all Member States to immediately agree on a set of proposals out of the 40 items in Annex A, and to submit appropriate recommendations on their implementation to the next WIPO General Assembly. The same should be done with the proposals in Annex B at the next session of the PCDA. The Delegation believed that Member States had not embarked upon an impossible task

or set themselves an unattainable objective when they had decided to initiate the development agenda debate. Rather, they had done so with the hope and certainty that they would achieve the desired goals and create a new sense of optimism and purpose in that unique international organization. To fail in this task after so much time, effort and resources would be a capital indictment of the will and determination of all Member States. The Delegation could not, therefore, afford to fail in that endeavor. In order to succeed, the Delegation proposed the following courses of action: (a) discuss proposals according to clusters and allocate time to each cluster as proposed by the Delegation of Algeria on behalf of the African Group; (b) study the comments of the Secretariat in column 3, as provided against each proposal in Annexes A and B, and determine if those explanations met Member States' expectations and concurrence; (c) if Member States found the comments of the Secretariat agreeable, they should decide to forgo discussing that proposal and move forward; (d) proposals that received the widest support and acceptance from all the clusters should be noted immediately and the Secretariat should be requested to deal with them appropriately by way of providing advice on modalities of their implementation on a short, medium and long-term basis; and (e) proposals upon which no consensus could be reached, or proved difficult to agree upon, could be held in abeyance while the Secretariat would be asked to conduct studies on them in a neutral, unbiased and objective manner, in order to avail Member States of positions for their future consideration. The Delegation referred to the intervention made the previous day by the Delegation of the African Union that reported that the African Heads of State and Government had adopted a decision at their previous summit meeting to establish a new organization on IP in Africa. The Delegation welcomed that announcement and called upon WIPO to incorporate programs of assistance to enable that newly established body to takeoff successfully and function efficiently. That could actually be realized under some of the proposals connected to the provision of technical assistance and institutional mandates, it added.

45. The Delegation of India stated that the PCDA needed to move on to the contents of the development agenda, rather than spending more time on the process on which the PCDA had not been able to develop a consensus. The Delegation pointed out to Ambassador Manalo's text, a matrix which was a very useful basis for the PCDA to move forward. The Delegation stated that Member States were no longer living in a unipolar and bipolar world. They were in a multipolar, world where the Organisation for Economic Co-operation and Development (OECD) countries and the developed countries needed the developing countries as never before. The process of globalization had highlighted that if the world community had to go forward, the two had to progress together. The developing countries were no longer mere suppliers of primary goods. They had become a big market and the source of a skill sets which the developed countries needed. The Delegation stated that it would be in everybody's interest that the process at WIPO acquired a development content like never before. Developments in countries like China had shown that the prosperity of the United States of America, for instance, which was ensuring that the goods in their country were made available at affordable cost, was to a large extent possible because of the developments and the huge trade that the United States of America had with China. This was an increasing trend. The Delegation did not think that any country today could be immune to development in another part of the world. It was in that context that the Delegation greatly appreciated the understanding countries from Group B had been showing on moving forward with the development agenda. The Delegation was grateful to Group B and pleased that in the informal gathering held in New Delhi, earlier in February 2007, a great deal of understanding had been shown by Group B countries and countries from the developing nations.

The Delegation found that there was huge convergence in talking about the development agenda and taking the issues forward. The Delegation emphasized that issues related to IP would start getting finalized in other fora rather than in WIPO. The fear of trade-related issues being discussed and finalized outside WIPO, for example in the WTO, the United Nations Educational, Scientific and Cultural Organization (UNESCO), etc., were real. In that context, the Delegation once again urged all Member States to move forward. The PCDA had been getting extension year after year but if progress was not there, it would be very difficult to justify the process going forward. The Delegation suggested accepting one proposal and start discussing so that the current PCDA could make real progress, otherwise, patience of Member States would be running out. The Delegation thanked the International Bureau for the considerable efforts it had made to achieve a successful meeting in New Delhi.

46. The Delegation of Tunisia recognized the personal contribution of the Chairman of the General Assembly. The Delegation declared that it was ready to listen to constructive proposals from other Member States and to support the flexible approach by the African Group and called on the PCDA to positively consider the proposals on actions for development of that Group. The Delegation thanked WIPO for the activities it undertook for development. It also stated that some of those activities were implemented on an *ad hoc* basis and that they should be institutionalized and made permanent to make them more efficient. The Delegation further stated that the document prepared by the Chairman of the General Assembly had merit since it mapped out the way forward, brought Member States closer together and the PCDA closer its the final objective. The proposals examined that day pointed out an ambitious plan of action. The PCDA should try to summarize them so as to clearly reflect the aspirations of the developing countries. The Delegation declared that the PCDA should ensure that no proposal was overlooked. All the groups had submitted proposals to the examination of the Committee. The Delegation pointed out that it was of great importance in drawing up a development agenda. The question of exceptions and limitations were also extremely important and should be dealt with great interest because those were indispensable tools for the socio-economic and technological development of countries and would give the necessary tools to the developing countries. The Delegation wished the Committee success in its work and in achieving results that would meet up to the expectations.

47. The Representative of the International Federation of Reproduction Rights Organizations (IFRRO), representing writers, lithio creators and publishers of printed and electronic material, and their collective management organizations known as Reproduction Rights Organizations (RROs), declared that it had incorporated the development dimension into its activities and cooperated with WIPO and the Member States on that notion at their request. The Representative recognized the crucial role of knowledge and information which put importance of the availability of books and other written materials throughout the world. The term “knowledge-based economy” was frequently used in the PCDA meetings. The existence of national material written and published for the local needs of a country was important from a cultural diversity viewpoint. The development of a local book culture presupposed a favorable national market that was free from undue competition in the form of piracy and unauthorized photocopying. A good supply chain, distribution outlets and libraries were essentially bringing materials to all corners of a country. Access to foreign material on affordable terms and conditions was equally important. To ensure that, foreign right-holders needed to be confident that a country had a functioning IP system. Therefore, IFRRO and its members, the International

Federation of Publishers Association and the European Writers Congress, wished to cooperate with the Member States of WIPO. The Representative understood the strategic importance of books for a sustainable culture. Public-private partnerships were needed to achieve that goal and the Delegation assured that it was ready to do its part. Respect for local right-holders and the industry was the only way to be an active participant in the information society and not one of the have-nots. The Representative invited the PCDA to think about the issue when formulating future policies in norm-setting and concrete actions.

48. The Representative of the Library Copyright Alliance (LCA), a coalition of the five major library associations of the United States of America - namely the American Association of Law Libraries, the American Library Association, the Association of Research Libraries, the Medical Library Association and the Special Libraries Association - wished to make four points relating directly to how that body could refine and implement the proposals under consideration for facilitating a development agenda. In order to do so, the Representative first wished to state three major issues: first, libraries were founded on the balance of promoting both the rights of creators and the needs of users who require access to information, in relation to proposals 19, 20, 21 and 40. Second, the core principle was that a robust and growing public domain provided new opportunities for creativity, research and scholarship, as referred in proposals 17 and 32. Last, effective library programs and services were a critical means of advancing knowledge and bringing individuals into the knowledge economy, referred to in proposal 10. The Representative pointed out that libraries and educational institutions could, and should, be a vital part of the strategies of WIPO and of its Member States in promoting IP law, referring to proposals 6 and 7. The Representative appreciated the opportunity to participate in the deliberations, as discussed in proposal 38. The Representative was encouraged by the commitment that Member States had expressed so eloquently and hoped that the PCDA would make real progress in the current and June PCDA meetings with Annex B proposals. The Representative invited Member States to take a copy of the library-related principles on the table outside the room.

49. The Representative of the Electronic Information for Libraries and International Federation of Libraries Associations and Institutions (IFRO) made a joint statement with the World Library, another library association working in developing countries. The Representative pointed out that proposals 7 and 32 in cluster A were very important for them. Concerning proposal 17, the Representative considered that WIPO should be much more proactive for the protection of the common public domain and the Representative believed that that was actionable. That should be done by adopting paragraph 32 and also Chile's proposal about a study on the advantages of the public domain. The Representative suggested the need for more active participation by civil society and civil organizations in WIPO's work. Referring to proposal 38, the Representative suggested having greater cooperation in addition to informal meetings in Geneva. The Representative stated that paragraph 37 should mean that civil organizations should work together with norm-setting institutions and should bring out joint publications and have joint meetings. WIPO should organize activities directly relating to libraries and should consult on that with the international community. The Asian symposium held in Laos, Cambodia, with WIPO was one example. The Representative representing library associations accredited to WIPO played an active part and wished to work actively in the PCDA. The Representative recalled that it had suggested regional seminars on the subject, a practical way of implementing proposal 38, but that it had not been taken into consideration.

50. The Representative of the Institute for Policy Innovation (IPI), a public policy research institute from Dallas, Texas, United States of America, said that he had attended the last two years' of meetings related to the proposed development agenda. The question of whether WIPO should adopt a development agenda, and if so what such an agenda should look like, was beginning the third year of deliberations. IPI mentioned that WIPO, as a specialized agency, had a narrowly-defined mission to promote the protection of IP around the world, and to administer certain treaties related to IP, and declared that the success of WIPO thus far in its history was directly related to the fact that it had managed to maintain a narrowly-defined mission. IPI recalled that the majority of WIPO's funds came in the form of fees paid by those who either owned or wished to own IP. Many of the development agenda proposals before the Member States were constructive, and after two years of discussions, it was time to move forward without further delay on the proposals which could garner consensus, it added. For IPI, some of the development agenda proposals would have the effect, or could have the effect, of diverting WIPO from its core mission, and the proposals in question should be rejected, or at least set aside, in order for consensus to move forward. In particular, proposal 17 in Annex A, on WIPO considering the protection of the public domain within its normative processes, was mentioned. IPI believed the vital importance of a rich and growing public domain was widely recognized and, as indicated in the referred document, WIPO was already giving the public domain adequate consideration in its processes. IPI pointed out that there was no evidence that the public domain was in any danger or threat, which called for an addition to WIPO's mandate and, as such, the proposal was being used by opponents of big IP to raise fear, uncertainty, and doubt about the virtue of IP. IPI added that should WIPO adopt the principle that public domain should become a major factor in WIPO's norm-setting, each time WIPO would attempt to set a norm, it would be opposed on the grounds that it would threaten the public domain. Threats to the public domain would be used to defeat technical protection measures, protection for webcasters, protection for broadcasters and other means of battling piracy. IPI mentioned that it was simply one example of how some of the proposals could have the effect, if not the intent, of sidetracking WIPO from its core mission and expressed IPI's concern that should WIPO stray too far from its mission and mandate, the Organization might become a less useful and functioning organization. IPI urged WIPO Member States to consider carefully how many tangential additions they would make to WIPO's mandate. It mentioned that its concern about the contents of the development agenda stemmed from its belief of the critically important nature of what Director General Idris had called "IP as a Power Tool for Development" and, quoting Kofi Annan, said that: "growing the small and large businesses able to create jobs and income is part of the means toward accomplishing the Millennium Development Goals." To conclude, IPI declared that the developing world of today was full of people in developing countries who were first time patent holders, entrepreneurs, artists, writers and creators who were creating wealth, building businesses, hiring people and paying taxes based on IP, and that that was the development that should be encouraged and should continue being WIPO's core mandate.

51. The Representative of the Third World Network (TWN) declared that the WIPO Development Agenda meant different things to different people and mentioned that, to some, the WIPO Development Agenda was only about providing sufficient technical assistance to implement the standards set in WIPO, without minding whether the standards were appropriate or not for developing countries. However, for others, the WIPO Development Agenda was about changing the current prevailing thinking about IP and its relationship to development, and that, as mentioned by the Delegation of Pakistan the day before, it was about recognizing that IP did

affect access to essential items, such as medicines, education materials and technology, which were all vital tools for development. TWN highlighted that developing countries could not be expected to provide the same level of IP protection as developed countries, and that WIPO could not simply be an organization that set more laws and higher IP standards, or a body that worked on harmonization of IP laws and that provided technical assistance to developing countries to implement the referred standards. TWN believed that WIPO's Development Agenda was about setting standards in WIPO, only after thorough development impact assessment, with standards reflecting sufficiently the realities of developing countries, and about ensuring that more pro-competitive measures and mechanisms were promoted as increasingly IPRs were being used by certain countries as a protectionist measure to delay, prevent competition, or to block trade. On that point, TWN wished to inform the assembly about a recent case where Monsanto, a biotechnology multinational, had filed law suits in several European countries against the imports of soya milk bio-products from Argentina, on the grounds that the soya milk bio-products were produced in Argentina by farmers who had not paid sufficient royalties, or who had not paid royalties at all. TWN pointed out that the Development Agenda was also about acknowledging that the exclusive rights approach of the conventional IP system was just one form of incentive and that there were other models that could promote innovation, without the monopolistic feature of an IP system. It believed that WIPO's Development Agenda was about understanding that the predominant theme in WIPO should not be about inculcating an IP culture that would suggest a blind quest for more IP protection, as it was mentioned in many WIPO documents and publications, but should be about a culture that promoted development and balanced public and private interest. Setting a new thinking paradigm would take time, but some progress had been made in this respect. TWN concluded by urging the Chair to guide the discussions to come up with concrete proposals that truly reflected the core of the Development Agenda proposed by the "Group of Friends of Development".

52. The Representative of the Electronic Frontier Foundation (EFF) declared that in order to follow the suggestion of the Chair, EFF would reserve its substantive comments for discussions on each cluster, and therefore its opening statement would be brief. EFF joined the sentiment of many Member States in supporting Ambassador Manalo's document to be the basis for the discussions. On the matter regarding the distinction between actionable items and the ones designated as general statements or principles, EFF encouraged Member States to view the latter category with the generosity of spirit with which they had been submitted, and hoped that Member States would work together to find how a statement or principle could be translated into actionable language, in order to preserve the intent behind its submission. Considering a full and comprehensive set of concrete proposals would strengthen the institutional capacity of WIPO to meet the needs of its Member States.

53. The Representative of Consumers International (CI) stated that WIPO was struggling to define and implement a Development Agenda, and that one aspect of said Agenda should be the protection of consumer interests. CI asked the Delegations to reflect on the problems facing people who lacked access to affordable medicines. CI questioned what had been done by WIPO to address the needs of the poor more than five years after the Doha Declaration on TRIPS and public health, and declared that it was not aware of any WIPO committee which had spent a single day to examine how the 2001 Doha Declaration had been implemented. CI was not aware either of any WIPO publications providing accessible information on how countries had implemented TRIPS flexibilities in the area of public health, nor of any studies undertaken by

WIPO assessing the impact of the use of compulsory licensing on the pricing of or access to medicines. While press reports on the use of compulsory licensing were often filled with factual errors when describing the nature of the TRIPS Agreement, WIPO had been silent and had failed to educate, when education would benefit consumers rather than right-owner interests. CI called the assembly to reflect upon the problems on access to knowledge, and recalled that since the Development Agenda proposals were first submitted in 2004, WIPO had held countless meetings on a treaty for broadcasting organizations. CI believed that the mentioned treaty was seeking a rationale and that there was no evidence that it was needed, because it created rather than solved problems. WIPO had only given brief attention to the proposals made by Chile and other WIPO Members to consider the treaty on minimum limitations and exceptions for education, libraries and the handicapped, and WIPO had no publications providing information on the success or failure of the Berne Appendix. CI concluded by stating that WIPO's work should not only be about programs to promote and advertise the benefits of strong IPRs, but that its work should also contain practical and useful programs to protect consumers, particularly those that were poor.

54. The Representative of the Knowledge Ecology International (KEI) thanked the PCDA for approving its accreditation and stated that it currently had offices in Geneva, London and Washington, D.C., and that the consumer project on technology known as CPTECH was supported by KEI. KEI wished to focus its comments on the provisions in Annex A, which could be read as a fairly standard endorsement of WIPO's efforts to extend and promote the uses of patent and copyright protections in developing countries, measures which were hardly new for this body. KEI declared that, like in a wedding, WIPO needed something old and also something new, and that it was recognized by a growing number of academic experts, business, and NGOs that IP policy was complex and that excessive levels of IP protection harmed both innovation and development. It was now known that patents presented barriers to both research and development (R&D) and access to medicines, and also that over-reaching copyright and related rights could stifle the development of the Internet. KEI stated that new ways of sharing information over the Internet were rapidly expanding education and development opportunities, and creating new business opportunities for those who understood the new knowledge ecosystems. KEI recalled the *Time Magazine's* recent decision to declare "you" as the "Person of the Year", which was a recognition that something new was happening. KEI believed that WIPO needed to be part of the new way of thinking, and needed to change and begin to acknowledge respect and exploit the new opportunities being faced by all. KEI reiterated its will to work with the PCDA to ensure that the development agenda was not simply a repackaging of the old ideas and mission, but also the new ideas and the modern mission. It pointed out that for this to happen, WIPO would need to have a fresh commitment to explore the new business models and topics, such as creating values, value from open standards, expanding access to scholarly and scientific research, the sharing and re-proposing of information in new knowledge communities, knowledge as a shared asset and knowledge creation as collaboration rather than as a commodity, and using prizes rather than prices to stimulate drug development.

55. The Representative of the International Chamber of Commerce (ICC) recalled that the ICC had organized seminars in Geneva in 2005 and 2006 in the context of WIPO's meetings on the proposal for a WIPO Development Agenda, and that at the seminars representatives from creative and innovative businesses from different developing countries had shared their practical experiences from using the IP system for the benefit of their businesses and their countries. ICC

declared that it was continuing to work along these lines and was now planning a further seminar intended to be held in Geneva the following spring.

56. The Chair recalled that the day before he had outlined what had been agreed in his discussions with the coordinators and that in his closing comments, he had asked them to consider how they could combine the ideas in column 1 in Ambassador Manalo's document with a view to, first, narrowing down the proposals in cluster A, and then to move in the afternoon to cluster B. The Chair referred to the refinements that the Delegation of Nigeria had introduced and declared that there was no significant variation from the theme that he put forward based on his discussions with the coordinators, except that the Delegation of Nigeria had made some suggestions about asking the Secretariat to do certain things which he did not wish to endorse at that stage. The Chair explained that what had been agreed upon with the coordinators and outlined briefly the previous day was based on their interventions, and he added that with the help of the Secretariat he would prepare a proposal to further consolidate Annex A. The Chair mentioned that hopefully the task would be achieved by the following Thursday. Thereafter, he would take the further consolidated proposal to the regional coordinators and the Delegations that had made the proposals in the first place for a first examination in the smaller group. That could then be considered by the plenary.

57. The Delegation of Brazil considered that the different proposals in Annex A could be divided into three different categories. The first category of proposals dealt with funding, with issues of financial resources for technical assistance, trust funds and other types of funding; the second category of proposals referred to the relationship between technical assistance and the private sector, and the desire to increase the amount of support for that; and the third category contained proposals requesting WIPO's technical assistance to be more demand-driven and tailor-made to cater to the development dimension, as set forth by the proponents of the development agenda. The Delegation believed that proposal 1 dealt with the issue of timeframes for completion, development-oriented and demand-driven, and stated that in general all the proposals attempted to make the technical assistance provided by WIPO more transparent to members and to the outside public in general. The Delegation requested more transparency, accountability and, perhaps, more information on the nature of technical assistance. It added that it was a sensitive issue and had become more so, because the technical assistance provided in the area of IP often lead to advice on legal solutions that countries might take, especially developing countries, and therefore it was important to know what kind of advice was being provided to different developing countries. The Delegation recalled that technical assistance should be programmed yearly and added that Member States should have an opportunity to express an opinion and adequate information on the nature of assistance. The Delegation declared its support of all the issues related to transparency and accountability. It was aware that WIPO assistance was usually based on requests from members but called for the information on the nature of assistance to be provided and shared with the Member States more systematically and to a fuller extent. The Delegation accepted Ambassador Manalo's document as a basis for discussion and agreed with his indication that proposal 12 in Annex B was related to proposal 1, but stated that proposal B3 was not related to proposal 1 from Annex A. Regarding proposals 2, 3, 4, 5, 6, 7, 8, 9 and 10, the Delegation indicated that they were related to financing and donor funding issues, to provide increased assistance to WIPO. There were a couple of proposals related to the idea of establishing a WIPO private sector partnership program for technical assistance involving the creation of a database and a WIPO partnership office within the structure

of the International Bureau. The Delegation did not support the mentioned proposals as presented and, as it had expressed on several occasions, the reason was that it believed it was contrary to the whole idea of making technical assistance more member-driven. The Delegation stated that it would not be supportive of the referred proposals, unless there were adequate safeguards and mechanisms for Member States to adequately control and monitor them. The Delegation called for the redrafting or better framing of the proposals, in order to indicate what were the safeguards to allow WIPO Member States to control, monitor and supervise the technical assistance mentioned. Regarding the issue of donor funding and trust funds, it wished to know what were the safeguards on such technical assistance, in order to ensure that it was also member-driven. For example, the Delegation had learnt from the Delegation of Japan that Japan was providing increased resources for funding through trust funds and different WIPO development assistance activities to developing countries in Asia. The Delegation wished to have adequate information as to the nature of the referred technical assistance, what kind of legal advice was being given to the countries, who were the recipients of those programs, and it proposed to debate on that issue with WIPO Member States in a transparent and open fashion. The Delegation greatly supported proposals 11, 12, 13, 14, 15 and 16, which it considered to be related to several very fundamental questions which had been presented and elaborated on by the “Group of Friends of Development”. It noted that taking into account different levels of development was an element which appeared on several of the proposals and added that, although the Secretariat had presented some comments which addressed those issues partially, some comments were not quite along the lines of what was intended by the proposals. The Delegation pointed out, however, that it would take WIPO’s comments merely as background information, as points of reference, in some cases to indicate how the different proposals could be action-oriented or actionable. The Delegation also mentioned that in different proposals WIPO had referred to some initiatives coming from the Member States themselves and highlighted that it was interesting and relevant, as it showed how Member States had pushed ahead with the Development Agenda issues by making their own proposals in the different relevant bodies of the Organization. The Delegation recognized the possibility of further streamlining and merging the number of proposals, even the proposals that it supported, such as proposal 14, to make publicly available the roster for consultants for technical assistance with other proposals that referred to the need for transparency and for WIPO to be member-driven. The Delegation emphasized the issue of ensuring that technical assistance staff and consultants were fully independent. Avoiding conflict of interest was also related to transparency, accountability and independence when providing technical assistance. Regarding the issue of providing technical cooperation to developing countries at their request, the Delegation stated that the mechanisms for request could be improved. It mentioned that if there was a roster of consultants publicly available and known beforehand, and a mechanism by which countries could indicate their own nationals as consultants, it would allow the use of more developing countries nationals as consultants in other developing countries. The Delegation indicated that, as far as it was aware, most consultants came either from the WIPO International Bureau or from developed countries. Finally, the Delegation declared that it would be interesting to have the demands and requests from countries being published in a publicly available webpage in order to have transparency and also to allow different governments to perhaps make an offer for technical assistance. The Delegation concluded by mentioning that it was necessary to open up the diversity, availability and sourcing of technical assistance as not being a process only mediated internally by the WIPO Secretariat, but a process that would involve Member States as well. The requests being published on a publicly available webpage for transparency, enabling different Governments to make an offer

for technical assistance so they could also participate and engage in that process, which would not just be mediated internally by the WIPO Secretariat but would go beyond that and involve Member States as well. For those reasons, they needed information to be readily available to further discuss the mechanisms under which that assistance would work. Regarding the issue of some forward linkages to Annex B in relation to proposal 5, the Delegation of Brazil did not share the view that proposal B2 was similar to what was contained in proposal 5 of Annex A. Proposal B2 was broader since it referred to the issue of innovation and funding of scientific research and development. Not being limited to SMEs, the Delegation could not therefore support that indication. The Delegation also explained that its comments on proposal 9 were extended to number 65 of Annex B. The same comments that had been made, and the same concerns that had been expressed with that partnership program database, were extended to a reference that was made to the same thing in proposal number 65 of Annex B. Regarding the reference to Annex B65 that was included in proposal 11, it believed it was not an adequate cross linkage because, although it did not support the partnership office, it did support the objectives that were stated in proposal 11 of Annex A. Therefore, the Delegation did not agree with that forward linkage to B65. Finally, the Delegation was generally in agreement with the other suggestions from Ambassador Manalo as to similar proposals and the other forward linkages in some proposals included in Annex B.

58. The Delegation of Algeria thanked the Government of India for the hospitality offered in New Delhi on the occasion of the Meeting. On behalf of the African Group, it declared that it had the same concerns as the Delegation of India and that the document of the Ambassador Manalo was a good basis for discussion. As for proposal 1, the Delegation considered that it could be merged with proposal A12. In fact, that proposal concerned general principles that could be regrouped in one article, starting by the principle of ‘development-oriented’ so as to take into account the priorities and special needs of different levels of development of members. Although it agreed that the Secretariat had done good work and had implemented a lot of activities in that manner, the Delegation believed that such a principle had to be institutionalized as a guidance for the Secretariat in the future activities that would be undertaken. With respect to proposal 2, the African Group expressed its support for the suggested merge of A2, A3 and A8. It also supported increasing the assistance to WIPO through donor finding and by establishing trust funds or voluntary funds. However, beside that proposal, it also wished to keep the current financing through budgetary and extra-budgetary resources. The Delegation considered that such a proposal had to be actionable. Regarding the development agreement between WIPO and private enterprises contemplated in proposal 2, the African Group also wished to include the regional and sub-regional IP organizations of developing countries in such an agreement, in addition to their national offices, in order to enable them to access the specialized database for the purpose of patent search. As for proposal 5, the Delegation declared that such a proposal was actionable and that it should be merged with Annex B2, as a general principle. It stated that it was in favor of proposal 6 and preferred to keep it as it was, because many countries from the African Group had not yet established their national strategy in the field of IPRs. It stated that it was one of the main activities that was undertaken by the Secretariat and that it should be a principle institutionalized in WIPO. The African Group was supportive of proposal 7 and took into account the work that had been done by the Secretariat. Regarding proposal 8, the African Group recalled that it had already proposed to merge it with proposal 2. Regarding proposal 9, it sought additional information from the proponent of the proposal and was still open to discuss it and to explore how it could be reformulated or redrafted, in order to address some of its concerns.

The African Group did not have a strong opposition to proposal 10, but it considered that such a proposal could be divided into two parts. The first part would reflect the principle of having access to economic and cultural knowledge, and the second would seek partners to assist countries to compete more actively in the laws of economics. The Delegation was open-minded on that proposal and was willing to explore how it could be reformulated or redrafted. However, it was not in favor of proposal 10 as drafted. The African Group was not in favor of merging proposals 9 and 11 because both were different. At the end of proposal 11, an example was given from an African point of view, which would be deleted if it was to be considered as a general principle. Although the African Group was supportive of any transparency, it still thought that disclosure of certain information had to be subject to the consent of the Member States. The Secretariat had received different requests from Member States, such as to draft their legislation or to provide some expertise on the question of flexibility, and the African Group believed that those issues were confidential and that the Secretariat should not be allowed to put that information on its website routinely, unless prior consent had been obtained from the country concerned. Regarding proposal 12, the African Group had already proposed to merge it with A1. It was supportive of proposal 13, although some redrafting might be needed. It stated that it was also in favor of merging proposals 13, 14, 15 and 16 with proposal 28. The African Group expressed its readiness to submit a text on which it had already worked on how to merge or redraft the above mentioned proposals.

59. The Delegation of Argentina considered that the cluster on technical assistance could be broken down into three types of proposals: those on funds for technical assistance; those that draw a relationship between technical assistance and private initiatives; and those that say that technical assistance would be Member-driven. It stated that A1 and A12 were clear priorities, as well as 14, 15, and 16.

60. The Delegation of Colombia declared that it supported proposals 1, 5, 12 and 16. Although Ambassador Manalo's document pointed out that proposals 2, 3 and 8 were similar, the Delegation believed that it was not the case. In its view, only proposals 2 and 3 were similar and at that point, it was not in a position to endorse them. Such proposals should have a more general wording, so that these effects were felt in all the developing countries, not just the levels proposed. The Delegation supported proposal 8, as it considered it a non-binding matter which enabled Member States to receive financial support, without feeling any obligations. The Delegation was not in favor of raising the PCT fees to generate such funds and mentioned that for the Colombian inventors, it was almost impossible to reach the national phase because of the very high costs involved. Additionally, it proposed that for the national phase, the PCT fees should be set below the current fees for applications that came from developing countries. The Delegation expressed its support for proposal 4. It also agreed on the suggestion made by the Delegation of Algeria on behalf of the African Group. In order for them to have an effective system for invention patents, their examiners required unlimited access to many specialized databases in many disciplines, including scientific articles. This expense was very high. In the last column of the document of Ambassador Manalo, most of the activities were just related to patent databases, which was not sufficient. The Delegation therefore called for the necessity to improve access with the support of developed countries, in order for both the national and foreign inventors to count on a rapid decision of the public administration regarding the patentability of a product or a process. Regarding proposal 6, the Delegation believed that those activities had already been carried out by WIPO and it wished to express its gratitude to the Secretariat for the support it had

given to Colombia in order to carry out a national strategic plan of IP. The Delegation also supported proposal 7 because it considered that it was the first thing that a developing country should do in order to increase its innovative capacity. Businessmen should realize the importance of positioning a product on the market and so they might be interested in producing an IP culture into something such as business culture, as well as into the innovative sector. On the same lines as the African Group, the Delegation did not consider that proposal 9 was similar to proposal 11 of Annex A, and 65 of Annex B, as suggested by Ambassador Manalo's document. Like the Delegation of Brazil, the Delegation of Colombia did not agree to setting up this office because they wanted to maintain the government nature of WIPO. The establishment of an office with a webpage and a liaison function would open a way through which private companies could put pressure on the activities of WIPO. Although the Delegation supported proposals 13 and 15, it might suggest language for combining both, to establish an ethics code and appropriate procedures for WIPO officials, so as to guarantee transparency in technical assistance activities. It also supported proposal 14 as it was.

61. The Delegation of El Salvador wished to submit its contribution on the proposals of cluster A in the document circulated by Ambassador Manalo. The Delegation declared that it could support proposals 1, 2, and 3, whose wording it deemed very appropriate. As regards to proposals 4 and 5, and in particular proposal 4, the Delegation considered them very closely connected to the interest of its national office. Regarding proposal 5, the Delegation declared that El Salvador had developed a national project with the support of WIPO called "Intellectual Property for SMEs." The Delegation thus considered proposal 5 useful as well. On the other hand, it could not support proposal 6 since, according to the policy of the Government of El Salvador, it was the prerogative of its country to define the relevant strategies and to request from WIPO the relevant support for increasing the capacities that were needed to carry out its work. The Delegation supported proposal 7, which it considered very useful if education and awareness started with children and accompanied them up to university level. It added that this would help avoid future infringements. The Delegation recalled that, about five years ago, the Government of El Salvador had initiated a project called "IP for universities" which was now being extended to the primary and secondary levels. The Delegation also wished to support the position of the African Group as well as that of the Delegation of Colombia on proposals 9 and 10. On proposal 11, the Delegation needed to obtain clarification from its capital city about the wording. The Delegation supported proposal 12 but it considered that, to some extent, it repeated proposal 1. It also believed that proposal 13 was superfluous, based on information that WIPO had already covered that particular issue by means of its own administrative regulations. The Delegation wished to obtain some clarification from the Secretariat on that point, although it considered that matter to have already been dealt with by WIPO. The Delegation was not opposed to proposal 14 and could even support it, although it did not consider it to add anything to the other proposals. While expressing its support to proposal 15, the Delegation acknowledged the impartiality of the coordinator and the persons who covered the area of the regional group, as well as the corresponding division. It viewed proposal 16 as a repetition. Finally, the Delegation also wished to receive clarifications on proposals 17 and 18.

62. The Delegation of Uruguay considered the first proposal in cluster A, according to which technical assistance should be development-oriented and demand-driven, as appropriate and wished to support it. It also supported proposals 13, 14 and 15 in the same cluster.

63. The Delegation of Nigeria stated its support for the position conveyed by the Delegation of Algeria, as regards to proposal 8.

64. The Delegation of Pakistan declared that it attached great importance to making technical assistance more effective, demand-driven and development-oriented. However, Members should also focus on the quality and content of the technical assistance provided by WIPO, including the quality of consultancy. The Delegation stated that it was comfortable with most of the proposals, such as 1, 2 and 3. It also supported the additional suggestion made by the Delegation of Algeria. The same could be said of proposals 5, 6, 7 and 8. As far as proposals 9, 10 and 11 were concerned, the Delegation needed more information, so as to be clear as to the next steps, in particular concerning the establishment of IPOs. Members needed to have more detailed information regarding the scope and the functions of such offices. The Delegation supported proposal 12. Regarding proposals 13, 14 and 15, in view of the information provided by the basic document on the preservation of ethical standards concerning the Secretariat, technical staff and consultants, the Delegation would need to reassess how far members could go in that matter. On proposal 16, the Delegation believed that WIPO should be given a clear mandate from the PCDA to carry out research studies, such as the ones on the interface between IP and competition policy. The details of the two studies commissioned by WIPO on that subject should be made available to Member States, it added. Moreover, if required, WIPO's own expertise to carry out such studies should be strengthened.

65. The Delegation of Angola supported the position outlined by the Delegation of Algeria on behalf of the African Group, which it considered to accurately reflect the needs of the African countries. The Delegation considered the following proposals to be of particular importance: proposal 2 on funding; proposal 3 on the trust fund; proposal 4 on the access to databases by private enterprises; proposal 5 on SMEs; proposal 6 on drawing up national IP strategies that African countries needed; and proposal 11 which dealt with the authorization that Member States should give when requesting technical assistance. The Delegation believed that proposal 11 was extremely important, as the Delegation of Algeria had stated, because each and every member had subject matters of particular interest to it. It was true that WIPO Members had things in common, but they also had topics of particular interest to them. The Delegation believed that if they made their needs known or available to all other countries, they would lose something they might consider confidential for their country.

66. The Delegation of Bangladesh stated that it considered it possible to merge proposals 1 and 12. It also saw a relation with proposal 12 of Annex B. The Delegation could support several proposals, such as 6, 14 and 12. On proposals 9 and 10, it needed some clarification on the background. Several proposals appeared to cover funding in general. Bangladesh an LDC, the Delegation had noted the information provided by the Secretariat particularly with regards to proposal 3. There was nothing specific in the basic document that addressed the needs of LDCs. However, in the context of WIPO norm-setting, and as it had become apparent in Singapore, the special needs of LDCs had been recognized. The Delegation also believed that the LDCs Unit needed to be strengthened within the Secretariat. Therefore, funding was critical to really help LDCs. When the exercise of merging of proposals would start, the Delegation would emphasize the need for a clear reference to a specific funding mechanism for LDCs, so that matter should not go unnoticed. In that context, the Delegation understood that most of WIPO activities for

LDCs were being carried out through extra-budgetary funding. Therefore, the proposal for a trust fund within WIPO to provide specific financial assistance to LDCs was of utmost importance.

67. The Delegation of Italy, speaking on behalf of Group B, declared that it supported, in general, the proposals presented in cluster A of Annex A, including both the declarations of principles as well as the actionable items as within the mandate of WIPO. It added that, pursuant to the General Assembly decision, Group B had been asked to consider these proposals, and therefore it would reserve its comments on any rewording necessary to consolidate or clarify these proposals for the time being.

68. The Delegation of Germany wished to put on record that the EC and its 27 Member States associated themselves with the statement made by Group B. That statement also reflected the results of a discussion which the EC had earlier on that day. It added that not all EC Member States were also members of Group B and, therefore, it believed it would be also important that the EC expressed itself.

69. The Delegation of France supported the statements made by the Delegation of Italy on behalf of Group B, and by the Delegation of Germany on behalf of the EC, and declared that, from a national viewpoint, it wished to underscore the importance it attached to the discussions held that week. The Delegation wished to support all the proposals made in cluster A of Annex A, with a few additional comments. Firstly, the Delegation stressed that column 3 showed that in many cases a certain number of activities - which did not cover perhaps all the suggestions - were already on-going, a fact that should be taken into account, as well as the wording of the proposals. Its main comments concerned items 1, 2, 3, 6, 8, 11, 12, 13, 15 and 16. Its second comment dealt with the database and other Internet sites referred to in proposals 9 and 11. It stated that these were very certainly useful instruments to implement technical assistance activities, but not sufficient in themselves, and that the Delegation wished to flag this point and stress that there should be a balance between supply and demand but that was not the only instrument. Its initial comment concerned proposal 11. In light of what had been said by the African Group and other delegations earlier on that day, it seemed important to be able to preserve some degree of confidentiality when beneficiary countries wanted to benefit from assistance and the thinking processes, not knowing exactly how to formulate or not knowing exactly what sort of assistance they could aspire to, and that the Delegation thought that there should be some degree of confidentiality during this very important phase in technical assistance.

70. The Delegation of the United States of America also supported the statement made by the Delegation of Italy on behalf of Group B. It noted that, as highlighted by the Delegation of France, many of the proposals in cluster A did relate to work that had been on-going in WIPO, and that in line with the proposals made by the African Group, that could facilitate the streamlining of some of the proposals. The Delegation stressed that a few questions had been raised and further clarification sought, regarding its proposal for the establishment of a WIPO Partnership Program. It emphasized that it would be happy to discuss the proposal in greater depth with any interested Delegation. It reminded the assembly that the proposal was premised on the positive role of IP protection in promoting economic development. In order to better explain it, the Delegation wished to use the following as an example: Country A, Patria, after years of serving as a production-only center for foreign film companies, seeks to take steps to establish its own film industry. Patria has produced the preliminary film industry development

plan addressing a wide range of issues, including technology, finance and education, marketing and distribution and IPRs. With respect to IPRs, and after consulting with WIPO, Patria has posted a request for further assistance in developing the IPR aspects of its film development plan and there's good news. The XYZ foundation has expressed an interest in funding that part of the plan. As the example made it clear, the Delegation highlighted that the partnership office contained a number of practical proposals to enhance WIPO's capacity to respond to requests of Member States for technical assistance. The Delegation stated that, among other things, it had noted, as had other participants, that the creation of WIPO's Partnership Program contained an Internet-based tool to facilitate the strategic use of IP assets by developing countries and to maximize WIPO's positive impact on economic, cultural and social development. It brought together all stakeholders to match specific needs with available resources and amplified the developmental impact of development-related IP assistance. It increased the transparency of the development-related IP assistance, avoiding duplication of efforts and helping to focus resources on the specific needs of developing countries. The Delegation then turned to some of the questions raised by other delegations. Some had asked for assurances that the WIPO Partnership Program would be driven by Member States. The Delegation said that because Member States would be making requests for assistance, the very premise of the Partnership Program was to respond to the specific requests of Member States. Another Delegation sought assurances that the program would be able to meet specific regional concerns. The answer was that one of the advantages of using a flexible Internet-based tool was that it could be tailor-made to meet specific requests, whether on a national, regional or sub-regional basis. The Delegation added that those were mere highlights and that it looked forward to discussing the matter further with interested Delegations throughout the week.

71. The Delegation of Australia stated that it looked forward to a productive meeting that week. It endorsed the statement made by Group B. It supported, in principle - acknowledging that there were details to be worked out for the implementation of recommendations - proposals 1, 2, 3, 4, 7 and 8, as well as recommendations 13, 14 and 15, and fully supported recommendations 5, 9, 10, 11, 12, 16 and 6.

72. The Delegation of the Russian Federation declared that the questions touched upon in cluster A were questions of interest and it was certainly worth discussing them further. The Delegation had attempted to focus its attention on the particular points that were identified as being actionable, although it did not object to the general principles that were enunciated within the document. What was of particular interest were the specific proposals 2 to 6, 7, 8, 10 and 11. The Delegation agreed that quite a few proposals could be merged.

73. The Chair stated that the Secretariat wanted to clarify a few issues and invited it to respond to some of the points raised by Member States during the discussions. On the issue of FITs Arrangements, the Secretariat clarified that the activities of the Technical Assistance and Capacity Building Sector were designed to support efforts of developing countries and LDCs to build and strengthen their national capacity to effectively use IP for economic, social and cultural development. These activities covered a wide range of areas, like human resource development, modernization of IP infrastructure and institutions, public-awareness building, formulation of national IP strategy and policy in consonance with national development frameworks. The activities carried out under the FIT Arrangements were usually demand-driven, conducted upon request from Member States, and agreed with the governments, through bilateral discussions and

as the case may be, regional consultations. They were country-specific and undertaken in pursuit of the broad policy objectives for economic development of the concerned countries. The activities were result-oriented and implemented through time-bound national projects, which would contain provisions pertaining, *inter alia*, to their monitoring, reporting and evaluation of results. The Secretariat emphasized that FIT-funded activities were also reported in the context of the WIPO Program and Budget and requested the PCDA to refer to the Proposed Program and Budget for 2006-2007, which under the heading Extra Budgetary Resources, paragraph 50, page 22, gave an account of the activities carried out through the FITs. Table 10 of said document also indicated the financial report pertaining to those activities. As to the specific question relating to the implementation of the FITs, it mentioned that WIPO was currently managing a number of FITs from the following countries: France, Japan, the Republic of Korea, Spain, Sweden, the United States of America, as well as an arrangement involving Italy. Concerning the specific question of Japan, it was highlighted that the FIT/Japan targeted many countries which were members of the UN Economic and Social Commission for Asia and the Pacific, the ESCAP Region, and covered activities, some of which had been already mentioned, such as the promotion of IP awareness, the development of human resources assistance to developing countries, etc. It was emphasized that it did not relate to the question of legal advice mentioned earlier by the Delegation of Brazil, and that FIT/Japan covered over 2.3 million Swiss francs for activities in the field of industrial property and copyright.

74. With regard to the issue raised specifically in respect of cluster A, item 13, which dealt with establishing a code of ethics, the Secretariat clarified that a Code of Conduct for the International Civil Service had existed since 1954. The UN General Assembly had decided to revise this code of Conduct and as a result of that revision - which had taken about three years in consultation with all the agencies part of the common system - the UN General Assembly had adopted in December 2001 the Revised Code of Ethics for the International Civil Service. Being a specialized agency and, therefore, a part of the common system, it had been decided to submit the Revised Code of Ethics to WIPO Member States in 2002 at the WIPO General Assembly for approval and subsequent adoption. In September 2002, WIPO's Coordination Committee, the competent Body, decided to approve and adopt the 2001 Revised Code of Ethics of the International Civil Service and that Code was subsequently integrated into the WIPO Staff Regulations and Staff Rules. As a result, it was now binding on all WIPO staff members, including those who provided technical assistance.

75. On the issue of legislative advice, the Secretariat clarified that it had been providing such advice to WIPO Member States for a long time. After the TRIPS Agreement had entered into force, and in accordance with the bilateral agreements signed with the WTO, the International Bureau had provided assistance on the implementation of the TRIPS obligations and on the WIPO Treaties incorporated by TRIPS. Until 2000, most developing countries were concerned with the timely implementation of their TRIPS obligations, but after the African Group had tabled in the TRIPS Council, the concerns on possible problems of access to pharmaceutical products, as a result of higher IP standards under the TRIPS Agreement, WIPO had increasingly been requested to exercise creative thinking and develop solutions to facilitate the TRIPS implementation, without creating perceived burdens to national industries and consumers. Therefore, since then, the WIPO International Bureau had developed a large range of flexibilities that went much beyond the limited number of flexibilities that were generally identified, namely, compulsory licensing and international exhaustion of patent rights. Those flexibilities went from

patents to trademarks, from industrial designs to undisclosed information including, in particular, protection of test data. They covered straight forward issues such as streamlining administrative mechanisms to implement the TRIPS obligations, as well as complex and sensitive issues such as disclosure requirements in patent applications, and exceptions to rights conferred as regards test data. Legislative assistance on flexibilities had always been granted on a strictly bilateral and confidential basis. There were two reasons for that: on the one hand, as such assistance entailed the interpretation of the TRIPS Agreement, and as the International Bureau did not have the mandate to perform such tasks, that interpretation was made upon specific request by the Member State in question, and the decision to accept it or not was ultimately that of the Member State. On the other hand, such assistance not only covered multilateral provisions, but also bilateral and frequently national provisions, on which members asked for technical advice. The International Bureau continued receiving requests for assistance on flexibilities, mainly because it had been able to maintain a high level of trust and reliability amongst its members. In view of that aspect of confidentiality, WIPO's advice on flexibilities had always been given by the Secretariat and never by external consultants and there were no plans to change that practice.

76. With regard to comments that WIPO programs should be development-oriented and demand-driven, the Secretariat emphasized that these were general principles, which guided all its technical assistance activities. That was not only a general principle for the Secretariat, but an actionable item as WIPO strived to apply these principles in all the technical assistance provided to developing countries and LDCs. On the question of the use of consultants, more than ever before, WIPO was engaging national consultants or regional consultants in an attempt to develop national capacities. In many cases, while preparing for an activity in a specific country, the names of experts, consultants and sometimes even speakers were communicated to the country concerned and the approval by the country concerned was requested. Further, legal advice was never provided by outside experts or consultants, nor funded under the FITs. It was provided only by the Secretariat to ensure objectivity and neutrality and to safeguard its confidential character. On the question that was also raised on making all requests for technical assistance available on the website, the Secretariat's position was clearly reflected by what was indicated by the Delegation of Algeria, representing the African Group position. On the question of FITs, it was stressed that WIPO not only administered the ones referred to earlier, but also administered national trust funds where governments put in money from their own budgets for the implementation of activities within their own boundaries and within their own countries. The Secretariat wished to take the opportunity to thank those countries which had put their own funds for the implementation of activities, for their trust and confidence in WIPO in executing activities on their behalf in their own countries. On the question raised by the Delegation of Bangladesh concerning the financing of the LDCs coming from extra-budgetary sources, it was stressed that the LDCs were covered by the Regional Bureaus. Not only was assistance channeled to the LDCs from the Regional Bureaus, but since Dr. Kamil Idris had assumed office as the Director General, he had created the Division on LDCs which also catered to meet the specific requirements of LDCs. The Secretariat stated that it had tried to be as brief as possible, and that if there were any other questions and clarifications, it would be more than ready to provide them.

77. The Delegation of Canada expressed its support for the proposals in cluster A, as noted by the Delegation of Italy on behalf of Group B, and stated that there were few instances in which it wished to have some changes in wording, but that could be addressed at the appropriate stage. The Delegation hoped there would be a way to capture the general objectives and principles on

which there seemed to be a broad-based agreement; secondly, it hoped that from their discussions, they could identify the initiatives on which they agreed; and thirdly, that there would also be a way to preserve all the areas that would benefit at this stage from a continued and focused discussion. The Delegation added that those three elements would provide a framework that would faithfully reflect the objectives of cluster A, as each of them had an important role to play in shaping the development agenda.

78. The Delegation of Indonesia wished to respond to the clarification from the Secretariat on the FIT arrangement. It declared that in its efforts to develop the IP system in the country, Indonesia had in the first place the cooperation of many countries and their relevant IP organizations. That cooperation included, among others, the promotion of public awareness, capacity building and development of human resources. With regard to the FIT/Japan, it had benefited greatly from such an arrangement. The Delegation had participated in various activities and programs which have been very useful in improving the IP system in its country. It added that the trust funds had been beneficial for the strengthening of the IP system in the Asia Pacific region, particularly in the ASEAN countries, and supported the continuation of these funds.

79. The Delegation of Norway associated itself with the intervention made by the Delegation of Italy on behalf of Group B, and made a few additional comments. The Delegation expressed its general support to the principles as proposed in Annex A, cluster A. It fully supported proposals 1 and 12 and suggested a consolidation of those proposals as suggested by other delegations. The Delegation also supported proposals 3 and 8 and stressed its commitment to participating constructively in the discussions.

80. The Delegation of Bangladesh referred to the statement made by the Secretariat and declared that it was its understanding that WIPO activities for LDCs were done from a regular budget, from extra-budgetary means. The Delegation also stated that LDCs were advised on flexibilities in norm-setting activities, and that the LDC unit needed to be strengthened within WIPO.

81. The Delegation of China agreed with the statement made by the Asian Group on the specific proposals contained in cluster A. In the area of capacity building, it believed that WIPO should better share out the available resources in order to give tangible support to developing countries and LDCs in developing their IP systems, to ensure that protection for IP conformed to the situation in developing countries to their levels of productivity and in line with their long-term development goals.

82. The Delegation of Benin supported the statement made by the Delegation of Bangladesh regarding funds for LDCs. As an LDC, the Delegation said that they did have specific problems and they would like the LDC Unit within WIPO to be built up so that could help them to tackle its problems better.

83. The Delegation of El Salvador stated that, in addition to the statement made by it earlier, it wished to express its gratitude for the support it had received from WIPO for several national projects.

84. The Delegation of Argentina, speaking on behalf of the “Group of Friends of Development”, supported proposals 18, 19, 20, 21, and was of the opinion that some of these should fall into different categories, and that proposals 17, 20 and 21 should be termed as actionable.

85. The Delegation of Algeria supported the merger of proposal 17 with 32 and to change it from a general principle to actionable. It further requested proposal 18 to be changed from actionable to general principle and merged with proposal 21. It supported proposal 20, and proposed to put it as actionable instead of general principle.

86. The Delegation of Chile declared that the proposals in preserving and safeguarding public domain had received great support and that this support was in the first report of the PCDA and also in subsequent meetings, including the statements from Library Copyrights Associations heard earlier on that day. The Delegation thought that that the title of cluster B should be ‘Norm-Setting, Flexibilities, Public Policy and Public Domain.’ The Delegation considered that public domain was important for access to knowledge. An accessible public domain benefited inventors, beneficiaries, universities and research centers, it added. Safeguarding public domain was not in conflict with IP as had been suggested by a representative of an NGO earlier on. The Delegation declared that IP depended on a sound public domain, so that inventions could be preserved and that this would enrich the public domain. The Delegation declared that it had never wanted to affect IP nor IP holders and that it did not think that its proposal would have that effect. The Delegation reiterated that it was very important to the public to clearly know what was protected and up to where it was protected. In the document of Ambassador Manalo, in the fourth column for instance, it was stated that WIPO had activities on PCT and Traditional Knowledge so far. The PCT, for instance, was a widely-accepted WIPO Treaty with more than 130 members, but the inventions belonged to a few members and that it was known that very often through the PCT, the invention did not get into the developing countries and that WIPO had no knowledge about what was happening in developing countries and what sort of patents had been granted. Therefore, the Delegation thought it would be good to have a mechanism to check what was patented and till where. The Delegation declared that it would be very useful to establish a global database for works in the public domain and that it would foster trade, authors, inventors and would also consolidate patent offices that could provide better services. With regard to cluster B, the Delegation supported the proposals, especially number 20, and thought that the interest of society and the owners of IP were compatible but would have to be balanced out. The Delegation was pleased to see in the fourth column in the analysis made by WIPO that there were proposals, for instance, coming from Chile for exceptions for libraries for disabled and for educational purposes and that that was a good thing for those challenged people. The Delegation would work on exceptions for libraries and also between trademarks and copyright, and it considered all the proposals in cluster B very good.

87. The Delegation of Iran (Islamic Republic of) fully supported the statement made by the Delegation of Argentina on behalf of the “Group of Friends of Development” regarding cluster B on norm-setting flexibilities, public policy and public domain.

88. With regard to the proposals in cluster B, Annex A, the Delegation of Colombia stated that it could not support the merger of proposal 17 with 32 of A and two more from Annex B. The Delegation declared that the statement came from a country that it greatly admired and with

which it had ties of friendship, but it could neither support it nor the others that referred to the protection of public domain. The Delegation stated that the NGO that had intervened earlier on had said quite correctly how that proposal went far beyond the activities of WIPO. From the Delegation's point of view, it was inappropriate to speak about the protection of the public domain. Public domain was precisely all that bank of knowledge that could not be protected through IP and, therefore, was accessible to the public. The Delegation of Chile questioned how many patents fell into the public domain when the maintenance costs were not paid. In Colombia, the Patent Office which is in the unit of trade and industry had a website through which it informed which patents had lapsed but that work was in addition to its normal expertise. The Delegation could not see WIPO doing that. The Delegation supported proposal 18 as part of the principles and guidelines for the norm-setting activities of WIPO. The Delegation stressed that Ambassador Manalo did not propose any similar provisions, so it did not propose any other language with regard to proposals 19 and 21, which were indicated as similar. The Delegation supported that because the activities carried out by WIPO should be to foster economic and social development of the countries and, combined with other proposals, proposal 19 already absorbed proposal 21, so it believed it could just settle for the wording in the proposal 19. With regard to proposal 20, although the Delegation could not find combined language because it was similar to another point in Annex B, and they were to focus on Annex A, it fully supported it.

89. The Delegation of Uruguay fully supported what had been said by the Delegation of Argentina on behalf of the "Group of Friends of Development". It reiterated its belief that there was a direct relationship between IP and human rights, through access to knowledge and the right to education and culture. The Convention on the Rights of the Child, for example, held provisions which were in line with the WIPO Development Agenda. The human rights of men, women and children, which were enshrined in the Convention on the Rights of the Child, should be taken into account when preparing the Development Agenda. Access to knowledge and the right to education and culture had to be guaranteed. WIPO, as a specialized agency of the UN, should act in accordance with the UN General Assembly Resolution, as well as resolutions of other specialized agencies. The PCDA should not have been considered outside the Millennium Development Goals and those, along with respect of human rights, had to be the guide for devising the norms in the Agenda. The Delegation stated that that was a platform to devise a more balanced system in the public interest and that was the reason for its wish of having certain things stand independently.

90. The Delegation of China declared that while changing norms at WIPO, the development of various countries could not be ignored. The protection of IP should be done in accordance with the level of development of various countries. The protection of a IPR should be balanced with the protection of the public interest. Promotions should be combined with development. The Delegation stressed that in informal discussions on cluster B, more attention should be paid to the interest of a larger group, in other words, the public interest.

91. The Delegation of the United States of America supported proposals 17, 20 and 21 as general principles that were already occurring in WIPO and that would indeed continue to the extent that the IP protection did not extend to the public domain. The Delegation could not, however, support proposals 18 and 19 as noted in its general statement, since it had concerns with any proposals that required WIPO to ensure certain things. It supported notions contained in those proposals, namely, that WIPO be member-driven with an impartial Secretariat.

92. The Delegation of Brazil endorsed the statement made by the Delegation of Argentina on behalf of the “Group of Friends of Development” and wished to make a specific comment on cluster B. First, the Delegation indicated that it believed it to be one of the core clusters for the furtherance of the Development Agenda. The treaty-making process within WIPO was indeed the most important element of the program of work of WIPO. The Delegation wished to see more progress towards a development-oriented treatment of IP law. Certain issues, which were referred to in a proposal made by the Delegation of Chile, related to the protection of the public domain within WIPO’s norm-setting process, which was relevant for the Organization. Regarding protection of the public domain, the Delegation did not read it as a legal protection of the public domain, but as a general form of protection against further encroachment by expanding the IPRs recognized in WIPO treaties. The Delegation stressed that there was a direct relationship between treaty-making exercises in WIPO and the extent of the public domain in the future. There had been, in the past 10 years, quite a broadening of IP Agreements with the TRIPS Agreement and the 1996 WIPO Agreements. That had been a considerable extension of IP to cover new subject matters, new protectable subject matters and geographical extension, and by bringing in many countries which, before that period, had the flexibility of remaining outside certain agreements. The Delegation pointed out that the minimum standards had been raised and that it was a considerable challenge for developing countries to meet those standards. The Delegation stressed that public domain issues were quite relevant and should have been at the forefront of considerations in the PCDA. It stated that the explanations given by the Secretariat provided a clear indication as to how to take into account the issue of the public domain in the different WIPO normative processes. The Delegation was grateful to the Secretariat to have referred to those different instances. There were a few examples in which the Organization had dealt with the issue of the scope of the public domain. The Delegation made a specific reference to a proposal from Brazilian communities, concerning the use of names in Brazil as social wealth or national bio-diversity. There was an effort from the government to protect, as part of the public domain, customary names used in Brazil, so that they were not unduly appropriated through registered trademarks in other countries that may be unaware that these were actually customary names used in Brazil. That was an effort to promote and protect the public domain. That initiative was perfectly viable and suitable under the current WIPO mandate, compatible with the Organization, and completely related to IP, in this case, to trademarks. It was an important matter that should have indicated the consequences of particular normative choices on the scope of the public domain, in a particular country. The Delegation said that item 17 was quite important and that it should be actionable. The Secretariat had indeed indicated how it could be actionable. WIPO, as an institution, should further consider the consequences on the public domain of all normative processes carried out in its practice of providing legal advice to member countries. The Delegation mentioned that it had had a meeting on the essential items of the proposal. It had to do with the neutrality of WIPO as an institution. There was the issue of the WIPO Secretariat, WIPO as an institution, not applying a rule or not influencing particular normative choices that were at the disposal of member countries. The examples given by the Secretariat indicated, for example, that the principle of inclusiveness had prevailed in the negotiations on the draft basic proposal on a Broadcasting Treaty in the Standing Committee on Copyright and Related Rights (SCCR). The Delegation of Brazil had been a strong supporter of this principle of inclusiveness and it believed that that principle should be adopted across the board in all WIPO activities. The Delegation thought that it was actionable and that the inclusiveness principle should be adopted in all the WIPO norm-setting bodies. The Delegation

also mentioned other examples that were pointed out by the Secretariat from the Open Forum. The Delegation was happy to see a reference to it, as it thought it was an important example of how WIPO could become member-driven and development-oriented. The Delegation supported further open fora, as the issue had not been exhausted by simply holding one. The Delegation believed that additional open fora should be held every time there was an on-going innovative process in the Organization. It supported the way in which the Open Forum had actually been established. The Delegation noted that there had been consultations held in Geneva among members from the Permanent Missions, where they had been able to negotiate a balanced roster of experts and had also been able to negotiate all the particular issues that would be addressed in the Open Forum. The Delegation believed that the result was positive and balanced. It wished to see it become a regular practice in WIPO. With regard to the Intergovernmental Committee on Traditional Knowledge, Genetic Resources and Folklore (IGC), the Delegation stated that the Secretariat had provided a relevant piece of information. The documents produced by the International Bureau for the work on traditional knowledge and traditional cultural expressions did take into account the interest of developing countries. It was development-oriented to a great extent, in particular, the sections that took the shape of an international treaty that would be providing protection for cultural expressions and traditional knowledge. That had widespread support from developing countries in WIPO. It also supported the forward linkages to Annex B that were suggested by Ambassador Manalo, for proposals 17 and 19. The Delegation pointed out that in Annex B, there were also proposals 29, 30 and 37, which were directly related to the issue of ensuring or providing the means or the guidelines for norm-setting activities to be member-driven, to recognize the different levels of development of Member States, and to reflect an adequate balance between the costs and benefits of an initiative. The Secretariat had pointed out, under 19(2), to different proposals that were presented for the Broadcasting Treaty that related to public interest clauses, such as access to knowledge, cultural diversity, exceptions and limitations, and the duration of rights -which imposed a minimum period of protection which Member States were free to extend in their national legislation. The Delegation stated that it had actually presented, and supported, most of those proposals. The Delegation agreed with the Secretariat on the fact that those initiatives had been development-oriented or development-friendly. They were the kind of proposals that the Delegation wanted to see in future norm-setting activities in WIPO as the practice, and not as the exception. It also expressed its wish to see the Secretariat provide technical and expert support in the preparation of the proposals for every norm-setting activity. In that case, the Delegation had had to act on its own and had used its own expertise, and that of certain outside NGOs, in order to provide and test the technical viability and integrity of these proposals. The Delegation stated that it would have been much nicer to have the support from WIPO itself. It went on to state that it would be interesting to have WIPO become a little bit more cognizant and aware of the importance of those particular issues in the balancing of the overall treaties that were negotiated herein. The Delegation further mentioned a series of initiatives that the International Bureau had included in its comments. It pointed to the resolution that was supplementary to the Singapore Treaty, something that addressed the issue of taking into account different levels of development and being development-oriented. The Delegation explained that it would have preferred to see the issues addressed in the resolution become an integral part of the Singapore Treaty itself. The resolution had a different status, even though it was being deposited together with the Treaty. It was not really binding. Brazil provided developing countries with technical assistance but did not give them different options in terms of their commitments to the norms, with the levels of protections provided for in those particular countries. There were issues such as the possibility of opposition

to trademarks that used to be optional in many national systems. Then it was not optional anymore. That was a decision that affected everybody equally, both developed and developing countries, and perhaps that should have been under different options, i.e., an option A for developed countries and an option B for developing countries. That was the kind of treatment in norm-setting that the Delegation would have liked to see for different members. The issue of preserving the interest of society at large, and not only those of IP norms and norm-setting activities, was set out as an objective in proposal 20. The Delegation agreed that the way in which it was awarded took the shape of a general principle and objective, even though the Secretariat's comment indicated how that could be an actionable proposal as well. The Delegation referred to the proposal on the interplay between limitations and exceptions and TPMs, and to an issue related to the on-going exercise in the SCCR relating to the Broadcasting Treaty. The Delegation stated that proposal 21 was very important and believed it to be actionable. It could also be merged with some of the other proposals that went in the same direction in this particular cluster and could perhaps also benefit from some forward linkages to the proposals in Annex B that referred to 29, 37 and the ones that had been pointed out by Ambassador Manalo, namely 25 and 27, it added. As the Broadcasting Treaty was basically an on-going process at WIPO, the Secretariat had pointed to it. All these were initiatives that had occurred after the Development Agenda was launched in 2004. The Delegation did not totally share the point of view of other delegations that understood that all these proposals had been practiced in WIPO since its beginning. The Delegation, on the other hand, was of view that the examples given by the Secretariat, practically all of them, came from initiatives taken after the Development Agenda had been launched. The Delegation believed that that was already a welcome consequence and a result of the Development Agenda discussions.

93. The Delegation of Pakistan agreed with proposals 17, 18, 19 and 21. Referring to proposal 19, which mentioned the colloquia on selected patent issues, it stated that it had attended one of the colloquia the previous week. The Delegation believed that it had been a very good initiative that should continue. It stated that it had just seen a few Geneva-based delegations, attending. The Delegation requested wider information about such colloquia and also to obtain the text of the two PowerPoint presentations. Concerning proposal 20, the Delegation referred to the declaration of another delegation stating that it should be part of the general principles, and not an actionable proposal. The Delegation felt that the preservation of the interests of society at large - and not only those of IP-owners - as well as norm-setting activities needed to be looked into in more detail by WIPO. Especially when questions were raised from all over the world, including both developing and developed countries, on the impact of the patent regime on innovation. For example, in the *International Herald Tribune* the previous week, an article entitled "Patenting Life" had talked about an inherited disorder that affected three months' old children. These children could not crawl or walk, they suffered from seizures and eventually became paralyzed, and died by adolescence. For that disease, families all around the world had donated tissue and money to help the cause. When the gene was identified in 1993, the families got the commitment of the New York Hospital to offer a free test to anyone who wanted it. Unfortunately, the research employees at the Miami Children Hospital Research Institute had patented the gene and refused to allow any healthcare provider to offer the test without paying a royalty. The parents did not believe that their genes should be patented and therefore did not put their names on the patent. As a consequence, they had no control over the outcome. When the Severe Acute Respiratory Syndrome (SARS) was spreading across the globe, medical researchers hesitated to study it, because of patent concerns. There was no clear indication that the gene

patents blocked innovation and put them all at risk. The Delegation wondered that if WIPO was not the forum, which other forum would be there to address such issues.

94. The Delegation of Bangladesh wished to limit its comments to proposals 17 to 21 in cluster B. It noted that those proposals were more of a general nature, and that there were many forward linkages with proposals in Annex B. The Delegation believed proposal 17 needed to be made actionable, as it was a relevant proposal. Protection within the context of norm-setting was useful because a rich and expanding public domain was desirable. The basic objective of protection would be to ensure that contents available in the public sector, in the public domain, were not appropriated through the establishment of new IPRs. Things had to be made explicit within the context of proposal 17. Proposals 19 and 21 could be combined. The recognition of the different levels of development of Member States needed to be taken into account, which in turn related directly to flexibilities that should be available to developing countries and LDCs within the context of norm-setting activities. The Delegation declared that it had seen some progress in Singapore, but it could be made much more direct and more relevant and binding. The Delegation finally stated that proposal 20 needed to be made explicit and actionable through the clear inclusion of the notion of protection of stakeholders in developing countries, within the context of norm-setting activities, as appropriate.

95. The Delegation of El Salvador stated that it would focus on cluster B. Following the explanation from the Delegation of Chile on the issue of public domain, the Delegation wished to change its initial position and it now supported the inclusion of the proposal. With regard to proposals 18 and 19, it declared that it was the countries' governments that defined the strategy to be followed in IP matters. Finally, it stressed that it fully supported the wording of proposals 20 and 21.

96. The Delegation of Switzerland expressed its general support to seeking a balance between IPRs and the public domain. It did not wish however to comment on the specific wording of certain proposals that could lead to some misunderstanding later on. The Delegation explained that a different wording would be desirable for proposal 17. It pointed out that, generally speaking, it was not useful to use verbs such as 'ensure' in various proposals, as was the case in proposal 19. The Delegation believed that could be worked out in the negotiations. On proposal 20, the Committee could also keep the idea that there should be a balance between the interests of society at large and IP-owners in norm-setting, and that was a concern of all governments when establishing the norms between national and international activities.

97. The Delegation of Japan explained that it wished to make a brief comment on item 17 since IP existed against the background of the public domain. Discussions on IP by the Committee were therefore linked to a discussion on the public domain, which was already illustrated in WIPO activities in the document. As regards the wording which some delegations had raised concerns about, such as proposal 19, the Delegation also hoped that some reasonable alternative wording would come up during that week.

98. The Delegation of Italy, stressed that there were a number of points it wished to raise with reference to cluster B. On proposal 17, the Delegation agreed with the delegations of Colombia and Switzerland that the texture of the public domain was something that really could not be conceived because, by definition, the public domain was not protected. What was important to

bear in mind was that the Committee needed to draw a very clear distinction between what could be protected as IP and what could not be protected, because it had already fallen within the public domain. The Delegation believed that that was not related to norm-setting, it related rather to application in specific terms of IPRs, whether they had to be protected or not, and that would be the case no matter whether one was talking about patents or copyright. Regarding proposals 18 to 21, although the Delegation had no objection in principle, it had problems with some of the wording. It explained that negotiations among Member States were aimed at adopting treaties or negotiations that were quite free, in other words, each contracting party's Member State was quite free to participate in those negotiations as it wished, and the Committee could not judge in advance the content of treaties to be adopted. The Committee could not say that a treaty had to do certain things and that certain processes should be in it and others should not. All that should be left to the Member States and to how they saw things in the course of the negotiating process. The Delegation believed that all Member States were fully aware of their interests. There was, therefore, no need to have anything that would in any way predetermine the content of treaties.

99. The Delegation of Indonesia supported all the proposals presented in cluster B. It also supported Ambassador Manalo's proposals in streamlining and putting together some similar items. As regard item 20, the Delegation supported other delegations who suggested marking the item as actionable. Given the existing information, the Delegation noted that the IGC had a accredited 150 organizations. The Delegation added that at the time, as the President of the IGC it had also initiated a meeting between the President, Secretariat and Representative of local communities. The action had been useful in taking into account the views of all stakeholders in norm-setting activities, especially in IGC forums, SCCR and fora in WIPO.

100. The Delegation of Denmark stated that it could agree to the general principles as outlined in cluster B. It supported comments made by the Delegation of Switzerland in relation to the wording of the proposals. Turning to proposal 17, which it considered to be a concrete proposal, the Delegation stated that what it had read into the proposal was that in WIPO, when Member States engaged in norm-setting, two things were taken into account: the fair balance between what was in the public domain and what was protective via IPRs. That was the process that should be undertaken in any legislative process. It did not consider, however, as a matter of principle, that the proposal should be a general clause, that overwrote any future wishes of Member States to move something from the public domain into the IP domain *or vice -versa*.

101. The Delegation of Ecuador wished to support the statement made by the Delegation of Argentina on behalf of the "Group of Friends of Development". The Delegation also supported the proposal made by the Delegation of Chile on the protection of the public domain.

102. The Delegation of the Russian Federation wished to share its ideas on the problems that were touched upon in cluster B, proposal 17, relating to the legal protection to be granted to the public domain. The Delegation was grateful for the document that had been prepared. The Delegation explained that, as it saw it, there was some confusion in the terminology, because looking at the examples that were given in the document, those examples clarified matters and they made it clear that the Committee was not talking about the legal protection of certain categories of the public domain in the sense in which delegations were used to understanding it when they talked about Copyright and Patent Law. The Committee was rather talking about something different. The Delegation explained that the Committee was talking about protection

for somewhat different categories and as the Delegation understood it, what was involved was not possible legal protection as understood in the strict sense of the word. Should that be the case, it would be willing to study the possibility of reformulating the proposal, rewording it, in order to see what really and realistically might be understood as falling under the scope of the proposal for further work. The Delegation also pointed out that it saw proposals 18 to 21 as proposals that were set forth as general principles.

103. The Delegation of Chile took the floor for the second time in order to dispel one or two doubts and it believed there were longstanding doubts about the terminology used. It explained that the proposal did not refer to protecting the public domain in the legal sense of the terms, as the Delegation of the Russian Federation had put it. The Delegation of Chile was of the view that the Delegation of Switzerland was right. It was actually not the proper term and should be changed, possibly by 'preserve' or 'safeguard'. The Delegation of Chile wished to thank all the delegations which had made interventions - particularly the Delegation of Denmark which had been very concise, very much to the point - concerning the balance that should exist between IP and public domain, and which had to be considered in all domains of WIPO, not only in norm-setting. The Delegation stressed that the proposal referred to a balance and to the fact that very often when rights were created in norm-setting mode, those rights could have undesirable effects. The Delegation of Chile invited the Committee to turn its attention to the statements made by the Delegations of Brazil and the United States of America in PCDA/1/6, paragraphs 56 and 60. It pointed out that the statements very clearly reflected where the Committee was heading. The Delegation of Chile stated that it did not wish to have an undesirable effect in the public domain, because the public domain benefited everyone like creators, inventors, libraries, educational institutions.

104. The Delegation of Canada declared that it generally supported the proposals contained in cluster B. Like others, it believed that the proposals could use some alternate wording while preserving what was the intent of the group. On proposal 17, the Delegation thanked the Committee for the flexibility and suggestions made in relation to the protection of the public domain. Another suggestion might be to facilitate better access to the public domain. For proposal 19, instead of "to ensure the norm-setting activities recognized different levels of development", it could be perhaps be considered to use "seek to recognize in norm-setting activities different levels of development." As for proposal 20, rather than "preserve the interests of society at large and not only those of IP-owners", the Committee could perhaps consider something like the "interests at large with those of IP-owners." The Delegation stated that it was open to other suggestions.

105. The Delegation of Argentina believed that the question that was to be addressed in proposal 17 was how the Committee was going to preserve the public domain within WIPO. Then the Committee should address what kind of steps could be taken in order to do that. If the Committee agreed that it had to preserve that public domain, the question was, how could it be done, whether the word 'protection' was the correct one or whether the Committee was going to establish it. The Delegation stated that was not the kind of expectation it had about the results on proposal 19. It explained that was the same case for other proposals, such as when the Committee was talking about having member-driven procedures in proposal 18. What they should be looking at was how to work and how to establish the member-driven procedures. That should be the outcome of the meeting and not whether the Committee was talking about

‘ensuring’ or changing the word ‘ensuring.’ The Delegation pointed out that it was important for the Committee to clearly keep in mind what were the objectives of the meeting.

106. The Delegation of Australia supported the principle that international treaties and norm should be member-driven. The Delegation also pointed out that the issue of different levels of development, and the balance between the benefits and costs of any initiative for developed and developing countries, were issues that Member States addressed to themselves. It believed that all Member States needed to have the capacity to develop and determine their own norms. The Delegation expressed its full support to assistance in capacity building for individual Member States, particularly where such assistance could be developed within the current WIPO budgetary constraints and process.

107. The Representative of KEI supported the recommendations that had to do with competition policy and also the public domain. KEI pointed out that there was an important relationship between the two, for example in the patent field, where efforts were made to encroach upon the public domain, and these could lead to non-competitive practices. It was up to WIPO to address the issue of public domain as a revised standard. It should actually address both, issues of competition and public domain. KEI believed that was really a global problem, and not a domestic one. With respect to the issue of cost-benefit, mentioned in some of the norm-setting activities, KEI believed that WIPO should consider different models for setting-up economics bureaus that assisted in the cost and benefit analysis. It added that in the United States of America, there were parties which had such economics bureaus. KEI believed that other countries had different experiences from the one of the United States of America. It also believed that WIPO should study the issue of competition and the public domain, to deepen people’s understanding and also to collect information on other issues such as the impact of IP policies on the prices of medicines or access to education, as some delegations had mentioned in the debate.

108. The Representative of TWN had some comments in relation to Annex A on Technical Assistance and Capacity Building and wished to relate some of its experiences. It explained that there had been occasions in several meetings it had attended in the African and Asian Pacific and Caribbean Regions, on the implementation of TRIPS flexibilities, where participants from patent and health offices had declared that, although they had attended WIPO meetings, little was said about flexibilities that was available in the TRIPS Agreement, or even how to implement the declaration on TRIPS and Public Health. The Representative also cited the experience of *Médecins sans frontières*, which had documented the failure of WIPO technical assistance to inform Cambodia that being an LDC it did not have to grant patent protection on pharmaceuticals. The Representative thought that those kind of incidents raised questions, not just about impartiality, but also about the quality of the advice that was given. The other matter of concern was that there was very little knowledge of what was being advised and the different options that were being given to developing countries by WIPO. For example, in giving advice on how to put in place copyright law, was WIPO advising developing countries to legislate standards that were found in the WIPO Copyright Treaty, which the United Kingdom Commission report on IP and development had said that developing countries should be cautious because it could affect access to knowledge? On the issue of FITs arrangements, the concern was that it might require WIPO to focus on certain areas of IP protection, such as on enforcement and implementing WIPO treaties, which reflected more the priorities of the donor countries, rather

than the interests and needs of developing countries receiving technical assistance. That reflected the same problem one would have with a WIPO partnership database, wherein they might provide assistance that reflected its priorities. Those were just some questions being posed but they were questions which needed to be asked and objectively assessed, as they had major impact on the developmental objectives of the country receiving technical assistance. The Representative called for more transparency and accountability to the membership, as to the kind of technical assistance WIPO was giving and the positions it was advocating on the different areas on which it was providing technical assistance. This was the reason why it supported proposals that ensured more governmental oversight, over the type and form of the technical assistance given. A mechanism had to be found in order to ensure that technical assistance was neutral and reflected the realities in the country. One of the features of such a mechanism would be a publicly-available roster of consultants, selected after an intensive process, along with the establishment of principles and guidelines for delivering technical assistance. .

109. The Representative of FIAP explained that it had already commented in detail on public domain, cluster B, proposal 17, not only earlier on that day but also the previous year at PCDA/1. The Representative wished to speak on cluster A, proposal 12, which was to take into account different levels of development. It noted that the information in column 3 stated that “work on the creation and strengthening of collective management of copyright in African, Asian and the Caribbean Countries, takes into account the size of the market and the resources available.” The Representative pointed out that, on the contrary, its experience from working with its members in developing countries showed that that was not the case. Librarians in developing and transition countries were increasingly aware of the impact on their budgets of large amounts of money paid in buying book and journal stock and in license fees flowing through RROs to large corporations and creators in the global North. Regions such as Africa were net consumers of copyright goods, leading to a concern that collecting societies were foreign revenue collectors, i.e., sending more money out of the country than they received in return. The Representative explained that it knew that, even in extremely poor countries, the first market sector to be targeted by collecting societies was usually the education sector, research institutions, libraries and other publicly-funded bodies which were risk averse, soft targets and always tried to be legally compliant. That of course made business sense to RROs, since the public sector organization decision-makers were easy to identify and they were then able to generate the maximum return in the shortest time. However, access to information and knowledge was critical to the education and training needs of poor countries, whose human capital was central to their development. It was therefore vital that scarce funds were not diverted from basic educational needs, frontline activities or the purchase of primary resources by libraries, upon which students almost entirely depended. For developing countries, it would be more fair if a merchant began its activities in the commercial sector, instead of targeting the poorest and most vulnerable organizations in the not-for-profit sector. With regard to collective licensing, WIPO should be overseeing a more equitable regime which respected the basic needs of a developing economy and that was what it expected from proposal 12.

110. The Representative of CI reiterated its support for proposal 17 in cluster B which called for WIPO to consider the protection of the public domain within WIPO’s normative processes, and called for members to consider the addition of the phrase “and enhance”, so it would read “consider the protection of and enhance the public domain within WIPO’s normative processes.” The Representative reiterated its support for proposal 20 of cluster B, which called for WIPO to

preserve the interests of society at large and not only those of IP-owners in normative activities. While it welcomed the comments in the document that limitations and exceptions were being discussed at the Copyright Committee, the Representative called for the mainstreaming of the discussions of limitations and exceptions as soon as possible.

111. The Chair called for the Committee to consider an extension of the idea that the Delegation of Algeria had expressed, that the African Group had drafted or begun drafting a summary document reflecting the discussions on cluster A and he had asked them if they would volunteer to meet with some other delegations in order to progress on that draft, noting that that kind of initiative would certainly help the Secretariat on the following Thursday and Friday, when they would try to consolidate the work done during the first days and arrive at something that could be negotiated and settled. The Chair asked the coordinators whether they wished to volunteer for a similar arrangement where six groups would each take up one of the clusters, A, B, C, D, E, and F, and if there were less than six groups, some of the small clusters could be combined, such as E and F. He suggested that they could take the responsibility for the initial discussions. The output of their effort would then come to the Chair and, with the Secretariat's assistance, they would compile it into a complete draft which they would take back to all of the coordinators and the original proposals. Following those discussions, they would come to the wider group to see if they could take the issue forward.

112. The Delegation of Algeria thanked the Chair for the trust it was showing in their group. It further clarified that as a group they proposed to examine the different clusters on different sessions, and to rely on the Chair's wisdom that it would conclude each session with some proposals with the help of the Secretariat. The Delegation reiterated what it had proposed the same morning that, as the African Group, they had tried to go through the five clusters and were having some concrete proposals. On technical assistance, they were trying to get into consultation with the other regional groups to try and have a wide support on their proposal. However, the Delegation stated that they would stick to their suggestion according to which the Chair would have the last word on the proposals. The Delegation had submitted its proposal to the Chair as a proposal of the group and asked the Chair to see with the other groups what their concerns would be on that issue.

113. The Delegation of India stated that it would fully comply with the *modus operandi* the Chair had suggested and, at the Chair's request, the African Group was looking at the technical assistance aspects. It further expressed the thought that the Chair might also like to encourage some groups to come up with a paper on norm-setting for the Chair's consideration the following morning, about which there were elaborate discussions on that day. That paper which would come up to the Chair for its consideration would take into account the various views that had been expressed.

114. The Chair stated that that was what they had wanted with respect to B, C, D, E and F and asked for volunteers.

115. The Delegation of Kyrgyzstan informed the Chair that it wished to volunteer for cluster B on norm-setting.

116. The Chair recalled his responsibility to bring to the plenary a proposal for recommendation to the General Assembly and in order to do so consultations would take place on the clusters in the following manner: the African Group on cluster A; the Kyrgyz Republic, with the assistance of the Chair, on cluster B; the Asian Group and China on cluster C; the Central European and Baltic States, led by the Delegation of Poland, on cluster D; and Group B, led by the Delegation of Italy, on cluster E. As to who would pursue cluster F, a Delegation had yet to be named. The meeting had agreed to use the document prepared by Ambassador Manalo as the basis for the discussions and the consultations. The Chair stated that in undertaking those consultations, other groups and, in particular, the proponents of the proposals, were to be consulted, the objective of the process being to narrow the differences as far as possible. The Chair expressed the hope that as a result of those consultations there would be a document that reflected the second stage, while the document prepared by Ambassador Manalo would be the first stage. Such a document would identify the proposals that were actionable, those that articulated general principles, as well as where there was complete agreement, gaps that called for further discussion, or where there was complete disagreement.. The responsibility of the Chair would be to work on achieving some consensus in those areas that continued to be difficult, and to finally make recommendations to be submitted to the General Assembly. During that process, the Chair would remain in contact with the various group coordinators, in order to be in touch with the progress of the consultations. The Chair recognized that a lot of work remained to be done, but that a lot could be achieved as many of the consultations would be undertaken in parallel.

117. The Delegation of Colombia made the following submissions with respect to the proposals on clusters C and D . It stated that it did not support proposal 22 as it did not consider the function of WIPO to engage in activities aimed at bridging the digital divide. The Delegation was of the opinion that such activities went beyond IP and that the digital solidarity fund mentioned in that proposal had, as one of its priorities, the development of infrastructures to reduce the digital divide, which had no connection with the activities of WIPO. The Delegation indicated its support for proposals 23 and 28, as well as for proposal 24 of the Delegation of the Kingdom of Bahrain on incentives for cooperation and exchange with research and development institutions in developing countries. It considered giving pre-emptive tax incentives of primary importance, and wished to propose that WIPO provide an information service for researchers and research centers of the developing countries on the one hand, and universities and businesses on the other, in order to better exploit their inventions. It added, however, that this element would not be effective unless there was a proactive determination on the part of research agencies of developed countries. It added that it would be very useful if developed countries were to carry out awareness-raising activities for the benefit of scientific and research organizations in developing countries, and asked developed countries to encourage their researchers in scientific institutions to enhance their exchanges with R&D institutions in developing countries and LDCs. The Delegation added that this was similar to proposal 27, which it also supported, and that it would suggest possible language that combined both proposals. The Delegation added that the aim was to promote transparency and dissemination of technology to developing countries, particularly through cooperation and exchange, with research and development institutions of the developed countries. The Delegation then referred to proposal 25 which it found acceptable, unlike proposal 22 to which it had referred to earlier. It also added that it supported proposal 26, but that it was not in a position to propose suitable language to combine it with a similar proposal in cluster B. With respect to proposal 27, the Delegation stated that it had already expressed its views. With regard to cluster D the Delegation supported proposals 29, 30, and 33, as well as

proposal 31 requesting WIPO to study the cultural impact of using IP, which the Delegation believed to be useful as it would enable the system to be assessed. On proposal 32, the Delegation stated that though initially it found it to be an attractive proposal, it had reconsidered it and found that it could no longer support it. The Delegation explained that there were too many unknowns and too many issues that were not clear and, as such, it was not a proposal it could support. If, as stated by the Delegation of the United States of America, IP did not affect public domain, there was no need to assess this proposal, the Delegation of Colombia added. It concluded by expressing support for proposal 34, which it believed necessary in following-up the effectiveness of technical assistance.

118. The Delegation of Algeria referred to proposal 22 in cluster C and stated that it wished this proposal to be redrafted as, in its view, it was an ‘actionable’ proposal and not a ‘general principle’ one. It went on to state that the question of the digital divide was very important for Africa and that it wished to reflect further on the comments of the Delegation of Colombia on the relationship between the digital divide and WIPO. The Delegation referred to the practice of WIPO to disseminate information about its activities through its webpage, and stated that the WIPO webpage should be similarly used to disseminate information about this activity. As to proposal 23, the Delegation confirmed its support. On the proposal to merge proposals 24 and 27, the Delegation stated they were two different ideas and that if they were to be merged, the essence of both would be lost. As such, it preferred to leave them separate. However, it believed that proposals 26 and 27 should be merged, and considered it to be an actionable proposal, and not a general principle. The Delegation added that it supported proposal 25, but requested the Secretariat to clarify whether the forum that had been established was the same as proposed in 25. The Delegation then referred to proposal 28, which had already been merged with 16 and as such could be deleted. The Delegation then turned to cluster D and confirmed its acceptance for the merger of proposals 29, 33 and 34 and that it would propose suitable language for that proposal. It supported proposal 30 and with regard to proposal 31, in view of the information provided by the Secretariat, it considered it as an activity that had already been undertaken. It requested for the proposal to be reformulated to request the Secretariat to continue undertaking such studies or to define how such an activity could be institutionalized in the activities of WIPO. Proposal 32, the Delegation stated, had already been merged with 17, and 33 had merged with 29 and 34.

119. The Delegation of El Salvador declared that, as regard to proposal 22, it did not think it was appropriate to change or combine the fora. It was its understanding that the topic of IP had been taken out from the information society forum in order to define competencies. The Delegation therefore sought clarifications on that particular proposal. It wished to support proposals 23 and 24. As regards proposal 25, the Delegation believed that it belonged to each government to define its own IP strategy. The guidance that WIPO could provide to Member States and, in particular, to El Salvador, was nevertheless a great support for concluding national strategies in the area of IP. The Delegation also supported proposal 26, based on the language of the TRIPS Agreement, to which El Salvador was a party. As regards proposal 27, it wished to have some additional explanation, either from its sponsors or from the Secretariat. It supported proposal 28. However, the Delegation noted that in El Salvador, anti-competitive practices were not under the supervision of the national IPO or the corresponding Ministry, but of a specialized unit of control and monitoring unit. With that, the Delegation closed its comments on cluster C. On cluster D, the Delegation approved and endorsed the wording of proposal 29. It considered the wording of

proposal 30 to be slightly repetitive, but its substance was praise-worthy. Regarding proposal 31, the matter of availability of funds for impact studies was not a matter of concern for the Government of El Salvador, but the Delegation would not oppose that WIPO, as many members had requested, undertook those studies. It was its understanding that there was already some experience in that regard. The Delegation considered proposal 31 acceptable, and added that proposals 33 and 34 should be merged. In its cooperation with WIPO, the Government of El Salvador would define the priorities and the objectives of the use of IP. Once those definitions were made, support from WIPO would move ahead in accordance with the country's requirements. Therefore, the general assessment and evaluation of WIPO's activities in that type of cooperation should be individualized, personalized, tailor-made, because what might interest El Salvador might not be necessarily a priority for other Members. The Delegation, therefore, would not support the adoption of a uniform evaluation standard. El Salvador would continue to identify its own requirements and work in accordance with the guidelines provided by WIPO. The Delegation supported proposals 35 and 36. As for proposal 37, it requested an explanation or an interpretation from the Secretariat or the sponsors.

120. The Delegation of Brazil wished, first, to refer to document IIM/1/4, dated April 6, 2005, presented by the "Group of Friends of Development", which contained an elaboration on the context and the background for the proposals that they submitted on all clusters, but also included extensive explanations on the cluster on technology transfer. Reference was made to paragraphs 78-98 of that document on the elaboration, the thinking behind the proposals presented on transfer of technology. The Delegation therefore suggested that members referred to that text for additional background information and clarification of proposals. With regard to Ambassador Manalo's document, the Delegation stressed its support of proposal 23, which referred to enabling Members to take better advantage of flexibilities as provided by relevant international agreements. The Delegation agreed that that was an actionable proposal. The Delegation of Brazil supported proposal 24 to request developed countries to encourage their research and scientific institutions to enhance cooperation exchange with research and development institutions in developing countries. The Delegation agreed that was also actionable. Proposal 24 was also related to Article 66.2 of the TRIPS Agreement, as regards to commitments undertaken by developed countries, to promote transfer of technology to developing countries. It was an IP-related issue. It was the Delegation's view that WIPO should also become a conduit for promoting that particular obligation of the TRIPS Agreement. There were similar obligations in WIPO Agreements as well. The Delegation also wished to support proposal 26, and viewed it as actionable. In the Delegation's view, proposal 26 also related to those particular proposals from Annex B indicated by Ambassador Manalo – 19, 45 and 46. The Delegation believed that those proposals from Annex B could be brought forward in the merging of the proposals in which members would engage during the course of the meeting. It also supported proposal 27, which also stemmed from document IIM1/4, where further clarification was available. It agreed that this particular proposal was actionable. The Delegation of Brazil especially supported proposal 28, relating to anti-competitive practices. It believed it was IP-related. However, in its view, that was an actionable proposal and not a general principle or objective. The Delegation agreed with the four linkages with B6 and 16, as suggested by Ambassador Manalo. It thought that the intervention made by the Delegation of Colombia was very interesting. However, the Delegation might not have understood the intervention correctly because the issue of moral rights was applicable to authors' rights but not to patent rights. In the Delegation's view, that was not a relevant issue for patents, so this should be made clear.

Regarding the example given with regard to Mozart and the issue of his music being in the public domain, it was important to clarify that Mozart's sheet music was in the public domain; however, any new interpretation, renditions or recordings of Mozart's music, for example by the Berlin Philharmonic Orchestra, would generate new IPRs. When the Delegation of Colombia referred to the public domain, it was not ignoring the fact that new renditions of music generated new IP and therefore did not fall in the public domain.

121. The Delegation of Italy declared that it had a few concerns as regards proposal 28. The Delegation of El Salvador had reminded Members that aspects of competition law were normally under the competence of antitrust authorities. Those were aspects that were linked to economic matters, that went beyond IP. In that context, the Delegation saw that in the African proposal, which had been handed out earlier on that day, proposal 7 had exactly the same wording as proposal 28. Therefore, there was the need for evaluating the relation between those proposals. The Delegation also had concerns regarding proposal 32. The Delegation's position regarding the public domain had already been explained, it added. It felt that proposal 32 should be rephrased, so as to express that WIPO should deepen its analysis to find a way of enabling a better dissemination of the knowledge of IPRs, which had fallen into the public domain. As already noted by other delegations, it would be useful to know, for example, which patents had expired simply because their owners had failed to pay annual fees. The issue did not concern drawing a line between appropriated content and the public domain, but simply knowing what was no longer protected and could be used by everyone. On proposal 38, the Delegation had, in principle, no difficulties. However, its language could be deemed too generic, for there was no clarification as to what its sponsors meant by referring to the participation of civil society and public interest groups in WIPO's activities. WIPO had already adopted rules aiming at the participation of interested NGOs in meetings. The Delegation wished to highlight the fact that the negotiating activities between Member States should be limited to Member States, as it was already indeed so. Negotiations with the participation of competent authorities or NGOs should not be open to everyone or to unspecified groups of public interest groups which were not closely linked to IP and the topics under negotiation. In its view, proposal 38 should be worded rather differently in order for that point to be more specifically reflected. The Delegation also had concerns regarding proposal 40. In its view, there should be no reference to Article 7 of the TRIPS Agreement. Each treaty should be interpreted according to its own content and the interpretation and application of treaties should not make reference to other treaties. For example, where reference was made to the enforcement of WIPO treaties, a reference should be made exclusively to what was the norm-setting contained in WIPO's treaties. Members should not look at other treaties in that context. Another point was that, as members were aware, enforcement raised very difficult and delicate issues. It was not convenient, therefore, to have a very general sentence, for if there was the need to take into account many other aspects as well, it would become necessary to interpret each and every treaty in order to understand how its application should be carried out. For those reasons, the Delegation could not support proposal 40.

122. The Delegation of Argentina declared that it considered proposals 24, 26 and 28 as a priority. In its view, proposals 26 and 28 were particularly considered as actionable. It also considered as priorities proposals 32, 33 and 34 in cluster D, and proposal 40 in cluster F.

123. The Delegation of Uruguay considered cluster C as a priority, because it conveyed the agenda for development. The Delegation therefore supported proposals 23, 25, 26, 27 and 28. Taking into account the text in column 1, and the information provided by the Secretariat in column 3 of Ambassador Manalo's document, the Delegation believed that proposals 26 and 28 should be transformed into actionable ones, by slightly changing the corresponding wording. As regards cluster 4, proposals 29, 31, 32, 33 and 34 were relevant. Proposals 33 and 34 could, however, be merged with proposal 29.

124. The Delegation of Germany wished to thank the Delegations that had repeatedly referred to the Berlin Philharmonic Orchestra. That was a sort of advertisement, generally called "product placement." Speaking on behalf of EC, and complementing what the Delegation of Italy had said, it declared that the EC was generally in agreement with the proposals, and thus would confine its remarks to clusters C and D. The Delegation wished to focus on one aspect mentioned by the Delegation of Colombia, that one should not lose sight of the fact that WIPO was still a specialized agency and, therefore, there might indeed be doubts whether WIPO was best placed or could be instrumental in removing the digital divide which certainly existed. Therefore, there was some doubt on proposal A22. The Delegation stated that technology transfer was desirable but members should keep in mind that it was primarily a matter for those who owned the technology, which was the private sector. Therefore, there might be an encouragement for the private sector to transfer technology. But one of the proposals went as far as saying that members should explore policy-related initiatives to ensure such transfer. Whether this assurance could be established by WIPO might also be questionable. On El Salvador's statement about anti-competitive practices, the Delegation of Italy had already expressed its views. Just to enrich the debate, the Delegation wished to point out that at least an anti-competitive element was simply inherent in the IP system, because holders of IPRs were automatically given a kind of monopoly, and that ran contrary to the idea of competition. That element was there, but of course abuses should be corrected.

125. The Delegation of Tanzania expressed its support for the statement made by the Delegation of Algeria on behalf of the African Group. The Delegation was supportive of proposal 31, in cluster D. It believed that there were many forms of economic, social, and creative IP-related activities in some Member States, particularly LDCs, which needed to be studied, to demonstrate not only their social and cultural impact on the use of IP, but also the contribution of such activities to the gross domestic product (GDP) of such countries. A study of that nature was being implemented in Tanzania with the assistance of WIPO, for which the Delegation was very grateful.

126. The Delegation of South Africa wished to consolidate its position on the issue of anti-competitive practices. The African paper, in paragraph 7, spoke about that issue. The Delegation considered that the mere existence of an exclusive right to own IP did not necessarily mean anti-competitiveness. With regard to that issue, the Delegation was interacting with its German counterpart. As regards other issues, the Delegation agreed that WIPO's appreciation of what was happening at national levels was an actionable proposal. Countries were applying competition laws to deal with the issue of anti-competitive practices, at regional and international levels. When developing some guidelines in that area, WIPO should therefore take note of what was happening in all jurisdictions. Finally, Article 40 of the TRIPS Agreement had been hanging for some time. The Delegation wished to propose that WIPO start work on the

issue of competition law. That was an actionable proposal in the Delegation's view. Members could debate and consult with each other but they should lead the Chair to take an informed position, and that was why the Delegation of South Africa supported the African Group and its paragraph 7 on that issue. The Delegation also wished to add background information on proposal 30. As the Delegation of Tanzania had just declared, in Africa most of the business activities were happening in the informal sector and many IP-related assets were being created in that environment, such as unique textile and clothing designs, traditional paintings and musical instruments. WIPO's work could help African countries in their concerns in order to improve and advance those particular sectors. The Delegation agreed that technology was originated by the private sector in some developed Member States. As sovereign countries, those states had obligations towards their private sectors as well. It was the Delegation's view that the fulfillment of the promise of transfer of technology might balance the IP system in many countries. However, most of the times in international fora, the only element emphasized was the enforcement of IPRs, without the corresponding transfer of technology, as it had been, in fact, promised in the TRIPS Agreement.

127. The Delegation of Brazil asked for the Chair's guidance on whether it was appropriate to make remarks on clusters D and E at that stage since it had limited its remarks on cluster C in its previous intervention. As a reaction to the intervention from the Delegation of Italy regarding proposal 28 on anti-competitive practices, the Delegation of Brazil recognized that the issue was complex and involved pieces of legislation and national regulations that were not directly related to IP, which was why the proposal referred to IP-related anti-competitive practices. The Delegation was glad to see in the intervention made by the Delegation of Germany that it acknowledged the direct relationship between IP and the issue of competition. The Delegation also wished to acknowledge the intervention made by the Delegation of the United States of America relating to the treaty on the protection of broadcasting organizations, to the effect that signal theft can be protected through anti-competitive practice. In fact, the Delegation of Brazil thought that was how it was done mostly within the United States of America and that anti-competitive legislation was IP-related because, among other reasons, there were clauses that related to anti-competitive practices in the TRIPS Agreement and in other IP treaties. The Delegation stated that there was a broad margin for anti-competitive practices to be discussed and dealt with adequately and appropriately within the current mandate of WIPO as an organization. With respect to cluster D, the Delegation pointed out that most of the proposals regarding assessment evaluation and impact studies stemmed from the proposal made by the "Group of Friends of Development". The Delegation stressed that a lot of background information was also available in document IIM 1/4 and called countries to refer to that text in order to have more clarity as to the meaning and direction of these proposals. It added that it strongly supported all of them. The only exception was proposal 30, which did not originate from them. The Delegation however believed that it could be an interesting proposal as well, as long as it was not specifically directed or targeted at developing countries and LDCs. The Delegation declared that the issue of IP protection and the informal sector were also relevant in developed countries, where one would find to a great extent an informal sector of the economy that was also responsible for and represented a challenge to the protection of IP in many developed countries, so it should be treated as a global issue and as such it supported it. The Delegation attached great importance on the issue of assessment, evaluation and impact studies since it had a direct connection with technology assistance, its quality and monitoring, as well as the transparency the technology assistance was given. It also had an impact and a relationship with norm-setting.

Many of the different proposals referred to the issue of WIPO enhancing its institutional capacity to provide members with impact studies that would objectively assess the relationship between certain IP obligations, commitments, treaties and norms and its impact in the real world. The Delegation pointed out that there was a great room for improvement in the way those assessments were usually dealt by WIPO. As it was also mentioned in its intervention in the general debate, the Delegation was happy to see that WIPO was moving in the direction of hiring economists to fathom the economic impact of what was actually negotiated in that body, and of the kinds of norms and commitments that were exported to many countries of the world, developing countries in particular, through the negotiation of new WIPO treaties; updating existing WIPO treaties; provision of technical assistance; adoption of model laws within WIPO or through best practices that were suggested by WIPO to developing countries. It was important to make the connection between what was done there and its impact in the real world, in economic, social and cultural terms. Although a lot of proposals were related to that, the Delegation recognized that there was room for merging and reducing them, and making the list a bit shorter and more manageable. It also supported the kinds of linkages that were suggested by Ambassador Manalo in the first column on similar proposals. Finally, on cluster E, the Delegation of Brazil wished to raise the issue of institutional matters, mandate and governance, with proposal 36 for example. The Delegation declared that WIPO's relationship with other UN Agencies should involve the membership closely and it recalled the position of Brazil in the WIPO Coordination Committee, with regard to a new proposed agreement between WIPO and the Food and Agriculture Organization of the UN (FAO), and between WIPO and the Convention on Biological Diversity (CBD). The Delegation believed that such inter-interagency formal arrangements should be discussed more in-depth with WIPO members. As a consequence, the Delegation did not support proposal 36 the way it was drafted, because it seemed to give WIPO a freer hand in the way those agreements were negotiated and entered into with other UN agencies, and it explained that there was a lot of issues that were very sensitive, for example the relationship with the FAO had a bearing on the way IP may be applied to the food industry worldwide. Members should therefore have a say in the content of those arrangements, and should have some safeguards in instances where those issues could be discussed prior to WIPO entering into those formal arrangements. The Delegation of Brazil supported proposal 37. The issue included in that proposal was important and it agreed to the fact that it was actionable. The Delegation also strongly supported proposal 38. It stated that measures for wider participation of civil society and public interest groups were in the interest of WIPO as an institution in the long-term, and it was also in the interest of the membership, in particular of developing countries, as relevant portions of their national societies were not often engaged in such a complex debate as the debate on IP. The Delegation thought there was a real positive impact that might derive from WIPO actually adopting a clearer course in this direction. It recognized that there had been progress with respect to wider participation of NGOs and IGOs from different sectors in the regular activities of WIPO. It also pointed out that the broader the debate the better it was for the future of WIPO and of IP in general. The Delegation thought the issue was to broaden the constituency that supported IP and to make sure that development in the normative elements of IP benefited the different relevant segments of society. The perception that WIPO was an institution that only held the perspectives of right-holders should not continue as in the past. Institutionally, what it was aiming for was perfectly in line with WIPO's mandate which contained several provisions that supported that kind of approach, that dealt with broader societal and public interest groups that have to be mainstreamed in WIPO's work. The Delegation declared that proposal 39 was also relevant. The participation of NGOs and IGOs in WIPO work had been, to a certain extent, facilitated, but it

pointed out that norms that can promote more of that and facilitate accreditation would be useful as well, to give them predictability and the assurance that they can follow through WIPO processes during the full course of time it takes to mature and to produce an outcome. The Delegation therefore believed that the stability of their position as observers in the Organization should be promoted and better defined through clearer norms and regulations, and perhaps it could be achieved to the extent possible by adopting the UN system criteria which was already a form of reference for WIPO. With regard to cluster F, the Delegation supported it because it was a proposal made by the “Group of Friends of Development.” It stressed its importance and stated that Article 7 of the TRIPS Agreement was relevant, not only in the WTO context but also in the WIPO context because the TRIPS Agreement, in fact, was an amalgamation of several treaties and there were several cross-references between the WTO universe and all of the treaties that were governed within WIPO. For example, the issue of combating piracy and trading counterfeit goods at the Advisory Committee on Enforcement took as a point of reference several of the TRIPS provisions in its discussions, and its participants were constantly reminded of their TRIPS obligations in all activities relative to norm-setting and to technical assistance and cooperation and to discussions on enforcement at WIPO. The Delegation believed it was almost one and the same, so it did not understand the intervention from the Delegation of Italy which seemed to indicate that different treaties should be analyzed as stand-alone commitments, because that was no longer the situation in terms of commitments that were subscribed to by most of the membership of WIPO. Their commitments in the field of IP embraced not only all of the WIPO treaties to which they were members, but also a lot of WIPO treaties, through the door of the TRIPS Agreement, and there was a reference that was constant and could not be ignored.

128. The Delegation of Iran (Islamic Republic of) supported proposals 24, 26, 27 and 28 of cluster C, and proposals 32, 33 and 34 of cluster D. It called for proposals 26 and 28 to be transferred to the actionable section.

129. Regarding proposal 28 of cluster C, the Delegation of Nicaragua believed that a distinction between the scope of IP and the scope of anti-competitive policy should be made. IP law gave exclusive rights to the holder to exploit the economic rights, in other words it established legal monopoly. On the other hand, competition policy might have an effect on procedures and contents of the exploitation agreements, and that meant that the holder of the economic rights might be tempted to engage in anti-competitive monopolistic practices such as, for example, misuse of dominant position or agreements between competitors not to take action for a particular length of time, among others. Considering that there was no multilateral agreement on anti-competitive practices in the WTO, WIPO should promote measures to help establish some disciplines to avoid anti-competitive practices in IP. The Delegation therefore supported point 7 of the African proposal.

130. The Delegation of Italy stated that its previous statement was made on behalf of Italy as a Member State, and not as a representative of Group B.

131. The Chair then requested comments on clusters C, D, E and F.

132. The Delegation of Pakistan stated that it had no problem with proposals 22 to 30, and similarly 32 onwards, in cluster C. The Delegation made some observations on proposal 31, which requested WIPO to undertake studies to demonstrate the economic, social and cultural

impact of the IP system in Member States. The explanation given by the WIPO Secretariat indicated that WIPO had undertaken a wide range of studies looking at how IP was being used and managed in various sectors in different countries. The Delegation declared that that was simply one part of the picture. There was clearly a need to look at the implementation or the management of IP instruments, with a view to furthering the development impact. Equally important was the need to put in place procedures that would allow nominative initiatives taken within WIPO to address whether these contributed to development goals or not. In that regard, the idea of a development-impact assessment deserved serious consideration. While embarking on the norm-setting initiatives, some fundamental questions would need to be squarely addressed, such as: Does the initiative contain the ability of the developing countries to innovate, to acquire know-how, to access goods at affordable prices? And if there were possible downsides, were those counted by the exceptions and flexibilities, were there clauses for on-going monitoring and review of the economic impact of the new instrument? Such impact assessments would have ensured balanced norm-setting and would have greatly facilitated efforts to build consensus on norms, which might have been urgently required to meet the new challenges. The Delegation strongly supported the proposal to mandate WIPO to undertake systematic studies on the economic, social and cultural impact of the IP system in the Member States. Regarding the Terms of Reference, it offered to revert with a proposal.

133. The Delegation of Sudan supported the statement made by the African Group.

134. The Delegation of the Russian Federation wished to put forward some of its views on clusters C to F. It declared that many statements from a number of Delegations had referred to problems that arose from particular questions referred to in those clusters, for instance, issues on technology transfer and the questions of anti-competitive practices, as well as the matter dealt with in cluster F, proposal 40. The Delegation wished to point out that it still had difficulties with those matters. It also referred to a number of points on which it was willing to continue discussion and to move forward. In particular, proposals 30 and 31 could be taken forward with certain amendments or changes to the wording. The Delegation conveyed its suspicion that a number of these points overlapped to some extent with some of the proposals in cluster A. It announced that it was however willing to continue work on them, as well as on proposal 36, although again on that particular proposal, the Delegation did have a number of questions. It insisted on the fact that it did not object to the idea of future interaction between WIPO and other international organizations or agencies. The only clarification it wished to seek concerned the precise meaning of 'harmonization' stated in proposal 36. In addition, the Delegation suggested continuing work on proposal 38, in particular on the question of involving interest groups in WIPO's activities. WIPO had very good and positive experience in that kind of work, which could be continued in the future, it added. Finally, the Delegation stated that it no serious problems with proposal 39.

135. The Delegation of Japan commented on item 22, and mentioned that the mandate of WIPO as a UN agency specializing in IP should be taken into account. A similar view applied to items 24, 25, and 26. With regard to proposal 25, the Delegation expressed its doubts as to whether the Standing Committee on Information Technology (SCIT), which was a forum focusing mainly on technical issues, was the right forum to discuss IP and Information and Communication Technologies (ICT) policy issues in the context of economic and cultural development. As regard to proposals 28 and 32, which dealt with public domain and

anti competition activities, the Delegation was of the opinion that these topics should have first been dealt with by fundamental research and investigation. Regarding proposal 39, which referred to the UN system criteria, the Delegation wished to obtain clarification on the meaning of such criteria, as it was not aware of any existing rules or guidelines regarding that criteria. On proposal 40, the Delegation stated that Article 7 of the TRIPS Agreement reflected the interest of not only society at large but also producers of technical knowledge. The Delegation concluded by stating that these aspects should have been taken into account.

136. The Delegation of Italy, speaking on behalf of Group B, had no further comments apart the statement made earlier on behalf of Italy.

137. The Delegation of Canada supported proposal 22, as well as the efforts to bridge the digital divide. It recognized that the digital divide was particularly important in the context of IP and it understood how it could be an obstacle to some of the proposals discussed. As others, the Delegation saw that the digital divide was much broader than IP and that it could not be addressed entirely in WIPO. In that respect, the Delegation appreciated the African Group's offer to consider ways to redraft that provision. One option might be for WIPO to consider how it could best contribute to international efforts to bridge the digital divide from an IP perspective. Concerning proposal 23 on 'Helping SMEs Take Advantage of Flexibilities', the Delegation supported each of the elements in their own right, including the need to foster technology transfer to help SMEs, to promote existing flexibilities, etc. The Delegation nonetheless called for further clarification on how technology transfer might enable SMEs to take better advantage of flexibilities in international agreements and declared that a couple of examples might have been useful. It supported proposals 24 and 25 but, as noted by some Delegations, it wished to make sure that it was the right forum for proposal 25. The Delegation supported, in principle, proposals 26 and 27 which dealt with promoting technology transfer. As an example, the Delegation stated that in Canada most technology transfers were carried out by the private sector. For that reason and due to the fact that detailed data on the effects of such efforts did not exist at that time - although they were starting to look at how this could be done - it would have been difficult to assume at that stage an obligation to ensure such transfers as suggested. Perhaps the proponents could have considered whether the word 'encourage' adequately met their goals. Still on proposal 26, the Delegation also supported discussions on how to improve technology transfers. It saw particular value in sharing experiences, best practices, even policies and initiatives as suggested, but it voiced some concern with the reference to 'reform' in proposal 26 and some questions on the term 'IP-related policies' in proposal 27. The Delegation urged the proponents to confirm if it was meant to extend to reforms or changes to domestic IP regimes. Would the latter be the case, the Delegation stated that it could have had some difficulty with this notion. Yet the Delegation did support the broader discussion. It supported in principle proposal 28 on anti-competitive practices and also supported discussions on IP competition policy and anti-competitive practices but hoped for some flexibility and clarification. The Delegation stated that it did see the importance in the development context, as those were issues of considerable interest to Canada, domestically as well. The Canadian Competition Bureau did provide technical assistance and considered such requests on a case-by case basis. The Canadian Competition Bureau and IPO had recently commissioned five studies by outside experts, with the purpose of ensuring that the Competition Bureau's IP enforcement guidelines, and its general approach to enforcement in relation to IP, reflected current economic thinking as well as to guide their IP policy-makers. For members with an interest, the topics were an extension of IPRs,

compulsory licensing, authorized generics, tying and bundling in the context of IP, and collective management of copyright. The Delegation stated that it would be glad to share more information, including the studies themselves, as soon as they would be available. The Delegation sought clarification on the meaning of ‘promote measures.’ Was the goal to go beyond dialogue or even an exchange of best practices, and if so, to have WIPO advocate or advise on such measures? If so, the Delegation wondered, and as others had noted, whether WIPO alone had the necessary expertise on the competition policy side. Second was the goal to ultimately develop some sort of obligation in the international context. The Delegation also wished to voice its concerns on that issue, particularly from a competition policy perspective. Noting that if the goal was to simply look at best practices, it would see value in such work, although given the complex interface between IP and competition, it was important to strike the right balance, so it would be essential to have the right experts involved. The Delegation added that WIPO could have considered, for example, coordinating with the International Competition Network (ICN), a network of more than 100 national competition agencies from developed and developing countries, of which Canada would shortly become the Chair. The ICN was the only body devoted exclusively to competition and enforcement. While it did not have a rule-making function, it did provide a forum for addressing competition enforcement issues of common concern. The network was project-orientated and where it found consensus, it developed recommendations or best practices. It could be a valuable resource on that front. To summarize, the Delegation supported the discussions but would have wanted to have the proper experts involved. It requested clarification on the meaning of ‘promote measures’ and whether there was some flexibility. For cluster D, proposal 30, it supported a study on the informal sector, but it requested clarification on the proponents’ intention with regards to ‘creation of substantial programs.’ It also requested clarification on the role of WIPO as opposed to national governments. Finally, it declared that it supported the other proposals in cluster D.

138. The Chair noted that the Delegation of Canada had many requests for clarification and indicated that it agreed that the time had come to address these requests. He added that they could more efficiently deal with those clarifications if the proponents met with the Delegations seeking clarifications and see if there could be some dialogue to help close the gap. He stated that he did not wish for A or B to interfere with discussions in the plenary, which would hold up the rest of the Assembly from doing more of the Committee work. He therefore urged the Assembly to pay attention to the requests for clarification and to get together. If they had difficulties, the Chair would be willing to make a different arrangement. In the interests of speed, he hoped that that could be achieved.

139. The Delegation of the United States of America stated that, with regard to cluster C, it could support, in principle, proposals 22, 24 and 25. On proposal 22, it supported WIPO’s continued efforts within its mandate to help developing countries in improving their ICT infrastructure and facilities, particularly those of IPOs. It did not support proposal 23, because it advocated a general policy of taking advantage of flexibilities. The Delegation believed that it was up to individual governments to decide which IP norms to put in place and which flexibilities to use and for what beneficiaries. Regarding proposal 26, like the EC and others, the Delegation had some problems with the concept of somehow having to ensure the transfer of technology. With regard to proposal 27, it believed that WIPO should focus on its core mission, the promotion of IP protection, and not engage in lengthy debates about technology transfer policies. Such debates had been on-going in the United Nations Conference on Trade and Development

(UNCTAD) and other UN bodies for many years, indeed decades. This work would furthermore duplicate work that was ongoing in the WTO Working Group on trade and technology transfer. Given WIPO's limited resources, the Delegation did not support duplicating work already underway in other international organizations. With regard to proposal 28, it stressed that UNCTAD had a very active program on competition policy and the Delegation stated that it was also weary about duplicating the work of other UN agencies. As the Delegation of Nicaragua had pointed out, there was no international framework for competition policies, although countries were free at the national level to implement such policies and have dialogue with each other. Yet at that time, the Delegation did not support that proposal. In cluster D, it could support in principle all of the items as proposed in Annex A. It believed that many, if not all, of the proposals were either being implemented to some degree in WIPO or underway in WIPO within its mandate. In cluster E, it supported proposals 35, 36 and 37. For proposal 35, it supported the assistance within WIPO's mandate. It did not support however proposals 38 and 39, believing them to be unnecessary. WIPO had vastly broadened the participation of NGOs in recent years and the number of accredited NGOs in WIPO had more than doubled in the past five or six years. Regarding proposal 39, it did not believe there was a UN-wide criteria for NGO accreditation, various UN agencies seemed to have established their own criteria. WIPO's admission criteria were very inclusive as evidenced by the large increase and the broad range of NGOs accredited to the Organization. The Delegation indicated that it was often unaware of any problem with an NGO accreditation that had been rectified or which needed to be rectified. It did not support any mandate for WIPO to ensure anything. It could support the proposal in cluster F.

140. The Delegation of Norway wished to express its general support to the principles proposed in clusters C to F. Regarding proposal 22 in cluster C, the Delegation supported the outcomes of the World Summit on the Information Society. It wished to obtain some clarifications as to what role WIPO could have played in bridging the digital divide from an IP perspective. It stated that that process did not fall totally within the core work of WIPO. The Delegation was however looking forward to the promised draft by the African Group. The day before, the Delegation had stated its general support to proposal 5 of cluster A. The Delegation wished to stress that since proposal 23 of cluster C also related to the SMEs and as its main content seemed to be covered by proposal 5, 23 might have been superfluous. Regarding proposal 25, the Delegation believed that the discussion on the importance of IP-related aspects of ICT and its role in economic and cultural development was an important one. It wondered whether the SCIT was the right forum for such a wide-ranging discussion. It supported, in principle, proposal 26 but it wished to see some re-wording to it, i.e., replacing the word 'ensure' with the word "encourage." Regarding transfer of technology, it was important to bear in mind what had been said by the Delegation of Germany on behalf of the EC, namely that the technology was owned by the private sector, and that that fact should have been reflected in the wording of the proposals. The Delegation also requested some clarifications on the meaning of the expression 'promote measures' as stated in proposal 28. Finally, it wished to support the merging of proposals 29, 33 and 34, as proposed by other delegations.

141. The Delegation of El Salvador wished to seek clarification from the proponents on proposal 31 on impact studies. The Delegation did not think that impact studies should be made in El Salvador, since it had not been defined as a priority. Studies had been carried out, and they had been quite positive, but these were in keeping with the interests and requests made by individual States. The Delegation insisted that it was up to each country to define its priorities.

Regarding cluster E, particularly proposal 36, the Delegation referred to the statement made by the Delegation of the Russian Federation which had explained it quite clearly. The Delegation of El Salvador concluded by stating that it had some misgivings about the scope of the word 'harmonization.'

142. The Delegation of Colombia wished to comment on clusters E and F. The Delegation reiterated its support to the notion of public domain, but it did not believe it was the forum or the appropriate mechanism for dealing with it. It also wished to clarify that it was not trying to link moral rights with patents of inventions. It believed that copyright and patents were two of the areas that could be affected by that proposal. Looking at clusters E and F, it did not support proposal 35 on brain drain because it believed that the brain drain went beyond IP, as it encompassed economic, social and cultural aspects, and the Delegation reiterated its belief that it was not the right forum to deal with that issue. It did not consider it as a focal issue of IP and therefore should not be posed as a priority area for WIPO. The Delegation clarified its position by stating that that did not mean that brain drain was not a problem. The Minister of Social Protection in Colombia had said that, in certain areas, brain drain did have advantages, such as in health and with current technological progress. A Colombian who was working in a developed part of the world could enable the country to make progress and have inputs it did not yet have. The Minister had also declared that the phenomenon of globalization went beyond IP and encompassed other areas. The Delegation could not therefore support proposal 36. It sought to obtain further clarification, as other delegations had sought, to see that the target was to avoid duplication. Proposal 37 had its support, but not proposal 38. The Delegation reminded the Member States of WIPO that it was a governmental organization, an area in which States met, bringing and putting forward their misgivings. The Delegation thought that it was the States that should voice the interests and misgivings of their people and it was for them to bring it forward. It was fine to include civil society and public interest groups, but that could dilute the authority of the States and could bring in actors who were not necessarily interested in development. In fact, they might actually be barriers to attaining the Millennium Development Goals, all to the prejudice of keeping the present scheme alive in WIPO and in various other committees. Civil society and interest groups did participate in them and the Delegation believed that IGOs and NGOs also participated in those bodies. The Delegation did not think that proposal 39, somewhat differently to what had been stated in the document of Ambassador Manalo, was similar to proposal 38. The wording in proposal 38 was broad and diluted the governmental aspect in the Organization. Proposal 39 on the other hand referred to a legitimate process about the accreditation of NGOs in the Organization. The Delegation supported the UN Economic and Social Council (ECOSOC) Resolutions as being mechanisms for accrediting NGOs in UN conferences. The Delegation recalled that, in 1998, that had been clarified and therefore did not think that political issues should be mixed there. The Delegation of Colombia was at the time chairing the NGO committee in ECOSOC, and it ensured that those processes did not violate any of the resolutions, such as the one in ECOSOC in 1996.

143. The Delegation of Bangladesh wished to comment on clusters D and E. On cluster D, it supported the merger of 29, 33 and 34. However, while merging, there were several areas that needed to be looked at. In proposal 29, there could be something probably better than the current formulation because at the end all the activities were development-oriented activities. The Delegation thought the terminology used was probably not a very specific one and that it was better to avoid it. In proposal 33, for example, the word 'continuously' was employed while in

proposal 29 ‘annual basis’ was used instead. In the Delegation’s point of view, any other periodicity would be fine but it considered that ‘continuously evaluate’ did not give any indication. The Delegation added that on item 34, there were indicators and benchmarks, and that it wished to see clarity in language which would clearly define what roles Member States would have in its establishment, how it would be established and who would establish it, and that needed to be retained while merging proposals 29, 33 and 34. On proposal 30, the Delegation wished to see something global rather than having it focused on developing countries and LDCs because it could also turn out to be a finger-pointing exercise. On cluster E, proposal 36, the Delegation had some two concerns. The Delegation did not know whether WIPO had cooperation with all UN agencies and that maybe the language should take that into account but the Delegation said that it had difficulty with the word ‘harmonization.’ The Delegation stated that they had no problem with the notion of taking advantage of complementary that was included in there and that it should be included, that was how it should be with different organizations that have relevant expertise and that there was a lot of complementarity that could be brought together to intensify the cooperation, but ‘harmonization’ seemed like going into an overlap, everybody developing the same expertise. The Delegation recommended caution on using that word. On item 37, the first part was fine for the Delegation but when dealing with statement of core policies and objectives, it wished to know how this would be brought about and what role Member States would have in it, whether this would lead to, or could lead to, an interpretation of the existing WIPO mandate because there was a statement on “policies and objectives”. The Delegation had therefore some questions in this regard. Regarding proposals 38 and 39, it understood that these were similar proposals that could be merged, but the notion that the Delegation wanted to preserve in these items was a notion of balance in participation from developing and developed countries. That was a notion the Delegation believed was important and should be retained while coming up with a formulation.

144. The Delegation of Sudan wanted to correct an unintentional mistake in its previous intervention when it said Morocco, it actually meant Algeria, coordinator of the African Group.

145. The Delegation of Australia had some concerns - some of those on language but the Delegation considered that the Committee could work on the language issue later. The Delegation whole-heartedly supported proposals 29, 33 and 34. In relation to proposal 24, which it also fully supported, the Delegation declared that Australia had currently in place or underway a number of bilateral science and technology agreements with other countries, some of which were present in the meeting, and these agreements actually addressed some of the issues contained within proposal 24. In connection with cluster A, the Delegation could support proposal 36 through 39. In relation to item 38 in particular, on attendance by NGOs and civil societies and other groups, the Delegation supported increased participation from interest groups from all sectors of society. It therefore supported that proposal as long as it was appropriately managed within WIPO, i.e., that the participation of interests groups from all sectors did not impact adversely on the ability of Member States to contribute to meetings. The Delegation supported all the proposals and, in particular, item 23 on SMEs and on flexibilities; 24 on supporting developing countries; 36 on coordination with international bodies, 29, 33 and 34, on technical assistance; 37 on stock taking in WIPO, and particularly proposal 28 on competition. The Delegation considered competition to be a crucial issue and expressed its great interest in knowing the outcome of the five studies undertaken in Canada on the relationship between IP and

competition, studies which the Delegation considered as actionable. It finally wished to support the proposal on public domain which had been supported in general, but for one delegation.

146. The Delegation of the United Kingdom supported, in principle, all the proposals in clusters C, D and E. The Delegation wished to obtain some clarification but anticipated that these would be resolved by the consolidation process held by the regional groups at the suggestion of the Chair.

147. The Delegation of Switzerland generally supported the idea that was set forth in clusters C to F. The Delegation wished to make a number of comments on specific proposals and, in these, echoed the comments already made by preceding speakers. The Delegation said it would limit its comments to the main points. As some delegations had noted, technology transfer was something basically dependent on the private sector. It was therefore difficult to have a proposal like 26, where there was an obligation to encourage or rather ensure transfer and dissemination of technology, that did not seem to be appropriate. The Delegation asked for a more appropriate term. Regarding proposal 27, the Delegation believed that it should avoid any overlapping with activities already undertaken in other international bodies. As for 23, the Delegation believed it to be contradictory. On the one hand, it mentioned fostering the transfer of technology and on the other it highlighted and promoted flexibilities. The Delegation explained that pretty often if transfer of technology was going to be fostered, then a clearly defined legal context and framework were needed in order to do so, and that it was rather contradictory to do the two things at once. As for what concerned the brain drain, it seemed that proposal 35 went well beyond IP as such, and that there should be an explanation as to what exactly WIPO could do because those issues went far beyond WIPO's mandate. With regard to proposal 38, again the Delegation wished to obtain some clarification as to what exactly should be understood by the participation of civil society since the Delegation believed that things were going quite well in that regard within WIPO. As for proposal 39, like other delegations, the Delegation of Switzerland did not know what the UN criteria on NGO acceptance and accreditation were, but believed that it was satisfactory in WIPO.

148. With reference to cluster E, the Delegation of Uruguay believed relevant to include 36, and to merge and unify 38 and 39. With regard to cluster F, it was of the opinion that proposal 40 should be maintained.

149. The Delegation of China agreed in principle to cluster C. The Delegation supported, especially, proposal 28 because it dealt with the interests of the right holder and because to study the various effects would be useful for the work of WIPO. Regarding cluster E, the Delegation supported it and declared that WIPO should carry out cooperation with other international organizations, that it could help developing countries, especially African countries. The Delegation supported number 35 and also felt that the civil society and the wider cooperation of other organizations and NGOs would help the carrying out of work by WIPO, and therefore supported proposals 8 and 39. Regarding cluster F, proposal 40, which the Delegation supported, the real problem should be dealt with according to article 7 of the TRIPS Agreement, it added.

150. The Delegation of Mexico supported the proposals in clusters C, D E and F. On proposal 28, it believed that it should not exceed the purview of WIPO since those aspects in the trade area as well as some of the measures to help combat anti-competitive practices ran counter

to free enterprise, and that that was a matter for other organizations. With regard to cluster E, the Delegation also believed that the most appropriate thing would be to merge proposals 38 and 39, in view of the fact that there were well-defined criteria in the UN system for the participation of NGOs.

151. In connection with proposals 22, 25 and 35, the Delegation of Australia acknowledged the importance of those proposals and although not totally convinced that WIPO was the right forum, it did support the intent behind them.

152. The Representative of the Electronic Frontier Foundation (EFF) referred to proposal 32 on which there had been some questions on whether the public domain could or should be protected. The Representative indicated that the public domain was not fallow simply because its contents were not protected by copyright. It was rather a rich source of sustenance for future creators, whether it was the Berlin Philharmonic interpreting Mozart, Walt Disney, or borrowing from the Brothers Grimm. According to the Representative, the public domain was a crucial part of the creative process as well as a public good. It therefore urged Member States to view protection for the public domain in the light of maintaining its future growth, not just its present boundaries. With reference to proposal 30, it fully supported the study of informal economies in a cost-benefit analysis of IP enforcement. The economic impact of IP protection in its many forms had been woefully under-examined and because the complexity of the issues scaled with the complexity of the economies in question, it believed it was vital for developed countries to undertake such studies as well.

153. The Representative of CI expressed its support for the inclusion of proposal 28 as an actionable item that would enable WIPO to assist countries in using competition policy to redress the abuse of IPRs to the detriment of consumers. CI welcomed the comments made by the delegations of South Africa and Germany which had noted that competition policy was an effective tool to curb anti-competitive practices. CI emphasized that Articles 6, 7, 8, 31(k) and 40 of the TRIPS Agreement framed the WTO members' policy options in using competition policy safeguards. As some delegations had noted, the relationship between competition laws and IPRs was indeed a complex one. As WIPO and other multi-lateral and bilateral trade negotiations established new IP norms, leading to more obligations on countries to enforce those rights, it was quite important to fully appreciate the role of competition policy in addressing certain problems that could arise, particularly if those problems harmed consumers. CI stated that it would be very useful if WIPO could collect information from Member States on the cases where competition laws had been used to remedy anti-competitive practices. WIPO could also play a role in helping Member States understand their rights and obligations under Article 40 of the TRIPS Agreement in cases involving disputes over anti-competitive practices in the licensing of IPRs, when those practices involved actions in more than one country. An initial report from the Secretariat on the possible implementation of Article 40 in cross-border cases would also be a useful deliverable. CI reiterated its support for proposal 32, an actionable item which requested WIPO to deepen the analysis of the implications and benefits of a rich and accessible public domain. CI indicated that WIPO could provide a report with case studies on the issue. Such case studies could discuss the decision by several Member States to place the human genome in the public domain, or how the World Wide Web consortium and other bodies had created technologies for the Internet that were free from IP claims. In both instances, by placing some

data and technology into the public domain, there was a more competitive environment for the next generation of inventions and services, including inventions and works that were fully protected by patents and copyrights. CI considered that a deeper understanding of the relationship between the public domain and IP was timely and important.

154. The Centre for International Environmental Law (CIEL) was pleased to see the increased willingness by Member States to substantively engage with the proposals before the Committee and to see less time spent on discussions on procedure. In particular, it was pleased to see many countries express general support for the document before them, even where they needed clarifications or preferred other wording. CIEL urged Member States to note that the participation of public interest civil society organizations in the WIPO processes had not happened overnight and had not been welcomed by some members or the Secretariat. The conceptual approach at WIPO that equated right-holder groups with public interest organizations still presented problems. CIEL nevertheless acknowledged the support of many Member States for public interest civil society organizations to take part. On proposals 38 and 39 in cluster E, on NGO participation, it believed that two issues needed clarification. The first concerned the reference to the UN standards and to the proper characterization of the difference between business and right-holders organizations on the one hand, and public interest organizations on the other. The second issue was the need to maintain the openness of WIPO's participation to date and the extension of that openness to other organizations.

155. The Representative of the International Federation of Library Associations and Institutions (IFLA) made a joint intervention with the Electronic Information for Libraries (EIFL), expressing their support for proposal 33 in cluster D regarding the continuous evaluation WIPO's technical assistance programs and activities to ensure their effectiveness. IFLA and EIFL believed that a continuous evaluation was also necessary to ensure quality and neutrality and proceeded to give an example. It was indicated that the Secretariat used a draft copyright law as a tool to advise Member States and such a draft was previously available on the WIPO website. The definition of communication to the public for transmission by wire or wireless means in the draft law was, however, far narrower than the definition in the WIPO Copyright Treaty. The draft law limited the availability to the public to "persons outside the normal circle of a family and its closest social acquaintances." That limited and inhibited the uses of new wireless technologies just when it was necessary to encourage their take off in developing countries. Such a narrow interpretation of transmission by wire or wireless means could not be found in the copyright law of any major industrialized nation, including the United States of America and EC Member States, yet it had been the advice of the WIPO Secretariat to developing countries. IFLA and EIFL pointed out that it could be found in the copyright law of numerous countries, including in Cambodia in 2003, Swaziland in 2004, and Ghana in 2005. The Secretariat had highlighted the previous day that legislative advice was undertaken entirely within the house. It was, therefore, incomprehensible why the Secretariat had chosen to unnecessarily create such a narrow definition, for what reasons, and for whose benefit. IFLA and EIFL believed that the draft Copyright Law was being updated and hoped that that particular problem would be addressed in the revised version. A continuous evaluation of WIPO's technical assistance programs would ensure that such aberrations were identified and rectified at a much earlier stage before it was too late for some countries.

156. The Representative of the LCA spoke on behalf of the LCA, IFLA and the EIFL and addressed two points. The first point referred to proposal 32 in cluster D, noting that the public domain meant works that either had never been copyrighted or that were no longer within the term of protection under the applicable IP laws. Libraries all over the world were working to save - including through digitalization - older and often endangered materials that were in the public domain. Those efforts were crucial when preserving history and cultural heritage for future generations. Access to the public domain fostered learning, innovation and creation of new works. Those works might themselves then be subject to new rights but that was a benefit, not a burden, of a rich public domain. The Representative indicated that WIPO should make that an actionable proposal. With regard to proposals 24, 25 and 26 in cluster D, widespread access to the information contained in scientific articles, particularly articles based on research funded by governments, was an essential and inseparable component of Member States' investment in science and technology. That and other scientific information should be shared in cost-effective ways to take advantage of the Internet, stimulate further discovery in innovation, and advance the translation of that knowledge into public benefits. Enhanced access to information would lead to usage by millions of scientists, professionals and other individuals, and would deliver an accelerated return on the public's investment. The Representative expressed its willingness to meet with interested parties who wished to discuss those concepts in order to refine the proposals before the Committee.

157. The Representative of IPI said that in its earlier intervention, it had cautioned against WIPO being led too far from its narrowly-focused mandate and wished to reiterate its concern. It believed it was outside of WIPO's mandate to involve itself, for instance, in competition policy or bridging the digital divide. There were already at least two other UN specialized agencies, namely the International Telecommunications Union (ITU) and the new Internet Governance Forum, that had the digital divide well within their mandates. Its concern was that WIPO would function most efficiently and most effectively if it maintained the discipline of a narrowly-focused mission. In its earlier intervention, while praising the value of the public domain, it had specifically cautioned against proposal 17 factoring protection of the public domain in WIPO norm-setting, and it appreciated the discussion that had taken place on that item. The lack of consensus on proposal 17 was however warranted in its opinion. Digital content should be protected otherwise IPRs related to digital goods would be impotent. Technical protection measures were necessary in order to protect digital content, including recorded music, movies, software and digital content streamed over the Internet or broadcast over airwaves. As already indicated, technical protection measures restricted and threatened the public domain. Therefore, if the protection of the public domain was a criterion for WIPO norm-setting, that would make it almost impossible to protect digital content. The Representative was also concerned with the proposal for WIPO to adopt UN criteria for NGO accreditation. As NGOs, they had had no problem obtaining accreditation and were always fully notified and invited to all WIPO meetings. WIPO had been generous in admitting NGOs, even on an *ad hoc* basis, so the Delegation was puzzled by that proposal. It was concerned that the effect of that proposal, if not the intent, could be used to deny accreditation or to segregate accreditation to industry or business NGOs which found it much harder to attain accreditation under UN criteria. Because of WIPO's unique funding mechanism, it was only right and proper that business and industry NGOs had the full right of accreditation within WIPO without segregation. The lack of consensus on that item seemed also warranted.

158. The Representative of the International Policy Network (IPN), a development charity based in London, United Kingdom, working for public policy experts across the globe and focusing particularly on issues relevant to development in poor countries, declared that it had consistently been concerned since the beginning of the Development Agenda with the attempt, whether intentional or not, to override WIPO's principal responsibilities as a norm-setting body, and to turn it into an organization that was defined by vacuous goals whose success could not be measured objectively. The success of an organization was defined by how closely it operated within its specific agreements. Any effort to introduce unclear guidelines would thus at best be a distraction for WIPO or at worse counterproductive. IPN was concerned with a number of specific proposals that appeared to unjustifiably draw WIPO away from its core responsibilities. Many proposals were, to its opinion, whether again intentionally or not, attempts to include issues that were not specifically related to IP, nor to WIPO. While important matters, it believed that issues related to the brain drain and the digital divide were not immediately relevant to WIPO's responsibilities. Moreover, and as previously indicated by other Member States and NGOs, unclear efforts made to protect the public domain could have the unintended consequence of weakening the IP system and failing those who needed it most, namely those who had no other recognized assets but their creativity. To serve as another reminder, a strong and impartially-administered IP system was the best way to ensure a robust public domain. IPN noted that countless economic studies based on empirical evidence, not rhetoric, indicated that sustainable economic and social development was the result of a stable environment where there was a rule of law administered by an impartial judiciary, not a rule of man where unclear rules were interpreted at the whim of policy-makers. In other words, where governments were restricted by clearly defined laws, people demonstrated the remarkable ability to explore their innate creative resources and lift themselves out of poverty. Yet people needed some important tools, and strong enforceable IPRs were among these tools. IPN concluded by stating that this last point should be a guiding premise to the continuing discussions on a WIPO Development Agenda.

159. The Representative of TWN made specific comments on cluster B, stating that proposals 17 to 21 were of utmost importance. TWN pointed out that there was a trend wherein more layers and standards of IP were being set. It had started off with the TRIPS Agreement which had been the first international agreement to globalize minimum standards, and TWN believed that countries were still grappling with the implementation of those standards. In fact, it was only recently that developing countries had begun to understand the impact of the TRIPS Agreement. TWN noted that there were many WIPO agreements and it had often been argued that those agreements were not binding, but voluntary, and as such if developing countries felt that the standards were not suitable they simply should not ratify these treaties. But the reality was that many countries, least developing countries, were being pressured, through bilateral and sub-regional free trade agreements - as well as other forms of pressure - to ratify many of those agreements. For example, one specific American bilateral free trade agreement with a development country required the country to accede to five WIPO agreements, give effect to provisions of two other WIPO agreements, and make best efforts to ratify or accede to two other WIPO agreements. That was a total of nine WIPO agreements. TWN, therefore, believed that it was today even more important to ensure that the set norms followed certain principles such as ensuring the recognition of the different levels of development of members, reflecting a balance of benefits and costs of any initiative, preserving the interests of society at large - and not only those of IP-owners in norm-setting - and reflecting the priorities of all members. TWN hoped

that the adoption of those principles would lead to the adoption of norms that were balanced and that treated countries at diverse levels of development differently. It also wished to support proposal 28 on the promotion of measures that would help countries combat IP-related anti-competitive practices. In its opinion, IPRs were monopoly rights and anti-competitive measures could enhance balance within the IP system. In support of that proposal, TWN quoted the American Federal Trade Commission Report of 2003 which stated that competition and patents stood out among the federal policies that influenced innovation. Both competition and patent policies could foster innovation but each required a balance with the other to do so. TWN agreed that that was an actionable proposal, there was a need for deeper understanding of the relationship between IP and competition policy, and that was an area where WIPO could do much more.

160. The Representative of KEI wanted to respond to several comments about the public domain and noted that there were some discussions about whether or not it would be useful for the Committee to discuss some of those new modes of production of knowledge goods based upon open public domain technologies. KEI referred to the human genome and SNIPS projects. These databases which were put in the public domain were deliberately supported by big pharmaceutical companies who believed they included certain types of pre-competitive information that would be more useful to society and would stimulate more investments if put in the public domain. What was happening, according to KEI, was that such projects were now leading to privately patented inventions which were based upon initial public domain investments. The Internet, which had been created by the World Wide Web consortium and the Internet engineering task force, had also led to an enormous range of proprietary technologies which were right on top of those public domain shared resources. KEI noted that there was a type of pre-competitive public domain infrastructure in such critical, dynamic areas of the economy supporting a number of wealth-generating activities that enjoyed IP protection. The global positioning satellite (GPS) system, put into the public domain by the United States of America under the Reagan Administration, had immediately generated a 15 billion United States dollar value-added industry for the use of free signal with new value-added products, so it should not be thought of that the public domain was an attack on the IP system. It was part of the knowledge ecosystem. If it became hard to use the public domain tools, then it could actually end up hurting the IP system because one of its fuels was the ability to use these tools, which were in some cases in the public domain. KEI wished to point out that those were complicated issues and it was important to talk about them and that they be included in the Development Agenda in order for better decisions to be made at WIPO. The public domain was about the term of IPRs, about the scope of rights, and about what could be owned. In some countries like the United States of America, patents could be held on business methods, whereas in other (countries) business methods could not be patented, and similar differences might exist in other areas. In the United States of America, patents on surgical methods could not be enforced against a doctor, while in other countries they could. KEI noted that it was interesting to look at how countries have fared that have pursued one strategy, when compared to countries that have pursued different strategies in some of those areas where people were not quite sure about whether or not anything should be owned in the first place. In terms of anti-competitive practices, in KEI's experience, people were more comfortable with the enforcement of IPRs if they believed that the system of IPRs was fair and had safeguards. KEI pointed out that in the debate on the European biotech directive, the extension of patents to seeds had been quite controversial, and plant breeders were among the people that had been unhappy with widespread

patenting of seeds because they needed access to the seeds to be plant breeders, to make improvements to the seeds. Part of the compromise had been that the European directive on biotech mandated compulsory licensing if there was a refusal to license the patent to the plant breeders to make improvements on seeds. As a result, a sort of competition model had been developed, which was part of the reason why people had accepted extended patent protection in that area. The use of competition remedies, whether in the area of software technology, seeds, medicine or other areas, made people feel they could accept higher expanded scope of patents in other areas because they felt that there was a device to fix that and it would be very useful that those remedies be better understood within the Committee. KEI indicated that WIPO had a responsibility, namely, that if it was promoting more patents and more IP protection, it was also to make people understand what were the widely-used means in Europe, Japan and the United States of America to control and deal with problems that came from those rights.

161. The Delegation of Algeria, on behalf of the African Group, stated that a document on technical assistance and capacity building had been circulated earlier on that day to all the groups and concerned delegations in order to give them the appropriate time to examine the document. The Delegation also stated that it had held consultations with the Asian Group, Group B, the “Group of Friends of Development”, GRULAC, and with other delegations that were directly involved in this process, and that in their proposal document they had tried to accommodate the concerns of all groups. The Delegation underscored the fact that, for the time being, all delegations and groups were supportive of the substance of the draft document, but that consultations were still continuing with some groups. The Delegation hoped that by the following day, full support of the document would have been obtained so that it could provide the Chair with its proposal. The Delegation therefore asked the Chair to grant them a bit more time.

162. The Chair stated that as cluster A was first to be dealt with, it was not surprising that the work on cluster A had proceeded so quickly. The Chair thanked the Delegation of Algeria for its hard work, noting that it was the fourth draft, and also thanked the “Friends of the Chair” for the work that they had started. He emphasized the fact that there was still a lot of work to be accomplished and thanked all delegations for their cooperation and efforts so far.

163. The Chair called upon the Delegation of Algeria, as coordinator of the African Group, to report on the progress made in the consultations on cluster A.

164. The Delegation of Algeria stated that it had received reactions to the last version of the document it had distributed the previous day, and that it had made suggestions to meet the concerns of the various groups. The Delegation summarized the concerns expressed by different delegations on the proposals, paragraph by paragraph, and how those concerns had been taken into account by amending, adding, or reformulating the proposals.

165. The Delegation of Poland informed the meeting it would circulate a revised version of the document on cluster D which took into account all the comments received.

166. The Delegation of Italy declared that it had produced a preliminary paper on cluster E and had only received feedback from the “Group of Friends of Development.” It hoped that the other regional groups would be able to comment, after which it would submit a new draft.

167. The Delegation of China informed the meeting that the first draft was ready and requested the members of the Asian Group to have a look at the text as prepared so that it could be distributed to the other coordinators

168. The Delegation of Kyrgyzstan confirmed that it had received the comments of all groups on cluster B and that it would present a new draft of it that afternoon.

169. The Chair said that further negotiations would continue that morning particularly on cluster B, in which process the Chair would help.

170. The Delegation of Colombia understood that it was the time to take a general stand on the results that had been produced concerning the consolidation of the 40 proposals contained in Annex A. The Delegation wished to reiterate its commitment as to the topic of development and particularly pointed out that it fully supported the integration objectives of the development aspects in the IP system and in WIPO activities, so as to increase the credibility of the IP system and promote innovation, creativity and development. The Delegation supported some of these timely proposals and supported the substance of the initial proposals presented by the Delegation of Argentina and Brazil. The Delegation noted that the integration of the development aspect into the IP system and into WIPO activities would enhance the credibility of the IP system and its acceptance on a broad scale as a fundamental tool to promote innovation creativity and development. A proof of that was that out of the 40 proposals in Annex A, the Delegation had fully endorsed 31 of them, which was more than 75 per cent. Only two of them, that is 5 per cent, referred to the public domain and on those the Delegation did not have flexibility. As far as public domain went, it had great concerns about the language of proposals 17 and 32 of Annex A, and proposals 23 and 32 of Annex B. Throughout that day the Delegation had received certain proposals made by the Friends of the Chair which reflected the progress made in the discussions. However, despite what the Delegation had earlier stated, the documents circulated still reflected these proposals on public domain. It noted that it did not understand the character of the said documents which claimed to reflect the consensus. True consensus required meeting the needs of all Delegations. Taking a consensus approach in a multilateral forum like that one meant that the intention was to integrate the views of all parties. Countries had the right to have certain positions on a topic. The consensus process was desirable when it was unlikely to force the compliance with decisions. The Delegation stated that minority positions should be taken into account, the majority should not take actions and compel a decision without any additional consultation with the minority parties. Perhaps the Delegation was a minority voter, but if that was a consensus process, then that vote counted particularly as regards those proposals. Sometimes, a single vote was the light that was brought into the process. A consensus process meant that general concerns were listened to, and elements of multiple alternatives could be combined and it was confirmed that the Delegation understood a given proposal and argument. However, up to that moment, it had not seen many other alternatives to the public domain proposals, except those which had been submitted, and those were impossible to accept for the Delegation. The Delegation hoped that other delegations would understand the commitment it had to development as a developing country but also urged other delegations to understand that as all of them, it had concerns and its concerns were being raised there. As regards public domain, the proposal was still dealing with protection and including that into the norm-setting activities of WIPO, as the Delegation had pointed out at the beginning of those discussions, and in its view, that was contradictory, the public domain not being susceptible of achieving

protection. Sometimes the public domain was when something had lost protection, there was free access and people could use it freely. What was found in the public domain was not something which depended on WIPO, but rather depended on individuals. If delegations wanted to include that within the WIPO activities, if they wanted to look further into that issue, then it was sure that, as many delegations had pointed out, that proposal should claim that it would not affect the IP domain. But that was not in the language. With reference to proposal 17, the Delegation enquired as to where was it stated that the rights of IP would not be affected? There was a principle in law which established that everything that was not forbidden by law was allowed. The Delegation said the Committee listened to some people saying that the problem with the public domain was that it was being reduced further and further and more and more. But, no one had ever seen the tangible case of a specific literary or artistic work which had gone out of the public domain into the private domain. Half of that specific situation that was usually seen was often excessively an erroneous cope of rights. The Delegation cited as an example the execution of a piece of music that was in the public domain to be considered also as a public domain through misunderstanding of the expression, there had been voices heard during that day session protesting to the fact that there were technological protection means to the public domain work. That was usually done because creative aspects had been added to that specific work and, therefore, the interpreters were entitled to do so. But it did not mean that the work composition, which was object of that execution, had been taken out of the public domain and put into the private domain. The Delegation declared that anyone could make an addition to a work at any time and prevent third parties, prevent libraries, to edit these works which were in the public domain. The Delegation did not understand why WIPO should do so. Some delegations had had a strange impression that day that the Delegation of Colombia had mixed up moral rights with patents and inventions and they said that might require an example. The Delegation therefore gave an example in the chemical field that it felt totally familiar with because it was the delegate's educational background. Often in chemistry, new molecules were developed which were distinguished one from another by just one radical or one substitutive element, and in a patent request, this molecule was called in English "moyette". It was therefore like half was just a very small part of the molecule and in most of the cases, was the one that enabled a modification or had totally different effects when compared to the original molecule. For many, the difference was a very slight distinction and was considered as an extraction of a molecule which was already in the public domain to be put then into the private domain. But this had to be confirmed by chemical processes. The activities of all these were working as a key. These molecules had an active site which enabled some to act on its specific substrate and not another. For example, the congestion or replacement or moyette elements which recognized a specific part of the molecules or substrate. And that was the one that they were going to act. Because people were not familiar with the process, they considered that an old molecule had now become a patented one, which was not correct. The Delegation wished to point out that that kind of reaction indicated a certain level of lack of familiarity with copyright and industrial property rights in general to include all of the IP branches in one, they should not be mixed up, that was not going to lead to a reduction of the public domain. The Delegation said that if these political topics were taken to a specialized forum as WIPO they were going to end up taking away the whole essential characteristic of the IP, which was to create special activities in the different nations. The Delegation understood the concerns of the other countries but considered that the theme was properly taken care of in the international instruments, which currently existed. For example, in the WCT in its beginning, there is the recognition that balance should be maintained between Copyright and the general interest of the public at large. An education research access

to information was reflected in the Bern convention that was in the preamble. The Delegation added that in the WPPT, there was a preamble relating to the lack of balance between the titleholders and the public at large. The Delegation declared that that proposal of public domain was not clear. The Delegation was concerned with it and could not accept it in the light of what it just had said and declared that Colombia expressed its reservation about the proposals on the public domain.

171. The Delegation of Nigeria declared that its amendments were directed to the fourth bullet or indentation which read: “be a participatory process, which takes into consideration the interests and priorities of all WIPO Member States and other stakeholders, including Civil Society at large.” The Delegation wished to proceed in making the amendment on the understanding that the interests and priorities of Member States might not necessarily coincide or reflect those of Civil Society and that could be *vice versa*. The Delegation therefore proposed that this particular indentation should read “be a participatory process which takes into consideration the interests and priorities of all WIPO Member States, as well as the view points of IGOs and our credited NGOs.” The Delegation believed that would be more accurate in connection with that particular objective than the word that was currently used.

172. The Delegation of Pakistan had a suggestion regarding the language used in cluster B, proposal 31, which in its opinion should be: “to request WIPO to continue to undertake studies to examine the economic, social and cultural impact of the IP systems, including the impact on pricing and availability on education material, i.e., textbooks and software and pharmaceuticals.” In addition the Delegation suggested that WIPO could undertake development impact assessment of the existing and proposed IP norms.

173. The Delegation of Benin took the floor on behalf of the LDCs which had been consulting the African Group in relation to the proposal concerning technical assistance and capacity building and also about paragraph 2. The Delegation declared that the Delegation of Algeria and itself would submit to the Chairman the results of their consultations, which considered the LDCs’ interests and tried to include specific vocabulary in that paragraph.

174. The Delegation of Brazil wanted to make sure that it had not missed on the procedure followed in the meeting. There were certain proposals and amendments that should have had some time to be reflected on and that had not really had a process to consider them and it also wished to know how the Committee should include the most recent proposals that were coming from the different groups. Regarding the cluster B changes suggested by the Delegation of Nigeria, the Delegation of Brazil did not have a problem with indicating NGOs and IGOs and listing them among those entities that should be part of this participatory process, as long as the other stakeholders including civil society at large were not removed. The Delegation declared that taking into consideration their views did not necessarily mean adopting their views and the Delegation thought that there was already a clear view of this aspect open and flexible enough to accommodate for the possibility of their views, not being necessarily the same as Member States, but the Delegation believed that they should be taken into consideration and that was the least that could be done. The Delegation stressed its position supporting that language in the bullet and simply adding on reference to NGOs and IGOs, which were not explicitly mentioned. With regard to the proposal made by the Delegation of Pakistan, the Delegation of Brazil stated that its first reaction to it was that it believed that that issue was new in many ways, so it would not be a

question of WIPO continuing to undertake those studies, but it would have to start to undertake them in line with certain elements of the proposals forwarded by the Delegation under the IIM/1/4, regarding impact assessment studies. So, a clear picture of the kind of studies that were behind that proposal should be drawn since, to the Delegation's point of view, it was to a great extent a new activity for WIPO to undertake. If so, maybe the verb 'continue' would not work in that context. On the issue of making reservations to particular points in proposals, the Delegation understood that that was an on-going process, in accordance with the decision and the framework agreed during the General Assembly of 2006 and that the outcome of that process would only be fully adopted after PCDA/4 in June 2007, when the Committee would have the full scope of decisions in front of it. So, in that sense, the Delegation would refrain from making specific reservations at that point but insisted that it should be kept in mind that the process continued through June 2007 and up to the General Assembly 2007 and that the full view of the outcome would be needed before Member States began making particular reservations. Otherwise, there would be a series of comments that might take the discussions backwards instead of forward.

175. The Delegation of Nigeria declared that as much as it wished to refer to the wisdom of the Delegation of Brazil, it wished to highlight that the interests and priorities of States should not be placed at the same footing with those of civil society members, especially in multilateral process in an IGO like WIPO. Yet, this did not mean denigration or reduction of the importance of civil society participation and viewpoints, it added. Having said so, it wished to propose that when WIPO Member States were mentioned in the proposal a comma or semi-column be placed there and then to continue to say: "and the view points of other stakeholders including IGOs and accredited NGOs." The Delegation declared that in case the expression civil society at large was used, the Committee was, by implication, indicating that any member of the civil society could come there, present viewpoints which would be obliged to be considered, being them registered members or not. That was the Delegation's argument and it did hope that the Delegation of Brazil would see its viewpoints which were not actually very different from theirs.

176. The Delegation of Pakistan responded to the comments made by the Delegation of Brazil on three points: first the Delegation of Pakistan wanted to use the expression 'to continue' because in the explanatory notes which were given, it had been said that WIPO was undertaking a wide range of studies looking how the IP was being used and managed in various sections. The Delegation's point was that during these types of studies, the impact on the pricing and availability of the text from pharmaceutical should also be looked into. The second point was that that proposal was basically in line with the proposal made by the "Group of Friends of Development" on the impact assessment of subjects as that one. Third point was to include in the content of the impact assessment both sides of the picture, the positive and the negative aspect, the benefits and costs of any IP instrument which was negotiated or which was being implemented. Coming to the detailed terms of preference the Delegation was willing to share its views with the Chair in the due course of time on that subject.

177. The Chairman thanked the Delegation of Pakistan and believed that at that stage it would help if the delegations would at least indicate what they supported. If the Delegations supported the draft of clusters X, Y and Z, he wished to hear all views because if they had amendments to propose that would be the opportunity. He added that to maintain the momentum, it would help if the delegations said whether they were happy with the proposals in certain clusters. He wished to hear where they stood because he did not want to reach the next day, which was the last day of

the meeting, to hear that someone was concerned about something. On the other hand, he presumed that their silence was good and that meant that they consented and would forever hold their peace and that was a risk which was a bit dangerous at that stage but he was willing to take that risk if the Delegations wanted to stay quiet and not say anything about.

178. The Delegation of the United States of America thanked the “Friends of the Chair” for their efforts throughout the course of the week and for moving the process forward, creating these drafts, several of which the Delegation had just received and had not had the opportunity to look at in detail. The Delegation believed that it would have been most useful if the groups had been able to have group coordination before proceeding to the regional coordinating meetings, where they would be negotiating texts without the input from all the groups. It stated that while it was useful to hear the preliminary reactions, it did not think that going to group coordination before proceeding to negotiation of those texts would be useful. It expected to obtain recommendations with regard to Annex A by the end of the week, so that they could achieve concrete results that week. It thanked the Chair for his efforts and stated that it would continue to engage constructively.

179. The Delegation of France declared that it was delighted to see that the consultations contributed to reach some form of agreement and, as a result, they had the proposals distributed to them. The Delegation asked about the availability of the different language versions of the documents, because discussions, particularly in their regional group, had underscored the importance of choosing the right word as sometimes there might be difficulties in interpretation that would arise from one language to another regarding particular aspects on what had been done. The Delegation noted that having that in mind, it considered it to be particularly important to know when the other language versions of the documents would be made available in order to have an accurate picture of what was involved and what they were committing themselves to.

180. The Chair thanked the Delegation of France and expressed his understanding for the concerns of non-English speaking members. The Chair pointed out that he was sure that the fact was not new to them in the international environment. The Chair declared that they had done the work in English and he expressed his appreciation to those members of the team, the coordinators, etc., whose natural language was not English but who however had cooperated with them to negotiate in English. The Chair was told that the translations would be available by the following week and he stated that that was the best response that he could give to them as well as to all of the other non-English language speaking delegations within the UN system.

181. The Delegation of France thanked the Chair for his answer and expressed its understanding regarding the difficulties in obtaining a whole set of different linguistic versions available on documents that kept evolving and changing minute by minute to include a lot of amendments. It stated, however, that it was constrained to ask for a general linguistic reservation about all of the documents so as to be quite sure of the concordance of the commitments that could be taken.

182. The Chair thanked the Delegation of France for its understanding and stressed that the idea of a linguistic reservation was well understood.

183. The Delegation of Mexico was thankful for the very transparent, systematic and methodological manner in which work was conducted so as to be able to reach the results sought.

Regarding the negotiated solution for all the clusters before them, although the Delegation of Mexico was not the coordinator of a regional group, nor had taken part within the regional groups plus two, it had indeed taken part as a contributor at some point in time with a proposal and that it was fortunate enough, even though its mother tongue was not English, to have the patience of their colleagues so as to be able to achieve a compromise which was satisfactory for the majority. The Delegation of Mexico declared that the way in which the results of the days of negotiations had been submitted in the English language was acceptable and that of course it was waiting for the official translation of the Secretariat.

184. The Chair asked for the delegations' approval for the proposals submitted in clusters A, B, C, D,E and F in order to be adopted . As there was no objection, he declared the recommendations adopted. The Chair indicated that the next item on the agenda was the summary by the Chair, he asked for them to look at it in order to adopt it in due course and invited the delegations that wished to make closing statements to do so.

Agenda Item 5: Summary by the Chair and

Agenda item 6: Closing of the session

185. The Delegation of Argentina thanked the Chair – in its own name and on behalf of the “Group of Friends of Development” - for the work he had conducted during the week and commended him on his negotiating skills. It joined the Delegation of Mexico in thanking him for the transparent way he had conducted the exercises, for his patience and his strenuous efforts to look for fair compromises. The Delegation stated that it looked forward to the continued work with him in preparing the successful meeting next June.

186. The Delegation of Bangladesh thanked the Chair and, on behalf of the Asian Group, expressed its satisfaction of the outcome of this third PCDA session, and its appreciation to the Chair for his leadership and wisdom in guiding the session to a successful outcome. The Delegation also thanked the Vice-Chair for his contribution and colleagues from the Asian Group for their support and understanding for the coordinator. It also thanked other regional groups and all delegations for their constructive engagement during the session and declared its appreciation to the Secretariat for the useful support rendered. It mentioned that the Asian Group was looking forward to equally fulfilling discussions on Annex B proposals next June.

187. The Delegation of Algeria, speaking on behalf of the African Group, expressed its gratitude for the fruitful work achieved during the session and pointed out that the positive results achieved during the meeting were the result of efforts undertaken by all the parties although points of view had differed on the issues. The African Group wished to contribute to consolidating the constructive work done and pursue efforts so as to be able to achieve positive results during the Fourth Session of the PCDA. It expressed its gratitude to the Chair, as well as to the Vice-Chair and the Secretariat, for the ceaseless efforts they had made during the whole session. The Delegation also thanked all members of the African Group for their positive contribution which had also enabled them to reach fruitful results.

188. The Delegation of the Russian Federation thanked the Chair for his wisdom, conviction and courage, qualities which had greatly contributed to achieving the decisive results they had

reached. It declared its hope that the forthcoming session of the PCDA in June would be held in the same spirit and, on behalf of its regional group, assured the Chair of their support in the inter-sessional period as well as in the course of the Fourth Session of the PCDA. The Delegation also thanked the Secretariat for its extremely valuable support, the colleagues from its regional group, the regional coordinators, and all colleagues who had participated in their work.

189. The Delegation of Italy, on behalf of Group B, thanked the Chair for the very transparent way he had been conducting the discussions and apologized if the body language of his representative during the Chairman's restrictive consultation had created some problems. The Delegation also thanked the regional coordinators, the Delegations that had constructively worked with them, and the Secretariat and its interpreters for their help during the whole week.

190. The Delegation of Poland, on behalf of the Group of Central European and Baltic States, thanked the Chair and declared that it had been very pleased to participate in and actively contribute to a process that had led them to achieve fair progress during the week. The Delegation stated that such a good result was due to the extraordinary work and leadership of the Chair and also expressed its appreciation to the Vice-Chair. The Delegation thanked all the colleagues from all regional groups and other groupings, as well as from separate delegations, for their flexibility in questions which were sometimes very sensitive or otherwise difficult to them. The Delegation noted that this flexibility and gap-bridging spirit had resulted in what they perceived as the success of the meeting and that it would permit them to look to the next PCDA session with optimism. The Delegation thanked the Secretariat for its continuous and high quality assistance and mentioned that it was looking forward to working with the Chair in June as well as during the inter-sessional period.

191. The Delegation of China joined the intervention made by the Delegation of Bangladesh on behalf of the Asian Group to thank the Chair for his contribution during the session and added that it was thanks to his wisdom, experience and relentless efforts that the meeting had achieved such a good result. The Delegation also thanked all the other Member States for their compromise and cooperative spirit, as well as flexible attitude. The Delegation had noticed that the Member States had put forward a lot of judicious opinions on the proposals which had given a lot of inspiration and that would help future work. The Delegation welcomed the agreement on the relevant proposals and expressed its wish to continue working in a constructive way to participate in future discussions.

192. The Delegation of Germany, on behalf of the EC, thanked the Chair and recalled that in its opening statement it had expressed the hope that under his guidance substantial progress and concrete results could be achieved during the week. It declared its great satisfaction on the progress made and on the concrete results achieved, which it considered due to the constructive spirit and flexibility on all sides, and thanked everybody who had been involved in the exercise. The Delegation stated that the success was also due to a great extent to the way the Chair had chaired the Committee, his hard work and dedication, and commended him on the professionalism and negotiation skills that he had shown.

193. The Delegation of Kyrgyzstan thanked the Chair and commended him on his skillful Chairmanship of the Committee. The atmosphere of trust and goodwill he had created had allowed the assembly to arrive at mutually acceptable compromised decisions, which had set up a

good foundation to further work. It also expressed its gratitude to WIPO Member States for the election of Kyrgyzstan to the post of the Vice-President of the PCDA. It was convinced that letters of definition of parameters of the WIPO Development Agenda were very important and that the Agenda for the Development was an issue that was topical for all countries, regardless of the level of their social and economical development. It believed that within the framework of the Organization, as through the International Bureau, greater work was being done to fully meet the expectations of the Member States, and that consequently the Agenda for Development could not be restricted to the issues relating to technical assistance, in spite of the fact that, in itself, this aspect was rather essential for many states. It stated that consideration of the Agenda proposals on a cluster basis was a bolster in a right direction because it allowed the goodwill and desire to compromise step-by step to increase the speed of work and avoid imposing of an agenda which might not be inclusive or might not reflect interest of the majority of the Member States. The Delegation mentioned that it had supported and actively participated in the constructive decision-making process concerning the substance and forms of the WIPO Development Agenda and it would continue contributing to the work of the Provisional Committee. It commended the work done by the Chair of the General Assembly. It had been pleasant for its Delegation to volunteer in assisting the Chairman on cluster B and expressed its deep satisfaction with the support it had received from the Member States and regional groups on further structuring and generalizing all the proposals. The Delegation pointed out that the success that had been achieved was due to the Member States' spirit of compromise, goodwill and sincere aspiration to advance the process. It concluded by mentioning its support to constructive approaches, patience and prudence in their common work, as well as to all other PCDA prudent champions for the Development Agenda.

194. The Delegation of El Salvador thanked the Chair for his efforts and also to the Vice-Chair, the coordinators and the regional groups, highlighting the excellent work done by GRULAC. The Delegation expressed its gratitude for the proposals that had been submitted and praised the working procedure used by the Chairman. It trusted that the June meeting would attain the same or even better results just as the one obtained at the Third Session of the PCDA.

195. The Delegation of Chile congratulated the Chair for his leadership and the very skillful way in which he had conducted their work and confirmed what had already been seen in the TRIPS Council. The Delegation thanked the Secretariat for the support provided during the meeting and expressed its satisfaction with the results and with the constructive spirit in which all of the members had participated, *inter alia* to accept topics which at some point in time were very difficult for some. The Delegation reiterated its support to the process and its desire to participate in a constructive manner in the future meetings.

196. The Delegation of India joined the delegations that had expressed their deep appreciation for the Chair's untiring efforts which had resulted in an excellent outcome of the Third Session of the PCDA. It viewed the outcome as a significant forward movement based on a spirit of compromise and consensus and hoped that the momentum that had been gained in the meeting would be maintained, if not further strengthened. The Delegation would continue to support the process in a meaningful manner and recalled that India had taken an initiative to hold an informal meeting in New Delhi earlier in February that was attended by representatives from 22 countries, helping the assembly to achieve clarity on the various and complex issues relating to the Development Agenda. It thanked the delegations who had attended the New Delhi meeting, as

well as the support provided by WIPO, and reiterated its deep appreciation to the Chair for his efforts. The Delegation also thanked the regional coordinator of the Asian Group, all the delegations, and the WIPO Secretariat for their support and cooperation.

197. The Delegation of Iran (Islamic Republic of) thanked the Chair and everybody who had helped with this process. It praised the Chair's leadership skills and his result-oriented approach which it considered key in achieving the results obtained in the meeting and mentioned that it called for a similar approach at the June meeting.

198. The Delegation of Argentina said that it had just seen the Spanish version of the Summary by the Chair and would be suggesting some changes.

199. The Chair stated that the Summary was a factual account and if the Committee went to the relevant parts of the draft, they would see that it had been faithfully recorded and if that was the case, he would ask if there were any comments. As there were none, the draft Summary by the Chair was adopted. (Reproduced in para 201.)

200. The Chair stated that during the week a number of delegations had expressed and emphasized the importance of achieving positive results by the end of that week, and he was extremely happy that they had been able to deliver on that expectation and to have been a part of it. The Chair wished to thank all the persons who had contributed to the success achieved. He thanked his Vice Chair, the Ambassador of the Kyrgyz Republic and his very energetic deputy. He also thanked the Secretariat, the interpreters for their good work, and the Members of the PCDA. The Committee's willingness to be flexible and progressive in approach to the work that week had been admirable, he added, stressing that they all knew that the more difficult part of the mandate laid ahead so while they sat that day at the comfort of the success at level A they all knew that the real challenge would come with level B in June that year. The Chair thanked all the delegations and said that he would inform Ambassador Enrique Manalo of Philippines, Chair of the General Assembly, of the discussions in that session. The Chair once more thanked the Committee for its work and declared that he was looking forward to continue the process the following June, and thereby he had the distinct pleasure of declaring the third Session of PCDA closed. With that, he formally adjourned the Meeting.

201. The following Summary by the Chair was agreed by the Meeting:

“1. The WIPO General Assembly, in its session held in September-October 2006, reviewed the positive discussions held during the two sessions of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), emphasized the need to continue discussions on the proposals submitted and placed in the six clusters during the IIM/PCDA process, and decided, *inter alia*, to renew the mandate of the PCDA for one year. It was also decided that the PCDA will hold two 5-day sessions, in a manner that allows for structured in-depth discussions, on all 111 proposals made so far, during the sessions of the IIM and PCDA in 2005 and 2006 respectively, taking into account the decision of the 2005 General Assembly, on the deadline for submission of new proposals. The General Assembly decided that in order to facilitate the task and streamline the process for detailed examination of all proposals in an inclusive manner, the PCDA should undertake an exercise:

- (d) to narrow down the proposals, in order to ensure that there is no repetition or duplication;
- (e) to separate the proposals, which are actionable, from those which are declarations of general principles and objectives; and
- (f) to note those proposals, which relate to existing activities in WIPO and those, which do not.

In this regard, the Chair of the General Assembly was requested to produce, in consultation with Member States, initial working documents.

“2. The Third Session of the PCDA was held from February 19 to 23, 2007. 106 Member States and 47 Observers participated in the session.

“3. The PCDA decided to admit, on an *ad hoc* basis, two non-accredited Non-Governmental Organizations (NGOs) namely Yale Information Society Project and Knowledge Ecology International, without implications as to their status for future WIPO meetings.

“4. The PCDA unanimously elected Ambassador C. Trevor Clarke, Permanent Representative of Barbados, as Chair, and Ambassador Muktar Djumaliev, Permanent Representative of Kyrgyzstan, as Vice-Chair.

“5. The PCDA adopted the draft agenda, as proposed in document PCDA/3/1 Prov.

“6. The PCDA discussed the working document prepared by Ambassador Enrique A. Manalo, Chair of the General Assembly, and decided to use it as a working document of the PCDA (PCDA/3/2). The delegations expressed their views on the proposals listed in the various clusters, in Annex A of the document. After discussions, the Chair requested specific delegations to coordinate discussions on the different clusters, in an attempt to reach a consensus on the list of agreed proposals. The draft lists prepared by the different delegations were discussed in the plenary, and the PCDA agreed on the proposals contained in Annex I. However, the Delegation of Colombia expressed its reservation in respect of proposal 11 in cluster B. These proposals will form a part of the final list of agreed proposals, to be recommended for action to the 2007 General Assembly, after the June 2007 session of the PCDA.

“7. The PCDA noted that the Draft Report of the Third Session would contain all the interventions made during the current session and also the Chair’s Summary. This Draft Report will be prepared by the Secretariat and communicated to the Permanent Missions of the Member States by April 5, 2007. The Draft Report would also be made available, in electronic form, on the WIPO website, by the same date. Comments on the Draft Report should be communicated in writing to the Secretariat by April 20, 2007. The revised Draft Report would then be considered for adoption at the beginning of the Fourth Session of the PCDA.”

[Annexes follow]

ANNEX I

CLUSTER A: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

1. WIPO technical assistance shall be, *inter alia*, 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 and activities should include time frames for completion. In this regard, design, delivery mechanisms and evaluation processes of technical assistance programs should be country specific.
2. Provide additional assistance to WIPO through donor funding, and establish Trust-Funds or other voluntary funds within WIPO specifically for LDCs, while continuing to accord high priority to finance activities in Africa through budgetary and extra-budgetary resources, to promote, *inter alia*, the legal, commercial, cultural, and economic exploitation of intellectual property in these countries.
3. Increase human and financial allocation for technical assistance programs in WIPO for promoting a, *inter alia*, development-oriented IP culture, with an emphasis on introducing intellectual property at different academic levels and on generating greater public awareness on IP.
4. Place particular emphasis on the needs of SMEs and institutions dealing with scientific research and cultural industries and assist Member States, at their request, in setting-up appropriate national strategies in the field of IP.
5. WIPO shall display general information on all technical assistance activities on its website, and shall provide, on request from Member States, details of specific activities, with the consent of the Member State(s) and other recipients concerned, for which the activity was implemented.
6. WIPO's technical assistance staff and consultants shall continue to be neutral and accountable, by paying particular attention to the existing Code of Ethics, and by avoiding potential conflicts of interest. WIPO shall draw up and make widely known to the Member States a roster of consultants for technical assistance available with WIPO.
7. Promote measures that will help countries deal with IP-related anti-competitive practices, by providing technical cooperation to developing countries, especially LDCs, at their request, in order to better understand the interface between intellectual property rights and competition policies.
8. Request WIPO to develop agreements with research institutions and with private enterprises with a view to facilitating the national offices of developing countries, especially LDCs, as well as their regional and sub-regional IP organizations to access specialized databases for the purposes of patent searches.
9. Request WIPO to create, in coordination with Member States, a database to match specific IP-related development needs with available resources, thereby expanding the scope of its technical assistance programs, aimed at bridging the digital divide.

CLUSTER B: NORM-SETTING, FLEXIBILITIES, PUBLIC POLICY AND PUBLIC DOMAIN

10. Norm-setting activities shall:
- be inclusive and member driven;
 - take into account different levels of development;
 - take into consideration a balance between costs and benefits;
 - be a participatory process, which takes into consideration the interests and priorities of all WIPO Member States and the viewpoints of other stakeholders, including accredited inter-governmental organizations and non-governmental organizations; and
 - be in line with the principle of neutrality of the WIPO Secretariat.
11. 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.

CLUSTER C: TECHNOLOGY TRANSFER, INFORMATION AND COMMUNICATION TECHNOLOGIES (ICT) AND ACCESS TO KNOWLEDGE

12. To request WIPO, within its mandate, to expand the scope of its activities aimed at bridging the digital divide, in accordance with the outcomes of the World Summit on the Information Society (WSIS) also taking into account the significance of the Digital Solidarity Fund (DSF).
13. To explore IP-related policies and initiatives necessary to promote the transfer and dissemination of technology, to the benefit of developing countries and to take appropriate measures to enable developing countries to fully understand and benefit from different provisions, pertaining to flexibilities provided for in international agreements, as appropriate.
14. To encourage Member States, especially developed countries, to urge their research and scientific institutions to enhance cooperation and exchange with research and development institutions in developing countries, especially LDCs.
15. Facilitating IP-related aspects of ICT for growth and development: Provide for, in an appropriate WIPO body, discussions focused on the importance of IP-related aspects of ICT, and its role in economic and cultural development, with specific attention focused on assisting Member States to identify practical IP-related strategies to use ICT for economic, social and cultural development.
16. To explore supportive IP-related policies and measures Member States, especially developed countries, could adopt for promoting transfer and dissemination of technology to developing countries.

CLUSTER D: ASSESSMENT, EVALUATION AND IMPACT STUDIES

17. To request WIPO to develop an effective yearly review and evaluation mechanism for the assessment of all its development-oriented activities, including those related to technical assistance, establishing for that purpose specific indicators and benchmarks, where appropriate.

18. With a view to assisting Member States in creating substantial national programs, to request WIPO to conduct a study on constraints to intellectual property protection in the informal economy, including the tangible costs and benefits of IP protection in particular in relation to generation of employment.

19. To request WIPO to undertake, upon request of Member States, new studies to assess the economic, social and cultural impact of the use of intellectual property systems in these States.

CLUSTER E: INSTITUTIONAL MATTERS INCLUDING MANDATE AND GOVERNANCE

20. To request WIPO, within its core competence and mission, to assist developing countries, especially African countries, in cooperation with relevant international organizations, by conducting studies on brain drain and make recommendations accordingly.

21. To request WIPO to intensify its cooperation on IP-related issues with UN agencies, according to Member States' orientation, in particular UNCTAD, UNEP, WHO, UNIDO, UNESCO and other relevant international organizations, especially WTO in order to strengthen the coordination for maximum efficiency in undertaking development programs.

22. To conduct a review of current WIPO technical assistance activities in the area of cooperation and development.

23. To enhance measures that ensure wide participation of civil society at large in WIPO activities in accordance with its criteria regarding NGO acceptance and accreditation, keeping the issue under review.

CLUSTER F: OTHER ISSUES

24. To approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that “the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations”, in accordance with Article 7 of the TRIPS Agreement.

[Annex II follows]

ANNEX II

I. ÉTATS/STATES

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

AFGHANISTAN

Nanguyalai TARZI, ambassadeur, représentant permanent, Mission permanente, Genève

Ahmad Khalil NASRI, premier secrétaire, Mission permanente, Genève

AFRIQUE DU SUD/SOUTH AFRICA

Fungai Khumbulani SIBANDA, Chief Director, Commercial Law and Policy, Department of Trade and Industry, Pretoria

Macdonald Mafhanza NETSHITENZHE, Director, Commercial Law and Policy, Department of Trade and Industry, Pretoria

Lucy MAHLANGU (Ms.), Director, Department of Arts and Culture (DAC), Pretoria

Glenn MASOKOANE, Director, Department of Arts and Culture (DAC), Pretoria

Vicky BEUKES (Ms.), Deputy Director, Department of Arts and Culture (DAC), Pretoria

Glaudine J. MTSHALI (Mrs.), Ambassador, Permanent Representative, Permanent Mission, Geneva

Johan VAN WYK, Counsellor (Economic Development), Permanent Mission, Geneva

Simon QOBO, First Secretary, Permanent Mission, Geneva

Susanna CHUNG (Ms.), Second Secretary, Permanent Mission, Geneva

ALGÉRIE/ALGERIA

Idriss JAZAÏRY, ambassadeur, représentant permanent, Mission permanente, Genève

Nabila KADRI (Mlle), directrice générale, Institut national algérien de propriété industrielle (INAPI), Alger

Boumédiene MAHI, secrétaire diplomatique, Mission permanente, Genève

ALLEMAGNE/GERMANY

Li-Feng SCHROCK, Senior Ministerial Counsellor, Federal Ministry of Justice, Berlin

Friedrich OELSCHLAEGER, Counsellor, Federal Ministry of Justice, Berlin

ANGOLA

Arcanjo DO NASCIMENTO, Ambassador, Permanent Representative, Permanent Mission, Geneva

Antónia DA SILVA BANDEIRA (Mrs.), Director General, Angolan Institute of Intellectual Property, Luanda

Angélica COSTA MDAIHLI (Mrs.), Third Secretary, Permanent Mission, Geneva

ARGENTINE/ARGENTINA

Alberto J. DUMONT, Embajador, Representante Permanente, Misión Permanente, Ginebra

Ernesto MARTINEZ GONDRA, Ministro, Representante Permanente Alterno, Misión Permanente, Ginebra

Inés Gabriela FASTAME (Srta.), Segundo Secretario, Misión Permanente, Ginebra

AUSTRALIE/AUSTRALIA

Joanne RUSH (Ms.), Assistant Director, International Policy, IP Australia, Woden ACT

Edwina LEWIS (Ms.), Policy Officer, International Policy, IP Australia, Woden ACT

Tegan BRINK (Ms.), Second Secretary, Permanent Mission, Geneva

AUTRICHE/AUSTRIA

Johannes WERNER, Deputy Head, Department of International Relations, Austrian Patent Office, Vienna

Markus WEIDINGER, Permanent Mission, Geneva

BANGLADESH

Mesbah UDDIN, Registrar, Department of Patent, Designs and Trademarks, Dhaka

A.T.M. Rafiqul HOQUE, Joint Secretary, Ministry of Industries, Dhaka

Toufiq ALI, Ambassador, Permanent representative, Permanent Mission, Geneva

Enayet MOWLA, Counsellor, Permanent Mission, Geneva

Nayem U. AHMED, Second Secretary, Permanent Mission, Geneva

BARBADE/BARBADOS

C. Trevor CLARKE, Ambassador, Permanent Representative, Permanent Mission, Geneva

Corlita Annette BABB-SCHAEFER, Counsellor, Permanent Mission, Geneva

BÉLARUS/BELARUS

Aleksandr KULINKOVICH, First Secretary, Permanent Mission, Geneva

BELGIQUE/BELGIUM

Alex VAN MEEUWEN, représentant permanent, Mission permanente, Genève

Brigitte MINART (Mme), représentant permanent adjoint, Mission permanente, Genève

Henri BENKOSKI, chargé de mission, expert, Ministère de la culture et de l'audiovisuel (Communauté française) pour la diversité culturelle auprès des institutions internationales, Bruxelles

Michel GEREBTZOFF, premier secrétaire, Mission permanente, Genève

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BÉNIN/BENIN

Yao AMOUSSOU, premier conseiller, Mission permanente, Genève

BOLIVIE/BOLIVIA

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BOSNIE-HERZÉGOVINE/BOSNIA AND HERZEGOVINA

Anesa KUNDUROVIC (Miss), First Secretary, Permanent Mission, Geneva

BOTSWANA

Boometswe MOKGOTHU, Ambassador, Permanent Representative, Permanent Mission, Geneva

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BRÉSIL/BRAZIL

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José Carlos ARAUJO FILHO, Foreign Trade Analyst, Industrial Technology Secretariat, Brasilia

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Wayne SHINYA, Senior Project Officer, Policy Development Department of Canadian Heritage, Ottawa

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CHILI/CHILE

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CHINE/CHINA

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DI Xiao Yun, Assistant Counselor, Trademark Office, State Administration for Industry and Commerce (SAIC), Beijing

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GHANA

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Zurab NEPARIDZE, Deputy Director General, Georgia National Intellectual Property Center (SAKPATENTI), Tbilisi

GRÈCE/GREECE

Franciscos VERROS, Ambassador, Permanent Representative, Permanent Mission, Geneva

Andreas CAMBITSIS, Minister-Counsellor, Permanent Mission, Geneva

Styliani KYRIAKOU (Ms.), Attaché, Permanent Mission, Geneva

HAÏTI/HAITI

Auguste D'MEZA, chef, Cabinet du ministre de la culture, Ministère de la culture et de la communication (MCC), Port-au-Prince

Emmanuel DERIVOIS, directeur général, Bureau haïtien du droit d'auteur (BHDA), Ministère de la culture et de la communication (MCC), Port-au-Prince

Pierre SAINT-AMOUR, conseiller, Mission permanente, Genève

HONGRIE/HUNGARY

Orsolya TÓTH (Ms.), Second Secretary, Permanent Mission, Geneva

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Ajay DUA, Permanent Secretary, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, New Delhi

Swashpawan SINGH, Ambassador, Permanent Representative, Permanent Mission, Geneva

Naresh Nandan PRASAD, Joint Secretary, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, New Delhi

Mohinder S. GROVER, Deputy Permanent Representative, Permanent Mission, Geneva

INDONÉSIE/INDONESIA

I. Gusti Agung Wesaka PUJA, Ambassador, Deputy Permanent Representative, Permanent Mission, Geneva

Dian WIRENGJURIT, Minister Counsellor, Permanent Mission, Geneva

Yasmon YASMON, Head, International Cooperation Division, Directorate General of Intellectual Property Rights, Jakarta

Widya SADNOVIC, Third Secretary, Permanent Mission, Geneva

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

Ali Reza MOAIYERI, Ambassador, Permanent Representative, Permanent Mission, Geneva

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SUISSE/SWITZERLAND

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TRINITÉ-ET-TOBAGO/TRINIDAD AND TOBAGO

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TUNISIE/TUNISIA

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TURQUIE/TURKEY

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VIET NAM

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YÉMEN/YEMEN

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ZAMBIE/ZAMBIA

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ZIMBABWE

Richard CHIBUWE, Counsellor, Permanent Mission, Geneva

II. OBSERVATEUR/OBSERVER

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III. ORGANISATIONS INTERNATIONALES
INTERGOUVERNEMENTALES/
INTERNATIONAL INTERGOVERNMENTAL
ORGANIZATIONS

ORGANISATION INTERNATIONALE DU TRAVAIL (OIT)/INTERNATIONAL
LABOUR OFFICE (ILO)

John Davis MYERS, Sectoral Activities Branch, Geneva

COMMISSION EUROPÉENNE (CE)/EUROPEAN COMMUNITY (EC)

Claudia COLLA (Mrs.), Legal and Policy Affairs Officer, Industrial Property Unit, Internal Market and Services Directorate General, Brussels

Sergio BALIBREA SANCHO, Counsellor, European Communities Delegation, Geneva

LIGUE DES ÉTATS ARABES (LEA)/LEAGUE OF ARAB STATES (LAS)

Hafedh TOUNSI, Geneva

ORGANISATION AFRICAINE DE LA PROPRIÉTÉ INTELLECTUELLE
(OAPI)/AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI)

Anthioumane N'DIAYE, directeur général, Yaoundé

ORGANISATION EURASIENNE DES BREVETS (OEAB)/EURASIAN PATENT
ORGANIZATION (EAPO)

Khabibullo FAYAZOV, Vice President, Moscow

ORGANISATION MONDIALE DU COMMERCE (OMC)/WORLD TRADE
ORGANIZATION (WTO)

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Xiaoping WU (Mrs), Counsellor, Intellectual Property Division, Geneva

Mamissa MBOOB (Miss), Trainee, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Department, Geneva

AGENCE INTERNATIONALE DE L'ÉNERGIE ATOMIQUE (AIEA)/INTERNATIONAL
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SOUTH CENTRE

Yash TANDON, Executive Director, Geneva

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UNION AFRICAINE (UA)/AFRICAN UNION (AU)

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UNION INTERNATIONALE DES TÉLÉCOMMUNICATIONS (UIT)/INTERNATIONAL
TELECOMMUNICATION UNION (ITU)

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Developing States and Emergency Telecommunications, Geneva

IV. ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES/
INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

Association asiatique d'experts juridiques en brevets (APAA)/Asian Patent Attorneys Association (APAA)
Alonzo Q. ANCHETA (President, Manila)

Association internationale pour la promotion de l'enseignement et de la recherche en propriété intellectuelle (ATRIP)/International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP)
François CURCHOD (représentant permanent auprès de l'OMPI, Genolier)

Association littéraire et artistique internationale (ALAI)/International Literary and Artistic Association (ALAI); Victor NABHAN (président, Ferney-Voltaire)

Association pour la promotion de la propriété intellectuelle en Afrique (APPIA)
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Centre pour le droit international de l'environnement (CIEL)/Center for International Environmental Law (CIEL)
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Centre international pour le commerce et le développement durable (ICTSD)/International Center for Trade and Sustainable Development (ICTSD)
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Committee of Nordic Industrial Property Agents (CONOPA)
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Confédération internationale des sociétés d'auteurs et compositeurs (CISAC)/International Confederation of Societies of Authors and Composers (CISAC)
David UWEMEDIMO (Director, Legal Department, Paris)

Consumers International (CI)
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Electronic Frontier Foundation (EFF)
Ren BUCHOLZ (Policy Coordinator, Americas, Toronto)

Electronic Information for Libraries (eIFL)
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European Commercial Patent Services Group (PatCom)
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Fédération internationale de l'industrie du médicament (FIIM)/International Federation of Pharmaceutical Manufacturers Associations (IFPMA)
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Fédération internationale de la vidéo (IVF)/International Video Federation (IVF)
Laurence DJOLAKIAN (Miss) (Legal Counsel, Brussels)

Fédération internationale des associations de bibliothécaires et des bibliothèques (FIAB)/
International Federation of Library Associations and Institutions (IFLA)

Winston TABB (Chair, Copyright Committee, Baltimore); Barbara STRATTON (Ms.)
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Fédération internationale des associations de producteurs de films (FIAPF)/International
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Pedro PARANAGUÁ (Líder de Projeto, Centro de Tecnologia e Sociedade, Rio de Janeiro)

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International Federation of Reproduction Rights Organizations (IFRRO)

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International Trademark Association (INTA)

Bruno MACHADO (Geneva Representative)

Knowledge Ecology International (KEI)

James LOVE (Director, Washington, D.C.); Malini AISOLA (Ms.) (Research Associate,
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Library Copyright Alliance (LCA)

Miriam M. NISBET (Ms.) (Legislative Counsel, American Library Association,
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Médecins sans frontières (MSF)

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Organisation pour un réseau international des indications géographiques (ORIGIN)/
Organization for an International Geographical Indications Network (ORIGIN)

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The Federalist Society

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Third World Network (TWN)

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Yale Information Society Project (ISP)

Eddan KATZ (Executive Director, New Haven); David TANNENBAUM (Fellow, New Haven)

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Président/Chair: C. Trevor CLARKE (Barbade/Barbados)
Vice-Président/Vice Chair: Muktar DJUMALIEV (Kirghizistan/Kyrgyzstan)

VI. SECRETARIAT DE L'ORGANISATION MONDIALE DE LA
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