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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

First Session
Geneva, April 30 to May 3, 2001

REPORT

adopted by the Committee

1. Convened by the Director General in accordance with the decision of the WIPO General Assembly (see document WO/GA/26/10, paragraph 71), the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (hereinafter referred to as “the Committee”) held its first session, in Geneva, from April 30 to May 3, 2001.

2. The following States members of WIPO or the Paris Union for the Protection of Industrial Property were represented at the meeting: Albania, Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Barbados, Belarus, Belgium, Bolivia, Brazil, Bulgaria, Burundi, Cameroon, Canada, Chile, China, Colombia, Congo, Côte d’Ivoire, Cuba, Czech Republic, Democratic Republic of the Congo, Democratic People’s Republic of Korea, Denmark, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Gabon, Germany, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Haiti, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Jamaica, Japan, Kazakhstan, Kenya, Kuwait, Latvia, Lesotho, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malaysia, Malta, Mauritius, Mauritania, Mexico, Morocco, Myanmar, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Samoa, Saudi Arabia, Senegal, Singapore, Slovakia, Slovenia, South

Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, Uganda, Ukraine, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe (110).

3. The following intergovernmental organizations and secretariats took part in the meeting in an observer capacity: African Intellectual Property Organization (OAPI), African Regional Industrial Property Organization (ARIPO), Andean Community, Convention on International Trade In Endangered Species of Wild Fauna and Flora (CITES), European Commission (EC), European Patent Office (EPO), International Labour Organisation (ILO), International Union for the Protection of New Varieties of Plants (UPOV), League of Arab States (LAS), Office of the United Nations High Commissioner for Human Rights (OHCHR), Organization of African Unity (OAU), Organisation for Economic Co-operation and Development (OECD), Pacific Island Forum Secretariat, Secretariat of the Pacific Community, Secretariat of the Convention on Biological Diversity (SCBD), United Nations Conference on Trade and Development (UNCTAD), United Nations Environment Programme (UNEP), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Health Organization (WHO), World Trade Organization (WTO) (20).

4. Representatives of the following international non-governmental organizations took part in the meeting in an observer capacity: Biotechnology Industry Organization (BIO), Ibero-Latin-American Federation of Performers (FILAIE), International Association for the Protection of Industrial Property (AIPPI), International Centre for Trade and Sustainable Development (ICTSD), International Confederation of Music Publishers (ICMP), International Federation of Industrial Property Attorneys (FICPI), International Federation of Musicians (FIM), International Federation of Pharmaceutical Manufacturers Associations (IFPMA), International Federation of Reproduction Rights Organizations (IFRRO), International Publishers Association (IPA), Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law, Union of Industrial and Employers' Confederations of Europe (UNICE), World Conservation Union (IUCN), World Federation for Culture Collections (WFCC), World Self Medication Industry (WSMI) (15).

5. The list of participants is attached to this Report as Annex I

6. Discussions were based on the following documents prepared by the Secretariat of WIPO: "Revised Draft Agenda" (document WIPO/GRTKF/IC/1/1 Rev.), "Rules of Procedure" (document WIPO/GRTKF/IC/1/2), "Addendum to Rules of Procedure" (document WIPO/GRTKF/IC/1/2 Add.), "Revision to Rules of Procedure" (document WIPO/GRTKF/IC/1/2 Rev.), "Matters Concerning Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore – An Overview" (document WIPO/GRTKF/IC/1/3), "Activities of Other Intergovernmental Organizations and Processes" (document WIPO/GRTKF/IC/1/4), "Information Provided by WIPO Member States Concerning Practices Related to the Protection of Biotechnological Inventions" (document WIPO/GRTKF/IC/1/6); "Corrigendum to Information Provided by WIPO Member States Concerning Practices Related to the Protection of Biotechnological Inventions" (document WIPO/GRTKF/IC/1/6 Corr.), and the following documents submitted by delegations: "Traditional Knowledge and the Need to Give It Adequate Intellectual Property Protection" submitted by the Group of Countries of Latin America and the Caribbean (GRULAC) (document WIPO/GRTKF/IC/1/5), "Document of the Holy See on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore" submitted by the Permanent Mission of Observation of the Holy See (document WIPO/GRTKF/IC/1/7), "Corrigendum to Document of the Holy See on Intellectual Property and Genetic Resources, Traditional

Knowledge, and Folklore” (document WIPO/GRTKF/IC/1/7 Corr.), “Directive 98/44/EC of the European Parliament and of the Council on the legal protection of biotechnological inventions; Explanatory note on recital 27 of the above Directive concerning the indication of the geographical origin of biotechnological inventions; Communication by the European Union and its Member States on the relationship between the Convention on Biological Diversity and the TRIPS Agreement; Paper on the relationship between intellectual property rights and biodiversity” submitted by the European Community and its Member States (document WIPO/GRTKF/IC/1/8), “Draft Guidelines on Access and Benefit Sharing Regarding the Utilisation of Genetic Resources” submitted by the Government of Switzerland (document WIPO/GRTKF/IC/1/9), “Proposal Presented by the African Group to the First Meeting of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (30 April-3 May 2001)” submitted by the African Group (document WIPO/GRTKF/IC/1/10) “Decision 345 - Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties, Decision 351 - Common Provisions on Copyright and Neighboring Rights, Decision 391 - Common Regime on Access to Genetic Resources, and Decision 486 - Common Intellectual Property Regime” submitted by the Member States of the Andean Community (document WIPO/GRTKF/IC/1/11), and, “Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore” submitted by the Delegation of Zambia (document WIPO/GRTKF/IC/1/12).

7. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions without reflecting all the observations made. Mr. Wend Wendland of WIPO was Secretary to the First session of the Committee.

Agenda Item 1: Opening of the session

8. The session was opened by the Director General of WIPO, Dr. Kamil Idris, who welcomed the participants. He welcomed also the presence of a number of international organizations and indicated that the decision of the Member States to establish the Intergovernmental Committee signaled a new phase in WIPO’s work relating to intellectual property and genetic resources, traditional knowledge and folklore.

Agenda Item 2: Election of a Chair and two Vice-Chairs

9. Following consultations among Group Coordinators, the Committee agreed to elect two Co-Chairs for its first session, namely Ambassador Sergio Marchi (Canada) and Ambassador Chak Mun See (Singapore). The Committee elected as Vice Chairs Ambassador Petko Draganov (Bulgaria) and Ambassador Fayza Abounaga (Egypt). The Rules of Procedure, as adopted under Agenda Item 4, were amended accordingly to reflect the election of two Co-Chairs for the first session.

10. The Delegation of Madagascar, speaking on behalf of the African Group, supported the consensus on the election of Co-Chairmanship given the high priority of starting the work of the Committee. However, the Delegation stressed the fact that the Co-Chairmanship should be valid for this session and confine itself to examining statements of general policy and procedural matters on the understanding that the arrangement would not apply to the next session. The Delegation noted the need to amend Rule 5 of the Rules of Procedure to state that, as a transitional measure for this session only, there would be two Co-Chairs and two Vice Chairs. The Delegation also recommended that consultations be carried out under the auspices of the Secretariat for the next session.

11. The Delegation of Uruguay, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), supported the statement made by the Delegation of Madagascar on behalf of the African Group.

Agenda Item 3: Adoption of the Agenda

12. The Revised Draft Agenda (document WIPO/GRTKF/IC/1/1 Rev.) was adopted without modification.

Agenda Item 4: Rules of Procedure

13. The Intergovernmental Committee discussed organizational and procedural matters on the basis of documents WIPO/GRTKF/IC/1/2, WIPO/GRTKF/IC/1/2 Rev. and WIPO/GRTKF/IC/1/2 Add.

14. The Delegation of Sweden, speaking on behalf of the European Community and its Member States, recalled that the Standing Committee on Copyright and Related Rights (the SCCR), the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (the SCT) and the Standing Committee on Information Technology (the SCIT) had adopted a special rule of procedure extending membership (without the right to vote) to the European Communities. The Delegation further recalled that the European Community, as such, had a competence concerning certain issues under consideration by the Committee, namely in the field of biotechnology based on Directive 98/44/EC of the European Parliament and the Council. The Delegation expressed its hope that, therefore, the proposal in paragraph 7 of document WIPO/GRTKF/IC/1/2, which would accord non-voting membership in the Intergovernmental Committee to the European Communities, would be adopted.

15. The Delegation of Egypt noted that paragraph 10 of document WIPO/GRTKF/IC/1/2 on “Languages” provided that the working documents for sessions of the Committee would be prepared in English, French and Spanish. The Delegation stated that, in light of the importance it attached to the issues under consideration by the Committee, it would appreciate it if the working documents for the sessions could additionally be prepared in Arabic. The Director General stated that the Secretariat took note of this suggestion, and that WIPO would do the best possible in the circumstances. However, for budgetary reasons, the translation of documents into additional languages might not be possible. The Delegation of Egypt stated that it was satisfied with this response in so far as this first session of the Committee was concerned, but that this matter should be reconsidered for future sessions.

16. The Delegation of the United States of America stated that it supported the inclusion and appropriate participation as observers of non-governmental organizations and other organizations whose charter and activities met the standard WIPO requirements, namely that an organization be composed of international membership and have as its primary purpose a field of intellectual property. The Delegation noted, however, that a number of the organizations listed in the Annexes to documents WIPO/GRTKF/IC/1/2 and WIPO/GRTKF/IC/1/2 Add. had as their stated purpose goals other than the discussion of traditional knowledge and its relationship to intellectual property. In addition, the Delegation noted that a number of these groups were local or national in character, and therefore did not meet the test of international membership. The Delegation sought further information on the interest of these organizations in intellectual property.

17. The Secretariat provided clarification and further information on three points. Firstly, other WIPO committees had adopted the practice of giving *ad hoc* accreditation to national non-governmental organizations, as opposed to accreditation on a permanent basis, which required the organization to be international. Secondly, Rule 24 of the WIPO General Rules of Procedure provided that observers may take part in the debates only at the invitation of the Chair and that they may not submit proposals, amendments or motions. Thirdly, information on organizations which had expressed their wish to be represented in sessions of the Committee as *ad hoc* observers was provided in the Annexes to documents WIPO/GRTKF/IC/1/2 and WIPO/GRTKF/IC/1/2 Add.

18. Following these observations, the Committee approved the Rules of Procedure as proposed in documents WIPO/GRTKF/IC/1/2, WIPO/GRTKF/IC/1/2 Rev. and WIPO/GRTKF/IC/1/2 Add. In particular, a special rule of procedure extending membership (without the right to vote) to the European Communities was adopted. Furthermore, the Organizations listed in the Annexes to documents WIPO/GRTKF/IC/1/2 and WIPO/GRTKF/IC/1/2 Add. were accorded *ad hoc* observer status in sessions of the Committee. These organizations were as follows: Aboriginal and Torres Strait Islander Commission (ATSIC); ActionAid; American Association for the Advancement of Science (AAAS); Berne Declaration; Bioresources Development and Conservation Programme (BDPC); Brazilian Association of Intellectual Property (ABPI); Center for International Environmental Law (CIEL); Centre for Documentation, Research and Information of Indigenous Peoples (doCip); Coordinadora Indígena de la Cuenca Amazónica or Indigenous Coordinating Agency for the Amazon Basin (COICA); First Peoples Worldwide; Foundation for Aboriginal and Islander Research Action (FAIRA); Friends World Committee for Consultation (represented by the Quaker United Nations Office, Geneva); Genetic Resources Action International (GRAIN); Health and Environment Program; Indian Movement “Tupaj Amaru”; Indigenous Peoples’ Biodiversity Network (IPBN); Institute for African Development (INADEV); Institute for Agriculture and Trade Policy (IATP); International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL); International Centre for Trade and Sustainable Development (ICTSD); International Plant Genetic Resources Institute (IPGRI); International Work Group for Indigenous Affairs (IWGIA); Inuit Circumpolar Conference (ICC); Mejlis of Crimean Tatar People; Pacific Islands Forum Secretariat; Promotion of Traditional Medicines (PROMETRA); Russian Association of Indigenous Peoples of the North (RAIPON); SAAMI Council; Secretariat of the Pacific Community; Sustainable Development Policy Institute (SDPI); Te Iwi Moriori Trust Board; Tebtebba Foundation - Indigenous Peoples’ International Centre for Policy Research and Education; Working Group of Indigenous Minorities in Southern Africa (WIMSA); World Wide Fund for Nature (WWF).

Agenda Item 5: Issues to be considered by the Intergovernmental Committee

5.1 Access to Genetic Resources and Benefit-Sharing

5.2 Protection of Traditional Knowledge

5.3 Protection of Expressions of Folklore

General Statements

19. Deliberations commenced under the presidency of Ambassador Marchi who thanked the Member States and Observers for their support and endorsement and also thanked

Ambassador Chak Mun See of Singapore for agreeing to Co-Chair the session with him. He also thanked the two Vice Chairs, namely Ambassador Draganov of Bulgaria and Ambassador Abounaga of Egypt. He recalled the establishment of the Committee by Member States during the WIPO General Assembly at its Twenty-Sixth Session, held in Geneva from September 26 to October 3, 2000. The decision to establish this body signaled consensus that the issues referred to in the title of this Committee, "Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore," should be addressed in this Organization. He noted that the task was to advance consensus on how those important issues should be addressed. He pointed out that the emergence of the knowledge economy rendered all forms of creativity and innovation even more valuable, and that, with modern biotechnologies, genetic resources had assumed increasing economic, scientific and commercial value to a wide range of stakeholders. He added that traditional knowledge and other tradition-based creations, such as expressions of folklore, had at the same time taken on new economic and cultural significance within a globalized information society. Concluding, the Co-Chair expressed every confidence that both effective and appropriate progress would be made on these important issues. The Co-Chair then invited Member States, Intergovernmental Organizations and Non-Governmental Organizations to make opening general statements before addressing the items contained under each of the sub-headings of Agenda Item 5. He suggested that Member States and Observers use these general statements as an opportunity to outline their general expectations and views on the nature, working methods and the possible outcomes of the Committee.

20. The Delegation of Sweden, speaking on behalf of the European Community and its Member States, stated that its remarks sought to set out the general approach of European Union Member States to the work of the Committee. The Delegation reminded the Committee of the European Community's agreement to begin consideration of matters related to intellectual property, genetic resources, traditional knowledge and folklore and its support for the setting up of this Committee. The Delegation reiterated its hope that the discussions of the Committee would be fruitful and constructive, in accordance with the importance that the European Community placed on these issues. The Delegation drew the attention of the Committee to the document submitted to the Committee by the European Community and its Member States as an initial contribution to the upcoming examination of issues. The Delegation stated that issues such as sustainable development, environmental sustainability, human development, human rights and sound economic policies and ethical norms might all have a relationship with intellectual property rights. Recognizing this, the European Community and its Member States held the view that all decisions should be carefully considered. Recognizing the concerns voiced by some countries in this respect, the Delegation stated that there was a need to make a constructive effort in order to reach a deep understanding of the problems involved and to develop possible approaches in order to achieve balanced solutions. It considered that the Committee should take into account relevant work on these issues which was being undertaken in other fora. In line with this, the Delegation also welcomed a common approach to the themes before the Committee which would focus on intellectual property issues. It stated, however, that the work of the Committee should not be limited in such a way as to neglect appropriate and equivalent measures outside the intellectual property system which were suited to fulfill relevant purposes. With regard to the first item under Agenda Item 5, namely Genetic Resources, the European Community and its Member States welcomed constructive discussions on the important issues with which the Committee was faced. The Delegation attached great importance to the complex relationship between intellectual property rights and genetic resources, especially with regard to the issue of access to genetic resources and benefit-

sharing. The Delegation expressed its openness to examine possible effects of the patent system and look into different ways of how to positively support Member States in achieving objectives such as sustainable development and benefit-sharing, while maintaining existing intellectual property protection standards and not unduly increasing the burden of patent applicants. The Delegation mentioned that the preamble to the European Community Directive on the Legal Protection of Biotechnological Inventions, particularly recital 27, provided that, if an invention was based on biological material of plant or animal origin, or if it used such material, the patent application should, where appropriate, include information on the geographical origin of such material, if known. This was without prejudice to the processing of patent applications or the validity of rights arising from granted patents. In this respect, the Delegation stated that it was prepared to engage, in a positive manner, in discussions on the question of disclosing and sharing information about the geographic origin of biological material within the framework of the patent system. With regard to the second item under Agenda Item 5, namely Traditional Knowledge, the Delegation believed that a broader scope of protection, including elements of particular interest to a number of countries, and in particular traditional knowledge, would improve confidence in the international intellectual property system. The Delegation welcomed the opportunity to constructively participate in discussions on the purpose of a definition of the term “traditional knowledge,” the possible use of existing intellectual property protection in the area of traditional knowledge and the identification of elements which required additional protection. Concerning the third item under Agenda Item 5, Folklore, the Delegation expressed the commitment of the European Community and its Member States to participate actively in the discussions on how to establish proper protection of expressions of folklore. He stated that the European Community and its Member States had already conducted much work on the issue. For example, in October 2000, a commissioned study was produced under the title ‘Report on the International Protection of Expressions of Folklore under Intellectual Property Law.’ The study provided elements for further reflection on the matter within the European Community. The Delegation affirmed that the European Community and its Member States agreed on the appropriateness of re-starting discussions on a possible international legal framework for such protection. However, taking into account that efforts in the middle of the 1980’s had failed in this respect, the Delegation stated that some flexibility was needed and that discussions should be focused before embarking on the specific issues outlined under Section IV.C of document WIPO/GRTKF/IC/1/3. The Delegation also stated that a number of specific questions had to be answered in a satisfactory way in order to provide a basis for further consideration of a possible system for the protection of folklore. In particular, further discussion was needed on the following issues: a proper definition of the subject matter to be protected; the acts against which a possible protection should apply; the beneficiaries of the protection; and the nature of such protection, including to which extent the existing protection systems could apply and, if and to what extent, that protection should be improved. The Delegation also stated that it would be of great value to examine already existing national systems for the protection of folklore and the experience of their operation, keeping in mind systems for the identification, documentation and conservation of folklore.

21. The Delegation of Uruguay, speaking on behalf of the Group of Countries of Latin America and the Caribbean (GRULAC), explained that the focus of the subjects to be dealt with by the Committee on Genetic Resources, Traditional Knowledge and Folklore, should be that of the specific work done by WIPO, i.e. it must consist in providing elements for protecting intellectual property rights in their different forms and must act as a complement to and in cooperation with other international instruments and processes involving related subjects. The Delegation insisted that in particular this perspective was important when dealing with aspects of intellectual property relating to genetic resources and traditional

knowledge, so as not to duplicate or interfere with the work being done on these subjects in other international organizations, particularly the Convention on Biological Diversity (CBD), the Food and Agriculture Organization (FAO) and the Council of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). It stated that the activities in this area that could be carried out within the WIPO framework were of great importance, given that they directly affected WIPO's specific sphere of action and should provide support for governments so that they might carry out successfully the tasks in question allocated within the CBD framework. The Delegation explained that within this process, in order to avoid duplications, coordination and collaboration between WIPO, the CBD and FAO was considered essential and it would therefore be necessary to ensure that appropriate collaboration and cooperation mechanisms existed. Furthermore, this mechanism could be set up in a similar manner to those existing between WIPO and WTO. The Delegation observed that the challenge encountered in this first meeting was to organize the Committee's work so that it was substantive in terms of content and was aimed at obtaining specific results. GRULAC considered that, before beginning to discuss individual aspects of greater or lesser relevance, it was necessary to concentrate on establishing the general framework of the Committee's undertakings. The Delegation expressed the view that this general framework should contain an overview of the Committee's work, in which the thematic analyses were both rational and coherent. In that regard, the Delegation considered that the focus of the work to be done on the subjects to be dealt with by the Committee should fall within WIPO's competence, in its various forms. In this context, the Delegation considered it appropriate to deal with the protection of traditional knowledge and folklore-related issues. As to the elements for establishing the Committee's mandate or terms of reference, GRULAC proposed that the following should be included:

Examining and studying, from the perspective of intellectual property rights, aspects relating to genetic resources, traditional knowledge and folklore.

Preparing comparative studies relating to national and international standards, from the same focus of intellectual property rights, on the above subjects, as well as field studies relating to the practical application of those standards.

Putting forward appropriate proposals and recommendations relating to intellectual property aspects to supplement standards existing in the form of international instruments regulating such matters, or developing new systems where required.

Preparing studies on the suitability of existing intellectual property systems in order to facilitate the protection of intellectual property rights of traditional knowledge and folklore (including operating principle proposals for such protection).

22. The Delegation of Malaysia, speaking on behalf of the Asian Group, stated that the role and relevance of intellectual property in the protection and management, conservation, utilization and benefit-sharing in respect of genetic resources, traditional knowledge and folklore were assuming increased importance all over the world. Although traditional knowledge had become more prominent, there had not been adequate information or legal protection. The Delegation stressed that Asia was rich in traditional knowledge and folklore and that it would wish to see this heritage appropriately recognized within the global intellectual property system for the benefit of mankind. The Delegation stated that the Asian Group held the view that the terms of reference of the Committee should be drawn as broadly as possible to enable policies, plans and mechanisms for regulatory access and benefit-sharing to be developed. The Delegation further noted that, while defining the terms of reference of

the Committee, a broad definition should be given to the terms “genetic resources, traditional knowledge and folklore”. The Delegation welcomed the work that had been undertaken so far by WIPO, which ranged from fact-finding missions and country surveys, to consultations which involved traditional knowledge holders in both developed and developing countries and which ultimately revealed the value of their traditional knowledge systems. The Delegation noted that intellectual property rights regimes were not designed with traditional knowledge in mind but rather to meet the economic needs of a modern industrialized society. The Delegation underscored that these intellectual property rights regimes were, generally, intended to grant exclusive rights for a certain period of time to new knowledge created by an individual or corporation, while traditional knowledge, on the other hand, tended to evolve incrementally over time, was passed on orally, was improved over generations, and was often held collectively by one or several communities. The Delegation stated that the use of intellectual property rights to protect this type of knowledge required further study and emphasized the need to study the relationship between customary protection of traditional knowledge and intellectual property rights systems. In this regard, the Delegation expressed the Asian Group’s support for task B.1 in paragraph 71 of document WIPO/GRTKF/IC/1/3 and task B.2 in paragraph 77 of same document. The Delegation stated that WIPO was the appropriate forum to ensure an internationally acceptable and equitable resolution of the concerns of different groups, and that WIPO’s comparative advantage in this area and its neutrality in considering issues was a matter of great comfort to developing countries. The Delegation further stated that it was often the case that traditional knowledge holders did not possess the economic and other resources necessary to file and contest intellectual property rights claims in their own as well as in other countries, and that, therefore, practical solutions to this problem should be developed. In this regard, the Asian Group supported task B.4 in document WIPO/GRTKF/IC/1/3. It stressed that the Asian Group was fully aware that several countries and regional organizations were in the process of developing or had developed proposals, laws, regulations, model laws and policies on these issues. In this regard, the Delegation stated that other countries and regional organizations would benefit from such national and regional experiences and referred to the current work being done on the “ASEAN Framework Agreement on Access to Biological and Genetic Resources” to protect ASEAN interests in biological and genetic resources from biopiracy. In addition, the Delegation stated that several Asian countries were developing or had already developed *sui generis* systems for the protection of traditional knowledge. For example, in India, the Biodiversity Bill, 2000 provided for the protection of traditional knowledge through measures such as documentation and development of a *sui generis* system. The Patent (Second Amendment) Bill, 1999 had incorporated measures for the protection of biodiversity and traditional knowledge. In Bangladesh, the draft Biodiversity and Community Knowledge Protection Act protected the rights and traditional knowledge of local and indigenous communities and encouraged an appropriate system for access and benefit-sharing. In the Philippines, the State’s duty to recognize, respect and protect the rights of indigenous cultural communities was enshrined in the 1987 Constitution. The Delegation emphasized the need to develop new instruments for both intellectual property rights and non-intellectual property rights for the protection and preservation of traditional knowledge. Where traditional knowledge was accessed by individuals or entities outside the traditional knowledge-holding community, these instruments should support the principles of prior informed consent of the community concerned in accordance with the community’s customary laws, as well as fair and equitable sharing of benefits that might arise from the commercialization of the knowledge. In addition, national measures were considered of the utmost importance, but they did not adequately protect traditional knowledge. The exclusion of traditional knowledge from patentability in one country did not prevent its being patented in another. Therefore, the Delegation emphasized the need to explore international mechanisms for the

protection of traditional knowledge and indicated cases where traditional knowledge had been inappropriately patented in foreign countries. Such inappropriate patents were most likely to be granted in those countries where prior art did not include non-written disclosures or use outside the national territory. Ideally, national searches on prior art should not discriminate between the use in the home country and abroad, the Delegation stated. The Delegation also addressed the issue of folklore, stating that most handicrafts were considered to be part of tangible expressions of folklore. The Delegation recalled that during the meetings of the WIPO General Assemblies of 1999 and 2000, views were expressed by Member States concerning “the need for suitable mechanisms and agreed norms for the protection of handicrafts by developing countries.” In this regard, the Delegation expressed the Asian Group’s approval of task C.2 referred to in paragraph 106 of document WIPO/GRTKF/IC/1/3. The Delegation stressed the need for Governments to initiate, at the national level, national consultative processes with the view to raising awareness regarding the issues and to include the involvement of all stakeholders in the development of policies and plans, particularly with the indigenous and local communities. Furthermore, Governments should give assistance to support the inclusion of traditional knowledge databases and digital libraries (TKDLS) in existing intellectual property systems. Governments should also identify, catalog and document the genetic resources, traditional knowledge and folklore held by their communities, peoples and countries. To enhance the ability of developing and Least Developed Countries (LDCs) to participate effectively in sessions of the Committee, the Delegation recommended that WIPO provide its assistance in organizing more national, regional and interregional meetings on genetic resources, traditional knowledge and folklore. Further, it urged WIPO to finance the participation of as many developing countries and LDCs in the Committee meetings as possible and stated that WIPO could assist developing countries in documenting their traditional knowledge and continue to conduct exploratory activities. The Delegation stated the importance of documenting traditional knowledge that was in the public domain and making it available in an easily searchable manner to patent offices all over the world so as to form part of the prior art. In this context, WIPO was urged to continue supporting the development of a “traditional knowledge digital library.” For traditional knowledge that was not in the public domain, documentation needed to be approached in a more careful manner. In this regard, the Asian Group supported task B.3 in document WIPO/GRTKF/IC/1/3. WIPO should continue to follow and cooperate with other intergovernmental organizations and agencies such as the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Food and Agricultural Organization (FAO) and the Secretariat of the Convention on Biological Diversity (CBD), relating to genetic resources, traditional knowledge and folklore.

23. The Delegation of India recalled that at the Diplomatic Conference for the Adoption of the Patent Law Treaty, held in May and June 2000, it had also suggested consideration of the issues in question in a WIPO forum, as it felt that WIPO would be the appropriate and neutral platform to address these issues whose complexity and importance could not be over emphasized. The Delegation stressed that this was an opportunity to extensively address and develop a roadmap leading to equitable and acceptable resolutions. It acknowledged that it was a nation’s ability to convert knowledge into wealth and social good through the process of innovation that would determine its future and that the knowledge gap between the developing and the developed world needed to be effectively bridged by mutual cooperation. The Delegation stated that intellectual property was no longer to be seen as a distinct or self-contained domain but rather as an important and effective policy instrument that could be relevant to a wide range of socio-economic, technological and political concerns. The existing intellectual property systems were oriented around the concept of private ownership and individual innovations. These appeared to be at odds, but not irreconcilably so, with

emerging concerns about utilization of genetic resources, traditional knowledge and folklore. This itself was not surprising considering that intellectual property systems were set up centuries ago, whereas today the exponential growth of scientific knowledge and the increasing dominance of the knowledge economy over the 'brick and mortar' economy was laying down a new challenging agenda. The Delegation suggested that the Committee be innovative with regard to the intellectual property system itself and also consider an approach that not only facilitated the advancement of knowledge, but provided for valid and sustainable use and adequate intellectual property protection. The Delegation stated that this expectation was not unreasonable in itself since intellectual property systems had responded to new issues, such as the protection of software and layout designs and the consideration of the protection of databases and copyright in a digital environment, under the WIPO umbrella. The Delegation referred to some initiatives which India had undertaken. The first related to the Government of India's approval for setting up a Traditional Knowledge Digital Library (TKDL), namely an electronic database of traditional knowledge in the field of medicinal plants. It elaborated further on the completion of the database and stated that steps would be taken to put the database on a network making it accessible to Patent Offices throughout the world. The Delegation highlighted the function of the database, which enabled Patent Offices to search and examine any prevalent use of prior art, thereby preventing the incorrect grant of patents on products and processes based on knowledge in the public domain. The Delegation stated that its efforts in regard to the database had been appreciated and that at the last meeting of the Committee of Experts on the International Patent Classification (IPC) Union held from February 19 to 23, 2001, the IPC Union agreed to set up a Task Force on the Traditional Knowledge Resources Classification. The Delegation stated that the TKDL should be prescribed as part of non-patent literature and minimum PCT documentation in order to ensure that patent examiners are duty bound to search the database for any prior art. The Delegation suggested that other countries rich in traditional knowledge systems should consider establishing such a searchable database and WIPO should assist them in their efforts. The Delegation addressed the concerns of access to genetic resources and the need to ensure that holders of associated traditional knowledge, which was not in the public domain, secure benefits arising from the use of such knowledge, citing the appropriate provisions in the Biodiversity Bill, 2000. The provisions provided for the protection of knowledge of local people relating to biodiversity through measures such as registration of such knowledge and development of a *sui generis* system. It explained that to ensure the equitable sharing of benefits which arose from the use of biological resources and associated knowledge, it was necessary to receive prior approval from the National Biological Authority (NBA) before access would be allowed. Anybody who sought any kind of intellectual property rights protection on research based on a biological resource or knowledge obtained from India, would need to obtain prior approval. It further stated that the NBA could also impose benefit-sharing conditions and that it could take measures to oppose the grant of intellectual property rights in any country outside India on any biological resource obtained from India or knowledge associated with such biological resource. The Delegation stated that in order to protect bioresources, the Patents (Second Amendment) Bill, 1999 contained provisions for mandatory disclosure of source and geographical origin of the biotechnological material used in an invention. Provisions had also been incorporated to include the non-disclosure or wrongful disclosure of the same as grounds for opposition and for the revocation of the patent, if granted. To prevent the granting of patents based on knowledge, which was not necessarily documented, provisions had been incorporated to include the anticipation of inventions made available via local knowledge, including oral knowledge, as one of the grounds for opposition and revocation of patents, if granted. The Delegation stated that the Protection of Plant Varieties and Farmer's Rights Bill, 2000 recognized the role of farmers as cultivators and conservers and the contribution of traditional, rural and tribal communities to

the country's agro-biodiversity by rewarding them for their contribution through benefit-sharing and protecting the traditional rights of the farmers. The Plant Varieties Protection Authority would, under this law, determine the amount of benefit-sharing taking into consideration the extent and nature of the use of genetic material of the claimant in the development of the variety relating to which the benefit-sharing had been claimed, as well as the commercial utility and demand in the market of the variety relating to which benefit-sharing had been claimed. The Delegation concluded by stating that the initiatives sought to ensure equitable sharing of benefits arising out of the use of traditional knowledge with the holders of such knowledge, disclosure of sources and geographical origin of biological resources used in an invention, and also to prevent the grant of patents for products and processes based on knowledge in the public domain. It further explained that other than those measures, several non-governmental organizations and provincial governments in India had undertaken documentation of knowledge regarding biodiversity and were documenting innovations by individuals, indigenous people and communities at the village and local levels. The Delegation indicated that it was aware of similar and other initiatives in other countries, and submitted to the Committee, for consensus, the laying down of a foundation for the concerns of all countries relating to the creation of a mutually beneficial environment for the preservation, protection and promotion of traditional knowledge, both for holders and users of knowledge and resources. It also expressed its willingness to assist in the promotion of such activities. The Delegation of India expressed its confidence that, notwithstanding the complex and contentious nature of issues, it would be possible to find internationally acceptable and equitable solutions for the concerns of different interested groups, and to work for the development of a *sui generis* international system to the extent that these issues did not fall within the conventional legal intellectual property protection system. The Delegation suggested that the Committee take into account the work already undertaken by the Convention on Biological Diversity (CBD) and the International Undertaking for Plant Genetic Resources for Food and Agriculture of the Food and Agricultural Organization (FAO), and harmonize the overall approach.

24. The Delegation of Bulgaria, speaking on behalf of the Central European and Baltic States Group, welcomed the establishment of the Committee, because it believed that the Committee represented further proof that WIPO was truly a universal organization. The Delegation explained that it held this belief not only because the vast majority of the world's countries were represented in WIPO, but also because WIPO approached intellectual property on the basis of various concepts which had developed in different countries and regions. In the view of the Delegation, WIPO was therefore fulfilling its role not only through balanced representation or objectives, but also through the variety of concepts and themes that would be discussed in the Committee. The Delegation expressed its conviction that the Committee was the forum where these discussions belonged. Second, the Delegation stated the belief of the countries of the Central European and Baltic States Group that the process of the Committee provided the opportunity to evaluate the functionality of the traditional intellectual property instruments in various communities and human social systems. It emphasized that an evaluation of the validity of concepts of European origin against the global perspective was essential for the further development of global intellectual property issues and the world economy on the whole. It expressed the hope of the Central European and Baltic States Group that the discussions that were starting at the first session of the Committee would lead to the identification of new sources of economic growth and prosperity. Third, the Delegation welcomed the convocation of the Committee in the light of its experience that the creation of a new forum where approaches, attitudes and concepts might be discussed was in itself a great achievement. The Delegation considered it inconceivable that the right decisions and conclusions could be elaborated without thorough discussions. It noted that, with the

establishment of the Committee, the Member States of WIPO had taken a wise step which was essential for continued work on the subject matter in the future. It expressed its belief that the Member States were starting discussions on new issues on which they had different levels of knowledge and that therefore the work of the Committee would also have an important awareness-raising impact. The Delegation announced that the countries of the Central European and Baltic States Group would individually express their opinions under specific Agenda Items but that those countries supported the position stated by the Delegation of Sweden on behalf of the European Community and its Member States. The Group intended to follow closely the debates of the Committee in which its members would participate with their own arguments. The Delegation expressed the commitment of the Group to spare no effort in order to reach consensus, to find win-win solutions, and to move the matters discussed forward. It noted that the Group had certain preferences but was ready to listen carefully to the arguments presented, because the quality of any argument might be tested only in a democratic discussion. It quoted a saying that politicians are people who would fight to build a bridge even if there is no river upon which to build it and noted that, in the present case, there was indeed a river in the field of genetic resources, traditional knowledge and folklore. It reaffirmed its view that the only way to build a bridge was by discussion and by communication.

25. On behalf of the African Group, the Delegation of Madagascar said that the establishment of the Intergovernmental Committee represented a real and decisive step forward in dealing with the important issues of genetic resources, traditional knowledge and folklore within WIPO. The African Group considered that the setting up of this Intergovernmental Committee represented a historic opportunity enabling the imbalance inherent in current intellectual property systems in the international community to be corrected. This question was of particular importance for developing countries, which had a wealth of genetic resources, traditional knowledge and folklore as part of their natural and cultural heritage. The vast majority of genetic resources were to be found in developing countries. In certain cases, knowledge of traditional medicine was appropriated, adapted and patented by other individuals and companies outside the countries of origin, which derived little benefit from the positive consequences of their use at the international level, owing to the lack and/or inadequacy of an appropriate legal framework. Traditional knowledge, folklore and the works of African countries were the subject of illicit use and were inadequately protected by existing provisions. The examination of existing intellectual property systems showed a tendency to grant exclusive rights to natural or legal persons, although the current new global problems involving traditional knowledge, genetic resources and folklore affected communities. It was important to recognize and to appreciate that globalization should occur without discrimination or marginalization. The promotion of technology and innovation should be beneficial for the whole of the international community without exception. African countries under the auspices of the Organization of African Unity (OAU) had devised a model law designed to help them in setting up a framework for protecting community rights and access to biological resources. The African Group considered that a body such as WIPO was the best placed to take account of these issues of genetic resources, traditional knowledge and folklore, which represented economic, social and cultural challenges for development. Intellectual property had continued to develop in order to protect new subjects such as software and topographies for example, the existence of which had been unimaginable just 20 years previously. The WIPO fact-finding missions report pointed out that given its progressive and flexible nature, it should not be excluded that the intellectual property system could grant effective protection for traditional knowledge. The African Group stated that these important issues should be taken into account in a framework for achieving specific results and proposed that a standing committee on genetic resources,

traditional knowledge and expressions of folklore be set up, in line with the action taken for the other subjects dealt with by WIPO. The Group intended to make use of the current Intergovernmental Committee session to bring to the knowledge of the participants the content of its proposal, details of which were to be found in document WIPO/GRTKF/IC/1/10 prepared for that purpose and available to all delegations. The document highlighted the gaps in the current international system of protection for intellectual property as regards genetic resources, traditional knowledge and folklore, which were closely linked. It also proposed a future course of action which the Intergovernmental Committee should adopt in order to promote the fair and equitable distribution of the benefits stemming from the use of genetic resources, while providing appropriate international protection for traditional knowledge and expressions of folklore.

26. The Delegation of Sri Lanka, speaking on behalf of the Member States of the South Asian Association for Regional Cooperation (SAARC), recalled that the Member States of SAARC included Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. The Delegation stated that the SAARC Member States welcomed the opportunity presented by the establishment of the Committee to pursue the intellectual property issues related to genetic resources, traditional knowledge and folklore. It stated that the SAARC Member States collectively looked forward to contributing towards developing appropriate proposals which might be considered and adopted by the Committee. The Delegation commended WIPO for embarking on a program of activities designed to ascertain the needs of Member States in the fields of genetic resources, traditional knowledge and folklore, in particular its search for models that would make intellectual property and traditional knowledge more compatible. It recalled that this program of activities had included the organization of regional roundtables, fact-finding missions on traditional knowledge, meetings on intellectual property and genetic resources, and information-gathering exercises on the protection of biotechnological inventions. The Delegation noted that the emergence of knowledge-based models of economic development had fuelled growing interests in tradition-based innovation and creativity and that genetic resources had therefore assumed increasing economic, scientific and commercial value to a wide range of stakeholders. It observed that traditional knowledge, whether or not associated with such resources, had attracted widespread attention from an enlarged audience. It noted that, even though the discussion on genetic resources, traditional knowledge and folklore had been introduced in several international fora, these issues were still considered new in the field of intellectual property. In the view of the Delegation, this had necessitated the creation of an atmosphere in which the Member States of WIPO could participate in a meaningful dialogue, with a view to clarifying and identifying the issues related to genetic resources and associated traditional knowledge. It stated that the SAARC Member States therefore considered that this Committee presented a valuable opportunity for deepening the understanding among WIPO Member States of the conservation, management, sustainable utilization and benefit-sharing of genetic resources and associated traditional knowledge. The Delegation observed that the role which intellectual property could play in the protection of genetic resources and traditional knowledge had become an emergent area of concern. It pointed out that this called for a thorough exploration of a number of aspects of intellectual property and that each of them needed to be carefully and distinctly analyzed. It added that this applied to both identifying and gaining access to genetic resources through the use of traditional knowledge developed by local communities and the subjects that constituted genetic resources *per se*. The Delegation explained that even though individuals and traditional communities in SAARC countries had resorted more and more to the existing patent, trademark and copyright systems for the protection of knowledge and culture, these efforts had achieved limited success. It therefore noted a great awareness and concern for the issues to be studied in this area. The Delegation pointed out that the SAARC Member States

attached high importance to the issue of genetic resources and associated traditional knowledge at the regional level. It explained that in the field of traditional knowledge, the region was rich and diverse both in terms of its creativity and the important role of traditional knowledge in the economic and social spheres. The SAARC Member States recognized, it stated, that traditional knowledge was a legitimate form of knowledge, based on individual and communal ideas, creativity and innovations. It considered traditional knowledge worthy of protection in the same way as traditional forms of intellectual property. In this context, the Delegation emphasized the need to develop a consensus on appropriate legal and policy mechanisms for the protection, conservation, promotion and use of traditional knowledge at the international, regional and subregional levels. The Delegation noted that SAARC Member States considered that special attention should be given to particular areas, such as collective ownership of traditional knowledge rights, documentation of traditional knowledge, establishing systems for access and benefit-sharing, the creation of a Community Knowledge Fund for such activities, and formulating incentive schemes for research. It reported on a number of initiatives which the SAARC Member States had undertaken with WIPO's assistance in their effort to pursue these objectives within the region. These initiatives included the recently held Subregional Forum for Intellectual Property Cooperation Among SAARC Member States, held in Dhaka in March 2001, where the Member States had agreed to commence work and coordinate positions on a number of areas. The Delegation informed the Committee that the Forum had taken decisions by which the SAARC Member States had agreed to (i) develop appropriate proposals for model legislation, mechanisms and contractual terms and practices for regulating access to and benefit-sharing in genetic resources and for the protection and conservation of traditional knowledge and folklore, which might contribute to the development of internationally accepted standards; and (ii) identify, catalogue, record and document the genetic resources and traditional knowledge, including expressions of folklore. The Delegation expressed its view that the challenge and role of WIPO in this field is much wider than what the SAARC Member States had initially envisaged. It considered it necessary to clarify the relationship between traditional knowledge and the existing protection of intellectual property rights, because traditional knowledge has special characteristics which made its protection by existing intellectual property rights difficult. In addition, it was of the view that several issues identified in WIPO document WIPO/GRTKF/IC/1/3 deserved careful and expeditious consideration. The Delegation expected the first session of the Committee to set the momentum to carry forward the proposed activities and affirmed that the SAARC Member States intended to participate actively in future sessions of the Committee and to work towards a beneficial outcome.

27. The Delegation of Brazil underlined its great interest in having a meaningful and productive discussion in the Committee. It recalled that Brazil had always considered that WIPO had a key role to play in the discussion on intellectual property and genetic resources, traditional knowledge and folklore and expressed the eagerness of Brazil to get down to business. The Delegation pointed out that, from a broad perspective, Brazil was of the opinion that intellectual property rights and international agreements on the protection of biodiversity should be mutually supportive. It was of the view that the work of the Committee should neither duplicate the work already undertaken by other international organizations nor encroach upon their specific mandates. It considered that, to the extent possible, the overlapping of issues should be avoided and proceeded to review certain existing processes in other international fora of relevance in the context of the Committee. At the World Trade Organization (WTO), the Delegation explained, Brazil supported the ongoing review of Article 27.3(b) of the TRIPS Agreement. Given that such a review was being carried out within the TRIPS Council mandate, the Delegation expressed its preference for the creation of a positive synergy between work undertaken under the WTO and whatever was

done under WIPO. Referring to the Convention on Biological Diversity (CBD), it recalled that in Article 16.5 of that Convention, the Contracting Parties have recognized that patents and other intellectual property rights may have an influence on implementation of this Convention. Thus, they have undertaken to cooperate in this regard, subject to national legislation and international law, in order to ensure that such rights are supportive and do not run counter to its objectives (Article 16.5). The Delegation referred to two Decisions of the Fifth Conference of the Parties, which demonstrated the expectations of the CBD Contracting Parties as regards the work of WIPO on the protection of genetic resources and traditional knowledge. It was recalled that Decision V/16 reaffirmed the importance of making Article 8(j) and related provisions of the Convention and provisions of international agreements related to intellectual property rights mutually supportive. It further noted that there were existing international agreements, intellectual property rights, current laws and policies that might have an influence on the implementation of Article 8(j) and related provisions. The Delegation recalled that in Decision V/26, the Conference of the Parties had also established an *Ad hoc* Open-ended Inter-Sessional Working Group with the mandate to develop guidelines and other approaches, for submission to the Conference of the Parties, to assist Parties and stakeholders in addressing elements of access to genetic resources and benefit-sharing. It noted that the Decision had established that such work should take into account “*inter alia* work by the World Intellectual Property Organization on intellectual property rights issues.” More importantly, the Delegation emphasized, Decision V/26 invited relevant international organizations, including WIPO, to analyze issues of intellectual property rights as they related to access to genetic resources and benefit-sharing, including the provision of information on the origin of genetic resources, if known, when submitting applications for intellectual property rights, including patents. It noted that the Decision “requests relevant international organizations, for example, WIPO and the International Union for the Protection of New Varieties of Plants (UPOV) in their work on intellectual property rights issues to take due account of relevant provisions of the Convention on Biological Diversity, including the impact of intellectual property rights on the conservation and sustainable use of biological diversity, and, in particular, the value of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.” The Delegation concluded that, bearing in mind such provisions, there could be no doubt that the Contracting Parties of the CBD expected that WIPO carry out its contribution to implement Article 16.5 and other relevant provisions of that Convention. The Delegation then referred to the ongoing discussions in the Food and Agricultural Organization (FAO) as regards the use and conservation of genetic resources, which should be carefully followed by this Committee in order to avoid duplication of efforts undertaken in that context. The Delegation considered document WIPO/GRTKF/IC/1/3 to be a good reference for the work of the Committee and thanked the Secretariat for their useful input. It noted that Brazil intended to revert back to this paper during the more specific discussions and deemed it useful to consider the elaboration of some terms of reference that might serve as a roadmap for the Committee’s discussions, as referred to by the GRULAC Group. It felt that such terms of reference might be helpful to structure the Committee’s work, given the many different interests at stake in the Committee. It added that the work should also be broadened so as not to prejudge the final outcome of the discussions. Regarding the structure of the discussions, the Delegation expressed its opinion that the Committee should engage in more productive and harmonious work. It foresaw that the Committee would engage in more productive and harmonious work if the three broad issues covered by its mandate were addressed in every meeting in light of the inter-linkages among such issues. It stated that it would not like to see a separation of the three issues and areas covered by the Committee. From the perspective of Brazil, it explained, WIPO should work towards concrete results as regards protection of genetic

resources, traditional knowledge and folklore from the perspective of intellectual property. It added that, whenever appropriate, it would be open to consider the development of provisions that ensure consistency between intellectual property rights and the objectives of the CBD. The Delegation stated that another valuable contribution WIPO could make would be in the development of databases for the protection of genetic resources and traditional knowledge, as suggested by the Delegation of India. It added that careful consideration should be given to the conditions of use and access to information of such a database, in order to prevent its misuse or eventual biopiracy. The Delegation noted that Brazil was also open to giving consideration to conceptual discussions on genetic resources, traditional knowledge and folklore to the extent they might be useful to achieve concrete results in this Committee. It specified that the conclusion of a debate on concepts and definitions should not be established, however, as a conditionality for the beginning of discussions on disciplines or legal frameworks that could facilitate implementation of the CBD and other relevant fora. It expressed its view that it would be preferable to leave such a task to other international fora or to national legislation. The Delegation observed that the time for undertaking discussions in the Committee would be short and that there would be only four Sessions after the present one. As productive as this Committee might be, it foresaw that more meetings would be required to carry out further work after conclusion of the scheduled meetings. It reiterated that Brazil would revert to the background paper in the more detailed discussion of the tasks suggested by the Secretariat on the issues of genetic resources, traditional knowledge and folklore. The Delegation stressed its intention to participate actively in future discussions including through references to domestic legislation enacted in Brazil, which relate to most of the items under consideration.

28. The Delegation of Singapore, speaking on behalf of Singapore and as Chair of the Working Group on Intellectual Property of the Association of Southeast Asian Nations (ASEAN), supported the remarks made by the Group of Latin American and Caribbean Countries (GRULAC) on behalf of the Asian Group. It emphasized the importance and significance of the work of the Intergovernmental Committee. It drew attention to the challenge confronting the Committee, which would have to go into new areas and explore how to adapt the global intellectual property regimes to these new areas. It posed the question whether the Committee would be able to use existing intellectual property concepts in the areas it was going to deal with, whether the Committee would have to work out *sui generis* systems, or whether it would have to come up with entirely new concepts. It also drew attention to the wide interest which the issues before the Committee had raised, as indicated by the large attendance, both governmental and non-governmental, at the first session of the Committee. The Delegation recalled that intellectual property issues related to genetic resources, traditional knowledge and folklore had been raised in areas as diverse as food and agriculture, biological diversity and the environment, culture and trade. It added that these issues cut across boundaries and that some parts of what the Committee would deal with had also been addressed in other fora, such as the Food and Agricultural Organization (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the World Trade Organization (WTO). It recalled that in WIPO a great amount of work had been done on these issues, as could be seen from the documents circulated. As an example, it referred to three case studies which had been carried out together with the United Nations Environment Programme (UNEP) in 1998 and 1999 and to work that had been done in the Standing Committee on the Law of Patents (SCP) in September 1999. In the area of traditional knowledge, it referred to two roundtables on intellectual property and traditional knowledge and nine fact-finding missions. It noted that in the area of folklore, work had begun much earlier and together with UNESCO much work had been done to prepare Model Provisions. Furthermore, it recalled that folklore itself had been specially mentioned in the WIPO

Performances and Phonograms Treaty (WPPT), which was worked out in WIPO. The Delegation referred to other interregional discussions in this area, such as an interregional meeting in Thailand where a policy statement was adopted, and the work of the Convention on Biological Diversity (CBD), which had made available very useful papers for this meeting. Bearing in mind all these matters, the Delegation suggested that, for a systematic treatment of the work, the Committee should proceed with the work in accordance with the sub-items of Agenda Item 5 of the Agenda. It further suggested that the Committee should arrive in a broad way at an understanding as to the scope of its work. This way, it believed, a lot of time could be saved and in this connection it stated that the possible tasks mentioned in the Secretariat document WIPO/GRTKF/IC/1/3 would be a useful guide. It emphasized the importance of reaching a general understanding of the meaning of various terms used by the Committee, which would save the Committee time and arguments when it begins its substantive work in the future. It pointed out the need to have a broad understanding of what the Committee was intended to achieve in each of the three areas. It suggested that the Committee would need to examine existing intellectual property concepts in order to see where it could work within existing concepts, where it would need to adapt these concepts, and where it might have to think of new concepts. At the same time, it emphasized the importance of recognizing that there were other international legal instruments which covered some of the work that the Committee might do and of trying to work harmoniously in connection with those documents or instruments. It referred specifically to Article 27.3(b) of the TRIPS Agreement and the CBD. The Delegation reiterated that Singapore stood ready to work in this area in order to enable the Committee to achieve its objectives.

29. The Delegation of Indonesia expressed its full support for the statement made by Malaysia on behalf of the Asian Group. It stated that the subject matters to be addressed by this Committee were very important to Indonesia, a country abundant in natural resources and knowledge inherited from its ancestors. As an illustration, it pointed out that in Indonesia long before medical doctors were sufficiently available across the country, people went to a traditional physician called “dukun.” It explained that the “dukun” treated patients based on his or her diagnosis and gave medicines which comprised a variety of plant leaves and other local materials. It further explained that the practice of “dukun” still existed today, even though medical doctors with modern and high-technology equipment were available. It noted that on some occasions patients which had been treated by medical doctors without success went to the “dukun” for further treatment. It added that, not surprisingly, among those patients one could also find medical doctors in need of “alternative treatment.” The Delegation pointed out that traditional herbal practitioners or “jamu” had long been recognized by the people, not only in Indonesia but also in other countries. It explained that “jamu” were taken mostly for the purpose of strengthening the human body or maintaining one’s health and that “jamu” was made by a special recipe, which undoubtedly constituted traditional knowledge relating to local natural resources, maintained and improved for generations. By those illustrations, the Delegation stressed that the issues concerned were of utmost importance for the people at the grassroots level in Indonesia. It referred to a recommendation from the WIPO-ASEAN Sub-Regional Policy Forum on the New and Emerging Dimensions of Intellectual Property in the 21st Century, held in Bali, Indonesia, from July 25 to 27, 2000, as follows: “Although traditional knowledge and its related issues have become prominent and relevant, there has not been adequate international legal protection. A consultation mechanism should be established to build international consensus on the issues. The Forum urged WIPO to take the lead in this consensus building.” The Delegation therefore welcomed the establishment of the Committee in WIPO. It stated that the Committee provided a momentum for the international community to continue addressing the issues, which were of significance for people in many countries. The Delegation pointed

out that the significance of the issues of traditional knowledge, genetic resources and folklore warranted careful consideration by the Committee. It noted that the goal of the Committee should be to protect the skill, knowledge and resources, as well as the interests, of the people in the respective communities. The Delegation emphasized that the Committee should deal not only with individual rights, but also community rights. Viewed from this perspective, it explained that the issues concerned involved other disciplines within a country's jurisdiction and involved the system and value of a society, as well as progress in community development. It suggested that the Committee should always bear in mind that the issues of traditional knowledge, genetic resources and folklore were not only a matter of intellectual property rights. It stated that the various studies already conducted by WIPO, including the WIPO Report on the nine fact-finding missions on intellectual property and traditional knowledge, had taken into account the above concern. The Delegation pointed out that this Committee had very challenging tasks and would need to consider carefully all the issues concerned in a balanced manner, including in allocating the time frames. Furthermore, the Delegation considered it very important that the Committee would always take into account the needs of all parties concerned on every issue. The Delegation noted with appreciation the specific suggestions on the work of the Committee, as contained in document WIPO/GRTKF/IC/1/3, and expressed its view that priority should be given to possible tasks A.1, A.2, B.1, B.4 and C.2.

30. The Delegation of the Islamic Republic of Iran associated itself with the statement made by the Delegation of Malaysia on behalf of the Asian Group. It referred to the well-known fact that traditional knowledge was part of man's heritage, transferred and passed down from one generation to the other, and indeed one of the unique features reflecting the cultural identity of nations. It pointed out that the Islamic Republic of Iran, one of the oldest civilizations in human history, was rich in traditional knowledge, and had a long-standing background in that field. It noted that for centuries Iran's handicrafts and traditional medicine had enjoyed an outstanding international reputation and position. It suggested that the economic impact of the information age had provided new opportunities for developing nations to benefit from their geographical distinction as well as their traditional knowledge in a globalized world economy. It added that along with this new opportunity came the challenge of the preservation of national and community heritage for future generations. The commercial values of traditional knowledge embodied in commodities such as handicrafts, carpets and herbal medicine, and in associated services, if protected from unfair competition, can contribute to the world's cultural diversity and serve as an impetus towards the prosperity of developing nations. Referring to the philosophy behind the long tradition of intellectual property rights, it stated that for competition to provide its fruits to the prosperity of nations it needed protection. The Delegation observed the necessity to formulate and establish an effective international legal protection regime for traditional knowledge within the framework of international trade because the present intellectual property rights system had not been found sufficient in offering the required protection to all the multifaceted aspects of traditional knowledge. It noted that the lack of a proper protection system at national, regional and international levels had caused the improper and unfair utilization of a very broad spectrum of this community heritage, thereby adversely affecting the holders of this knowledge who were often from the lower echelon of society and inflicting great losses upon their lives. As an example, the Delegation referred to the export value of Iranian carpets and handicrafts, famous for their articulate design and distinct material, and which had seen damaging deterioration in terms of trade, due to unfair infringement of the geographic indication and lack of international protection. It stated that WIPO had the sole authority for intellectual property rights and suggested that with the cooperation of other international organizations, like the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the

Food and Agricultural Organization (FAO), it might increase and strengthen the present efforts at national and international levels. With the collaboration of Member States and relevant international organizations and in the context of the 1982 Model Provisions, the Delegation suggested that WIPO could formulate a comprehensive legal protection scheme to enhance all the different forms and aspects of the traditional knowledge, specially in the handicrafts area. Furthermore, it urged WIPO to take the initiative to provide legal, technical and financial assistance to developing countries so as to empower them for preservation, identification, safeguarding, documentation and classification in the field of traditional knowledge. It added particularly the need for awareness-raising on the educational front for both holders and users of these cultural rights, the two sides of cultural trade. The Delegation concluded that the time was right for facilitation of this cultural transaction in a year that had been named as the year for dialogue among civilizations, as proposed by the President of the Islamic Republic of Iran and approved by the UN General Assembly.

31. The Delegation of China expressed its belief that the activities which had been carried out were not only very topical, but that they would also have important effects on the future development of international regimes for the protection of intellectual property. It attached great importance to this and supported the work of the Committee. On the subject of the protection of genetic resources, the Delegation actively supported that the Committee should carry out concrete research into the protection of genetic resources and intellectual property rights and benefit-sharing. It noted that the Committee should be inspired by the positive recommendations already set out in the Secretariat documents. It expressed its hope that the Committee would be able to respect the principle of national sovereignty and adhere to intellectual property regimes and the prevailing international rules and laws. It suggested that the Committee should make efforts to explore ways of benefit-sharing in respect of genetic resources, which would be feasible and acceptable to the majority of Member States. It considered that this would be profitable for the Member States, especially to the developing countries, which could use their own genetic resources to promote economic and technological development. On the question of the protection of traditional knowledge, the Delegation considered that traditional knowledge was the fruit of the historical development of a society and noted that its protection and use were directly connected with the social and economic development of humanity today. It argued that for many developing countries protection of traditional knowledge was even more important and therefore favored carrying out research on the protection of intellectual property rights and traditional knowledge. The Delegation reported that China had already benefited from the existing intellectual property regime by protecting traditional knowledge in certain areas. It provided the example of traditional Chinese foods which had been known for a very long time and were protected by trademarks and appellations of origin. It furthermore stated that traditional Chinese medicine, which had a long historical development, was protected thanks to a patent law since 1993. The Delegation specified that at the end of 1998, traditional Chinese medicines were the subject of 9,900 patent applications. It added that traditional knowledge which forms technological know-how were included as trade secrets as part of protection against unfair competition. On the subject of folklore, the Delegation pointed out that copyright in China has explicitly included expressions of folklore in its scope of protected subject matter. However, special provisions on the protection of folklore needed to be drafted. The Committee was informed that, at present, China was carrying out studies and research into the legal protection of folklore. The Delegation noted that China was studying very carefully recommendations from the international organizations concerned and had learned from the experiences of other countries. It noted that, on the basis of the Chinese experience, it was planned to draft, as far as possible, the necessary special provisions so as to implement the protection of intellectual property rights and folklore. In concluding, the Delegation repeated

that China gave its full support to the fact that the Committee should develop its activities in the area of genetic resources, traditional knowledge and folklore, under the aegis of the Director General of WIPO. It emphasized that carrying out these activities was of great significance and that China was prepared to make its contribution to meeting this challenge.

32. The Delegation of Peru began by reiterating its full support for the statement made by Uruguay on behalf of GRULAC. Peru was a country of great biological diversity and was considered to be among the ten most diverse countries in the world. In addition to this considerable heritage, Peru was a multi-ethnic and multicultural society whose communities were endowed with valuable practices, innovations and traditional knowledge. It was aware that the knowledge relating to the use and exploitation of biological resources belonging to indigenous peoples, as well as genetic resources, had a potentially great economic value since they could be used in industrial products and processes. Secondly, Peru was convinced that the relationship between such communities and genetic resources should be strengthened on the basis of the preservation of biological diversity and of the social and economic development of those communities. In the past few years, Peru had therefore devised a draft *sui generis* system for protecting the collective knowledge of indigenous people. Similarly, at the international level it had expressed interest in exploring ways of acknowledging the historical contribution made by indigenous and local communities to biological diversity, its preservation and development, and also the benefits of that contribution. The Delegation of Peru believed that the task in question included, *inter alia*, the establishment of a *sui generis* protection system which was appropriate both to the characteristics of traditional knowledge and of those of indigenous peoples, and inspired confidence by means of investment, research and development to the extent that satisfactory agreements were put in place for the communities in question as well as for anyone wishing to have access to such knowledge for commercial and scientific purposes, and for society as a whole. There currently existed an information imbalance present in commercial market transactions relating to traditional knowledge and genetic resources which could possibly be reduced by means of a regulatory system to generate confidence and provide appropriate incentive for all parties concerned. In that regard, the Delegation of Peru considered that WIPO, as a United Nations specialized agency dealing with the subject of intellectual property, could make a substantial contribution to the fulfillment of that task. In this context, it welcomed the beginning of the WIPO Intergovernmental Committee's work. As mentioned in the document submitted by GRULAC (document WIPO/GRTKF/IC/1/5), the Committee's work must be aimed at defining practical methods and developing internationally recognized disciplines so as to achieve appropriate protection for the intellectual property of traditional knowledge. The Delegation of Peru considered that this aim must serve as a basis for the Committee's deliberations so that those discussions achieved satisfactory results. The WIPO Committee's work should not duplicate or interfere with the work in progress on the same subject in other international fora such as the CBD, the United Nations Conference on Trade and Development (UNCTAD), the FAO and so on. For that purpose, the focus of WIPO's work should ensure that its results added to the value of the discussions in progress, i.e. by dealing with intellectual property aspects, a focus which corresponded to WIPO's remit. In this context, the Delegation of Peru reiterated that terms of reference should be established for its work, as had been indicated by Uruguay on behalf of GRULAC. Having made these few general remarks at the beginning of the Committee's work, on the basis of its national and subregional experience within the Andean Community, the Group subsequently hoped to be able to make individual comments on the three substantive issues included in the Committee's agenda.

33. The Delegation of Norway commended the Secretariat for giving a very useful overview of the various policy areas which interrelated with intellectual property rights in the documents presented to this Committee and for providing a most constructive basis for deciding on the tasks of this Committee in document WIPO/GRTKF/IC/1/3. It stated that, as a starting point, Norway wished to emphasize the need for adequate protection of intellectual property, as reflected in the many existing international agreements for the promotion of innovation, creativity, and investment. The Delegation added that, at the same time, Norway attached great importance to the need for addressing the implications of the many linkages between intellectual property rights and the uses of genetic resources, traditional knowledge and folklore. It expressed its commitment to work at the international level for the promotion of human rights, including the rights of indigenous peoples, equity, sustainable development, the conservation and sustainable use of biological resources, cultural policy as well as trade and economic development. It acknowledged the increased concern and awareness of many countries, regions and indigenous and local communities, which had been expressed on traditional knowledge issues and the increased attention given to intellectual property-related questions and discussions in many international fora. The Delegation reiterated the support of Norway for the establishment of the Committee and its commitment to moving forward with discussions on these issues within the framework of WIPO. It attached importance to initiating a common approach to the interfaces between intellectual property rights and genetic resources and traditional knowledge. In its view the work on these issues should be focused but a broad approach should be chosen in order to better identify appropriate solutions. The Delegation joined numerous other Delegations in recommending that the Committee should take into consideration the work already being carried out in other fora, such as, the Convention on Biological Diversity (CBD) and the Food and Agricultural Organization (FAO). Turning to the question of genetic resources, the Delegation expressed its commitment to the objectives of the CBD in facilitating access to genetic resources and avoiding loss of biodiversity, as well as to ensuring a fair and equitable sharing of benefits arising from their use. It acknowledged that there may be many approaches on how to regulate access to genetic resources as well as to ensure equitable sharing of benefits. The Delegation stated its readiness to discuss a number of options on this complex issue and articulated its hope that work in this Committee would bring the Member States forward. The Delegation noted with interest the submission by Switzerland to the Committee, containing a Swiss proposal for draft Guidelines on Access and Benefit-sharing. It also expressed its appreciation for the informative and interesting submissions by the European Community and its Member States. It mentioned that in Norway, the Government is currently elaborating ministerial plans of action to implement the CBD. It informed that, additionally, the Government had appointed a committee to propose a law on biological diversity. Turning to the issue of traditional knowledge, the Delegation supported the approach taken by the WIPO Secretariat in exploring the needs and expectations of the holders of traditional knowledge. It expressed its opinion that this was a good basis for identifying to what extent existing intellectual property rights could protect traditional knowledge. It also expressed its appreciation of the useful contribution by the GRULAC countries contained in document WIPO/GRTKF/IC/1/5 to this Committee. The Delegation suggested that consideration should be given to exploring the need for additional protection, including possible *sui generis* systems. In this regard, it emphasized that the CBD encourages the involvement of indigenous and local communities prior to granting access to their traditional knowledge. The Delegation pointed out that Norway is actively involved in ongoing international work on the protection of the rights of indigenous peoples, including the draft United Nations Declaration on the Rights of Indigenous Peoples. It also mentioned that the Norwegian Constitution itself included provisions for the protection of the indigenous Saami peoples' traditional culture. Turning to the protection of expressions of folklore, the Delegation supported taking up

focused discussions on the possible establishment of a functional international regime for the protection of expressions of folklore. It acknowledged the importance of being able to maintain and develop, within its own culture, the traditional, artistic heritage of a country, of indigenous peoples and of local communities. It expressed its commitment to participate in discussions on how a protection system for folklore might be established. Taking into account the relatively advanced stage of this topic and to ensure progress, it held the opinion that discussions should concentrate on certain key questions, namely (i) what was to be the protectable subject matter, (ii) who would be the beneficiaries and (iii) what should be the content and scope of protection. It considered it important to identify to what extent existing protection regimes were applicable and useful to examine various existing national systems for folklore protection. In concluding, the Delegation welcomed the common approach that had been chosen to address these issues and looked forward to a constructive discussion on deciding about the tasks of the Committee.

34. The Delegation of Egypt endorsed the statement made by Madagascar on behalf of the African Group. It recalled that Egypt had supported the creation of this Committee throughout the meetings of the General Assembly in September last year, and for these reasons the Delegation was happy to take part in this very first session. It expressed its view that the creation of this Committee was a historic opportunity to find a balance in the international system for the protection of intellectual property. It articulated the great hopes which it was placing in the future work of the Committee and its contribution towards the creation of an international protection system which would take due account of all the interests and requirements of all parties. The Delegation recalled that many countries, particularly developing countries, had a great heritage of traditional knowledge, folklore and genetic resources, which had for many decades exposed them to illicit exploitation in many fields by certain foreign parties, particularly in medicine, industry, art, music, literature and other fields. It noted that the last years had witnessed an upswing of such exploitation, particularly with the scientific advancements of modern technology. The Delegation considered genetic resources, traditional knowledge and folklore, as well as intellectual property rights related to them, to be vital topics for developing countries and their peoples. The Delegation argued that, because these countries and peoples were the main owners of their knowledge, they should be the only people entitled to this knowledge, so as to guarantee their rights and protect them from any illicit exploitation in acts of counterfeiting. It noted that WIPO had extended the framework of its activities regarding these issues, in response to many requests from developing countries. In particular it referred to fact-finding missions, which were sent to many regions of the world so as to identify the needs and expectations of traditional knowledge holders, and to Regional Consultations with the United Nations Educational, Scientific and Cultural Organization (UNESCO) on the protection of expressions of folklore. It noted that these activities had led to many recommendations as to the means of defending traditional knowledge in the future. The Delegation recalled that many problems regarding genetic resources had been discussed within the framework of the competent bodies, such as the Standing Committee on the Law of Patents (SCP) and the WIPO Working Group on Biotechnology. It considered that therefore the creation of the Committee came within a natural framework, extending the work of WIPO so as to deal with these topics at all levels. The Delegation fully endorsed this development and welcomed with a great deal of satisfaction the increase of the budget devoted to these activities in the 2002-2003 biennium. The Delegation quoted the privileged place of Egypt in the cooperation with WIPO and the importance that Egyptian authorities attached to this cooperation. It noted that (i) a fact-finding mission had visited Egypt in March 1999 and had explored the Egyptian experience in the field of traditional knowledge and folklore; (ii) a workshop had been organized in cooperation with WIPO in February 2000 to discuss the means of protecting and

identifying expressions of folklore; and (iii) an advisory mission had visited Egypt in September 2000 to strengthen cooperation in the field of traditional knowledge. In this respect, the Delegation thanked the Cooperation for Development Bureau for Arab Countries within WIPO for the support given to the Arab region in the field of cooperation for development, especially regarding these new topics of intellectual property. Turning to traditional knowledge and genetic resources, the Delegation drew attention to a draft bill submitted to the legislative bodies, in which one chapter was devoted to a *sui generis* system for new plant varieties. It also referred to copyright and related rights in relation to folklore. The Delegation stated its intention to submit its point of view in detail regarding all the work proposed in the Agenda. The Delegation pointed out that these topics expressed the deficiencies in the international systems of intellectual property, because the system is currently incapable of providing effective protection for a great part of human creation, namely traditional knowledge and expressions of folklore. Moreover, the Delegation maintained that it did not find the necessary concordance between international instruments in the field of genetic engineering and that the benefits arising from the use of genetic resources were not being fairly distributed. It argued that this was part and parcel of WIPO's competence, because WIPO is the competent organization in the field of the protection of intellectual property at a worldwide level. It emphasized the importance of deciding on the precise objectives of the Committee, so as to guarantee the success of its work. The Delegation expressed its hope that the Committee could during its first session decide upon a set of procedures on how to deal with these topics during the coming sessions, so as to enable the Member States to work and to tackle the topics effectively. It stated that the Committee should submit recommendations so as to set up a comprehensive global framework for the protection of genetic resources, traditional knowledge and expressions of folklore and to guarantee an equitable sharing of benefits. It added that these opinions were not a decision which anticipated the results which the Committee should reach, but rather they were just aspirations and expectations regarding the results it could reach. The Delegation stated that if the Member States of WIPO truly wished to find solutions to these current deficiencies, they required the creation of this Committee. It fully agreed with the Secretariat that the Committee would have to deal with the proposed topics very objectively. The Committee should look at them objectively and technically, because they concern the interests of all the Member States of WIPO. The Delegation pointed out that it had read quite carefully document WIPO/GRTKF/IC/1/3 prepared by the Secretariat which contained a number of very important recommendations which the Committee should analyze carefully. It expressed its hope for effective and constructive dialogue in which all the countries could take part, leading to recommendations and effective proposals. The Delegation pointed out that the protection of the rights of holders of traditional knowledge, be they individuals, communities or countries, encouraged respect for intellectual property rights as a whole from a wide range of stakeholders. It emphasized the need to protect traditional knowledge holders against counterfeiting and illicit exploitation. By way of conclusion, the Delegation insisted on the importance of these topics for most WIPO Member States which would all like to see results achieved. Specific results of the Committee's work in the field of intellectual property at an international level would represent an important milestone.

35. The Delegation of Mexico expressed satisfaction at the holding of this first Intergovernmental Committee meeting and also confidence that under the supervision of the two Co-Chairs the work of the Committee would be successfully concluded. The Delegation associated itself with the statement made by Uruguay on behalf of GRULAC. It was grateful to the Secretariat for having prepared the working documents and appealed for the versions in the official languages to be distributed sufficiently in advance. Mexico was very interested in the subjects with which it was currently dealing: firstly, it was one of the six most diverse

countries in the world; secondly, it attached importance to traditional knowledge from Mexican indigenous and local communities and, thirdly, it had a very large number of expressions of folklore. It noted with interest the proposals for future work contained in document GRTKF/IC/1/3. It was ready to discuss those proposals and would follow the discussions over the coming days closely.

36. The Delegation of Tunisia, which had supported the establishment of a specialized body within WIPO responsible for studying the links between intellectual property, genetic resources and traditional knowledge, considered that the holding of the first Committee session was a significant event in the history of the worldwide intellectual property system, both for developing and developed countries. The Delegation expressed its full support for the statements made on behalf of the African Group and expressed the wish that the proposals made in the document prepared and presented by that Group would make a constructive contribution to the first stage of the Committee's work. Tunisia was convinced that one of the fundamental resources of several developing countries was their natural and cultural potential, and therefore called for protection at both the national and the international level, as well as great solidarity. Development as Tunisia understood it could not be sustained autonomously from the local to the international level. In that regard, Tunisia congratulated WIPO which, through its program and budget, had devoted an appropriate level of interest to this issue as part of its aims to establish a global approach to intellectual property for the purposes of sustainable development. Tunisia's commitment to traditional knowledge and folklore and, in general, the cultural heritage was dictated by two essential requirements, the first historical in that owing to its privileged geographical position since antiquity, Tunisia had been a place where human beings and cultures at the foundation of a considerable legacy had met, exchanged views and passed through; the second imperative was based on the country's profound conviction regarding the role of culture in the flourishing of creative energies and innovation, the consecration of the foundations of civilization in society, the guarantee of its development, equilibrium and the strengthening of the attributes of its national identity. On the basis of this assessment, a link had been established between protection and cultural heritage, and its preservation and enhancement as a sustainable development factor. This willingness on the part of the State had taken shape in the setting-up of a legislative framework guaranteeing the protection of folklore and the various professions linked to the heritage and folklore. As regards the latter, Articles 1 and 7 of Law No. 94-36 of February 1994 relating to literary and artistic property provided for protection for folklore and its expression, and governed its use for profit-making purposes through the granting of authorization by the Ministry of Culture in return for the payment of a standard fee to the welfare fund of the Tunisian Copyright Protection Agency set up under the law in question. The same authorization was also required for the production of works inspired by folklore. Under Tunisian law, folklore was defined as any form of artistic heritage bequeathed by previous generations and which was linked to customs and traditions and to all aspects of popular creation such as popular stories, letters, music, dance and crafts. The aspects linked to the cultural heritage were governed by the Code on Historical Archaeological Heritage and Popular Arts published in Law No. 35 of February 24, 1994. In that regard, institutions had been set up to deal wholly or partly with the preservation of the traditional cultural heritage and folklore, and included: the Center for Popular Arts and Traditions which was responsible for collecting and preserving popular arts and traditions and enhancing them by means of, *inter alia*, publications. The work of the Center related essentially to traditional dress, jewelry, certain aspects of traditional daily life and so on. Fifteen similar regional centers were spread throughout Tunisia in addition to seven (7) museums set up for that purpose by the State and others by private individuals including the Museum of Brent. In 1994, the Heritage Center of Science and Technology had been set up and was responsible for

preserving and transmitting technologies linked to traditional heritage development such as sculpture and painting. In 1992 the Center for Arab and Mediterranean Music had been set up and was responsible for collecting and cataloguing, as well as protecting and enhancing, the musical heritage; in addition to the National Record Library the Center housed the museum of Arab, Mediterranean and even African musical instruments. Finally, in 2000 the Arab Heritage Preservation Center had been set up. In terms of awareness, since 1992 there had been an Annual Heritage Month from April 18 to May 18, which was a popular cultural event designed to enhance the importance of the cultural heritage. This activity undertaken for young and not so young people was intended to raise awareness of the importance of the legacy left by the country's ancestors and an invitation to help protect that heritage. The session currently under way had been placed under the theme of the cultural heritage and tourism which had been given specific form in the national plan to promote cultural tourism drawn up by the national President in April 1998 and motivated by a single aim: the use of the heritage and its enhancement. The overall program comprised 288 events, 223 involving cultural institutions and 47 in which associations participated. All aspects were therefore to be enhanced ranging from phosphate extraction methods to "Om Laârayes," culinary traditions in Tunis, Arabic manuscripts in Kairouan and the Andalusian musical heritage. Proverbs, adages and popular tales were part of a range of intense activity conducted throughout the country. As regards crafts related professions and in order to reinvigorate old professions and encourage innovation based on traditional arts and the heritage with a view to making it part of economic development, a National Day of Traditional Dress and Crafts (March 16 each year) had been introduced and a prize honoring the best craft-related inventions was awarded. Aware that the protection of the non-material heritage and folklore represented a precious intellectual property resource and required a commitment and appropriate protection at the national and international levels, Tunisia had taken an active part in different meetings and regional consultations held for this purpose by WIPO and the United Nations Educational, Scientific and Cultural Organization (UNESCO), and in November 1998 had hosted the WIPO Regional Afro-Arab Symposium on Copyright and Related Rights the final recommendation of which had called for the setting up in Tunisia of a regional center for the protection of the heritage and folklore, since Tunisia had a legal framework, appropriate institutions and experience in the field of preserving, protecting, enhancing and judiciously using the heritage and folklore, and could from that point of view, serve as a basis for a regional approach in particular in the field of training. Tunisia reiterated its willingness to contribute fully and to provide support for this undertaking at the appropriate time.

37. The Delegation of Venezuela was of the opinion that the work of the Committee on Genetic Resources, Traditional Knowledge and Folklore should consist in providing elements for protecting intellectual property rights in their various forms, as made clear in the statement by GRULAC, without duplicating the work being done on those subjects within the CBD, the FAO and the TRIPS Agreement. Venezuela attached great importance to those subjects since traditional knowledge was essential for preserving and utilizing biological diversity. It was also aware of the fact that such knowledge was associated with the rise of modern biotechnologies and the increased use of genetic resources for commercial purposes. The experience of work with Amazon communities and the development of a database for storing information on ancestral technology, native medicine, agriculture and food in the Amazon in Venezuela exemplified the importance of traditional knowledge by means of field data. Questions had arisen as to how to protect a product developed on the basis of traditional knowledge and the use of biotechnologies. Knowledge of cell biology and corresponding techniques, such as the cultivation of tissues, somatic hybridization and cloning of cells, as well as genetic engineering and molecular biology techniques in agreements reached with the producers of traditional knowledge as part of the added value thereof, could be applied. The

current trend in the field of biodiversity and traditional knowledge was aimed at research in the areas of bioexploration, ethnopharmacology and non-construction products with the idea of obtaining new sources of nutrition, fibers, cosmetics and a great diversity of germ plasm from edible plants, sources for biotechnological development. On that basis, traditional knowledge played an important role as a source of information and resources of biodiversity for its commercial use. Such knowledge was generally based to a large extent on genetic resources and emphasis was therefore placed on establishing mechanisms for preventing the illegal use of such resources and for sharing the benefits resulting from the *sui generis* protection systems in use, for which reason it was essential that such systems were designed in an appropriate manner. It should be pointed out that Venezuela had ratified the CBD and the TRIPS Agreement. It was also a member of the Andean Community of Nations which had devised rules on intellectual property, traditional knowledge and genetic resources (Decrees Nos. 391 and 486). It was noted that Article 124 of the National Constitution of the Republic of Venezuela stated that “the collective intellectual property of traditional knowledge and innovations of indigenous peoples shall be guaranteed and protected. Any activity relating to genetic resources and knowledge associated therewith shall be revised to achieve collective benefits.” The Law on Biological Diversity and the Law on Demarcation and Guarantee of Habitat of Indigenous Peoples had recently been approved. This legislative progress had been accompanied by a debate with the various sectors in national life in order to identify possible solutions with clearly defined parameters and principles. Reference could be made to the First Latin American Congress on Protection of Traditional Knowledge, the Second International Intellectual Property Congress and a Workshop on Access to Genetic Resources. The Ministry of Science and Technology, Environment and Natural Resources, and Manufacturing and Trade, together with the Academy of Physical, Mathematical and Natural Sciences (FUDECI) had set up a project entitled: BIOZULUA “Recovery of Agriculture and Food Information, Ancestral Technology and Native Medicine for the Sustainable Development of Different Ethnic Groups in Venezuela.” This project was designed to compile and store this information directly from the communities in question. It was kept on specially designed software. The database contained the names of animals and plants of use to communities, their method of use, techniques used for processing them, photographic registration, videos, voice registration and description of the elements which the informants considered to be of particular relevance. The uses in question included magical and religious, technological, medicinal and nutritional aspects. The database was protected by law. Consequently, two specific activities had recently been initiated by Venezuela. The first related to the preparation and implementation of domestic corporation agreements between the authorities mentioned together with the Ministry of Environment and Natural Resources in order to promote the use and registration of intellectual property rights derived from elements of biodiversity. The second activity referred to the setting up of negotiations with international agencies so as to orchestrate technical cooperation programs designed to guarantee intellectual property rights, establish economic enhancement, devise sustainable production processes and set in motion the commercialization and development of biobusiness. In that regard cooperation with WIPO was fundamental. Venezuela had promoted a project entitled Recovery of Agriculture and Food Information, Ancestral Technology and Native Medicine for the Sustainable Development of Ethnic Groups in Venezuela. This project included information compiled from six Venezuelan ethnic groups from the State of Amazonas: Curripaco, Guahibo, Parpoco, Piaroa, Yanomami and Ye’kuana respectively. Since time immemorial, each of these ethnic groups had had its own system of using resources and the precise aim of the project was to avoid a situation where this information was lost, especially in relation to the use made of suitable plants and animals. Efforts were made to retain information held by various ethnic groups on plants and animals of use from the nutritional and medicinal points of view, as well as knowledge on the

technologies used to prepare manufactured products such as foodstuffs, tools, utensils, construction tools and so on. Venezuela hoped to promote the foundations for implementing policies which took account of the conservation both of biological resources and the knowledge held on such resources by the country's indigenous communities. On that basis and within the sphere, mandate and aims of WIPO, the Committee should, in addition to the subjects mentioned in the statement by GRULAC, deal with the following:

- expanding the resolutions and agreements relating to the contracting of genetic resources and their relationship with traditional knowledge;
- promoting the preparation of rules including the protection of various expressions of folklore;
- protecting traditional knowledge by developing a *sui generis* system to meet the needs of communities, which may include existing systems, the adaptation of such systems and the creation of new rules;
- establishing standard patterns for studying, analyzing and understanding intellectual property rights in relation to traditional knowledge;
- developing and enhancing a legal standard for using traditional knowledge by granting communities the appropriate benefits to which they are entitled as a result of holding and producing such knowledge;
- investigating the possibility of establishing at the international level the invalidity of intellectual property rights using genetic resources, traditional knowledge and folklore that have been acquired without prior informed consent, by fraudulent means and without the existence of equitable benefit-sharing.

38. The Delegation of Zambia expressed displeasure that time had been lost while the election of the chair of the meeting was being discussed. The Delegation added that it would not accept co-chairing in any future sessions of the Committee. The Delegation discussed the initiative to bring the protection of traditional knowledge systems, traditional knowledge and innovations within the jurisdiction of WIPO and emphasized that the initiative should go beyond the mere protection of such issues. It further stressed the need for the Committee to address the issue of rewarding the custodians of traditional knowledge systems, traditional knowledge and innovations and argued for the fair and equitable sharing of benefits which derived from them. The Delegation noted that other intergovernmental organizations and agencies already addressed some aspects of protecting and rewarding knowledge and innovations derived from traditional knowledge systems and traditional knowledge. It therefore urged the need to avoid unnecessary duplication of effort and encouraged the promotion of synergy and harmony among ongoing initiatives. In this respect, the Delegation expressed its confidence that WIPO could play a leading role. The Delegation endorsed the recommendation by the African Group on the establishment of the Intergovernmental Committee on Intellectual Property, Genetic Resources and Traditional Knowledge and Folklore and suggested that the mandate of the Committee be to develop an intellectual property instrument that recognized, protected and rewarded knowledge and innovations derived from traditional knowledge systems and traditional knowledge. The proposed international instrument should be legally binding and should be enforced through some form of dispute settlement mechanisms. The Delegation suggested further that the Committee appoint contact groups to expedite the work and that the Terms of Reference outlining their

mandate be drafted. It proposed the amalgamation of the United Nations Educational, Scientific and Cultural Organization (UNESCO)-World Intellectual Property Organization (WIPO) Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions with the African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources.

39. The Delegation of Ecuador reiterated its satisfaction at the decision to establish the Intergovernmental Committee within WIPO, which it hoped would continue on a permanent basis. In turn, this satisfaction was sustained by the aspiration to see, during the corresponding study, the recognition of rights for appropriate protection of genetic resources, knowledge and traditional innovations and practices, crystallized, as well as for folklore, which to a large extent were to be found in indigenous and local communities, of which Ecuador had a considerable number. As known, Ecuador was one of the richest countries on the planet in terms of its biological diversity. It was the world number one in terms of the number of vertebrate species and endemic species by surface area, third in terms of amphibians, fourth in terms of diversity of birds, seventh in diversity of butterflies, eighth in diversity of reptiles and twelfth in diversity and endemism of higher plants, not discounting the fact that it had a rich biodiversity in its sea, continental and inland waters, relating to the unique physical conditions characterizing the marine environment. At the same time, Ecuador had remarkable cultural diversity. Its small territory was home to 12 indigenous peoples, all of whom were in possession of a great wealth of traditional knowledge and practices relating to biological diversity. For those and other reasons, Ecuador recognized that such knowledge and practices, together with the genetic resources of its territory, were strategic factors not only in the self-development of those peoples but also for the development of the country as a whole, and that this could produce unique benefits for the whole planet. The Constitution of Ecuador enshrined the aim of preserving biodiversity and the integrity of the country's genetic heritage, affirmed the sovereign right of the State to biological diversity and, at the same time, guaranteed the right of indigenous and Afro-Ecuadorian peoples to the collective intellectual property of their ancestral knowledge, and the enhancement, use and development of such knowledge. Furthermore, the Constitution recognized and guaranteed intellectual property in the terms provided for by law, and in accordance with the agreements and treaties in force. Those instruments were therefore the conceptual and political pillars of Ecuador's legislation and practice in that regard. In line with those constitutional principles, Ecuador had subscribed to and adopted Decision 391 of the Andean Community of Nations establishing the Common System on Access to Genetic Resources which also contained fundamental precepts both for guaranteeing the regulation of access to such resources and supporting the rights of indigenous, Afro-American and local communities and peoples and for protecting their traditional knowledge in relation to genetic resources. As to intellectual property, since 1998 Ecuador had had an Intellectual Property Law through which the State recognized, governed and guaranteed the intellectual property acquired in accordance with the law, the decisions of the Andean Community and international agreements in force. The Law in question provided, *inter alia*, for the protection of folklore, knowledge and creations based on tradition, as well as establishing specific provisions guaranteeing consistency between the protection of intellectual property and the provisions of the CBD. In addition to the reasons cited, among other countries Ecuador had discussed with great interest the subjects relating to intellectual property and its application to the use of genetic resources as well as to traditional knowledge in respect of biodiversity. In that connection, in addition to the comments made by the Delegation of Uruguay on behalf of GRULAC — to which the Delegation of Ecuador fully subscribed — the country hoped that the Committee would make a contribution through analysis and studies of contractual

practices, guidelines and clauses in respect of intellectual property for the agreements on access to genetic resources and the distribution of benefits, taking into consideration the nature and specific aspirations of the groups concerned, the different genetic resources and the interaction occurring between different sectors. Similarly, the Committee's studies should be designed to compare and assess information relating to the availability and scope of the protection of intellectual property for traditional knowledge, incorporating elements of the systems in force for a *sui generis* application of protection of those rights or a combination of the two. In order for the Committee's endeavors to be completely successful, its work must be done avoiding duplication so as to achieve coherence and consistency with the international instruments dealing with such matters, as well as the tasks carried out within the framework of those instruments. Specific reference was made to the work done under the CBD, the FAO and the United Nations Environment Program (UNEP). In that regard, the Delegation of Ecuador fully supported the proposal made by GRULAC to promote the signing of coordination and cooperation agreements with the organizations dealing in different ways with those important subjects, in terms similar to the agreement existing between WIPO and the WTO.

40. The Delegation of Morocco associated itself with the statement made by Madagascar on behalf of the African Group. It said that genetic resources and traditional knowledge generated great interest in social, economic and political terms. Traditional knowledge represented the cornerstone of the social cohesion and expression of the identity of the Moroccan people thanks to its profound attachment to traditional values. As a result of the diversity of the cultural and artistic heritage, Morocco now had a considerable legacy. However, with the new era of technology, the lifting of customs barriers and so on, that heritage was under threat. Now aware of the fact that traditional knowledge, genetic resources and folklore were part of countries' sustainable development, be it in economic or social terms, the Moroccan authorities took an interest in all the elements of traditional knowledge by updating its body of laws as a result of fruitful debates at the national level on related subjects. The legislative texts in question related in particular to copyright and neighboring rights, plant varieties and industrial property. As regards traditional knowledge, the Moroccan legislator showed great interest in expressions of folklore, their definition, protection methods, the holders of rights and penalties resulting from the infringement of those rights. The legislator also considered that for Morocco expressions of folklore represented a "living concept" embodied in the daily life of the Moroccan people. As to copyright and neighboring rights, the new Moroccan law defined "expressions of folklore" as the production of elements characteristic of the traditional artistic heritage which were developed and preserved on the territory of the Kingdom of Morocco by a community or by individuals recognized as meeting the traditional artistic expectations of that community. For example, "Jamaa El Fana" square in Marrakesh had been proclaimed part of their universal oral heritage by UNESCO. As regards the field of genetic resources, the national legislator had prepared a law on the protection of plant varieties. The interest shown was the result of awareness of the existence of a rich biodiversity in Morocco which should therefore be safeguarded and preserved. The flora in existence in Morocco proved to have interesting cosmetic or therapeutic properties. In that regard, it was sufficient to cite the argan tree which grew in the south of Morocco and which, according to scientific research, had important therapeutic or cosmetic properties. In that connection, the legislator had devised this law to protect all new plant varieties. With the assistance of UNESCO, a biosphere reserve for argan trees had been set up in 1998. The reserve had given rise to argan oil production cooperatives. In order to strengthen the protection of genetic resources, Morocco considered that the creation of a data bank for each region possessing similar features, in terms of climate or geography and so on, was the first step towards a general database recognized by all the

countries contributing thereto. It was also legitimate to question how a database could be set up using traditional data. What were the means and methods for cataloguing the genetic resources and traditional knowledge linked to such resources? How could collection and classification be standardized for an international search? Once responses were provided to those questions, it was expedient to consider setting up an international search authority on genetic resources and traditional knowledge linked to those resources, along the lines of other official search authorities on prior art for patent-related purposes. The Ministry responsible for crafts was in the process of drawing up a charter designed to establish a framework to protect the creative activity of craftsmen. Morocco was now working on the mechanisms and instruments used to apply the laws relating to genetic resources and traditional knowledge, particularly expressions of folklore, taking into consideration several parameters, i.e. the rights of holders of traditional knowledge and the equitable distribution of the benefits stemming from the use of that knowledge. Furthermore, in order to determine all the aspects of genetic resources and traditional knowledge, Morocco hoped that the fact-finding missions carried out by WIPO within this framework would be extended in the Arab region to other countries so as to detect all the needs and expectations of their holders and also to study subjects other than folklore, such as innovations and traditional creations. In addition, given the complexity of the subjects relating to genetic resources and traditional knowledge, it was recommended to launch other surveys in other countries known for their wealth of genetic resources and traditional knowledge. It was obvious that developing countries lacked the means to provide appropriate protection for their heritage on an international scale, *inter alia* in the field of traditional knowledge. Their memories began to fade owing to the infringements committed against the integrity of their ancestors' creations, for example through the demolition of historical monuments. In that regard, Morocco considered that a budgetary fund should be set up and mechanisms sought as a matter of urgency in order to facilitate access for those countries to financial resources so as to protect their heritage, in partnership with UNESCO. Finally, it should be recognized that the stumbling block to the development of protection for genetic resources, traditional knowledge and folklore remained the nature of the instruments and mechanisms used to apply legislation. For that purpose, all countries must incorporate all layers of society in any debate in order to arrive at a consensus on protection instruments and mechanisms. Moreover, the establishment of an office responsible for genetic resources and traditional knowledge, in which all participants working in that area were represented, including the agency responsible for industrial property, was therefore an essential element if the activities conducted for that purpose were to be successful. In conclusion, the Delegation emphasized that strengthening of the existing formal system and the development of new mechanisms for their application, taking account of several social and economic considerations, were an effective way of achieving appropriate protection for the heritage of industrialized and developing countries.

41. The Delegation of Japan drew attention to the preamble of the Convention on Biological Diversity (CBD), which stated that the "conservation and sustainable use of biological diversity is of critical importance for meeting the food, health and other needs of the growing world population." It observed that contracting parties to the CBD had already been working to formulate an appropriate scheme of access and benefit-sharing. The Delegation stated that many factors were related to the issue of access and benefit-sharing and that intellectual property was only a part of the issue to be considered. For benefit-sharing systems it stated that ideas other than those which were intellectual property-related had been proposed, for example, technical cooperation, human resource development, an 'access fee' and so forth. It also mentioned that access and benefit-sharing matters had been discussed in the Expert Panel of the CBD and that intergovernmental discussions on the matter were programmed to begin this October. The Delegation urged WIPO to follow the process and that the Committee hold

specialized discussions on the intellectual property-related aspects, keeping in mind the need to assist in the realization of the CBD's mandate. Additionally, the Committee should closely follow the International Undertaking at the Food and Agricultural Organization (FAO). The Delegation articulated the role the Committee had in holding substantial and technical discussions on the relationship between intellectual property and genetic resources, including other issues, without pre-judging conclusions, and more importantly with the objective not to see this as an opportunity for making new rules such as a treaty or agreements. With regard to certain issues, for example the patent system itself, it pointed to the corresponding Standing Committees within WIPO to address such issues with its expertise. The Delegation stated that such issues were appropriately discussed in such Standing Committees, namely the Standing Committee on the Law of the Patent (SCP). With regard to traditional knowledge, the Delegation expressed the need to first clarify several issues, for example, the definition of traditional knowledge and the identity of the owners of traditional knowledge. In answer to those questions, it emphasized the need to collect and analyze examples, and thereafter give consideration as to how traditional knowledge could be protected under the existing legal framework, such as patents, trade secrets and private contracts. The Delegation stressed that discussions on traditional knowledge should not pre-empt the established expression of new intellectual property systems for the protection of traditional knowledge. With reference to the concerns on patent rights being obtained for subject matter covered by traditional knowledge of third parties found under the patent laws of many Members, including Japan, the Delegation stated that not only inventions which had been described in documents, but also inventions which have been publicly known or are used elsewhere in the world prior to the filing of the patent application, constituted prior art. Therefore, traditional knowledge, much of which was transmitted by word of mouth, was recognized as prior art under the patent laws of many Members. Additionally, the Delegation stated that if a patent right was mistakenly granted for traditional knowledge, such a patent right could be revoked through post-grant opposition procedures. Patent examiners could have easier access to traditional knowledge once it was documented. In this respect, the Delegation commended the efforts made by some Members of WIPO in recent years to document traditional knowledge. The Delegation stated that the TRIPS Agreement and the CBD were mutually non-exclusive and, because of the totally different objectives and the flexibility of the provisions of the two treaties, it would be unlikely that one would conflict with the other when implemented. It added that Japan, as a contracting party of the CBD, continued to fulfill its obligations while still implementing the TRIPS Agreement. Thus, the Delegation stated its belief that the TRIPS Agreement and the CBD could be implemented in a non-conflicting manner. The Delegation referred to the protection of expressions of folklore stating that it was a sub-set of traditional knowledge. It identified the need to organize substantial and technical discussions by way of collecting and analysing examples from Members without pre-judging its conclusions, and finally wished the Committee to clearly identify the work shared between UNESCO and WIPO.

42. The Delegation of Colombia expressed approval of the establishment and the beginning of the first session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. Taking into account WIPO's essential protection aims and the great importance of various related issues at the current time, it should be emphasized that this forum had provided a valuable area for all present to debate proposed subjects which were fundamental to the economic and social development of participating countries. Within the important work to be done by the Committee from the perspective of intellectual property, it was confident that it could make a significant contribution to the examination and study of specific subjects in order to provide recommendations to supplement and enrich the work completed in the framework of the CBD and Decision 391 of

the Commission of the Cartagena Agreement, the Common Provisions on access to Genetic Resources. As regards folklore and taking into account the difficulties encountered with the protection of folklore, in accordance with current copyright legislation the Delegation considered that it was appropriate to promote the adoption of a *sui generis* system as part of the protection that could be provided by the intellectual property discipline, taking into consideration the progress made in the work undertaken by UNESCO. Finally, the Delegation of Colombia expressed its agreement with the statement made by the Delegation of Uruguay on behalf of GRULAC.

43. The Delegation of Argentina considered that the main question raised at the current meeting was that relating to the clear determination of the scope and content of the discussions and possible tasks to be undertaken by the Committee. A broad mandate with imprecise outlines could allocate responsibilities to the Committee in relation to subjects which came within the remit and were discussed within the framework of negotiations conducted both under the International Undertaking on Plant Genetic Resources for Food and Agriculture and the framework of the Convention on Biological Diversity (CBD). The Delegation of Argentina believed that if the work which the Committee was to undertake were not carefully defined, adopted decisions or possible successes could be affected within those two negotiating spheres. Argentina attached great importance to the establishment of a multilateral system of access to plant genetic resources for food and agriculture; negotiations for that purpose were being conducted by the FAO. In that connection, the Delegation wished to highlight the importance of taking into account at the meeting the fact that the results of the Sixth Inter-sessional Meeting of the Contact Group on the Undertaking on Plant Genetic Resources for Food and Agriculture had not been analyzed fully by the different countries, owing to lack of time (the Spoleto Meeting had ended on April 28, 2001), and could not therefore be taken into consideration at the current meeting. This was particularly important since the subject of the Contact Group's negotiations was precisely the establishment of a multilateral system of access to phytogenetic resources for agriculture and food, and the distribution of the benefits stemming from their use. The principle of national sovereignty of phytogenetic resources for agriculture and food, established in the CBD, had therefore been brought into line with the multilateral system, thereby facilitating access for countries to those resources. For their part, benefits would be distributed by means of a financial strategy envisaging the formation of a trust fund comprising financial donations and contributions, including from international institutions, which would implement a mechanism for the transfer of technology to developing countries providing phytogenetic resources for agriculture and food and participating in the multilateral system. That system included easy access to the phytogenetic resources for agriculture and food to be found in the twelve seed banks of the International Agricultural Research Centers coordinated by the International Consultative Group for Agricultural Research within the World Bank. Taking the above into account, the Delegation of Argentina considered that thus far the negotiations on the International Undertaking had achieved a certain clarity and specific results, although it would be difficult to determine precisely the concepts of access, use and exploitation. As regards the subjects to be dealt with by the Committee, the Delegation considered that two themes should be clearly distinguished, which were interrelated but should not be confused: on the one hand, access to genetic resources and on the other protection of biotechnological inventions based on those resources. The first group constituted tangible assets over which States exercise sovereignty (under the CBD) and should decide, in accordance with the principles established in the Convention and on the basis of the negotiations conducted in that forum and in the FAO with regard to plant genetic resources for food and agriculture, the form of access to such resources. By contrast, the second group contained intangible assets which belonged to their private owners, with the scope established in the different intellectual property

systems. This differentiation was unclear both in the agenda for the current meeting and in the Secretariat document “Matters Concerning Intellectual Property and Genetic Resources, Traditional Knowledge and an Overview Folklore” (WIPO/GRTKF/IC/1/3). The treatment of subjects relating to “access” to genetic resources by the Committee could lead to a simple and straightforward analysis of issues of access to genetic resources in the same terms as in the negotiations on the International Undertaking on Plant Genetic Resources for Food and Agriculture. The Delegation of Argentina therefore stated that a clear difference should be maintained between access to genetic resources and the protection of inventions based on those resources. The first subject related to the fact that access was granted in accordance with the CBD and, within intellectual property law, there should be no provision regulating or governing the subject of access. This was a theme discussed within the CBD, in so far as it came within the thematic remit of that forum. As for WIPO’s treatment of subjects outside its remit and which were also dealt with in other negotiating fora, as the Delegation of Argentina had already pointed out, different solutions or opposing negotiating scenarios could arise. As regards traditional knowledge, Argentina considered that the Committee’s work should be clearly limited: only those questions relating to intellectual property should be dealt with and issues going beyond the exclusive heritage of indigenous communities avoided. According to the views expressed, Argentina was of the opinion that the proposed agenda item 5.2 (“Access to genetic resources and benefit-sharing”), as worded, dealt with a subject being negotiated within the Contact Group of the International Undertaking on Plant Genetic Resources for Food and Agriculture. The same consideration was true of some of the subjects dealt with in Secretariat document WIPO/GRTKF/IC/1/3, particularly paragraph IV.A, “Genetic resources.” As regards the documents prepared by the Secretariat and distributed for the meeting, the Delegation also wished to make the following preliminary general comments. Argentina considered that the mere ownership of a resource could not be protected by the intellectual property system, to which such things were completely alien. In that regard, it might be considered incorrect to refer in general terms to “owners” of genetic resources (as in Section IV (A) of the Secretariat document in question). Genetic resources were under the sovereignty of States whose legislation and authority should govern, in accordance with the provisions of the CBD and FAO, access to the genetic resources existing under its jurisdiction. That distinction was not made clear by the document in question. Nor was it clear, in the section of the document referring to products based on entities previously existing in nature, whether those products had been isolated or synthesized and had been modified, thereby involving an inventive step and making those products novel or whether, by contrast, it was accepted that the genetic structures, microorganisms and plant or animal organisms existing in nature could be the subject of invention patents, as had been the case before the products were isolated or synthesized. Furthermore, in Section III of the document relating to WIPO’s work, there were references to “recommendations” resulting from meetings of reduced scope (either in terms of the features of the established forum or the purely regional scope) which, precisely as a result of those features, were not representative of all members of the Organization. In that connection a clear distinction should be made, in that section of the document, between “recommendations” made to the Committee, to the Member States or to the Organization, which could be binding according to whether the decisions had been adopted by all members within WIPO’s internal bodies, and recommendations which did not fulfill that requirement, were therefore unrepresentative and which ultimately served only to create confusion regarding the Committee’s work. Finally, Argentina considered that the CBD or the negotiations conducted within the FAO did not merely represent “other fora for discussing the same issues as those currently being dealt with by the Committee,” contrary to document WIPO/GRTKF/IC/1/4, under the heading “Activities of other intergovernmental organizations and processes”: the CBD was not merely an international instrument to be taken into account but an international treaty binding on its signatories with a competent

organization and bodies for dealing with all related subjects, i.e. access to genetic resources and knowledge of indigenous communities, pursuant to Articles 8(j) and 15 *et seq.* of the Convention in question.

44. The Delegation of Algeria reiterated its full support for the content of the statement made by Madagascar on behalf of the African Group. The intellectual property issues relating to genetic resources, traditional knowledge and folklore occupied a privileged position at a time of globalization of the technology and information markets. The current trend towards globalization invited the Organization to adapt its conceptual bases, in particular as regards genetic resources, traditional knowledge and folklore, and to adopt innovative approaches based on equity and non-discrimination. Algeria was pleased that the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore had been set up. It considered that the Committee's current session represented a decisive step in the introduction of a credible process designed to arrive at decisions based on consensus and to promote the further understanding of the concept of intellectual property and the expansion of its sphere of action. This undertaking would enshrine still further the universal nature of intellectual property. Genetic resources, traditional knowledge and folklore were of particular interest to Algeria, given the considerable natural and cultural heritage that it possessed as did other developing countries. The examination of these issues within WIPO, which was the most appropriate organization, was better able to meet Algeria's concerns in that regard. The lack of an appropriate legal framework encouraged certain companies to appropriate developing countries' traditional knowledge and folklore without, however, passing on the resulting benefits to them. The model African law for the protection of the rights of local communities, farmers and producers as well as for the rules of access to biological resources, which had been drawn up by the member countries of the OAU, demonstrated the urgency and prime importance of the protection of community rights and of access to biological resources. It should be noted that a meeting of experts had been held in Algiers in June 2000 to examine the above model law, following which a consensus had been reached to introduce a standardized protection system able to protect the interests of the African countries concerned pending the adoption of an appropriate international system. The conclusions of the Algiers meeting in question also conveyed the deep concern regarding the practice of exclusive appropriation and protection of knowledge and technologies based on biological resources. Such a prejudicial practice, which was rife in the absence of a legal framework, reduced the value of local communities' knowledge as regards preservation and sustainable use of biological diversity, and even constituted an infringement of food security. The position of the African countries conveyed the same worries as those experienced by developing countries, which had continually expressed their own concern at the growing and systematic appropriation of their resources. The intellectual property issues relating to the three sectors being examined should be approached in a constructive manner so as to achieve tangible results. The work of the Intergovernmental Committee should aim at setting up an appropriate framework in order to examine and deal with the issues of protection of genetic resources, traditional knowledge and folklore. To that end, a standing committee would be the most appropriate regulatory body for examining these issues, so that the existing legal void might be filled through the identification of relevant intellectual property aspects by means of a research project. In that regard, WIPO's technical assistance to developing countries should be strengthened, given the major role it played in that area and in order to allow those countries to benefit from the protection-related experience acquired. The Delegation expressed the hope that the Committee's work would be successful so as to generate constructive and effective momentum designed to establish an objective framework for the inclusion of aspects relating to genetic resources, traditional knowledge and folklore in the family of intellectual property rights.

45. The Delegation of Switzerland stated that it had always maintained that issues related to intellectual property rights should be dealt with by the competent international bodies, in particular, WIPO. The Delegation considered the establishment of the Committee within WIPO to be an important step that would allow for attention to be given to the issues related to intellectual property rights. It acknowledged its confidence that discussions in the Committee and the results thereof would assist discussions in other international fora. The Delegation referred to Decision V/26 of the Fifth Conference of the Parties of the Convention on Biological Diversity (CBD) which requested the Ad Hoc Open-Ended Working Group on Access and Benefit-Sharing programmed to meet in October 2001, to take into account the work of WIPO on intellectual property rights. Furthermore, it recalled that the second “Expert Panel on Access and Benefit-Sharing” of the CBD recommended that the Executive Secretary invite WIPO to share its expertise by exploring options for addressing issues related to intellectual property rights and to report back to the aforementioned Working Group on Access and Benefit-Sharing. The Delegation considered it important that the intellectual property-related issues arising in the context of genetic resources, traditional knowledge and folklore be properly prioritized. In this manner, the most pressing issues could be dealt with first while lessening the burden of the agenda of the Committee. The Delegation stated that without priorities there would be the risk of dealing with too many issues at once.

46. The Delegation of Canada said that it was essential for the country to participate in the opening session of the WIPO Intergovernmental Committee on issues relating to intellectual property, genetic resources, traditional knowledge and folklore. The Delegation considered that such a Committee was necessary for an enlightened discussion. Canada had for several years placed emphasis on the related discussions and work conducted within WIPO. It particularly welcomed and supported the fact-finding missions conducted on the knowledge, innovations and creativity of traditional societies. Henceforth, however, it was clearly essential for the Organization to play an active, transparent and unifying role among members in the most effective manner possible. The Delegation believed that it was important for the discussion about the relationship between traditional knowledge and folklore and the intellectual property regime to be open and transparent to the holders of that knowledge. It stressed the need for the work of the forum on access and benefit sharing, and on traditional knowledge, to build on and be complementary to the work being done in the relevant meetings of the CBD. Neither forum was a substitute for the other. As discussed in several international fora, means such as guidelines, model clauses or other suggested contractual practices represented pillars to be used as a basis for an effective contribution by intellectual property to the genetic resources concept and to the resulting benefits. Given that the discussion focused on the contribution made by statutory forms of protection for intellectual property to these two areas, Canada was in favor of studying the means already in existence or which could be introduced so that participants could act immediately. The Delegation favored the further study of the degree to which existing intellectual property rights could be applied to traditional knowledge. While legal means already existed for the intellectual property protection of many aspects of traditional knowledge by their holders, it was important to examine the extent of the capacity to exercise those means. To this end, the Delegation looked forward to discussing education and training towards ensuring that existing legal protection and means were known and exercised, and that intellectual property stakeholders were aware of the unique characteristics and challenges raised by traditional knowledge. Finally, the Delegation indicated a preference for an enlightened discussion of the issues linked to expressions of folklore, in particular as regards the unique position they occupied as a privileged manifestation of the collective wealth of humanity, in other words of its cultural diversity.

47. The Delegation of Pakistan acknowledged that the very establishment of the Committee was a fair recognition of the importance of the issues and it endorsed the views expressed by the Delegation of Sri Lanka in a joint statement made on behalf of the Member States of the South Asian Association for the Regional Cooperation (SAARC). It also agreed with the contents in the statement made by the Delegation of Malaysia on behalf of the Asian Group. The Delegation expressed its hope that the deliberations in the current session would result in a good mandate for the Committee to undertake necessary discussions and studies within sufficient time to report back to the General Assembly. Should the matter not be completed at a rapid pace, the Delegation stressed its concern that individual national authorities or other relevant organizations could create their own legislation and/or legal instruments, whereby a profusion of individual legal disciplines would create conflicting situations. The Delegation affirmed its desire to actively participate in the work of the Committee and commented on the substance of document WIPO/GRTKF/IC/1/3. It referred to paragraphs 65 to 70 of said document and stated that, while it believed in the importance of definitions, it did not feel that they were as important, given the need not to get caught up in semantics. It considered that such an approach would lead to the danger of engaging in a sterile discussion for a considerable amount of time, and since the substance was more important, conscious efforts needed to be made to move towards the substance of the issues as quickly as possible. The Delegation referred also to paragraph 70, which alluded to important but complex issues. It viewed regional cooperation in the area of traditional knowledge to be a good candidate for a comprehensive study given the need to address the issue of shared traditional knowledge and genetic resources between nations. The Delegation hoped the Committee would make progress in this area of importance to developing countries, which abounded in genetic resources, traditional knowledge and folklore, and that the outcome of the work of the Committee would affirm the role and relevance of intellectual property in the adequate protection, management, conservation, utilization, and fair and equitable sharing of benefits in respect to those issues.

48. The Delegation of the Republic of Korea believed that the Committee provided an opportunity to take valuable steps in identifying the relationship between intellectual property rights and genetic resources, traditional knowledge and folklore, including a means to appropriately obtain solutions to meet the various interests and concerns raised by Member States. The Delegation shared the view that without ensuring proper protection of generational and humankind's resources, their sustainable exploitation and development, essential for the welfare of humankind, would no longer be possible. Furthermore, it noted that the clarification of intellectual property-related aspects of genetic resources would help to locate effective ways to protect them, as well as to facilitate benefit-sharing derived from them. It therefore welcomed the Committee and the launch of the formal discussions on issues within the framework of WIPO. In this regard, the Delegation noted that the proposed tasks prepared in document WIPO/GRTKF/IC/1/3, outlined under each theme, cover various possible approaches and ideas which would serve as a very useful basis in proceeding with discussions in the Committee. The Delegation expressed its concern that the direction of discussions depended on the various interests and approaches of Member States, and hoped that the Committee would deal with those issues in a balanced and efficient manner, paying close attention to not only the interests of various stakeholders but also of the benefits to the existing intellectual property system. With reference to the suggested tasks, the Delegation categorized them as immediate work, and medium- to long-term work. In the field of genetic resources, it considered that task A.4 could be immediately undertaken with the view of harmonizing the application of standards of Member States for the protection of biotechnological inventions. In doing so, this work would assist in providing reasonable

grounds for resolving an array of intellectual property issues related to genetic resources, and would enhance the common understanding of the biotechnological invention protection system. The Delegation perceived the other tasks, notably A.1, A.2, A.3 and A.5, would involve the various interests and concerns of Member States with regard to the needs and conditions to do such work. In this perspective, it considered that undertaking the tasks in the Committee should be examined and subject to a close study of the relevant systems of each Member State including a review on the overlapping of work with other international fora. In the field of the traditional knowledge, the Delegation found that task B.1, referring to the definition of technological and conceptual issues, should be considered as primary work which could be conducted prior to the examination and undertaking of the other tasks. In doing so, due consideration should be given to the principles and objectives linked to the protection of traditional knowledge. The Delegation emphasized that the issues should be dealt with in a manner guaranteeing consistency with existing intellectual property standards and that the legal regimes of Member States should be respected.

49. The Delegation of the United States of America observed that there was one common theme to the discussions, notably the vast differences among indigenous communities across valleys, let alone across continents, in the types of folklore and traditional knowledge developed over the generations. It acknowledged the existence of diverse interests in ownership and exclusion, on the one hand, and openness to all, on the other hand, local rules concerning the rights to use and own traditional knowledge, and the differing policies regarding commercializing, as opposed to the maintenance of secrecy, of such knowledge. The Delegation stated that the facts led to one question, namely, whether it would be possible, or even desirable, to establish a comprehensive, uniform set of rules at the international level to govern the use of genetic resources, traditional knowledge and folklore. At the very least, it wondered whether it was advisable to undertake such activity before individual countries had, in conjunction with the communities within their borders, established their own regimes for protection within their own territories and had gained experience in the application of that protection and its effect on the communities involved. The Delegation believed that WIPO Member States should consider the issues carefully within the framework of the Committee. The Delegation affirmed that the legal systems known collectively as intellectual property were not static. To highlight the “evolutionary and adaptive” nature of intellectual property, the Delegation pointed to the development of national and international law on integrated circuits, plant variety protection and non-copyrightable databases. However, it noted that the newer generation of intellectual property laws all shared a certain characteristic with the older generation of intellectual property laws of copyright, patents, trademarks, namely that of an incentive mechanism for innovation. As forward-looking systems that sought to encourage the development of new forms of expression and invention, the newer types of intellectual property were considered to be based on that basic principle and shared characteristics such as a date of creation, the known identity of one or more creators, defined parameters of the relevant product and limited duration of protection. The Delegation expressed doubt about the development of a new intellectual property-type regime to protect traditional knowledge as it did not appear to be the best fit for holders of such knowledge, as pointed out by many of the participants in the WIPO’s Fact Finding Missions. Moreover, the Delegation stated there were so many different expectations, goals and native systems for approaching ownership and the transgression of ownership that a useful, enforceable global system would be virtually impossible to create. Indeed a “one size fits all” approach could be interpreted as demonstrating a lack of respect for local customs and traditions. It stated that questions had been raised as to the definitions of beneficiaries, economic valuation and other critical terms of reference. It noted with interest the variety of local rules and procedures that had developed within certain indigenous communities and clearly felt that these local rules must

be respected and care taken to avoid their preemption. The Delegation noted that many of the goals of indigenous and local communities in “protecting” their traditional knowledge, medicine, folklore, etc., stemmed from their concern for self-determination, health, justice, cultural heritage and land issues. It emphasized that these were serious interests that should be examined fully within the appropriate national and international contexts, but that these were not issues with which WIPO or intellectual property offices had competence. While important in and of themselves, the answers did not involve intellectual property questions. The Delegation further elaborated on what was within the competence of WIPO and national intellectual property offices, namely the provision of technical and legal assistance, where applicable, to holders of commercially valuable traditional knowledge. It stated that one key element of such assistance would be the development of means to exploit traditional knowledge and the application of current intellectual property tools such as certification marks, collective marks, licensing, etc., as well as the law of copyright for works of original authorship, where relevant. Such assistance should be with the cooperation of national intellectual property offices in order to explain how various forms of intellectual property protection could be claimed in that country. The Delegation indicated that issues, raised with respect to “traditional knowledge” and “folklore” were shared by all. For example, individual creators - whether they be graphic artists, writers, musicians, or inventors - had faced the same problem worldwide, namely, how to receive acknowledgment and economic benefit from their creations. In the United States of America, the challenges faced by the individual creator has been addressed in a number of ways. Approximately 15% of patent applicants were individuals or “independent” inventors. To encourage the creativity of these independent inventors, the USPTO has a special office devoted to the needs of individual or “independent” inventors. The Delegation stated that all independent creators were faced with the challenges of access, financing and benefit-sharing and in order to assist such creators worldwide in their efforts to access markets in the United States, the Delegation of the United States stated that it aggressively promoted Internet electronic filing systems for patents, copyrights and trademarks. It also drew attention to their extensive public information system and on-the-ground outreach and assistance. The goal of such an approach was to enhance the bargaining power of independent creators worldwide by giving them access to the same information as corporations worldwide. Where preservation, conservation and protection were the goals rather than exploitation, the Delegation highlighted the different strategies to be developed. In the United States of America, for example, the preservation of Native American works was achieved through several legislative avenues, including the registration of the official insignia of Native American Tribes, and the Indian Arts and Crafts Act. For more than seven decades, the United States of America also had been involved in the preservation of folklore. In 1976, Congress created the American Folklife Center at the Library of Congress “to preserve and present American Folklife.” The Center incorporated the Archive of Folk Culture as a repository for American Folk Music and its collections have grown to encompass all aspects of folklore and folklife from this country and around the world. Documentation played a critical role in the entire discussion, whether for literary and artistic works, including folklore, or for medicinal or other traditional knowledge, particularly as a means for demonstrating prior art in the patent context. Referring to the specific tasks set forth in document WIPO/GRTKF/IC/1/3, the Delegation indicated its support for tasks A.1, B.1, B.2, B.3, B.4 and C.2, namely those tasks seeking to define and clarify the terms easily used without ever having determined a common meaning. It also supported those tasks that sought to develop non-binding guidance for Member States, especially as pertaining to the development of laws and practices relating to access contracts and the creation of databases of traditional medicine. Further, it supported those delegations that called for Member State surveys of national implementation of the Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial

Actions developed under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and WIPO in 1982.

50. The Delegation of Ethiopia pointed out that Ethiopia was rich in biological resources, traditional knowledge and expressions of folklore and that the country was a center of diversity and the origin of various biological resources. As a result, it explained, Ethiopia had been identified as one of the eight Vavilov Centers of the world and had immense traditional knowledge and expressions of folklore which had been handed down from generation to generation. It noted that although the country had had a written language for over 2,000 years, much of the traditional knowledge and expressions of folklore had not been documented. The Delegation added that only some traditional knowledge, in particular that related to public health and veterinary medicines, had been documented. It stated that these biological resources, traditional knowledge and expressions of folklore had been accessed and transferred to foreign countries, bringing little or no return to the country. Moreover, it added, some of the genetic resources and traditional knowledge had been lost and there was a serious loss of these resources. It explained that cognizant of this and a number of related problems, a number of policies dealing with the conservation, development and access to genetic resources, as well as the protection, documentation and further improvement of traditional knowledge, had been issued. It pointed out that the national biodiversity policy, adopted in 1997, clearly explained the need to regulate access to genetic resources through various measures, including national legislation and building appropriate institutional structures and mechanisms. It stated that the proclamation which established the institution of biodiversity conservation and research, required that genetic resources would not be accessed without permit. The Delegation explained that a permit was required for locating, dispatching, improving or exploiting any biological specimen or sample and that engaging in any of these activities without securing a permit would constitute a criminal offense. However, it noted that no legislation that dealt with access conditions and requirements, as well as related issues, had yet been put in place. It pointed out that a draft law addressed a number of intellectual property issues related to access to genetic resources. It noted further that the 1992 national industry policy, the 1997 environment policy, as well as the biodiversity policy, clearly stated the need for protection of traditional knowledge through a *sui generis* system. It added that to this end draft legislation on the protection of community intellectual property rights had been prepared. It explained that the cultural policy of Ethiopia acknowledged the importance of folklore, but there was no law that protected expressions of folklore. It noted that consequently a new proclamation that amended the existing copyright law and provided for the protection of folklore had been drafted and submitted to the Government for approval. The Delegation noted that the issues of intellectual property protection, access to genetic resources, traditional knowledge and expressions of folklore had gained international recognition and importance. As examples it cited the initiatives made at regional and international level by the Organization of African Unity (OAU), the Food and Agricultural Organization (FAO) and the Secretariat of the Convention on Biological Diversity (CBD). It acknowledged the significance of such initiatives and explained that Ethiopia was taking active part in them. It proposed that the current work of WIPO should consider integrating its efforts with such ongoing work. It highly commended the ongoing effort and the achievements made so far by WIPO and fully supported the establishment of the Committee. In its view, the Committee would help to (a) clarify the interface between access to genetic resources, intellectual property and traditional knowledge; (b) complement the efforts that were being made at the national level, by giving indications and providing a forum for exchange of information and experiences; and (c) facilitate the development of an international scheme that would recognize and facilitate the protection and enforcement of rights related to traditional knowledge and expressions of folklore. It noted that the three

themes, access to genetic resources, protection of traditional knowledge and expressions of folklore, had common characteristics but consisted of distinct issues. It suggested that the separate treatment of the subjects would enable to clearly identify the issues and problems. It advised that this in turn would not only enable one to comprehend the same, but also facilitate the finding of solutions. With respect to traditional knowledge, the Delegation was of the opinion that the protection of traditional knowledge could not be met by seeking a single scheme of protection, but by using different schemes simultaneously. It proposed that it was possible to meet the need for the protection of traditional knowledge by (a) using the existing intellectual property regimes to the extent they were adequate to protect traditional knowledge; (b) adapting existing intellectual property regimes to accommodate the specific nature of traditional knowledge and the needs of traditional knowledge holders, for example, by making some of the requirements less stringent and the system more accessible; and (c) developing a *sui generis* system to complement what was mentioned under (a) and (b). It therefore suggested that the Committee should devise a way to (a) examine each of the elements of the existing intellectual property regime and determine those that can easily be used; (b) look at the available room for adopting the existing intellectual property regime; (c) determine the limitations and gaps of the existing intellectual property scheme that should be filled by developing a *sui generis* system; and (d) examine the initiatives taken this far in developing a *sui generis* system and give indications of the elements that such a system might have. In closing, the Delegation reiterated that Ethiopia attached great importance to the work of the Committee.

51. The Delegation of Turkey pointed out that Turkey was one of the richest countries in respect of genetic resources, traditional knowledge and folklore and attached great importance to the work of the Committee. It noted that issues related with the development of methods on access to genetic resources, the management of genetic resources and the scope of the term “traditional knowledge” were also studied by the bodies of the Convention on Biological Diversity (CBD) and that similar subjects were also being discussed in other international organizations, such as the World Trade Organization (WTO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Food Agricultural Organization (FAO). The Delegation considered it necessary to establish an effective and efficient coordination amongst the related international organizations and parties dealing with these issues in order to prevent duplication of work. The Delegation proposed some topics to be taken up by the Committee. It suggested that the Committee might focus on developing appropriate provisions and measures for intellectual property legislation, especially for patent legislation, concerning access to genetic resources and benefit-sharing. In addition to this, it suggested, legal standards concerning the scope of patent protection of structures and composition derived or isolated from naturally occurring organisms might also be reviewed by the Committee. The Delegation suggested further that Member States might discuss the extension of the scope of intellectual property terms to include possible traditional knowledge elements and expressions of folklore. It suggested that the Committee might develop protection systems on the agreed subject matter which was not already covered by existing systems. In its opinion, the Committee should also establish effective criteria and means for documentation of traditional knowledge and folklore. In closing, the Delegation stated that the Committee might wish to consider technical and legal assistance for the holders of genetic resources, traditional knowledge and folklore to strengthen their capacity and enforce their rights. Regarding the working methods of the Committee, the Delegation proposed that each issue should be considered and discussed separately in a working group to be established for this purpose. These working groups could focus on access to genetic resources and benefit-sharing, traditional knowledge and folklore.

52. The Delegation of South Africa supported the statement made by Madagascar on behalf of the African Group. It informed the Committee that South Africa was undertaking various projects that related to the issues which it hoped the Committee would address in the future. Firstly, it pointed out that there were a number of Bills which were being formulated by the various national departments in South Africa, such as the Promotion and Protection of Indigenous Knowledge Systems Bill and the Preservation of Indigenous Knowledge Systems Bill, which addressed the issues of cultural industries with the expressed intention of promoting and protecting traditional designs, handicrafts, expressions of folklore and other intellectual expressions of all communities. Secondly, the Delegation stated, geographical indications legislation was also being formulated. It explained that the reason for this was because the protection and promotion of geographical indications of biodiversity of the forest and biodiversity-based crafts and other natural products might generate demand for these goods, and thus might enhance incentives for their conservation and commercialization. The Delegation expressed the opinion that some of the rights of South African communities might be best protected by geographical indications and appellations of origin. The Delegation pointed out that since demands for access to biological resources were often accompanied by requests for information and knowledge associated with the use and management of these materials, it was imperative to provide for the protection of the knowledge, innovations and practices associated with these resources. For this reason, it explained, South Africa wished to ensure the protection of its biodiversity and genetic resources, so as to provide for prior informed consent for access and benefit-sharing. The Delegation indicated that South Africa was still grappling with all these issues, but it would be influenced by international developments. It therefore hoped that the intellectual property regime might be able to accommodate these new emerging issues and that the Committee's mandate would be to formulate a broad, comprehensive and inclusive legal framework to guide international processes in this regard. It recognized that the commercialization and benefaction was often the cornerstone of any dispensation, and that nations which were stronger in this area were empowered to determine their own destiny, but it believed that it was imperative for the international community under the auspices of WIPO and in cooperation with its sister organizations, Food And Agricultural Organization (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Conference on Trade and Development (UNCTAD), etc., to take the lead on these issues. In its view this was necessary so as to satisfactorily address the concerns of all countries, especially developing countries, thereby ensuring the effective protection of traditional knowledge, genetic resources and folklore. In conclusion, the Delegation expressed the commitment of South Africa to a fruitful conclusion of the present meeting. It assured the Co-Chair of its full cooperation and expressed the gratitude of the South African Government to all those governments, non-governmental organizations and individuals who had supported the South African Government during its case against the 39 pharmaceutical companies in Pretoria.

53. Upon assuming the Chair on May 2, 2001, Ambassador Chak Mun See of Singapore, thanked all the delegations for their words of support on his and Ambassador Sergio Marchi of Canada's election as Co-Chairs for the Committee. He expressed his intention to work closely with his Co-Chair and the Vice Chairs, Ambassador Fayza Aboulnaga of Egypt and Ambassador Petko Draganov of Bulgaria.

54. The Delegation of Madagascar endorsed the statement made on behalf of the African Group and supported the establishment of a standing committee for which the Group had proposed tasks in the document it had prepared. The Delegation noted that intellectual property relating to genetic resources, traditional knowledge and folklore was a major concern for developing countries such as Madagascar which had a natural and cultural heritage that

was, however, of very little benefit to its populations. The Delegation stated that genetic resources, traditional knowledge and folklore, when used in a rational manner, should contribute to the sustainable development of their countries, which had a wealth of biodiversity but were poor in economic terms. Among the key issues for “source countries” (to borrow a concept from the CBD, which recognized the sovereign right of States to own biological and genetic resources on their territories), regulations for access to resources and sharing of the benefits resulting from their exploitation were undoubtedly matters of urgency. The Delegation noted that the circulation of their national resources of flora and fauna was poorly controlled but nevertheless constituted an asset and a source of wealth, despite the lack of an appropriate framework providing legal protection. As regards traditional knowledge and folklore, as well as the knowledge of farmers and traditional practitioners, the works undertaken on a broader scale made a significant contribution to innovation and creativity which needed to be not only catalogued but also enhanced, given that due weight was not attached to them at the international level. Apart from in a handful of countries, intellectual property rights did not cover the traditional knowledge and local know-how possessed by communities. It was true that sustained attempts had been made in international agreements relating to natural resources, agriculture or folklore, in the same way as at the regional level where the instruments prepared under the auspices of the OAU should help countries to introduce their rights protection framework, applied in a new context of involvement of all participants and holders as users of resources. As was the case with several developing countries, in the past few years Madagascar had engaged in a process of creating a framework and a mechanism that should allow the rights of its populations to be protected in relation to the three items on the agenda of the current session. This should also promote sustainable development. The Delegation noted that in order to face up to current situations, Madagascar was attempting to resolve the issues of genetic resources, traditional knowledge and folklore by means of a contractual system. Experiments existed for transferring biological and genetic resources for many different purposes, be they scientific and/or commercial and industrial, the limits of which were at times confused. The principles of prior informed consent were applied to a greater or lesser extent. Furthermore, bioresearch contracts were increasing in number and made use of the country’s genetic resources and knowledge of traditional medicine. Benefit-sharing systems should be developed. Future work could benefit from the current experiments and practices in different countries and lessons should be drawn, with a view to defining legislative frameworks and suitable mechanisms, taking into consideration intellectual property involving local communities. In conclusion, the Delegation stated that the opening up and harmonization with other international agreements that reflected on and dealt with these important issues linked to the use of natural resources and biological and cultural diversity should allow the Committee’s work to be well established.

55. The Delegation of Guatemala attached great importance to discussing the subject of intellectual property, genetic resources, traditional knowledge and folklore within WIPO. It was particularly grateful for the work done by WIPO in relation to the mission dispatched to Guatemala to investigate the situation in the country as regards some of those subjects. The Delegation of Guatemala was interested in investigating the relationships that might exist between the protection of genetic resources and traditional knowledge in relation to intellectual property. The Delegation hoped to make use of the experience of other countries in that area so that it might develop fair and effective systems for all parties concerned.

56. The Delegation of Bolivia, as a multi-ethnic, multilingual and multicultural country, expressed satisfaction at the launch of the Committee’s work, which it considered should endeavor to identify elements necessary for the protection of traditional knowledge through a *sui generis* system and other methods of guaranteeing the rights of the holders of such

knowledge. It also considered that the Committee should examine options and mechanisms in the procedures for intellectual property rights which guaranteed that those rights had been obtained in accordance with the principles of prior informed consent and the mutually agreed requirements, on the basis of which access was granted to genetic resources; for example, in the filing of patent applications it should be necessary to specify the country of origin or source of genetic resources. It considered that the aspects mentioned were closely related to the distribution of benefits stemming from access to genetic resources, a subject under discussion within the CBD, with which WIPO should not duplicate its efforts, rather focusing its work on intellectual property-related aspects. As regards traditional knowledge, a participatory working process had been developed in Bolivia to provide an assessment of the state of protection of traditional knowledge, a process carried out jointly by the Government and two principal indigenous and rural Organizations, the CIDOB and the CSUTCB. As a result of the assessment, it could be stated that traditional knowledge was not protected and communities had therefore expressed the need for a *sui generis* system which included the protection of their collective rights, a factor not taken into consideration by current intellectual property systems. Finally, the Delegation of Bolivia believed that it was appropriate to invite indigenous organizations to meetings of the Committee as observers.

57. The Delegation of the Holy See, as a member of WIPO, wished to submit a document which emphasized that there were certain ethical problems with the subjects under discussion in terms of fundamental human rights. The first of those was the fact that God had intended the whole of the wealth of creation to satisfy the basic needs — be they material or spiritual — of all human beings. Secondly, the Creator had provided those human beings with the power to produce intelligent creations in order to bring them to fruition for the common good, thereby constructing their personal identity. At those extremes, i.e. the common good and recognition of personal dignity, was to be found the ultimate ethical foundation of the protection of conventional intellectual property, i.e. that described by the legal principles contained in the Berne and Paris Conventions. The same philosophical foundations were those which should protect possible rights in genetic resources, traditional knowledge and folklore, as instruments both to promote and construct the personal and/or collective identity of individuals and communities. The preparation of new legal instruments, or at least new forms of guidance, to meet the needs that had led to the Committee being set up, would therefore require work between institutions, which should be coordinated with the development of other fora dealing with the subject in hand — FAO, UNESCO, UNEP, WTO and so on. In that connection, the Delegation of the Holy See noted that, where required, all relevant international documents should be taken into account, for example the UNESCO Universal Declaration on the Human Genome and Human Rights. Similarly, an attitude of openness should be adopted towards the contributions made by NGOs with a legitimate interest in the subject and which acted in a sincere and peaceful spirit of cooperation, although thus far their prevalent focus had not been that of the conventional institutions of intellectual property law. Finally, the Delegation of the Holy See hoped that, at each stage of the undertaking now being launched, the necessary consensus would be reached quickly, thereby avoiding stalemate in the work undertaken and achieving a final result which expressed a unified conception of the law based on the legal sovereignty of fundamental human rights.

58. The Delegation of Bangladesh noted that the Committee would handle some very basic issues important to the communities and ethnic groups in its country, adding that folklore lay at the core of the cultural identity of communities. It identified a problem as the definition of folklore by outsiders rather than the concerned community. It pointed out that modern folklore scholars attempted to circumvent this problem by using a two-way interaction known as the inside (analysis by the holder of traditional knowledge) and outside (by the researcher)

leading to consensus between them. It added that this method minimized illicit dissemination and protected folklore from distortion. The Delegation cautioned against limiting the scope of folklore to a local, national or regional level, affirming its international nature and citing several notable scholars of the same view. It added that since folklore was a living phenomenon, which was constantly changing and adaptable, its protection required expertise. The Delegation referred to the work of the United Nations Education, Scientific and Cultural Organization (UNESCO) as a valuable contribution to the debate noting that WIPO's initiative under this Committee was a logical step particularly in the current age of innovation. It concluded by stating that folklore was a manifestation of intellectual creativity and should be so protected like other intellectual creations. It urged the committee to consider the organization of expert meetings worldwide to formulate policies to protect folklore and traditional knowledge to ensure the preservation of and continuity of culture and cultural advancement.

59. The Delegation of Jamaica stated its support for the statement of the Delegation of Uruguay on behalf of GRULAC. It thanked WIPO for conducting a fact finding mission to Jamaica on the needs of holders of traditional knowledge and assured the Organization of its support in future work, including at the national and regional levels, as its country consolidated efforts to preserve and safeguard its cultural and biological resources.

60. The Delegation of the United Kingdom subscribed to the statement made by the Delegation of Sweden on behalf of the European Community and its Member State. It confirmed its open and constructive attitude to discussion of these issues, which it considered relevant to all Delegations given that all the States present could have important genetic resources, traditional knowledge and folklore within their territories and could learn from each other's experience. It suggested that the Committee target specific activities which were likely to give rapid and useful results, such as those outlined in tasks A.1 and B.3 in document WIPO/GRTKF/IC/1/3. Finally, the delegation stressed the importance of holding a further session of the Committee in early autumn. The delegation stated that it had heard that such a session could take place in September and stated that this would be desirable.

61. The Delegation of Australia expressed its conviction that the Committee had the opportunity to make a substantial contribution to the development and understanding of the means for the protection of traditional knowledge and expressions of indigenous arts and culture and of the constructive role it could play in assisting governments and international organizations in developing a more comprehensive understanding of mechanisms for the regulation of access to genetic resources, by clarifying the potential role of intellectual property in such access regimes. It was of the view that these complex, inter-related issues would benefit from the considered and informed approach that had characterized WIPO's deliberations as a forum for expert consideration of intellectual property standards. It observed that the importance and value of the issues under consideration was evidenced by discussions on them in various international fora, citing particularly the role of indigenous communities as holders or custodians of this material. The Delegation expressed its concern about the lack of understanding of the relationship between intellectual property and the inter-related issues of genetic resources, traditional knowledge and folklore, sometimes evident in deliberations at fora, both within national jurisdictions and internationally, where there has been inadequate understanding of the detailed operation of intellectual property systems. It stated that its country, for this reason, has in fora such as the TRIPS Council of the World Trade Organization (WTO) tried to encourage discussions towards a process of examining the linkages between mechanisms for the protection of intellectual property and these issues. It urged the Committee to recognize the important perceptiveness of other

international bodies also concerned with these issues such as the WTO, the Conference of the Parties of the Convention on Biological Diversity (CBD), and other agencies of the United Nations. It expressed its support for the strengthening of linkages between international bodies where their deliberations overlap and expressed its support for observer status for the CBD Secretariat at the TRIPS Council of the World Trade Organization (WTO). The Delegation considered the setting of priorities for discussion of the various issues and the development of a program of work as a critical first step in the deliberations, citing the clarification of basic terminology of the various key terms encompassed by the subject matter of fundamental importance in order to facilitate informed dialogue. It counseled the need for an open-minded and flexible approach, one that did not preempt possible outcomes nor prematurely exclude possible solutions. The Delegation noted that results from this Committee's work could be usefully taken up in other fora such as the CBD's Ad-Hoc Open Ended Working Group on Access and Benefit-Sharing and the Ad-Hoc Open Ended Working Group on Traditional Knowledge and the negotiations on the Food and Agricultural Organization (FAO) International Undertaking on Plant Genetic Resources. It cited possible outcomes, such as a greater understanding of the interface between intellectual property and access to genetic resources which could assist in the effective implementation of national access and benefit-sharing regime; and consistency in the conditions under which genetic resources are utilized, achieved, in part, through the development of model contractual terms and practices, which could be adapted for use by national jurisdictions. It cited the linkages between the provisions of the Trade Related Intellectual Property (TRIPS) Agreement and the CBD, particularly Article 8(j), relating to the rights of indigenous peoples, and Article 15, relating to access to genetic resources as a key aspect of the relationship between intellectual property and traditional knowledge, stating that the two agreements were not mutually incompatible. In its view, if properly managed, the obligations of the two agreements could operate effectively together in a way that would assist in addressing the concerns of member states on these important issues. It considered intellectual property as a powerful instrument that should be used to assist in achieving the shared goals of all stakeholders. The Delegation outlined some of the policy analysis and development processes occurring in Australia which dealt directly with the issues raised in this Committee. These included developing a workable national mechanism for benefit-sharing in relation to genetic resources that took account of indigenous interests and concerns; ensuring that agricultural producers gained equitable access to the benefits of gene technology; and responding to the calls for wider protection of indigenous arts and cultural expression.

62. The Delegation of Panama reaffirmed its support for the statement made by the Delegation of Uruguay on behalf of GRULAC. In addition to the statement, the Delegation wished to make a number of points related to genetic resources, traditional knowledge and folklore which it considered important to Panama and wished to raise at the current meeting. In that context the Panamanian Government, aware of the importance attached to the three pillars serving as a basis for the Committee's establishment, and of its rights and international commitments in relation to intellectual property, its biological and cultural heritage, and the CBD, wished to inform Member States represented on the Committee of the adoption of Law No. 20 of June 26, 2000, which established a special intellectual property system for the collective rights of indigenous peoples, designed to protect and defend their cultural identity and traditional knowledge. The Law provided Panama with an agreement to devise strategies and action plans creating the means to provide society and the indigenous community with a regulatory information system for developing, strengthening and making use of the advantages of the resources provided by the three pillars in question. Panama considered it essential to devise an international technical cooperation program to strengthen national activities, including the creation of an information system for its cultural resources and

traditional knowledge, which supplemented the cooperation with other international bodies that provided occasional responses to the interests and concerns shown during the Committee's discussions and which had an impact on the intellectual property systems and resources of those countries. Finally, the Delegation of Panama hoped that the results of the Committee's work would take into account the urgent need to establish the requisite instruments which would provide a methodology for devising policies, distributing benefits and promoting the abilities of human resources in matters concerning the intellectual property rights in the three pillars, including the enhancement of the resulting commercialization structures. The results in question would provide Panama with a framework for devising the strategy and plan of action to promote and protect genetic resources, traditional knowledge and folklore. Based on the points made, the Delegation of Panama was confident that the development of the discussions would lead to the achievement of beneficial results which would serve the interests of developing the country's culture, and protecting and enjoying equitable benefits through the use and exploitation of those resources deserving of recognition that were traditional creativity and innovation, enhanced by intellectual property.

63. The Delegation of New Zealand outlined the work its country was currently undertaking domestically in the areas of access to genetic resources and benefit-sharing and the protection of traditional knowledge, and indicated the areas of future work in which it had an interest. On the issue of access to genetic resources and benefit-sharing, its biodiversity strategy included the objective of developing an integrated policy and legislative framework for managing bioprospecting in New Zealand, including arrangements for sharing benefits from the use of genetic resources, which were consistent with international commitments. It therefore welcomed discussions by the Committee on the relationship between intellectual property rights and access to genetic resources and benefit-sharing. The Delegation expressed support for tasks A.1 and A.3 in this regard, as outlined in document WIPO/GRTKF/IC/1/3. On the protection of traditional knowledge, it cited work which commenced in the mid-1990s examining ways in which the concerns of Maori, the indigenous people of New Zealand, about property rights could be taken into account. It highlighted that work in this respect, facilitated through consultation via specially set-up Maori "focus groups", centered on trademarks and patent legislation and how existing forms of intellectual property might be modified to address Maori concerns. It informed the Committee that this work had so far resulted in proposals for the inclusion of a number of amendments to the Trademarks Act aimed at addressing Maori concerns relating to the inappropriate registration of Maori imagery and text as trademarks and a review of the Patent Act, particularly as regards the patentability of lifeforms and the issue of prior informed consent for patent registration. The Delegation stated its country's intention to develop *sui generis* models of protection for cultural and intellectual property of Maori beyond existing intellectual property rights systems, mindful that intellectual property rights were only one aspect of a broader set of concerns relating to the protection of traditional knowledge and cultural heritage. The Delegation stated its support for further work by the Committee on *sui generis* systems to protect elements of traditional knowledge not covered by existing intellectual property systems. It noted the support by many Member States for the development of *sui generis* systems at an international level and advised that this should not preclude the development of country or region-specific alternative approaches to protecting the knowledge and practices of indigenous communities appropriate to their own unique characteristics and circumstances.

64. The Delegation of Sudan emphasized the importance of the issues under discussion given its country's wealth in traditional knowledge and folklore arising from its traditional cultural diversity and extended territories. It was of the view that a clear definition of the terms "genetic resources," "traditional knowledge" and "folklore" was necessary prior to

discussing Agenda Item 5. The Delegation also emphasized the role of international and regional legislation in answering pertinent questions on the Committee's work. It added that current international intellectual property mechanisms do not deal adequately with the issues under discussion. The Delegation hoped that the creation of this Committee would lead to the creation of a Standing Committee with a view to setting up an international legal mechanism competent in the management, protection and exploitation of these domains.

65. The Delegation of Kenya endorsed the statement of Madagascar on behalf of the African Group and looked forward to the formation of a Standing Committee to look into these issues with a view to coming up with a legally binding instrument, including the possible development of a *sui generis* system as an alternative mode for the protection of traditional knowledge. It considered the protection of traditional knowledge under the current form of intellectual property system inadequate because of the very nature of traditional knowledge. The Delegation highlighted the importance of these issues to its country given its wealth in biodiversity and genetic resources, citing the establishment of a national advisory and research committee on genetic resources as a move to address this issue, a new National Environment Management Act (2000), currently being implemented, the draft legislation on geographical indications, and a draft Copyright Bill (2001) to address the issues of folklore. It proposed that the Committee address ways of documenting traditional knowledge to become searchable prior art to prevent the protection of innovations arising from utilization of traditional knowledge without the prior informed consent of the source community.

66. The Delegation of Lesotho supported and endorsed the statement made by the Delegation of Madagascar on behalf of the African Group and welcomed constructive discussions on genetic resources, traditional knowledge and folklore, complementing, but not duplicating, work in other fora. It identified the need for the application of intellectual property principles to the issues under discussion, stating that the scope of intellectual property had to be widened to include these issues. It added that the advent of globalization necessitated the examination of these issues at an international level, adding that national protection would be insufficient.

67. The Delegation of Germany expressed support for the statement made by the Delegation of Sweden on behalf of the European Community and its Member States. It expressed the preparedness of its country to participate in the discussions of the Committee in a spirit of understanding and cooperation and with great respect for the specific needs and interests of those countries which are rich in genetic resources, traditional knowledge and folklore.

68. The Delegation of Cameroon said that it was bound to support the statement made on behalf of the African Group by the Delegation of Madagascar. It should, however, be noted that Cameroon was a country with many holders of traditional knowledge as well as a rich and varied folklore maintained by several hundred local communities. Through the Institute for Agronomic Research and the Institute for the Protection of Medicinal Plants, Cameroon had a tradition for research into and protection of genetic resources and traditional knowledge. The Delegation pointed out that Cameroon had played a very active part in preparing the OAU model law on community rights and access to genetic resources. The Delegation also stated that since 1982 Cameroon had worked to provide protection for expressions of folklore by virtue of literary and artistic property law. Nevertheless, all such legal measures were far from sufficient to provide protection for genetic resources, traditional knowledge and folklore. For that reason, Cameroon attached very great importance to the protection of those resources, knowledge and expressions. The Delegation stated that intellectual property relating to genetic resources, traditional knowledge and folklore should be such as to guarantee justice

but also to promote the preservation of biological diversity, and should exploit talents without drying up their source. It was in that spirit that Cameroon wished to contribute to the success of the current session and to the Intergovernmental Committee's future work.

69. The Delegation of France said that its country had always regarded WIPO as having an important role to play in the international debate on access to genetic resources, traditional knowledge and folklore, and that it shared the position expressed by the Delegation of Sweden, on behalf of the Member States of the European Union, as regards the manner in which the issues being discussed should be tackled. The French Delegation emphasized that it wished to participate openly and constructively in the discussions and that it would appreciate being able to benefit from the experience of other States in different fields. The Delegation said that it hoped for rapid progress in the discussions and that the Committee's work would be successful.

70. The Delegation of Senegal said that the statement made on behalf of the African Group by the Delegation of Madagascar was a perfect affirmation of the Committee's importance, and that the Committee should endeavor to use the process set in motion to recognize traditional knowledge as an important element of human civilization, which was therefore worthy of being protected and safeguarded. Folklore should be enhanced by organizing and securing dissemination. The Delegation hoped that the Committee's work would lead to the promotion and secure dissemination of cultural property, as well as secure access to genetic resources, in order to generate creative momentum for the benefit of all human beings. The Delegation proposed that the ways and means to achieve that aim should not be studied too hastily or with unnecessary slowness. The Delegation said that the current intellectual property system should be reviewed. The system should develop so as to take account of the specific concerns linked to access to genetic resources and to the dissemination of traditional knowledge and folklore. Reviewing the intellectual property system did not, however, equate to reinventing the wheel or remaking history. Based on the existing system, thought should be given to the introduction of appropriate mechanisms for the recognition and protection of communities' intellectual property rights. Such thought required method but also the provision of an appropriate framework. The Delegation of Senegal considered that the standing committee proposed by the African Group was the best possible framework to deal with the issue in a balanced and harmonious manner. The element of continuity was fundamental to discussion of the issue, and such discussion should be accompanied by specific action on the part of the International Bureau designed, *inter alia*, to make the holders of traditional knowledge more aware of intellectual property matters. The Delegation indicated that the current intellectual property system should be consolidated in a spirit of harmony so as to provide benefits for all without exception: from the largest pharmaceutical company to the smallest farmer in the African savanna.

71. The Delegation of the Democratic Republic of Congo, which subscribed to the statement made by Madagascar on behalf of the African Group, said that it awaited with great interest the results of the Committee's first session, considered to be an exploratory one, since it considered that the ground should be laid for the introduction of an international framework to protect genetic resources, traditional knowledge and expressions of folklore. The Delegation stated that the Democratic Republic of Congo had a diversity of natural resources representing a variety of animals, birds, fish, plants, raw materials and so on. The Democratic Republic of Congo, a country with immense natural wealth, was also rich in human terms since it comprised more than 400 tribes carrying out a very wide range of cultural activities involving songs, tales, dances and craft-related products. For that reason, the Delegation expressed satisfaction at the setting up of the Intergovernmental Committee which was of

equally great interest to all countries, be they holders or users of natural resources. The Delegation expressed the hope that, in the medium term, the Intergovernmental Committee would be able to:

- complete the work begun by other organizations on those subjects, by expanding the field of intellectual property;
- adopt an international framework which would comply with national rules in those areas;
- incorporate in WIPO's existing systems the intellectual property rights applied to genetic resources, traditional knowledge and expressions of folklore.

72. The Representative of the World Health Organization (WHO) referred to the increased worldwide interest in the health and economic development aspects of traditional medicine and recognition of its potential value to trade giving rise to the need to protect it and to secure fair and equitable sharing of any benefits derived from it. He stated that this issue, and the attendant complexities of the intellectual property aspects, was of concern to WHO Member States, who have requested that the organization cooperate with WIPO and other international organizations, such as United Nations Conference on Trade and Development (UNCTAD), to support countries in improving their awareness and capacity to tackle these problems. The Delegation referred to an Inter-Regional Workshop on Intellectual Property Rights in the Context of Traditional Medicine, which took place in Bangkok, Thailand from December 6 to 8, 2000, a follow-up to the implementation of WHO's revised drug strategy in connection with the monitoring and analysis of the effects of globalization on access to drugs. The stated objectives of the Workshop included the identification of areas of traditional medicine where intellectual property rights protection is of major concern; the identification of gaps between those areas of traditional medicine and existing modern patent law; the sharing of information on national patent law and policies on intellectual property rights relating to traditional medicine; and, the discussion of strategies that could be used for protecting traditional medicinal knowledge, resources and biodiversity in order to contribute to a fair and equitable sharing of benefits. The main problems and gaps identified by the participants at the workshop included: the lack of a national policy to develop traditional medicine; the lack of organizational infrastructure to utilize traditional medicine in the national health care system; an absence of formal or informal mechanisms for the participation of traditional healers in policy-making and IP development; the lack of a mechanism or strategy for equitable benefit-sharing among all stakeholders; a lack of policy and regulations for the protection of biodiversity and traditional medicinal knowledge; the lack of an understanding of the intellectual property system among stakeholders; the lack of understanding, awareness, communication and respect between traditional medicinal practitioners and intellectual property offices; differences between the concepts and fundamentals of traditional medicine and modern medicine; limited applicability of existing intellectual property laws to protect traditional medicine knowledge from biopiracy; and, the inability to meet the cost of requiring, exercising and enforcing IPR for the holders of traditional medicinal knowledge. Several recommendations were made including the need to formulate a national policy on traditional medicine as part of the national health policy of countries; the development of national and regional strategies for the protection of traditional medicine with the support of WHO and other international agencies; the documentation of traditional medicine in the form of traditional knowledge digital libraries in the respective countries taking into account the intellectual property implications; the need for governments to use all possible systems (including the *sui generis* model for traditional medicine protection and equitable

benefit-sharing); and the development and enforcement of guidelines or laws to ensure benefit-sharing with the source communities in cases of commercial use of traditional knowledge. The Representative concluded by elaborating the main objectives of the WHO Strategy for Traditional Medicine from 2001 to 2005.

73. The Representative of UNESCO stated that the protection of the intellectual property aspects of genetic resources, traditional knowledge and traditional and popular culture (folklore), including crafts, was an important element of the social statutes which should govern the safeguarding and promotion of this cultural heritage in national life and in the context of international trade. As a result of its mandate, UNESCO was closely involved in identifying, preserving and promoting this cultural heritage, and had long cooperated with WIPO to establish the legal protection method which corresponded most closely to the nature and social function of the different elements comprising the heritage in question. Cooperation between the two Organizations, launched in 1973 when the Government of Bolivia had asked the UNESCO Director-General to examine the protection of folklore as part of the Universal Copyright Convention, had led, *inter alia*, to the adoption by a UNESCO/WIPO committee of experts in 1982 of Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions. UNESCO had recently organized several meetings in cooperation with WIPO, including the UNESCO/WIPO World Forum on the Protection of Folklore, held in Phuket (Thailand) from April 8 to 10, 1997, as well as four regional consultations in Africa: Pretoria, March 23 to 25, 1999; in the Asia-Pacific region: Hanoi, April 21 to 24, 1999; in the Arab States: Tunis, May 25 to 27, 1999; and in Latin America and the Caribbean: Quito, June 14 to 16, 1999. This second phase of cooperation between the two Organizations had served as timely clarification of the requirements and methods of legal protection for expressions of folklore at the national level. It had highlighted the diversity of the position and role of traditional knowledge in the different areas of social life and the variety of *sui generis* solutions which could be used, according to whether the subject involved was science, traditional medicine, medicinal plants, land-based professions, the sea or conventional practical life in society or traditional literary and artistic expressions. The Delegation also elaborated UNESCO's objectives related to programs in the biosciences and the focus on collaborative research; its work on ethical issues related to the human genome project including the development of the Universal Declaration on the Human Genome and Human Rights, and the launching of an initiative from 2000-2007 to enhance local and indigenous knowledge systems as a means of empowering local communities and a tool to combat marginalization and deepening impoverishment. Given the advance maturity of the problem under discussion, it was to be hoped that the Intergovernmental Committee possessed the basic essential elements allowing its work to proceed in the right direction. UNESCO was engaged in preparing a new process for regulating the protection of traditional knowledge and traditional and popular culture (folklore). This process would be launched following the thirty-first session of the General Conference (October-November 2001). It would make use of appropriate international experts from the different areas concerned, so as to:

- determine the constituent parts of the non-material cultural heritage to be protected,
- identify the nature of the new instrument for protecting that heritage,
- analyze the nature and scope of the national obligations and international solidarity used to provide such protection.

The Delegation concluded by expressing the desire to continue its cooperation with WIPO to that end.

74. The Representative of the Pacific Islands Forum Secretariat, stated that the subject of intellectual property was not well understood in the Pacific Islands, adding that a majority of the people in the region thought it was best left to the more wealthy nations with the means to protect and exploit it. He stated that globalization had led to the recognition of the value of traditional knowledge and the potential benefits to the region. The Delegation highlighted the value and importance of preserving traditional knowledge and the risk of exploitation by others with little benefit going back to the knowledge owners (the Pacific Island States), if it is not protected. He noted that the nature of traditional knowledge takes it out of the scope of existing intellectual property protection and called for the development of new laws and international treaties and mechanisms for commercial exploitation which guarantee compensation to the holders of the knowledge. He elaborated that at a meeting of Member States in 1999, trade ministers decided that the Forum Secretariat should assist Member States to develop regional guidelines and legal mechanisms for the protection of indigenous IPR, and highlighted some areas of cooperation with international organizations such as WIPO and UNESCO. The current work achieved included the development of regional guidelines and a *sui generis* model law for the protection of traditional knowledge and cultural expressions in cooperation with the South Pacific Community Secretariat and UNESCO, and the development of a model law on biological resources. These model laws would be submitted to the next Forum Trade Ministers Meeting and to the Forum Economic Ministers Meeting in June of this year for endorsement. After the endorsement of these model laws by Ministers, the Forum Secretariat intended to submit them to WIPO for comments and international acceptance. He concluded by suggesting that WIPO provide technical assistance and assist in the international acceptance of *sui generis* model laws developed by countries and regions.

75. The Representative of the Secretariat of the Pacific Community presented its legal protection project which was aimed at promoting legislation in the Pacific Islands for the protection of traditional knowledge and expressions of culture. Highlights of the work program included the preparation of a draft regional framework for the protection of traditional knowledge and expressions of culture. The framework comprised regional policies and guidelines for the protection of traditional knowledge and expressions of culture, specifically for the Pacific region, to ensure that these could be commercialized for the benefit of owners; and based on the guidelines a *sui generis* Model Law on the effective protection of traditional knowledge and expressions of culture for the Pacific region, consistent with international treaties, had been prepared. The Model Law recognized that traditional knowledge and expressions of culture are perpetual and inalienable. Prior and informed consent of holders of traditional knowledge was fundamental. Major principles of the model framework included protection from inappropriate exploitation of traditional knowledge and expressions of culture, the protection of sacred/secret material, benefit-sharing, and communal ownership. The Secretariat's future work would include promotion of the model law and provision of assistance to adapt the model law to Pacific Island national requirements and conduct awareness-raising and training on these issues. The Representative supported task B.4 in the Overview paper and suggested the Committee further develop WIPO's activities to provide technical assistance to countries and regions. The Representative emphasized its preference for the term "expressions of culture" as opposed to "expressions of folklore" as the latter term was unacceptable to the Pacific Islanders who affirmed that "folklore" diminished and demeaned the rich and dynamic "expressions of culture" that existed in the region.

76. The OAU Delegation said that the views expressed by the African Group reflected perfectly the OAU's position. The Delegation wished to return to the following points:

- firstly to express the OAU's satisfaction at the fact that the debate offered Member States and all WIPO's partners the opportunity to elucidate fundamental issues relating to protection for intellectual property rights in the fields of genetic resources and the fair and equitable division of the benefits stemming from those resources,
- secondly to say that the debate allowed a particularly useful exchange of views on the systems which appeared to be most appropriate in providing better protection for such resources, and finally
- to recall that the OAU had devised a legislative model for protecting the rights of local communities, farmers and plant breeders.

This model related essentially to regulations for access to biological resources and aimed to establish a framework structure to deal, in each country, with the preservation of those resources and their rational use. The Delegation noted the OAU's view that it would therefore be possible not only to provide more appropriate protection for the rights of indigenous communities in their resources, but also to develop their knowledge of the field and increase their technological capacity. The OAU was following closely the work of the Intergovernmental Committee, which was of very great interest for the future of the legal protection of those new areas, the ultimate aim being to guarantee the just and equitable distribution of the benefits of that protection.

77. The Representative of the African Regional Industrial Property Organization (ARIPO) welcomed the establishment of the Committee and stated its expectation that this first session would provide answers and make concrete recommendations for the establishment of an appropriate legal instrument for the protection of genetic resources, traditional knowledge and folklore. It noted the impact of new technologies and globalization on the intellectual property system and the need for the system to adapt to these developments which have implications for all countries, developing and industrialized, emphasizing particularly the importance of these changes for farmers, rural societies, and biological (including genetic) diversity in developing countries. It outlined the resolution taken at the 7th Session of the Council of Ministers of ARIPO for a coordinated strategy to deal with the problem of protection of indigenous knowledge by linking its initiative with those undertaken by WIPO. The Representative suggested that the findings from the WIPO fact-finding missions on the needs and expectations of holders of traditional knowledge be taken into account in work leading to the establishment of international standards and guidelines. The Representative supported the statement made by the Delegation of Madagascar on behalf of the African Group and the document prepared by that Group which contains proposals on the future activities of this Committee.

78. The Representative of the European Patent Office (EPO) emphasized the importance of reliable databases to facilitate patent examinations citing the case of a patent granted by the EPO on a process of extracting oil from the neem tree and subsequently revoked following opposition. He highlighted the need to raise awareness on the patent system and outlined the EPO's international cooperation program in cooperation with the European Community, under which there was scope for activities on traditional knowledge and biotechnology. He

stated the readiness of the EPO to collaborate with WIPO on the development of searchable databases in the field of traditional knowledge.

79. The Representative of the United Nations Conference on Trade and Development (UNCTAD) described its work program following the decision by the Member States of UNCTAD to address issues related to traditional knowledge in cooperation with other organizations dealing with these issues. The outcome of its work to date included recommendations to raise awareness on the role and value of traditional knowledge to support the innovation potential of local and indigenous communities, to promote the commercialization of traditional knowledge-based products and services with emphasis on equitable benefit-sharing with the TK holders, to implement national legislation for the protection of traditional knowledge and to assist indigenous and local communities in exploring policies to harness traditional knowledge for trade and development.

80. The Representative of the Secretariat of the Convention on Biological Diversity (CBD) outlined the main objectives of the CBD, highlighting in particular Article 8(j) of the Convention, which urged States to respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities, and to promote their wider application. He emphasized the importance of the Secretariat's work on access to genetic resources and the fair and equitable sharing of the benefits of their utilization, including issues related to prior art and prior informed consent, and the role of intellectual property on these matters. The Secretariat and its Conference of the Parties had invited WIPO to carry out further work on these issues and would continue to cooperate with WIPO on the intellectual property aspects of its work.

81. The Representative of the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) presented the work of the Convention highlighting the fact that it provided the only global, legally-binding mechanism available to sovereign States that enabled them to certify that their regulated wildlife trade was sustainable. The Representative pointed out that Appendix III to the Convention contained species of concern listed by individual countries that would like the assistance of other Parties in regulating international trade- primarily through a Certificate of Origin. The Representative suggested that this Appendix provided a practical mechanism for Parties to list specific species for specific purposes (e.g., the protection of intellectual property rights) and, if used judiciously, could allow CITES to complement other mechanisms for managing biological and genetic resources. The Representative expressed support for the Committee's efforts to develop a harmonized approach to intellectual property in the areas of genetic resources, traditional knowledge and folklore.

82. The Representative of the World Trade Organization (WTO) indicated that the issues of traditional knowledge and its ownership, of access to, and use of, genetic resources, the sharing of benefits resulting from such use and/or the knowledge related to them, as well as other questions such as the criteria for patenting an invention, the patenting of living material and prior informed consent requirements and the relationship between the TRIPS Agreement and the CBD were raised in the context of the review mandate under Article 27.3 (b) of the TRIPS Agreement. The Representative referred to varying opinions expressed on the appropriateness of dealing with certain issues such as traditional knowledge, in the context of the review under Article 27.3(b) or in other contexts, for example, that of the review under Article 71.1. She indicated that mention had been made in the TRIPS Council of the work done by the Convention on Biological Diversity (CBD), the Food and Agricultural Organization (FAO), the United Nations Conference on Trade and Development (UNCTAD),

the United Nations Environment Programme (UNEP), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and WIPO and expressed the WTO Secretariat's interest in following the work of the Committee.

83. The Representative of the Organisation for Economic Cooperation and Development (OECD) informed the Committee of the Biotechnology Unit's project on genetic inventions, intellectual property rights and licensing issues, which focused the problems that the proliferation of gene patents might engender, and the strategies firms, governments and civil society might develop to deal with them. It expressed its interest in work to be undertaken by the Committee on model contracts for access and use of genetic resources, as well as benefit-sharing. The Representative listed key questions which its Member States sought to answer, including establishing the appropriate types of intellectual property protection for innovations derived from biotechnology.

84. The Representative of the Andean Community explained that paragraph 5 of the document in question referred to the fact that the common heritage concept had been applied both to genetic resources and to traditional knowledge and folklore. In that connection, paragraph 33 also indicated that a change was under way in the existing paradigm. The Representative said that it should be specified that the term common heritage was rooted in the sphere of plant genetic resources for food and agriculture, within the framework of FAO and in particular for those resources which were located in the *ex situ* centers of the International System. That concept did not therefore cover other plant genetic resources, and still less those of animal, microbial or human nature. The Representative also pointed out that in the field of traditional knowledge and folklore the use of the term "common heritage" was more in the sense of the cultural heritage of peoples rather than in terms of free access and the extent to which resources could be appropriated, as had been understood in relation to genetic resources, thereby generating a distinct connotation. In line with those ideas, it said that the common heritage concept could not be generalized in terms of its content and effects to include any type of genetic resource, and could still less be used to state that a paradigm had been set up which was now changing. The Representative expressed the importance in that connection of considering that Article 15 of the CBD was limited to emphasizing and strengthening the force of the pre-existing concept of national sovereignty over such resources, a concept which since antiquity was present in the majority of constitutions and, in particular, in those of the countries of the Andean area, for which reason such a free form of appropriation had never existed. Referring to its own case, the Representative also stated that in that regard Decision 391 was not innovative and it was limited to establishing an access procedure on a contractual basis, a procedural aspect which until 1996, when the Decision in question entered into force, had not existed. It emphasized the fact that aspects relating to the access procedure were quite different from those relating to the ease with which resources could be appropriated. Considering that sufficient documentation existed to support the comments made, the Representative tentatively suggested that those remarks should be taken into account in the work done by the Committee and WIPO in that regard. The Representative considered the fact that WIPO had taken the step of dealing with those subjects which related strictly to pertinent intellectual property aspects to be very relevant and, in that connection, welcomed the Committee's establishment. However, since the materials being dealt with were multifaceted and complex, and their treatment could not be fully exhausted merely in relation to intellectual property aspects, the Representative warned that a cautious approach should be adopted to the establishment of the limits within which those aspects could be dealt with in the current forum. Those limits could easily be exceeded in relation to the specific subjects of regulation and management of access to genetic resources or benefit sharing in itself, both of which were dealt with by the Secretariat in the

document it had produced. Taking into account the above, the Representative suggested that each of the tasks proposed by the Secretariat should be analyzed very promptly so that they did not repeat or duplicate, or possibly contradict, the discussions held in and regulations resulting from other international, national and regional fora, but did in fact lie within the intellectual property discipline. The Representative stated firmly that intellectual property was not a rigid discipline based on inexorable criteria, elements or concepts but that, by contrast, it was a constantly evolving and changing sphere. Without the need to recount the history of the formation of its most conventional elements and in order to illustrate this point, the Representative proposed mentioning only treatments such as those which now constituted the system of integrated circuits, the UPOV system for protecting plant varieties and the mechanism for protecting non-original databases, which were merely *sui generis* systems set up to cater for the need to deal with the particular features of those elements which otherwise could not have been effectively protected if they had been subject to the rules and standards in force. Traditional knowledge also conformed to such reasoning. The Representative cited paragraph 76 of the Secretariat document which stated that intellectual property should be conceived in the broadest sense of the term. Along those lines, it said that, since traditional knowledge was a non-material product of the human intellect and given that intellectual property referred precisely to any creation and right relating to intellectual activity, the fact that traditional knowledge constituted a type of intellectual property, which was indicative of the type of treatment that it was ultimately afforded, could not be questioned. The Representative explained that in relation to the above there were three aspects which the Committee should consider in all its tasks: the analysis of existing features in order to assess what was and was not relevant for the purposes of traditional knowledge; the possibilities of adapting existing features; and the possible creation of new elements, criteria or standards suited to the protection of such knowledge in relation to intellectual property. In that sense, it proposed that each of the tasks proposed by the Secretariat should consider the three dimensions. By way of exploration, it would be interesting, in relation to the comments made, to analyze issues such as the relationship between invention and discovery and the applicability of patentability standards, aspects which the Secretariat highlighted in paragraph 57 of its document, for example in tasks A.4 and B.3. It was also interesting to consider issues relating to collective property as opposed to individual property; the concept of prior art from the perspective of commercialization, for example by UPOV, as opposed to the perspective of written and oral disclosure; the actual concept of novelty and the concept of inventiveness as opposed to originality, in addition to procedural aspects and other matters. It added that with WIPO's cooperation, the Committee could undoubtedly enrich this initial illustrative list. Not wishing to prejudice what had been said before, the Representative stated that it would be essential to consider, as a matter of prime importance in the debate, aspects relating to the lawfulness of the manner in which the elements comprising a patentable invention were obtained, as well as the lawfulness of the genetic resource and/or traditional knowledge used as a basis for its development, since the official patent systems existing throughout the world should not be used as a means of legalizing undue appropriations. Consequently, the reference made by the Secretariat, as justification for task B.4 in its document, to the system used for dealing with injurious actions and illicit exploitation, which had been developed in relation to folklore, was of interest. Secondly, it pointed out that, as an alternative, negative forms of protection could be considered in order to challenge the validity of patents granted on the basis of illicit actions, or requirements for prior determination of the origin of the genetic resources or knowledge used, as the Secretariat document had indicated, in addition to other mechanisms. The Representative said that owing to the territorial nature of intellectual property rights, it was clear that little could be achieved by the national or regional laws protecting traditional knowledge, since those laws interacted in a world where commercial transactions took place across borders. In that regard, international solidarity and

multilateral understanding were therefore essential. In conclusion, the Representative invited other delegations and the Secretariat to review the rules of the Andean Community on that subject; a copy of those rules was available to delegations and, in certain respects, could be of interest and use in the debate, for example in relation to the definitions used which could enrich those provided by the Secretariat. The Representative added that the rules in question were the product of several years' research and discussion in the Andean Community.

85. The Representative of the African Intellectual Property Organization (OAPI) expressed satisfaction that the statement made on behalf of the African Group reflected its position and considered that WIPO was the appropriate framework for discussing such issues. OAPI recommended that the international instruments already in existence should be taken into account and that the existing definitions which were already used by several countries and certain international organizations should also be considered. The issue of intellectual property in relation to genetic resources, traditional knowledge and folklore was a matter of the utmost concern to OAPI. OAPI therefore naturally supported the idea of establishing a national committee of experts on those matters. In addition, in order to promote innovation as a whole and in relation to traditional knowledge, OAPI was setting up a foundation to support the promotion of innovation and invention in order to assist its holders of such knowledge in the work they undertook. OAPI called on delegations to conduct an open dialogue so as to be able to produce an international instrument taking account of the world's cultural and legal diversity.

86. The Representative of the International Union for the Protection of New Plant Varieties (UPOV) stated his Organization's commitment to the enhancement of plant breeding with the aim of promoting food security and agriculture and overall development in a sustainable way through an effective system of protection of new varieties of plants. The effect of a grant of protection, in conformity with the UPOV Convention, was that the authorization of the holder of the protection right was required before acts of exploitation could be effected with material of the variety. Under certain conditions, Contracting Parties may restrict the scope of protection in order to permit farmers the saving of seed for propagating purposes of the protected variety. He identified the incentive for development of new varieties as an important driver for effective conservation of plant genetic resources, noting that the genetic resources contained in protected varieties often represented the most valuable genetic resources since they were necessary for the production of high yielding, high quality crops with good pest and disease resistance and resistance to drought. He pointed out a key feature of the *sui generis* system developed by UPOV, namely, the breeder's exemption, which specifically allowed the use of all protected varieties in further breeding work, thereby increasing the range of genetic resources available in the development of new varieties.

87. The Representative of the Saami Council, representing the indigenous Saami people in Finland, Norway, the Russian Federation and Sweden, expressed its pleasure with the creation of a mechanism within WIPO for addressing the issues under discussion and emphasized the need that its work become an effective means for indigenous peoples and other marginalized groups to share their concerns and worries with regard to their cultural heritage and knowledge. The Representative stated that indigenous peoples are the creators and rightful holders of a substantial part of the world's genetic resources, traditional knowledge and expressions of folklore, but that contrary to popular views, their interest in protecting and developing these resources was not merely financial. It stated that indigenous knowledge often constituted a substantial part of their culture and the protection of these rights was therefore cardinal to the preservation and development of their cultural identity. He noted the absence of representatives of the world's indigenous peoples and stated that discussions on

the protection of genetic resources, traditional knowledge and folklore would be inadequate in the absence of the most important stakeholders. It urged WIPO and its Member States to establish working procedures that allowed the full and effective participation of indigenous representatives in the future work of the Intergovernmental Committee, including providing financial assistance to ensure such participation. In this context, it must be recognized that indigenous peoples are often the poorest of the poor in their respective home areas. It further urged WIPO and its Member States to contribute financial means, so that indigenous representatives could afford to participate in the meetings of the Intergovernmental Committee. The Delegation asked the Committee to include issues such as human rights, sustainable development, biological diversity and environmental development in the scope of its work. It expressed its support for the recommendation arising from WIPO's regional consultations on the protection of expressions of folklore, and reiterated by the distinguished representatives of Algeria and Madagascar, speaking on behalf of the African Group, for the establishment of a Standing Committee in WIPO to deal with these issues. It also urged WIPO to assist the Permanent Forum for Indigenous Issues, a newly established subsidiary organ of the Economic and Social Council (ECOSOC) of the United Nations, in its work in this area and expressed its willingness to cooperate with WIPO in organizing training workshops on traditional knowledge in the Nordic region.

88. The Representative of the Institute for African Development (INADEV) stated INADEV's commitment to human capacity building programs in Africa, including creating an awareness of the important role played by traditional knowledge in national development. The Representative traced the history of Africa's commitment to the protection of folklore and traditional knowledge under national legislation culminating in the establishment of strong regional agencies with significant responsibility for the protection of folklore, traditional knowledge and genetic resources such as the African Regional Industrial Property Organization (ARIPO) and the African Intellectual Property Organization (OAPI). He also referred to the draft model law of the Organization of African Unity (OAU) to regulate community rights and access to biological resources in Africa. INADEV's Representative pointed to the widespread commercial exploitation of African folklore and the use of traditional medicinal knowledge without appropriate compensation paid to traditional communities. He observed that territorial limitations of national copyright legislation further compounded by the absence of a binding international instrument have limited the usefulness of African legal regimes in responding to unauthorized commercial exploitation of such works by expatriate companies and individuals. According to the Representative, previous efforts to adopt a binding international instrument on folklore had failed due to the low priority governments gave to the issue and the fear that such a development could be interpreted as an indirect recognition of the claims of indigenous minorities to sovereignty over cultural property. He noted the continuing lukewarm attitude by some industrialized countries which consider protection to be impractical for reasons related to the possible infringement of free speech rights and the relegation of the subject matter to the public domain area. The Representative sought the cooperation of the industrialized countries in the consideration of an international instrument for protection and urged them to subscribe to a binding legal framework on grounds of reciprocity. Noting that the developing countries had signed the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) even though the Agreement benefited, disproportionately, the interests of industrialized country intellectual property rights holders and imposed significant enforcement costs on the developing countries, the Representative called on the industrialized countries to extend protection to folklore and traditional knowledge even in cases where industrialized country economies might appear not to benefit significantly from the new arrangements. In conclusion, the Representative recommended the adoption of a *sui generis* framework for

protection pointing out that unlike intellectual property rights, folklore and traditional knowledge were created and are owned and utilized differently, and therefore, it would be unhelpful to fit them within the rigidities of modern intellectual property law.

89. The Representative of the International Plant Genetic Resources Institute (IPGRI) stated that IPGRI was an intergovernmental organization and part of the Consultative Group for International Agricultural Research (CGIAR), which included 16 Centers all around the world. It stated that the mission of IPGRI was to promote food security, to eradicate poverty and to protect the environment. It explained that IPGRI aimed to conserve and develop genetic resources for the benefit of the world community with a focus on the needs of the rural poor. The Representative stated that the vast majority of the collections of the CGIAR were held in trust for the world community. The Representative stated that IPGRI was doing work of relevance to the Committee and had found that there was an interface between the mission and the work of the CGIAR and intellectual property rights was quite complex. It noted that the CGIAR had principles on intellectual property rights and genetic resources which guided its decisions with respect to intellectual property rights and kept those decisions in line with its mission and work. The Representative explained that IPGRI was one of the CGIAR Centers and was tasked with taking the lead on issues of relevance to genetic diversity. It added that IPGRI was tasked with representing the CGIAR at the negotiations for the revision of the International Undertaking on Plant Genetic Resources for Food and Agriculture, which had also done work on intellectual property. It mentioned that IPGRI had produced a decision-making guide on the implementation of Article 27.3(b) of the TRIPS Agreement and had produced a background paper for the negotiations of the International Undertaking, including one entitled "What is patentable?", which tried to look at the interfaces of intellectual property and a possible multilateral system for the exchange of plant genetic resources of relevance to food and agriculture. The Representative noted that the CGIAR welcomed the work of the Committee and a deepening of the technical input into these important areas. It emphasized the value of an exchange of experiences among Member States and among intergovernmental and non-governmental organizations. The Representative looked forward to a mutually-supportive relationship at this interface between the mission and science-based work of IPGRI, on the one hand, and the intellectual property systems that are overseen and studied by WIPO on the other. It noted that the tasks suggested in the Overview document were of direct relevance to IPGRI's work.

90. The Representative of the World Conservation Union (IUCN) explained that it was speaking on behalf of IUCN and the Worldwide Fund for Nature (WWF), the two largest international conservation organizations. The Representative said that the organizations were concerned at the potential for duplication, and a possible dispute between the Committee's probable mandate and the work currently in progress in relation to other international instruments and processes, in particular the CBD. The Representative expressed its appreciation and support for the statements made on behalf of GRULAC, as well as to countries from all continents, since they had called for coordinated work which was consistent with the CBD. It regretted, however, that the Secretariat documents did not provide sufficient material to guarantee the aims of coordination and consistency. The Representative explained that for the IUCN and WWF the most important subject on which the Committee should decide was the establishment of an appropriate mechanism or mechanisms for coordination and cooperation primarily with the CBD, as well as with concurrent tasks of other organizations, as had already been suggested by various governments. This was a fundamental issue which should be resolved by the Committee. Referring to the work program which the Committee was to establish, the Representative stated that the program could be structured in two phases. In the first phase, the Committee could basically

concentrate on those tasks related to facilitating the application of intellectual property mechanisms currently in existence and corresponding national laws and especially, in that context, attaching high priority to the work designed to support the urgent implementation of existing mechanisms for protecting intellectual property and traditional knowledge. Despite their shortcomings, the Representative considered that such mechanisms were potentially important and that such potential should be explored by the Committee which could therefore support countries in the appropriate application of the mechanisms. In a second phase, the Committee's work could be focused on tasks for developing proposals and information on possible *sui generis* systems for protecting traditional knowledge, another subject of fundamental importance. The Representative said that the results of the tasks in the first phase would also provide very important elements for continuing with this work which would also benefit from the performance of activities under the CBD, in line with the information provided by the CBD Secretariat.

91. The Representative of the Union of Industrial and Employers' Confederations of Europe (UNICE) recognized that the present discussion on traditional knowledge, genetic resources and intellectual property rights was relevant and timely. He acknowledged that similar discussions were taking place in other fora, like the Food and Agricultural Organization (FAO), but supported the view that WIPO should be the focal point for all international deliberations on intellectual property rights. He stated that the Committee should focus on tasks A.1, B.2 and B.3, and hoped that the Committee would allow UNICE to continue to be present and to contribute in a positive manner to the deliberations.

92. The Representative of International Federation of Reproduction Rights Organizations (IFFRO) stated that IFFRO represented copyright management organizations in more than 40 countries worldwide. He expressed IFFRO's belief that collective management should not be an obligation but it should be voluntary, as indicated in its statutes. He added that there were cases where the individual exercise of rights was impossible or impracticable. He noted that, in those instances, copyright management organizations should present their case to both rightsholders and users and demonstrate that they could play a role as an efficient intermediary. The Representative stated that in the areas of traditional knowledge and folklore, the issue of possible new rights and entitlements would have to be resolved among rightsholders, users, governments and other stakeholders. It expressed IFFRO's belief that several of the options under consideration or contained in proposals submitted to this Committee might lead to the recognition of rights or entitlements, the individual exercise of which might not be possible or desirable. The Representative pointed out that IFFRO stood ready to assist, especially in examining whether the tools of copyright management which were now in use or under development could be used for the benefit of rightsholders and users of traditional knowledge and folklore, irrespective of whether the rightsholder was an individual, a community or a country. The Representative noted that IFFRO urged the Committee, if and when it might come to a conclusion that new rights or entitlements for traditional knowledge or folklore were appropriate, to consider at the same time the issue of how such rights should be managed and applied. In conclusion, the Representative noted that a new right might not be worth much and may not achieve its underlying policy objective if it was not managed properly.

93. The Representative of the International Publishers Association (IPA) pointed out that IPA was the umbrella organization of national publishers' associations in 68 countries and affiliated specialized and regional publishers' associations, representing the interests of book and journal publishers at the international level. He pointed out that IPA supported the proposal for greater awareness-raising on the intellectual property system among traditional

knowledge holders and for greater understanding by the intellectual property community of the perspectives, expectations and needs of traditional knowledge holders. In this spirit, he welcomed the recommendation to start testing the applicability and use of existing intellectual property tools for traditional knowledge protection, providing technical information and training to traditional knowledge holders and Government officials on possible options under the existing intellectual property categories for traditional knowledge protection, as well as providing information, assistance and legal advice to Government authorities in respect of regional, sub-regional and national legislative and other initiatives to protect traditional knowledge. He expressed IPA's belief that a thorough examination of existing intellectual property and other legal tools for traditional knowledge protection, should precede the discussion of possible new instruments of protection at the international level. The Representative agreed that the identification and documentation of traditional knowledge would contribute to the preservation and protection of traditional knowledge. He suggested that initiatives for developing open standards and electronic systems for the unique identification of objects in which intellectual property rights may exist, such as the Digital Object Identifier (see www.doi.org), and initiatives for developing frameworks for the structured description of creations and inventions, such as the INDECS metadata framework (see www.indecs.org), should be explored in this context. The Representative welcomed efforts aiming at ensuring the preservation, protection and dissemination of traditional knowledge in general and expressions of folklore in particular, but also noted the risks and possible negative effects associated with some of the envisaged new intellectual property tools to protect traditional knowledge. He noted that books contributed to the protection, preservation and dissemination of traditional knowledge and that IPA was concerned that possible new instruments to protect traditional knowledge did not negatively impact on the development of local publishing industries.

94. The Representative of the International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL) said that it was convinced of the importance of the meeting in progress on intellectual property and its relationship to genetic resources, traditional knowledge and folklore. Within ASSINSEL and in terms of genetic resources for agriculture and food, it appeared to be essential not to duplicate work and to monitor the results obtained, in particular in the FAO and UPOV. It was very important that the work done in the different international fora was consistent. It also appeared that one of the essential tasks would be to adopt definitions and facilitate accurate inventories in the areas concerned. ASSINSEL noted that it was important that the results of the Committee's work did not lead to a result contrary to the desired aim, i.e. facilitating the sustainable conservation and use of genetic resources. ASSINSEL indicated that it hoped to be able to participate in the Committee's continuing work.

95. The Representative of BIO highlighted the importance of effective intellectual property protection to its member companies and the lack of such protection for biotechnological innovation in many countries, thus frustrating the objectives of these countries to attract foreign investment in the biotechnology sector. Recognizing the importance of partnerships to companies in this sector, he suggested that they could and would form the foundation for workable solutions for sharing benefits arising out of use of genetic resources or traditional knowledge. The Representative expressed support for the concept of transparent and practical regulatory systems to govern access to genetic resources and to traditional knowledge, in the belief that such systems, once implemented, would facilitate cooperative work with national governments, local communities and other stakeholders. He presented a definition for "biopiracy" to mean the illegal acquisition and subsequent unauthorized use of genetic materials or traditional knowledge and without question opposed such acts. He stated that

where an invention qualified for a patent, it meant that the invention was distinguishable from the original starting basis of the work, for example, a genetic resource in its native state and a patent, if granted, necessarily must exclude that starting material from its scope. It pointed out that obtaining a patent for an invention that qualified for protection would improve the likelihood that benefits would arise from use of the genetic resource and such benefits would be available to be shared with those that provided access to that resource. It emphasized its disagreement with those that would discourage the patenting of inventions arising from legitimate research and development on a genetic resource. It expressed support for efforts to create and improve prior art collections related to information held in local communities or knowledge and WIPO's work on this issue.

96. The Representative of the Max Planck Institute (MPI) cautioned against developing quick solutions to the challenges posed by issues relating to genetic resources, traditional knowledge and folklore. The Representative pointed at the complexity of the issues at stake, due to their fundamental nature (for example, regarding self-determination or public domain), and to their scope which went beyond traditional IP-systems (for example, regarding questions of preservation or taboos) and beyond western IP-thinking (looking, for example, at holistic concepts). The Representative recalled that long-term success may be reached only after careful exploration of all relevant elements and implications - a task which she considered as necessary, given the strong interests at stake. The Representative presented a project of her Institute for a study which would aim at submitting, for the first time, a comprehensive analysis of all relevant areas - including genetic resources, traditional knowledge, indigenous names and designations, and folklore, following an overall systematic approach. The study would examine whether, to what extent and how relevant IP laws (on a national, regional and international level) applied in these areas and discuss the possible contribution of laws outside IP, such as customary law, contract law or any kind of *sui generis* protection. She stressed that the envisaged study was to be governed by the principles of transparency and objectivity so as to result in a clear picture of the consequences and effects of the different legal instruments, and that this should constitute a basis for recommendations for balanced and working, practicable solutions. The Representative mentioned that funding of the project would still seem necessary in order to reach a satisfactory degree of comprehensiveness. She expressed her support for WIPO dealing with these matters, referring to the expertise of WIPO and the need to work on a technical, non-emotional level in order to achieve progress.

97. The Representative of the International Federation of Industrial Property Attorneys (FICPI) stated his organization's appreciation for the value of genetic resources and folklore, and expressed its interest in contributing positively to the consideration of initiatives leading to appropriate recognition and reward for their use. He, however, stated that it largely considered the intellectual property system inappropriate for protection of the subject matter under discussion. FICPI considered WIPO the ideal agency to deal with these matters, including discussions on a possible *sui generis* system for protection.

98. The Representative of the European Chemical Industry Council (CEFIC) said that his Organization considered it necessary to study, in detail and solely within the current framework, intellectual property issues, primarily the protection of traditional knowledge by intellectual property. CEFIC's position was introduced and described in the document of November 23, 2000, which had been made available to participants. The CEFIC Representative said that WIPO should be the central international organization for preparing a relevant international agreement which should subsequently be incorporated in the TRIPS

Agreement. The three stages mentioned in the CEFIC study relating to traditional knowledge were:

1. Defining precisely the concept and its content.
2. Subsequently cataloguing and guaranteeing registration of traditional knowledge.
3. Seeing what could be protected by current intellectual property rights and, for those aspects not concerned, defining the subject matter and scope of a *sui generis* right. The CEFIC Representative said that it wished to participate actively in the work undertaken.

99. The Representative of Tupaj Amaru explained in general terms that it would be impossible to understand the genetic resources, traditional knowledge and folklore of indigenous peoples without referring to their somber past. The Representative said that following more than five centuries of resistance to colonial domination, the indigenous peoples had succumbed to the fatality or accident of globalization which not only constituted a real threat for their cultural and intellectual heritage but also gave rise to the loss and destruction of biological diversity. The Representative said that the destruction of the genetic resources, ecological values and living organisms of those components was due to the abusive manipulation of unsustainable commercial use by international companies. The Representative said that, in contradiction to the falsified version of history, the Great Maya, Aztec, Inca and many other civilizations which had settled from Alaska to the Cielo del Fuego had already discovered a series of plants, domestic animals, microorganisms and pharmaceutical products of natural composition. However, the traditional knowledge of indigenous peoples, impregnated with wisdom and creative imagination, now undoubtedly represented an invaluable contribution to the common heritage of the human race. The Representative expressed regret that the conquest of America and colonization had placed the balance between men, women and nature in a state of violent upheaval. The Representative explained that the logic of colonization, whereby the traditional knowledge and genetic resources belonging to indigenous populations were considered to be the natural winnings of the colonial rulers, was accepted as legitimate but was in fact based on illicit appropriation without the consent of the true owners. The Representative considered that it was no accident that the preamble of the 1992 Convention on Biological Diversity recognized “the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.” The Representative considered that, according to the principles established in the Convention and other international instruments, the major pharmaceutical, agricultural and industrial companies now more than ever used the scientific discoveries resulting from modern biotechnology research to manipulate the living organisms, plant varieties and even the human genome of indigenous peoples. It said that while States recognized the right of indigenous peoples to free determination, those peoples that lived in poverty would never have access to their own genetic resources and traditional knowledge. The Representative said that biological diversity, which comprised an infinite number of living organisms and other forms of life in a permanent state of development for a period of more than 4,000 million years, formed an integral part of the common heritage of humanity and should not be manipulated or distorted in terms of the hereditary nature. The increasing production and commercialization of genetically manipulated or modified products constituted potential risks for human health, degraded the environment and exacerbated social problems such as poverty and the exclusion of millions of human beings from the new international economic order. The Representative stated that there was currently no capacity for anticipating or preempting with certainty the

behavior and effects of genetically modified products. It said that indigenous peoples knew that, as a result of the replacement of traditional crops with biotechnological alternatives, a considerable variety of maize, soya, potatoes and rice were disappearing from the diet of indigenous peoples. In conclusion, the Representative urged the WIPO Intergovernmental Committee to alert States party or not party to the Rio Convention to the urgent need for a moratorium on the production and designation of genetically modified products in the environment which, in the short or long term, would threaten the survival of the human species, unless States and the international community adopted policies consistent with the Joyce Coguin rules of international law. The Representative was of the opinion that in the law-making sphere, in accordance with the Commission on Human Rights Resolution, WIPO, together with UNESCO, WHO and the United Nations Working Group on Indigenous Populations, should set about drawing up an additional protocol to the CBD relating to biosafety with the aim of regulating or prohibiting the manipulation of organisms in *in situ* conditions, as well as their commercialization. The Representative warned that the Intergovernmental Committee should also draw up model intellectual property clauses for binding agreements on the rational use of genetic resources and equitable benefit-sharing.

Agenda Item 5.1. Access to Genetic Resources and Benefit-Sharing

100. In introducing Item 5 of the Agenda, the Co-Chair stated that he proposed to invite statements by Member States on each of the three issues identified in the item. The Co-Chair said that all States and observers expressed, in their opening statements, much enthusiasm for the work of the Intergovernmental Committee and a diverse range of views on its scope and objectives. He said that the brief now would be to address how to advance this work in a focused and effective manner. The Chair invited statements on each of the three issues listed under Agenda Item 5, "Issues for Consideration by the Intergovernmental Committee", as set out in document "Matters Concerning Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore: An Overview" (document WIPO/GRTKF/IC/1/3), which also identified possible tasks that could be undertaken by the Committee. The Co-Chair emphasized that the possible tasks set out in document WIPO/GRTKF/IC/1/3 were mere suggestions and provided examples of many similar tasks which could be identified by States. He also stressed that this would be the beginning of a discussion under this agenda item, which would be probably be carried over to the next session, so that every State would have the chance to speak. In order to structure the discussion, he suggested taking each issue one by one, starting with Item 5.1 on Access to Genetic Resources and Benefit-Sharing. In addition, the Co-Chair invited participants to address two particular questions which several delegations had raised in the opening statements: (i) Working methods: the Co-Chair pointed out that some delegations had suggested that future sessions could deal with one issue at a time, or all three issues could be discussed at the same time; (ii) Prioritization of tasks and additional tasks: the Co-Chair noted that some delegations had already, in their opening statements, indicated their preferred tasks and some had mentioned additional tasks.

101. The Secretariat referred to the decision taken by the Member States at the General Assembly held in September 2000 to establish this Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, the name of which provided guidance on the Committee's terms of reference. The document under discussion (WIPO/GRTKF/IC/3) had been prepared by the Secretariat in an endeavor to advance the discussions. However the document and particularly the tasks listed in it were entirely in the form of suggestions only and were in no way intended to be definitive or exhaustive. Secondly, the same decision taken by the Member States called upon States to submit proposals and documents. Thus far, documents had been received from the GRULAC

countries (document WIPO/GRTKF/IC/1/5); the Holy See (document WIPO/GRTKF/IC/1/7); the European Commission, on behalf of the European Union and its Member States, (document WIPO/GRTKF/IC/1/8); Switzerland (document WIPO/GRTKF/IC/1/9); and the African Group (document WIPO/GRTKF/IC/1/10). In addition, the Member States of the Andean Community had also submitted documents that would be made available by the Secretariat as soon as possible.

102. The Delegation of Sweden, speaking on behalf of the European Union and its Member States, said that document WIPO/GRTKF/IC/1/3 had been carefully considered. As regards Item 5.1, the Delegation stated that it considered that it was appropriate to discuss the issues under tasks A.1 to A.5. The Delegation added that there should be a focus on tasks A.1 to A.3 and that, as a first step, it would be appropriate to concentrate on task A.1.

103. The Delegation of Australia believed that significant progress could be made in a reasonably short time in respect of access to genetic resources. The Delegation stated that tasks A.1 and A.2 were, in particular, capable of achieving rapid progress. The Committee should commit itself to completing some work on these topics between this and the next session. In this regard, the Electronic Forum, referred to in the Rules of Procedure (document WIPO/GRTKF/IC/1/2), would be useful. It would also be helpful to have papers on more detailed approaches and proposals for discussion at the next session.

104. While the Delegation of India was in general agreement with all 5 tasks, it wished to make some further suggestions. In pursuing the tasks, it would be prudent to follow a technical and practical approach. Work would be needed to supplement and complement that being done in other fora, such as in relation to the Convention on Biological Diversity (CBD) and in the Food and Agriculture Organization (FAO). The need to develop a *sui generis* international system should be at the core of all such initiatives. In respect of task A.1, the Committee might wish to focus more on the development of intellectual property clauses for contractual arrangements. Work being undertaken in the CBD and FAO should also be taken into account. The Delegation said that it attached the highest priority to task A.2, and, in this regard, registered its agreement with the contents of paragraph 44 of document WIPO/GRTKF/IC/1/3. The Delegation also endorsed tasks A.3 and A.4, although noted that the negotiations on the FAO's International Undertaking on Plant Genetic Resources for Food and Agriculture were about to be concluded, and that duplication should be avoided. Task A.5 required clarification in view of its understanding that the management and conservation of genetic resources came within the sphere of national policies and programs. However, national action would not alone address all the concerns and the onus on benefit-sharing should also be shared by user countries.

105. In respect of task A.1, the United States of America said that it supported beginning this exercise with a section defining genetic resources. The Delegation stated that it supported the development of sample contractual practices, provided they were for guidance only and were not binding. The Delegation said that it opposed task A.2, since it was inconceivable that access issues would have any link to appropriate provisions or guidelines for national patent laws. Insofar as there was any overlap, the issue was already being addressed in the context of the applicable and appropriate requirement of enabling disclosure of a claimed invention. In respect of task A.3, the Delegation said that the United States of America opposed the current form of the benefit-sharing obligations in the revision of the Food and Agriculture Organization's (FAO) International Undertaking on Plant Genetic Resources for Food and Agriculture, in favor of a system of voluntary contributions to the multilateral system. Accordingly, the Delegation opposed task A.3. The Delegation also opposed task A.4 for

several reasons. Firstly, the Delegation said that in the United States of America there was well-developed and long-standing case-law on the issues referred to in task A.4 and that, in their experience, patent protection did not inhibit future research and development, but rather stimulated a vibrant biotechnology industry. Secondly, the Delegation opposed the task because the manner in which it was presented demonstrated a bias against patent protection. Thirdly, the issues raised in task A.4 related to Article 27.3(b) and would be more properly dealt with as part of the remit of the World Trade Organization (WTO). Finally, the Delegation opposed task A.4 since it fell within the scope of the Organization's Standing Committee on the Law of Patents (SCP).

106. The Delegation of Brazil said that its general approach was one whereby the exercise of intellectual property rights should not run counter to the objectives of sustainable exploitation of genetic resources, as stated in Article 16.5 of the Convention on Biological Diversity (CBD). In this respect, one concern might be that the private rights inherent in intellectual property rights could bring into question the sovereign rights of States over their genetic resources. The Delegation listed several issues arising from the patentability of microorganisms, plants and animals. Without prejudice to Brazil's position in other fora, the Delegation wished to address some of the elements under discussion. Brazil did not share the view that patents were in inherent conflict with the sustainable exploitation of genetic resources. By contrast, patents might serve as a useful tool to promote benefit-sharing schemes. Turning to the possible tasks identified in document WIPO/GRTKF/IC/1/3, the Delegation expressed support for task A.1. The Delegation cautioned, however, that contracts were limited tools in promoting benefit-sharing, since they were bilateral and included parties with differing negotiating strengths. It would therefore be important to include prior informed consent in contractual arrangements. The Committee should also work towards the establishment of mechanisms to provide legal assistance to traditional communities when entering into contractual arrangements. Contracts were also not easily enforceable. Given their limited effect, the Committee should place more emphasis on tasks related to legislative, administrative and policy measures, as well as multilateral systems. The Delegation stated that in general it supported task A.2. While consistency with international intellectual property standards was relevant to the exercise, it would be equally important to ensure consistency with international provisions on biological diversity, in particular the CBD. As regards task A.3., the Delegation believed that the Committee should follow closely the discussions in the Food and Agriculture Organization (FAO) on the establishment of a Multilateral System of Access and Benefit-Sharing for Plant Genetic Resources for Food and Agriculture. The Delegation said that it attached the utmost importance to the matters referred to in task A.4 and mentioned relevant provisions in the Brazilian Law on Industrial Property. The Delegation stated that loose or unclear standards for patentability undermined the patent system as a whole and said that the Committee should consider that naturally occurring organisms were not inventions. The Delegation concluded by stating that biotechnology had a key role to play in social and economic development. While supportive of such technology, Brazil was, however, opposed to biopiracy. The Committee should work in such a way as to provide mutually beneficial solutions for both the holders of intellectual property rights and holders of genetic resources.

107. The Delegation of France subscribed fully to the statement made by the Delegation of Sweden on behalf of the European Union and its Member States. The French Delegation insisted on the fact that work should relate more particularly to tasks A.1 to A.3 and focus on task A.1. As regards task A.3, the discussions within the FAO on the revision of the International Undertaking had shown the possible usefulness of a contribution by WIPO to the discussions on the implementation of the benefit-sharing provisions, based on intellectual

property rights. In that regard, it nevertheless appeared important to insist on the need for the Committee to await the conclusion of the revision of the Undertaking so as not to interfere with the negotiations on the provisions in question.

108. The Delegation of Norway supported tasks A.1, A.2, A.3 and A.4, and suggested that tasks A.1 and A.4 could be targeted for priority attention. From a technological point of view, the simple isolation and sequencing of biological material could not in itself constitute an invention. These issues raised several questions about the patentability of microbiological materials. As regards task A.1, Norway strongly supported the development of guidelines on access and benefit-sharing. The Delegation said that the elements of prior informed consent should be clearly defined in such guidelines and enumerated some of those elements. The Delegation concluded by suggesting that a further Committee session should be convened in the fall of 2001 and that it was flexible as to the working methods to be adopted by the Committee, provided that a common approach to the issues was retained.

109. The Delegation of Ecuador stated that the Political Constitution of Ecuador affirmed the State's sovereign right over its biological diversity and, therefore, the Delegation could not agree with what was stated in paragraph 5 of document WIPO/GRTKF/IC/1/3, prepared by the Secretariat, i.e. that "the first common characteristic of the three themes before the Committee is examining, is that the concept of 'common heritage' has been applied to genetic resources, traditional knowledge and folklore." As had been mentioned in this session, that "common characteristic" was not an accepted idea. Consequently, it could not have been an objective of international policy, nor was it generally recognized that in recent years "the public domain status of the material has been called into question" (paragraph 6 of document WIPO/GRTKF/IC/1/3). The Committee should not work independently of other fora and a joint working mechanism between WIPO and the Convention on Biological Diversity (CBD) should be established. Turning to the specific tasks set out in the document, with reference to task B.1 the Delegation said that work had already been done in the context of the CBD on questions of definition and such work should therefore be undertaken jointly with the CBD. Similarly, as regards task B.2 considerable work had already been undertaken in other fora, particularly the CBD. As to task B.3 the revision of existing criteria was necessary. In conclusion, in respect of the Committee's mandate the Delegation referred to the opening statement made on behalf of GRULAC.

110. The Delegation of Canada attached the highest priority to and strongly supported task A.1, for which WIPO was the appropriate forum. As regards task A.2, the Delegation said that it favored discussions on the suitability of developing such guidelines or provisions as referred to in the task. The Delegation supported but attached only average priority to task A.3. Finally, the Delegation stated that Canada could support further work on the documentation relating to the source of genetic resources, as a means of facilitating greater transparency, provided this did not raise TRIPS compliance issues or impose too onerous a burden on patent offices.

111. The Delegation of Indonesia said that it was of the view that paragraph 5 of document WIPO/GRTKF/IC/1/3 should not be construed as limiting the sovereign rights of a country over its genetic resources, traditional knowledge and folklore. The Delegation further stated that, with regard to paragraph 38 of the same document, all contractual arrangements should comply with existing national legislation of the country where the genetic resource was located. The contractual freedom of the parties to a contract should be in compliance with the provider country's jurisdiction over its genetic resources.

112. The Delegation of Venezuela expressed support for several paragraphs in document WIPO/GRTKF/IC/1/3, on the understanding that these paragraphs corresponded to proposals and submissions contained in the documents submitted by GRULAC for the current session (document WIPO/GRTKF/IC/1/5), i.e. paragraphs 41, 47 (provided that *sui generis* systems could be developed), 54 (with specific support for coordination mechanisms between WIPO, the Convention on Biological Diversity (CBD) and the Food and Agriculture Organization (FAO)), 60 (including action 2(a)), 71, 77, 80, 86, 101 and 113 (on the understanding that *sui generis* systems could be developed). The Delegation also suggested three additional tasks:

- (i) identifying the origin of resources used in the development of inventions;
- (ii) creating databases to protect the contents of traditional knowledge and the promotion of the proposal to elaborate these databases as a protection mechanism for said traditional knowledge; and
- (iii) in particular, studying ways to annul at the international level, intellectual property rights which arose in cases where there had not been prior informed consent for the use of genetic resources or traditional knowledge.

113. The Delegation of Switzerland said that, as a first step, clarification of terminology was crucial. In that regard, existing definitions should be used as far as possible. The Delegation supported task A.1 but with respect to task A.2, studies recommended by the WIPO Working Group on Biotechnology, which had met in November 1999, should first be completed. Further consideration of task A.3 would be premature at this stage and should be postponed until revision of the International Undertaking on Plant Genetic Resources for Food and Agriculture had been completed. Task A.4 covered issues being addressed within the TRIPS Council regarding the review of Article 27.3(b) of the TRIPS Agreement. In any event, the Standing Committee on the Law of Patents would be a more appropriate forum for addressing the matters raised in task A.4. As far as task A.5 was concerned, the Convention on Biological Diversity (CBD) and International Union for the Protection of New Varieties of Plants (UPOV) would be better suited to deal with the matter.

114. The Delegation of Japan stated that as far as task A.2 was concerned it could not support new patent standards. As regards tasks A.1 and A.3, the work being undertaken in the context of the Convention on Biological Diversity (CBD) and the Food and Agriculture Organization (FAO) should also be monitored, since many factors other than intellectual property were related to the issues of access and benefit-sharing. As to task A.4, duplication should be avoided and this matter must be better addressed within the context of the WIPO Standing Committee on the Law of Patents.

115. The Delegation of Mexico said that the regulation of access to genetic resources was an important priority. Nevertheless, it considered that such regulation could be controlled through the different forms of industrial property. For that reason, the Delegation expressed its full support for task A.1. It also supported task A.3 and concluded by requesting specific working groups on each issue.

116. The Delegation of Peru referred to previous statements by GRULAC on the Committee's terms of reference. As regards the Committee's structure and working methods, the Delegation suggested that the Committee should continue to meet in plenary session and that each session should address the three substantive issues in turn. In conclusion, the

Delegation requested the Secretariat to prepare studies on (i) the use and exploitation of genetic resources, traditional knowledge and folklore and (ii) legislation already existing in those fields.

117. The Delegation of Egypt stated that the Committee had been established to determine basic ways and means of protecting genetic resources. The Delegation supported previous statements by the African Group regarding the need for an international legal instrument. The Delegation suggested that the Committee should agree on certain basic principles: (i) the distinction between a discovery and an invention should be maintained; (ii) life forms should be respected, both in the North and South; (iii) the use of genetic resources should be subject to prior informed consent and other obligations such as (i) mutually agreed terms; (ii) prior informed consent of the holders of traditional knowledge related to genetic resources; (iii) acting on the basis of the principle of goodwill in benefit-sharing resulting from the use of genetic resources, which should also include the possibility of benefiting from the transfer of technology resulting from such a use. The Delegation was of the view that these obligations represented the sole basis for access to and the use of genetic resources, since otherwise this would be done by illegal means at the expense of the original holders.

118. The Delegation of Morocco said that the tasks and objectives set out in the Draft Program and Budget for 2002-2003 as regards the four sessions of the Committee did not meet expectations and that it was important to define the Committee's terms of reference and mandate. The Delegation expressed support for the statements made by the Delegation of Ecuador regarding paragraph 5 of document WIPO/GRTKF/IC/1/3, and for the proposals contained in document GRTKF/IC/1/10. The Delegation expressed support for task A.1, since it took into consideration the question of access to genetic resources, traditional knowledge and folklore.

119. The Delegation of Zambia stated that while there had always been access to genetic resources, benefit-sharing had not always existed. The Delegation placed particular emphasis on task A.3. It concluded by stating that it should be borne in mind that the International Undertaking on Plant Genetic Resources for Food and Agriculture was being revised within the context of the Food and Agriculture Organization (FAO), was limited to plant genetic resources for food and agriculture only, and that negotiations were still ongoing.

120. The Delegation of Colombia supported task A.1, and, in relation to task A.2, stated that this activity should be aimed at collecting and reviewing comparative legislation. In respect of task A. 3, work should focus on the identification of intellectual property rights in relation to genetic resources that were in force in the multilateral system. As regards task A.4, the Committee should exclude matters concerning the environment and ethics, as these questions were not within WIPO's competence.

121. The Delegation of Bolivia supported the earlier statements by the Delegations of Ecuador and the Andean Community regarding paragraph 5 of document WIPO/GRTKF/IC/1/3. The Delegation supported tasks A.1 and A.2. Task A1 would allow the elaboration of contractual agreements with a more integrated "vision," including elements relevant to intellectual property which were necessary in view of the distribution of benefits. Task A.2. would lead to the examination of options and mechanisms that allowed the integration of measures taken in relation to access to genetic resources and intellectual property rights, such as the specification of the country of origin of the genetic resource. On task A.3, the Delegation felt that it was premature to begin work on this task before the conclusion of the negotiations on the International Undertaking on Plant Genetic Resources

for Food and Agriculture. The Delegation stated that task A.4 needed clarification and related rather to the Union for the Protection of New Varieties of Plants (UPOV).

122. The Delegation of Turkey stated that tasks A.1 and A.5 were being discussed within the context of the Convention on Biological Diversity (CBD), and that there was no need to duplicate such work within WIPO. It was necessary to establish effective and efficient coordination with the Secretariat of the CBD and other relevant organizations. However, tasks A.2, A.3 and A.4 should be dealt with by the Committee. The issue of gene isolation and transfer to living organisms through modern biotechnology, and also whether the material resulting from such work deserved patenting and protection, should be discussed. The Delegation attached the highest priority to task A.4.

123. The Delegation of Cameroon said that it was important to address terminological issues. Secondly, the Delegation suggested addressing task A.2. Thereafter, tasks A.1 and A.3 should be addressed.

124. The Delegation of Panama endorsed the submission made by GRULAC (document WIPO/GRTKF/IC/1/5) and the previous statements made by the Group at the meeting. The Delegation expressed support for tasks A.1 and A.2.

125. The Delegation of Argentina stated that it would not express an opinion as to the priority to be accorded to the various tasks set out in document WIPO/GRTKF/IC/1/3. The Delegation said that it agreed with paragraph 22 of this document, i.e. that these issues were complicated and that before any activities were undertaken, ample information on the activities undertaken in this regard by other intergovernmental organizations should be provided, so as to avoid conflicting results and standards.

126. The Delegation of the Islamic Republic of Iran supported the statement by Ecuador concerning the “common heritage” and genetic resources, traditional knowledge and folklore. Endorsing the statements made by the Delegation of Malaysia, the Delegation expressed the desire that duplication of the work of other intergovernmental organizations should be avoided.

127. The Delegation of Mexico stated that, in respect of contractual arrangements, provisions pertinent to each country should be borne in mind, and such arrangements should be governed by the principle of good faith.

128. The Co-Chair said that as he understood it, task A.1 had been supported by almost all speakers. Certain delegations had attached the highest priority to this task. Tasks A.2 to A.4 had received majority support, but some delegations had also opposed certain tasks, or suggested that they be postponed. General agreement appeared to have been reached on task A.3, taking into account, however, the conclusions of the Food and Agriculture Organization (FAO) and other bodies. Certain delegations had also suggested that task A.4 be deferred, pending the outcome of the review of Article 27.3(b) of the TRIPS Agreement. Task A.5 had received little support and was not a priority for the moment. In addition, the Co-Chair stated that certain delegations had suggested additional tasks, in particular those relating to terminology.

129. The Delegation of Ecuador stated that the Chair’s summing-up should also have noted the Delegation’s previous statement concerning the need for coordination between WIPO and other bodies, especially the Convention on Biological Diversity (CBD). The Delegation of

Peru said that it had suggested that terms of reference should be developed before any activities began. The Chair took note of both those statements.

Agenda Item 5.2. Protection of Traditional Knowledge

130. The Delegation of Mexico said that owing to its cultural diversity in Mexico there existed a variety of expressions of traditional knowledge. It was therefore essential to limit the scope of this subject through possible definitions which could be determined by the work of the Committee. The Delegation therefore considered task B.1 to be relevant. In addition, tasks B.2, B.3 and B.4 constituted important elements for determining possible channels for regulation and control of the advantages of traditional knowledge. On the other hand, certain legal aspects of industrial property could provide protection for the various components of traditional knowledge. The Delegation questioned the suitability of those components, and for that reason the possibility of creating alternative systems, which would allow a specific and agreed form of regulation, was being analyzed. The Delegation therefore suggested that the Committee should undertake specific work to allow such protection.

131. The Delegation of the United States of America expressed support for the statement made by the Delegation of Mexico regarding tasks B.1 to B.4. The Delegation expressed support in particular for task B.1. Strong support was also expressed for task B.3.

132. The Delegation of Sweden, speaking on behalf of the European Union and its Member States, said that it welcomed a discussion on the items under Agenda Item 5.2 and expressed particular support for task B.1. It also stated that during work on those issues, due consideration should be given to the relevant work in the Standing Committee on the Law of Patents (SCP).

133. The Delegation of Switzerland supported all the tasks under Agenda Item 5.2. Of those tasks, the Delegation attached the highest priority to task B.1.

134. The Delegation of the Islamic Republic of Iran, referring to traditional medicinal knowledge in its country, said that since current intellectual property systems were not sufficient, there was a strong need to establish practical and effective regimes to protect traditional knowledge, including traditional medicine.

135. The Delegation of Australia supported tasks B.1 to B.4. Significant work was needed regarding task B.1, which might include drawing distinctions between traditional knowledge and folklore.

136. The Delegation of Colombia expressed particular support for task B.1 and said that the Committee should act as a forum in which the necessary conceptual and terminological issues could be addressed. The Delegation stated that the Committee should address conceptual definitions such as “traditional knowledge,” “community,” “collective,” etc., and generally elaborate adequate terminology within the context of intellectual property.

137. The Delegation of Panama supported tasks B.1 to B.4 and referred to recent legislation concerning the intellectual property of indigenous peoples.

138. The Delegation of Ethiopia supported all the tasks under the agenda item. The Delegation indicated that it might wish to suggest additional tasks at a later stage.

139. The Delegation of Egypt said that it would be difficult to develop definitions. It supported tasks B.1 to B.4. However, in relation to task B.3 it emphasized that the review of technical criteria for obtaining intellectual property protection should not remain confined to patents but should be extended to all forms of intellectual property protection in order to examine the ways and means by which those forms could encompass traditional knowledge. The Delegation referred specifically, with support, to task B.3.

140. The Delegation of Venezuela said that traditional knowledge was of great importance for the maintenance and utilization of living resources, and that work to date had focused on the conservation, improvement and transformation of those resources. The practices and knowledge of those groups of people had been recognized by the international community by means of different instruments. Nevertheless, the Delegation said that the type of protection of that knowledge had not produced the expected results. In the best cases, knowledge had been used without providing the corresponding benefits to the community that owned it. The Delegation said that where the knowledge did not demonstrate a unique form of creation or a unique origin criterion, it was generally said to have fallen into the public domain. It added that efforts should be made to develop a relationship between traditional knowledge and the market. Adequate conditions must therefore be created to recognize the added value of traditional knowledge to the product, thereby allowing communities to receive the benefits of that improvement. The knowledge and innovations of indigenous and local communities implied an added intellectual value that had been incorporated in the natural state of the product or process, whether by individual or collective means. Consequently, it was necessary to look for effective ways of protecting that knowledge against illegal appropriation and to obtain efficient forms of protection which would facilitate the commercial exploitation of the knowledge.

141. The Delegation of Norway supported tasks B.1 to B.4, with B.1 receiving priority. The Delegation also stated that information on the scope of intellectual property protection for traditional knowledge would be useful, including information on the need for *sui generis* systems. The Delegation added that indigenous and local communities should be actively involved in such discussions. Documentation activities were also important.

142. The Delegation of India supported tasks B.1 to B.4. It provided details of experiences relating to the matters referred to in tasks B.2 and B.3.

143. The Delegation of Japan supported tasks B.1, B.2 and B.3. As regards task B.4, it said that a definition of traditional knowledge and information on its holders was an important issue to be considered at the outset.

144. The Delegation of Ecuador said that as far as traditional knowledge was concerned, it expected the Committee to provide comparisons and evaluations of the scope of effective intellectual property systems, a *sui generis* application of such rights, or a combination of both. On the relationship between genetic resources and traditional knowledge, it said that a close link existed. That relationship was the most important reason why the subject of genetic resources should fall within the scope of WIPO and be subject to analysis by the Committee. It said that the question of genetic resources could not be dealt with in isolation, outside the debates on conservation, since it was the traditional knowledge on those resources which allowed steps to be taken to identify the rights over that knowledge and not genetic resources alone or separately. The Delegation said that it was such knowledge, practices and uses that required protection.

145. The Delegation of Brazil attached the highest importance to discussions on the protection of traditional knowledge. Traditional knowledge protection was important not only in order to prevent unauthorized use, but also to achieve economic and social development. All the tasks set out under agenda item 5.2 served as a good reference, but should not be placed in any order of priority. Although the Committee should address terminological issues, the conclusion of task B.1 should not be a precondition for the commencement of other activities. As regards task B.2, Brazil supported the establishment of a *sui generis* international system of protection. The Delegation also supported tasks B.3 and B.4. In terms of further work, the Delegation said that intersessional activities would be necessary. Before the Committee's next session, the Delegation suggested that the Secretariat could address contractual arrangements relating to genetic resources and the elaboration of databases for traditional knowledge. The Delegation suggested that a second Committee session in November 2001 would be appropriate.

146. The Delegation of Morocco said that the three issues under Agenda item 5 were interdependent and could not be separated. Fact-finding missions should be extended to other countries. The Delegation supported tasks B.3 and B.4. In its statement, the Delegation also supported tasks C.1, C.2 and C.3. As regards task C.2, the Delegation added a reference to other systems of protection such as trademarks, which related not only to industrial designs.

147. The Delegation of Spain said that it had long supported the protection of traditional knowledge and that the topic should be added to the international agenda. Spain had hosted two important meetings of the Convention on Biological Diversity (CBD): the Madrid Workshop on Traditional Knowledge in 1997, and in Seville, in March 2000, the First Meeting of the Ad Hoc Working Group on Article 8(j) relating to traditional knowledge of indigenous and local communities. Moreover, since 1997, Spain had had a cooperation program specifically focused on indigenous populations, in the context of which it had supported indigenous participation in the last Conference of the Parties to the CBD, the International Indigenous Forum on Biodiversity. The Spanish Delegation expressed its full agreement with the statement made by the Delegation of Sweden, on behalf of the Member States of the European Union, which emphasized the importance of considering tasks B.1 to B.4 in the Intergovernmental Committee and, in particular, the question of what was defined under task B.1. The Delegation of Spain wished to draw the Committee's attention, inter alia, to the importance of task B.1 which should be undertaken with the full participation of the holders of traditional knowledge, indigenous and local communities. It considered that all those tasks were closely related to those of the work program on traditional knowledge under Article 8(j) of the CBD, as defined at the Seville meeting and later approved by the Conference of the Parties (Nairobi, May 2000). The Delegation stressed that it would be practical for the Committee's future work to combine efforts with the CBD so as to avoid duplication, program dispersion or undesirable contradictions between the different multilateral fora. It also indicated that all elements relevant to the availability and scope of intellectual property protection for traditional knowledge should be studied, as provided for under task B.2.

148. The Delegation of Canada supported task B.1 and added that such discussions should involve traditional knowledge holders. The Delegation also supported tasks B.2 and B.4. and said that it supported the strengthening of the legal capacity of traditional knowledge holders.

149. The Delegation of Bolivia said that terminology issues were important. It supported task B.1 but said that a reference should be made rather to "traditional knowledge, innovations and practices", as referred to in article 8(j) of the Convention on Biological

Diversity (CBD), which the Fifth Conference of the Parties to the CBD had invited WIPO to examine. The Delegation also supported tasks B.2 and B.3, subject to the same comment as that on task B.1. Task B.4 was unclear, since it stated that it was uncertain what was meant by “ways of assisting holders of traditional knowledge in relation to the enforcement of their intellectual property rights.” The Delegation considered that the intellectual property rights of indigenous and local communities in their traditional knowledge, innovations and practices were not protected, given the characteristics and elements which were not taken into consideration by the existing intellectual property system. In that sense, task B.4 should have referred to the identification of specific and intrinsic elements of traditional knowledge as a basis for the work to build a *sui generis* system to protect traditional knowledge. The Delegation added that it would be advisable to analyze the establishment of an “*ex ante*” mechanism, which would allow the origin of the traditional knowledge used for a patent to be identified as well as an “*ex post*” mechanism, which would enable the validity of the latter to be questioned in case of unlawful appropriation.

150. The Delegation of Ethiopia supported tasks B.1 to B.4 and said that the treatment of terminological and conceptual issues, as identified under task B.1, was essential. The reference to “communities” in task B.1 might be too narrow, since traditional knowledge could also be held by individuals. In addition, intellectual property issues varied depending on the holders of the traditional knowledge. The Delegation also stated that the requirement for disclosure in patent law did not meet the needs of traditional medical practitioners, for example those who did not wish to disclose their knowledge. A need therefore existed to examine the limitations and shortcomings of the existing intellectual property regime. Task B.2 should be confined not only to the existing intellectual property system. Each of the elements of the intellectual property system should be explored so as to determine the extent to which they might be adapted to accommodate the specific nature of traditional knowledge and the needs of traditional knowledge holders. Task B.3 was particularly important. However, the documentation and disclosure of knowledge raised some important and difficult issues. Documentation should therefore be examined together with the need for an enabling environment that would encourage disclosure and build the confidence of traditional knowledge holders. The Delegation supported task B.4 and said that there was a need to strengthen enforcement agencies, as well to develop an international system for the recognition, protection and enforcement of rights. In addition to the tasks identified in document WIPO/GRTKF/IC/1/3, the Delegation also proposed that the Committee should consider ways to assist developing countries, especially LDCs, to strengthen their efforts to develop a scheme for the protection and documentation of traditional knowledge, as well as building their institutional and human resource capacities which were required for the preservation, protection and use of traditional knowledge.

151. The Delegation of Cuba said that the subjects the Committee was working on were interrelated not only in substantive but also systemic terms, which made it neither advisable nor wise to embark on them separately or in an inappropriate order of priority, thereby making it impossible from the very outset to accommodate the broad range of subject matter. The Delegation said that while regarding task A.1 as one of the most basic, owing to its immediate usefulness, it also considered that the exercise would lack the necessary coverage in terms of standard-setting and guidance clauses, if the task of revising and adjusting terms, concepts and protection criteria were not embarked upon first. Cuba did not accord invention status to biological material, including genetic material, or to substances already existing in nature and their derivatives, since they were discoveries. That put at risk the protection of processes that met the traditional patentability requirements and the protection of the products of those processes, owing to the way in which they were obtained. In addition, the Delegation

said that a nation's biological resources formed part of its heritage and, consequently, should have nothing to do with any intellectual property right that made it possible for them to be appropriated to the detriment of their legitimate holders and traditional users; related traditional knowledge was also understood to be included in that. Intellectual property rights had a fundamental part to play in the clauses of agreements providing for access and the distribution of benefits. For that reason, the Delegation considered that the agenda items should be dealt with in parallel at each Committee session by the whole Committee and also in an order of priority that made logical and systematic examination possible. The Delegation said that bearing in mind the traditional knowledge accumulated in its local population settlements, which were mainly but not exclusively rural and which had played a significant part in the use of natural active substances as drugs and for other industrial purposes, there was a need for a thorough examination so that means and measures might be identified, in the form of either *sui generis* systems or intellectual property rights, as well as other approaches that would guarantee the rights of those who possessed and gradually improved on that knowledge. It was not sufficient therefore if that examination did not extend to the inclusion of requirements such as the specification of the country of origin or source of the genetic material and resources in current procedures for the granting of intellectual property rights, for example in the filing of applications for patents or other titles, and in the processes of product approval and certification, with the effect that their subsequent commercial exploitation was prevented. The Delegation concluded by expressing support for document WIPO/GRTKF/IC/1/5, submitted by GRULAC, and for the initial opening statement made on behalf of the Group.

152. The Delegation of Turkey stated that the work relating to task B.1 should be coordinated with the Secretariat of the Convention on Biological Diversity (CBD). The Delegation expressed support for tasks B.2, B.3 and B.4. As regards future work, each issue should be discussed separately but in related fashion. Questionnaires should be prepared for each topic so as to evaluate the current situation of Member States and to determine the shortcomings and problems related to the protection of those issues. Future work should address, amongst other things, collective rights, databases and the provision of legal and technical assistance for traditional knowledge holders. The Delegation said that a second session in November 2001 would be appropriate.

153. The Delegation of the Islamic Republic of Iran supported tasks B.1, B.2 and B.3. As regards task B.4, the Delegation believed that a new mechanism was needed to secure the enforcement of the intellectual property rights of the "holders", without imposing on them the additional burden of taking bureaucratic steps. The holder-oriented mechanism should place the burden of acquiring the necessary permits and assurance of benefit-sharing requirements on "commercial users" of traditional knowledge.

154. The Delegation of Madagascar, speaking on behalf of the African Group, noted the great interdependence between the three topics of genetic resources, traditional knowledge and folklore, and maintained its proposal whereby a permanent committee would be established, as indicated in document WIPO/GRTKF/IC/1/10, to carry out the work on intellectual property relating to genetic resources, traditional knowledge and folklore. The Delegation said that the work of future Committee sessions should be carried out on the basis of a synthesis of the proposals presented during the first session by other regional groups and Member States. In that connection, the Delegation indicated that the Secretariat should, when preparing the next session, prioritize the trends developed during the general debates and in the documents provided by the Member States and regional groups. The African Group said that, in order to avoid duplication and to supplement the accomplishment of the defined tasks,

the Secretariat should work in collaboration with the other international agreements specified in document WIPO/GRTKF/IC/1/4, for example the Convention on Biological Diversity (CBD) and other conventions dealing with the subject of natural resources as far as access and benefit-sharing were concerned, the Food and Agriculture Organization (FAO) on plant genetic resources, and the United Nations Educational, Scientific and Cultural Organization (UNESCO) on folklore and traditional knowledge. The Delegation stated that the problem of appropriate definitions and terminology should be solved with a view to determining the scope of activities, mainly as regards traditional knowledge which might be protected. As far as folklore including handicrafts was concerned, the Delegation said that the limitations and scope of existing international instruments should be analyzed, especially the 1982 Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions, prepared jointly by UNESCO and WIPO. The African Group supported the proposal contained in document WIPO/GRTKF/IC/1/2 concerning the convening of a second Committee session in 2001, the mandate of which should be well defined. Moreover, the Delegation indicated that the creation of an electronic forum, as proposed in paragraph 13 of the same document, would allow fruitful exchange. Finally, the Delegation reiterated what it had stated at the beginning of the session concerning the temporary and exceptional nature of the Co-Chairmanship for the current session.

155. The Chair concluded that there was general support for tasks B.1 to B.4.

Agenda Item 5.3 - Protection of Expressions of Folklore

156. The Delegation of Poland expressed support for activities relating to the protection of expressions of folklore and suggested that a brief report by the Secretariat on the current forms of protection available would be of assistance. As regards future work, since the topics under discussion were interdependent three working groups should be established to work simultaneously on each topic so as to ensure a synthesis of results. The Delegation of Poland also indicated that it would be reasonable and practical to draw the attention of participants to the 1982 Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions developed under the auspices of WIPO and the United Nations Educational, Scientific and Cultural Organization (UNESCO), since those provisions might provide inspiration in certain areas and be of direct assistance in the Committee's future work.

157. The Delegation of Sudan said that it hoped that there would be an opportunity to continue the discussions at the Committee's next session. As regards task B.4, traditional knowledge holders had limited abilities to enforce their rights and the Delegation therefore suggested that the Committee should develop methods to support and assist traditional knowledge holders in that regard.

158. The statement of the Delegation of Sri Lanka related to agenda items 5.1, 5.2, and 5.3. The Delegation said that on the questions posed by the Co-Chair regarding the organization of the work program, it would be important for the Committee to consider the three issues in turn, so as to have a focused discussion. That did not mean, however, that the Committee should not deal with overlapping issues which might be applicable to all three items. A mechanism to deal with such overlapping issues could be developed. The Delegation said that it would be flexible on the issue. It attached great importance to the issue of access to genetic resources and benefit-sharing and would also like the Committee to deal with all issues from A.1 to A.5. However, the summary provided by the Co-Chair on the discussion of agenda item 5.1 showed that the members of the Committee had differing views on some

tasks and work on certain areas would therefore need to be postponed until the Committee agreed to proceed on those issues. The Delegation supported tasks B.1 to B.4 in the area of traditional knowledge. Commenting on task B.1, the Delegation believed that it was important to identify the scope of the subject matter and of the term “traditional knowledge”. It believed however that much work had already been done by WIPO and other organizations, and the findings of such research and documentation provided a variety of definitions. The Delegation therefore stated that the Committee should not duplicate such activities. What was needed was for suitable definitions to be identified based on the findings of the WIPO fact-finding missions and, for research work to be carried out by WIPO and other organizations. The Delegation therefore attached high priority to tasks B.2 and B.3. It endorsed tasks C.1 to C.3 identified in the area of expressions of folklore. As a general remark, the Delegation highlighted the fact that WIPO, as the United Nations agency entrusted with intellectual property issues, was expected to perform its role for the betterment of all Member States, be they developed, developing or least developed countries. Accordingly, the Delegation believed that such an intergovernmental meeting should provide adequate opportunities for its Member States to discuss matters of interest to them. The Delegation expected therefore that all Member States would proceed with the work program drawn up by the Assembly of Member States on those three issues. It particularly expected the cooperation and understanding of the country’s development partners in that regard.

159. The Delegation of Egypt said that it supported the submission made by the African Group (document WIPO/GRTKF/IC/1/10) and the statements made by the Republic of Madagascar, on behalf of the African Group, at the meeting. The Delegation said that there was a great need for the documentation of expressions of folklore and traditional knowledge, in order to facilitate their protection. Thereafter, work should address which elements deserved protection. The Delegation said that developing countries should be assisted in documenting and classifying their traditional knowledge systems. The Delegation expressed support for tasks C.1, C.2 and C.3. Task C.3 was especially important. The Delegation asserted that in addressing task C.3, concerning the recommendations of the regional consultations on folklore, particular importance should be attached to establishing an international framework to protect expressions of folklore and popular knowledge.

160. The Delegation of Australia said that it had certain difficulties with the tasks under agenda item 5.3. As regards task C.1, it would be preferable to collect and review information on experiences of implementation of the Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions developed under the auspices of WIPO and the United Nations Educational, Scientific and Cultural Organization (UNESCO). In relation to task C.2, the Delegation stated that, in Australia’s experience, various additional intellectual property and common law tools should be studied. The Delegation said that in its view, task C.3 was premature. As regards future activities, the Delegation said that, in relation to task A.1, the Secretariat should prepare detailed materials and that the electronic forum (as proposed in the Rules of Procedure, document WIPO/GRTKF/IC/1/2) would facilitate intersessional work on tasks B.1 and C.1.

161. The Delegation of Colombia said that the protection of expressions of folklore presented difficulties in relation to current copyright rules, insofar as those expressions were developed or perpetuated by a community and were attributed to a collectivity considered in abstract terms, and they did not emerge by means of a “unique act” but represented the cultural identity of a community. That being the case, with specific reference to expressions of folklore, the Delegation of Colombia said that it wished to promote the adoption of a “*sui*

generis” regime within the framework of the type of protection offered by intellectual property, taking into account the progress made by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in its advanced work. The Delegation also stated that it was fundamental to obtain documentation of those expressions, since documentation was of importance not only in the exercise of intellectual property rights, but also for the conservation of such expressions.

162. The Delegation of Malaysia, on behalf of the Asian Group, said that agenda item 5.3 should also refer explicitly to handicrafts. The Delegation stated that the same agenda item should be corrected to include the phrase “including handicrafts” at the end. That corresponded to the last line of paragraph 1 on page 3 of document WIPO/GRTKF/IC/1/3.

163. The Delegation of Norway said that it was necessary to understand what should be protected and priority should also be given to the collection of information on practical experiences.

164. The Islamic Republic of Iran supported task C.1 and, in relation to task C.2, stated that specific attention should be devoted to handicrafts. In that respect, it supported the statement made by Malaysia on behalf of the Asian Group.

165. The Delegation of Sweden, speaking on behalf of the European Union and its Member States, stated that with regard to task C.1 it would first be necessary to gather information on practical experiences gained at national and regional level. As regards task C.3, it would first be advisable to define as clearly as possible what was meant by “expressions of folklore,” which areas of the populations were concerned with such protection and the objectives of such protection.

166. The Delegation of Canada expressed support for the statements made by the Delegation of Australia on task C.2. As regards task C.3, the Delegation stated that better understanding regarding the protection of traditional knowledge and folklore and the existing intellectual property system was needed first. The Delegation therefore stated that task C.3 was premature and was currently not supported. As regards the Committee’s next meeting, the Delegation preferred the fall of 2001. The Delegation stated that each of the issues of genetic resources and traditional knowledge should be discussed in at least one separate session, with each session also taking into account folklore-related issues.

167. The Delegation of India supported tasks C.1 to C.3 and said that the present format for such committee discussions were appropriate.

168. The Delegation of the United States of America supported the statements made by Australia and Canada regarding task C.1. The Delegation favored an incremental approach, whereby surveys were first undertaken as to domestic and national experiences on the protection of folklore. As regards task C.2, the Delegation supported the statement by the Delegation of Malaysia, on behalf of the Asian Group, regarding the inclusion of handicrafts when referring to folklore. The Delegation also added that copyright, trademarks and geographical indications should be considered in that area. As to task C.3, the Delegation stated that it could not support the establishment of a Standing Committee to create *sui generis* systems at the international level. It pointed out that the Intergovernmental Committee had been already established and that a new process was not necessary. Further, the need for legal protection at the international level could only be determined after the Committee’s work had been completed. Work should first address the use of the existing

intellectual property system to protect traditional knowledge and folklore. If the existing intellectual property system was not helpful, then further standard-setting might not fall within the purview of WIPO. Moreover, concerns going beyond the area of intellectual property should be addressed by other United Nations bodies.

169. The Delegation of Japan supported the other delegations that had called for the collection and analysis of existing experiences regarding the implementation of the Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions developed under the auspices of WIPO and the United Nations Educational, Scientific and Cultural Organization (UNESCO). The Delegation also stated that the Committee should take into account the recent development of UNESCO programs on the safeguarding of intangible cultural heritage.

170. The Delegation of Panama expressed its full support for task C.2 provided that the elements explained in paragraph 105 of the document were taken into consideration. The Delegation was of the opinion that WIPO was in the best position to enhance the value of the task and could facilitate the achievement of results. Equally, WIPO had an information base for analyzing the recognition and protection of drawings and industrial designs, which would serve as a reference for the orientation of the studies related to the improvement of protection of folklore linked to handicraft. The results of such studies would be very useful in rationalizing and adapting national systems for the protection of folklore. Panama attached great importance to the matter owing to the possible benefits and impact on the economy, since handicraft was a major part of manual labor in the country and contributed significantly to the gross national product, with over a quarter of a million of Panamanians earning their living from handicraft products. The Delegation agreed with previous suggestions for intersessional work before the next Committee session which could take place in September or October 2001.

171. The Delegation of Bangladesh said that terminology issues were important and provided information on work being done in that regard. The Delegation suggested that the term “protection of folklore”, as opposed to “protection of expressions of folklore”, would reflect a more appropriate perspective.

172. The Delegation of Switzerland stated that clarification of terminology, as in the case of genetic resources and traditional knowledge, was the most important task. Task C.2 was of particular importance. As regards future work, the Delegation requested that the studies proposed by the WIPO Working Group on Biotechnology (1999) be undertaken as soon as possible, since they would help in relation to task A.2. The Secretariat was requested to report on ways and means for facilitating coordination and cooperation between WIPO and other fora, particularly the Convention on Biological Diversity (CBD), on such matters.

173. The Delegation of Bulgaria preferred to discuss those items in plenary session. The Delegation supported the statement by the Delegation of Malaysia, on behalf of the Asian Group, regarding the protection of handicrafts. It also supported tasks C.1 and C.2, with the changes to those tasks suggested by other delegations. Task C.3 should not be addressed at this current time.

174. The Delegation of Bolivia supported tasks C.1, C.2 and C.3, with priority attached to task C.2, and also the proposal of the Delegation of Malaysia regarding the inclusion of crafts. Within the competence of the Committee and of WIPO in the field of access to genetic resources, traditional knowledge and folklore, all the tasks proposed by the Secretariat should

be undertaken in a time manner so as to avoid duplication or possible contradiction with standard-setting results and debates of other international, regional and national fora, which, should correspond to the discipline of intellectual property. Finally, reinforcing the position of the Delegation of Uruguay on behalf of GRULAC and as emphasized by the Secretariat of the Andean Community, Bolivia did not support the creation of working groups to deal with the topics separately. The Delegation referred principally to the topic of genetic resources, a subject being discussed in the framework of the Convention on Biological Diversity (CBD) by a Panel of Experts and a Working Group on Access to Genetic Resources and Benefit-Sharing in extensive coordination with the Working Group on Article 8(j) of the CBD, in which representatives of indigenous organizations participated actively, including in the decision-making process.

175. The Co-Chair summarized the discussion by saying that there had been some support for tasks C.1 to C.3, although some delegations had felt that certain tasks were premature. Since there appeared to be no objection to work proceeding on those tasks, the question was rather how and when it should begin. Several delegations had referred to the need for terminological clarity. In addition, as pointed out by Malaysia on behalf of the Asian Group and several delegations, the inclusion of handicrafts was necessary. Finally, the Co-Chair stated that a number of delegations had suggested that national experiences with regard to the protection of folklore should be collected and analyzed.

Agenda Item 6: Future Work

176. Under this agenda item, Member States indicated that a second session of the Intergovernmental Committee in 2001 would be desirable. In this respect, the Secretariat advised that a second session in 2001 was not provided for in the WIPO Program and Budget for 2000-2001. The cost of such a session is approximately 240 000 Swiss Francs. It was therefore necessary to signal that a second session in 2001 was an additional item in the Program and Budget. A discussion followed on possible dates in 2001 for the second session of the Committee. In this regard, possible premises and dates in October 2001 and December 2001 were discussed. The discussion concluded with agreement that the Secretariat would prepare a list of the premises and dates available, and consult the Permanent Missions of the Member States of WIPO in Geneva as to the dates for the next session of the Committee.

Agenda Item 7: Adoption of Report

177. The Committee agreed that statements that had not been made during the meeting, and that were not referred to in the Report but were available in writing, would be attached as annexes thereto. The only such statement received by the WIPO Secretariat is attached as Annex II.

178. The Draft Report was adopted, subject to the changes requested and agreed being made to it.

179. The Co-Chair suggested that future Committee sessions should adopt only the summary or conclusions of the Chair, as well as the date and place of the next session, and that the minutes of the statements by Delegations be circulated after the meeting for written correction by them, where necessary. Thereafter, the minutes of the statements by Delegations would be adopted at the Committee's next session. Certain delegations supported that proposal, while others preferred the adoption of a full report, including the statements of Delegations, at the end of each Committee session. The discussion

was concluded on the understanding that the issue would be discussed further by the Group Coordinators.

Agenda Item 8: Closing of the Session

180. The meeting was closed by the Co-Chair, Ambassador Chak Mun See.

[Annexes follow]

ANNEX I

LIST OF PARTICIPANTS

I. ÉTATS/STATES

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

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Erik ZHUSSUPOV, deuxième secrétaire, Mission permanente, Genève

KENYA

Joseph Mutuku MBEVA, Examination Officer, Kenya Industrial Property Office, Ministry of Tourism, Trade and Industry, Nairobi

Juliet M. GICHERU (Mrs.), First Secretary, Permanent Mission, Geneva

KOWEÏT/KUWAIT

Wafa Hamed AL-SANE (Mrs.), Director General, Kuwait National Library, Safat

Abeer Salah Ahmed SALEH (Ms.), Secretary Assistant of Library, Head of Numbering and Deposit, Kuwait National Library, Safat

LESOTHO

Sentsuoe N. LENKA (Miss), Chief Industrial Property Counsel, Office of the Registrar-General, Ministry of Law and Constitutional Affairs, Maseru

LETTONIE/LATVIA

Mara ROZENBLATE (Ms.), Head, PCT Section, Department of Examination of Inventions, Patent Office of the Republic of Latvia, Riga

LUXEMBOURG

Christiane DALEIDEN DISTEFANO (Mme), représentant permanent adjoint, Mission permanente, Genève

MADAGASCAR

Maxime ZAFERA, ambassadeur, représentant permanent, Mission permanente, Genève

Olgatte ABDYOU (Mme), premier secrétaire, Mission permanente, Genève

Claudine RAMIARISON (Mme), coordonnatrice nationale du Programme R E F, Valorisation durable de la biodiversité, Office national pour l'environnement, Antananarivo

MALAISIE/MALAYSIA

Hussain RAJMAH (Mrs.), Ambassador, Permanent Representative, Permanent Mission, Geneva

Hamzah HASNUDIN, Deputy Permanent Representative, Permanent Mission, Geneva

Lai Peng YAP (Ms.), Counsellor, Permanent Mission, Geneva

Raja Zaib Shah RAJA REZA, Second Secretary, Permanent Mission, Geneva

MALTE/MALTA

Michael BARTOLO, Ambassador, Permanent Representative, Permanent Mission, Geneva

Pierre Clive AGIUS, Counsellor, Permanent Mission, Geneva

MAROC/MOROCCO

Benali HARMOUCH, administrateur, responsable du Service dessins et modèles, Office marocain de la propriété industrielle et commerciale, Casablanca

Fatima EL MAHBOUL (Mme), ministre conseiller, Mission permanente, Genève

MAURICE/MAURITIUS

Shiu Ching YOUNG KIM FAT (Miss), Second Secretary, Permanent Mission, Geneva

MAURITANIE/MAURITANIA

Jiyid OULD ABDI, conseiller du Ministre, Ministère de la culture et de l'orientation islamique, Nouakchott

Idrissa Oumar KANE, premier conseiller, Mission permanente, Genève

MEXIQUE/MEXICO

Arturo HERNÁNDEZ BASAVE, Ministro, Misión Permanente, Ginebra

Deborah LAZARD SALTIEL (Sra.), Directora Divisional de Patentes, Instituto Mexicano de la Propiedad Industrial, México

Alfredo Carlos RENDÓN ALGARA, Director Divisional de Asuntos Jurídicos, Instituto Mexicano de la Propiedad Industrial, México

Javier Tapia RAMIREZ, Director de Protección Contra la Violación del Derecho de Autor, Instituto Nacional del Derecho de Autor, México

Karla ORNELAS LOERA (Srta.), Agregada Diplomática, Misión Permanente, Ginebra

MYANMAR

Mya THAN, Ambassador, Permanent Representative, Permanent Mission, Geneva

Tin Maung AYE, Deputy Permanent Representative, Permanent Mission, Geneva

Moe Kyaw AUNG, First Secretary, Permanent Mission, Geneva

NIGÉRIA/NIGERIA

Benjamin Ogu OKOLO, Principal Assistant Registrar, Federal Ministry of Commerce, Trademarks, Patents and Designs, Abuja

Maigara Gurama BUBA, Second Secretary, Permanent Mission, Geneva

NORVÈGE/NORWAY

Maria DUNA (Ms.), Deputy Director General, Department of Media, Policy and Copyright, Ministry of Cultural Affairs, Oslo

Johannes OPSAHL, Senior Executive Officer, Ministry of Justice, Oslo

Jostein SANDVIK, Legal Advisor, Norwegian Patent Office, Oslo

Olav Bakken JENSEN, Adviser, Department for Nature Management, Ministry of the Environment, Oslo

NOUVELLE-ZÉLANDE/NEW ZEALAND

Kim CONNOLLY-STONE (Ms.), Senior Advisor, Ministry of Economic Development, Wellington

Emily EARL (Miss), Second Secretary, Permanent Mission, Geneva

OMAN

Mounir Bin Abdallah Bin Issa AL-HADABI, Coordination and Follow-up Director, Minister's Office for National Folklore and Culture, Muscat

OUGANDA/UGANDA

Joyce Claire BANYA (Ms.), Counsellor, Permanent Mission, Geneva

OUZBÉKISTAN/UZBEKISTAN

Pulat K. KHABIBULLAEV, Chairman, State Committee on Science and Technology, Tashkent

Abdulla ORIPOV, Chairman, Uzbek Republican State Copyright Agency, Tashkent

Akil AZIMOV, Director, State Patent Office, Tashkent

PAKISTAN

Muhammad Hamid ALI CHAUDHRY, Assistant Registrar, Trade Marks Registry, Karachi

Syed Irfan Makhdoom NAYYAR, Economic Counsellor, Permanent Mission, Geneva

PANAMA

Carlos Emilio ROSAS, Embajador, Representante Permanente Alterno, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

Ana Lorena LEVY (Srta.), Representante Alterno, Misión Permanente, Ginebra

Luz Celeste DAVIS R. (Sra.), Dirección General del Registro de la Propiedad Industrial (DIGERPI), Ministerio de Comercio e Industrias, Panamá

Lilia CARRERA (Sra.), Analista de Comercio Exterior, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

PARAGUAY

Rodrigo UGARRIZA, Primer Secretario, Misión Permanente, Ginebra

PAYS-BAS/NETHERLANDS

Joseph H.A.A. UITZETTER, Legal Adviser on Industrial Property, Ministry of Economic Affairs, The Hague

G. PERSON, Centre for Environmental Studies, University of Leiden, Leiden

Fiona VENING (Miss), Ministry of Education, Culture and Sciences, Zoetermeer

Jennes H.A.C. DE MOL, First Secretary, Permanent Mission, Geneva

PÉROU/PERU

Jorge VOTO-BERNALES, Embajador, Representante Permanente, Misión Permanente, Ginebra

Betty BERENDSON (Sra.), Representante Permanente Alterno, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

Luis CASTRO JOO, Segundo Secretario, Misión Permanente, Ginebra

PHILIPPINES

Ma. Angelina M. STA. CATALINA (Ms.), First Secretary, Permanent Mission, Geneva

Leo J. PALMA, Attaché, Legal Affairs, Permanent Mission, Geneva

POLOGNE/POLAND

Wojciech DZIOMDZIORA, Deputy Director, Legal Department, Ministry of Culture and National Heritage, Warsaw

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PORTUGAL

Alvaro MENDONÇA E MOURA, ambassadeur, représentant permanent, Mission permanente, Genève

Jaime Serrão ANDREZ, président, Institut national de la propriété industrielle, Ministère de l'économie, Lisbonne

Nuno GONÇALVES, directeur, Cabinet du droit d'auteur, Ministère de la culture, Lisbonne

Carlos PEREIRA GODINHO, Head, Plant Breeder's Rights Office, Lisbon

José Sérgio DE CALHEIROS DA GAMA, conseiller juridique, Mission permanente, Genève

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

Jae-Hyun AHN, Intellectual Property Attaché, Permanent Mission, Geneva

Kui Wou KWON, Senior Deputy Director, International Cooperation Division, Korean Industrial Property Office (KIPO), Tajeon City

Myung-Sun CHO (Mrs.), Deputy Director, Korean Industrial Property Office (KIPO), Tajeon City

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RÉPUBLIQUE DÉMOCRATIQUE DU CONGO/DEMOCRATIC REPUBLIC OF THE CONGO

Sébastien MUTOMB MUJING, conseiller, Mission permanente, Genève

RÉPUBLIQUE DE MOLDOVA/REPUBLIC OF MOLDOVA

Eugen STASHKOV, Director General, State Agency on Industrial Property Protection, Kishinev

RÉPUBLIQUE DOMINICAINE/DOMINICAN REPUBLIC

Federico A. CUELLO CAMILO, Embajador, Representante Permanente, Misión Permanente, Ginebra

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RÉPUBLIQUE POPULAIRE DÉMOCRATIQUE DE CORÉE/DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

Sung Ju JO, Deputy Permanent Representative, Permanent Mission, Geneva

Chun Sik JANG, Counsellor, Permanent Mission, Geneva

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Michal BENEŠ, Director, Ministry of Culture, Prague

Hana MASOPUSTOVÁ (Mrs.), Head, Copyright Section, Ministry of Culture, Prague

RÉPUBLIQUE-UNIE DE TANZANIE/UNITED REPUBLIC OF TANZANIA

Irene F. KASYANJU (Mrs.), Counsellor, Permanent Mission, Geneva

ROUMANIE/ROMANIA

Rodica PÂRVU (Mrs.), Director General, Romanian Copyright Office, Bucharest

Gheorghe BUCSĂ, Head, Industrial Designs Division, State Office for Inventions and Trademarks, Bucharest

ROYAUME-UNI/UNITED KINGDOM

Graham JENKINS, Head of Policy, The Patent Office, Department of Trade and Industry, Newport

Roger WALKER, Deputy Director, Patents Directorate, The Patent Office, Department of Trade and Industry, Newport

Brian SIMPSON, Assistant Director, Copyright Directorate, The Patent Office, Department of Trade and Industry, Newport

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Joseph M. BRADLEY, Second Secretary, Permanent Mission, Geneva

RWANDA

Richard Eugène GASANA, ministre conseiller, représentant permanent, Mission permanente, Genève

SAINT-SIÈGE/HOLY SEE

Massimo DE GREGORI, abbé, Mission permanente, Genève

Oswaldo NEVES DE ALMEIDA, membre de la Secrétairerie d'État, Vatican

SAMOA

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SÉNÉGAL/SENEGAL

Doudou SAGNA, chef du Service de la propriété industrielle et de la technologie, Ministère des mines, de l'artisanat et de l'industrie, Dakar

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SINGAPOUR/SINGAPORE

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SLOVAQUIE/SLOVAKIA

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SLOVÉNIE/SLOVENIA

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SOUDAN/SUDAN

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SRI LANKA

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SUÈDE/SWEDEN

Henry OLSSON, Special Government Adviser, Ministry of Justice, Stockholm

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Carl JOSEFSSON, Associate Judge of Appeal, Legal Adviser, Ministry of Justice, Stockholm

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Linda HEDLUND (Ms.), Deputy Director, Ministry of the Environment, Stockholm

Patrick ANDERSSON, Senior Examiner, The Patent and Registration Office, Stockholm

Peter EINARSSON, Consultant, Swedish International Development Cooperation Agency (Sida), Stockholm

SUISSE/SWITZERLAND

Martin A. GIRSBERGER, co-chef du Service juridique brevets et design, Division droit et affaires internationales, Institut fédéral de la propriété intellectuelle (IFPI), Berne

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François PYTHOUD, adjoint scientifique de la Section Biotechnologie et flux de substances, Office fédéral de l'environnement, des forêts et du paysage, DETEC, Berne

Alwin R. KOPSE, adjoint scientifique, politique industrielle, environnementale et économique, Secrétariat d'État à l'économie (SECO), Berne

THAÏLANDE/THAILAND

Surat TASNAWIJITWONGS, Director, Patent Office, Department of Intellectual Property, Nonthaburi

Kemasiri NITCHAKORN (Miss), Head, Promotion Section, Copyright Office, Department of Intellectual Property, Nonthaburi

Supark PRONGTHURA, First Secretary, Permanent Mission, Geneva

TUNISIE/TUNISIA

Latifa MOKADDEM (Mme), chargée de mission, Coopération internationale, Ministère de la culture, Tunis

Samia Ilhem AMMAR (Mlle), conseiller, Mission permanente, Genève

TURQUIE/TURKEY

Vural ALTAY, Deputy Permanent Representative, Permanent Mission to the World Trade Organization (WTO), Geneva

Vehbi ESER, Head, Field Crops Research Department, General Directorate of Agricultural Research, Ministry of Agriculture and Rural Affairs, Ankara

Banu AVCIOĞLU (Miss), Junior Patent Examiner, Turkish Patent Institute, Ankara

Yüksel YÜCEKAL, Second Secretary, Permanent Mission, Geneva

UKRAINE

Mykola PALADIY, Chairman, State Department of Intellectual Property, Kyiv

URUGUAY

Carlos SGARBI, Ministro Consejero, Misión Permanente, Ginebra

VENEZUELA

Ramiro ROYERO, Director General, Fundación para el Desarrollo de las Ciencias Físicas y Matemáticas y Naturales (FUDECI), Caracas

Virginia PÉREZ PÉREZ, Primer Secretario, Misión Permanente, Ginebra

VIET NAM

Quy Binh NGUYEN, Ambassador, Permanent Representative, Permanent Mission, Geneva

Huy Tan VU, Counsellor, Permanent Mission, Geneva

YÉMEN/YEMEN

Ahmed Kamal NOMAN, First Secretary, Permanent Mission, Geneva

ZAMBIE/ZAMBIA

Langford Mwanza KAKOMPE, Deputy Director, Department of Cultural Services, Lusaka

Edward M. CHISANGA, First Secretary (Trade), Permanent Mission, Geneva

Catherine Zulu NGUVULU (Ms.), Principal Research Officer (AG), Forest Research Division, Kitwe

Royd VINYA, Principal Forest Extension Officer, Forestry Department, Kabwe

Mwananyanda Mbikusita LEWANIKA, National Institute for Scientific and Industrial Research, Lusaka

ZIMBABWE

Boniface Guwa CHIDYAUSIKU, Ambassador, Permanent Representative, Permanent Mission, Geneva

Felix MAONERA, Counsellor, Permanent Mission, Geneva

II. ORGANISATIONS INTERNATIONALES
INTERGOUVERNEMENTALES/
INTERNATIONAL INTERGOVERNMENTAL
ORGANIZATIONS

HAUT COMMISSARIAT DES NATIONS UNIES AUX DROITS DE L'HOMME
(OHCDH)/OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN
RIGHTS (OHCHR)

Julian BURGER, Human Rights Officer, Geneva

Simon WALKER, Human Rights Officer, Geneva

John SCOTT, Senior Policy Officer, Geneva

Inge PARYS (Ms.), Intern, Geneva

CONFERENCE DES NATIONS UNIES SUR LE COMMERCE ET LE
DEVELOPPEMENT (CNUCED)/UNITED NATIONS CONFERENCE ON TRADE AND
DEVELOPMENT (UNCTAD)

René VOSSENAAR, Chief, Trade, Environment and Development Section, Division on
International Trade in Goods and Services, and Commodities, Geneva

Sophia TWAROG (Ms.), Economic Affairs Officer, Trade, Environment and Development
Section, Geneva

Promila KAPOOR (Ms.), Consultant, Trade, Environment and Development Section, Geneva

PROGRAMME DES NATIONS UNIES POUR L'ENVIRONNEMENT (PNUE)/UNITED
NATIONS ENVIRONMENT PROGRAMME (UNEP)

Ivonne HIGUERO (Ms.), Programme Officer, Division of Environmental Conventions,
Nairobi

Michael WILLIAMS, Information Officer, Geneva

CONVENTION SUR LE COMMERCE INTERNATIONAL DES ESPÈCES DE FAUNE ET DE FLORE SAUVAGE MENACÉES D'EXTINCTION (CITES)/CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)

Jim ARMSTRONG, Deputy Secretary General, CITES Secretariat, Geneva

Malan LINDEQUE, Chief, Scientific Coordination Unit, CITES Secretariat, Geneva

Marceil YEATER (Ms.), Chief, Enforcement Assistance Unit, CITES Secretariat, Geneva

Marinus Steven HOOGMOED, Chairman, CITES Animals Committee, Curator Reptiles and Amphibians, National Natural History Museum, Leiden, Netherlands

SECRETARIAT OF THE CONVENTION ON BIOLOGICAL DIVERSITY (SCBD)

Olivier JALBERT, Principal Officer, Montreal

Henrietta MARRIE (Ms.), Program Officer, Montreal

ORGANISATION DES NATIONS UNIES POUR L'ÉDUCATION, LA SCIENCE ET LA CULTURE (UNESCO)/UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO)

Salah ABADA, Chief, Creativity and Copyright Section, Paris

Tanya VELLA (Mrs.), Senior Programme Specialist, International Standards Division, Division of Cultural Heritage, Paris

Françoise GIRARD (Mme), Section du patrimoine immatériel, Division du patrimoine culturel, Paris

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

John MYERS, Sectoral Activities Department, Geneva

ORGANISATION MONDIALE DE LA SANTÉ (OMS)/WORLD HEALTH ORGANIZATION (WHO)

Xiaorui ZHANG, Acting Coordinator, Traditional Medicine (TRM), Department of Essential Drugs and Medicines Policy (EDM), Geneva

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

Thu-Lang TRAN WASESCHA (Mrs.), Counsellor, Intellectual Property Division, Geneva

Jayashree WATAL, Counsellor, Intellectual Property Division, Geneva

Erika DUEÑAS (Miss), Legal Affairs Officer, Intellectual Property Division, Geneva

UNION INTERNATIONALE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES (UPOV)/INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (UPOV)

Rolf JÖRDENS, Vice Secretary-General, Geneva

Yolanda HUERTA (Ms.), Senior Legal Officer, Geneva

ORGANISATION DE COOPÉRATION ET DE DÉVELOPPEMENT ÉCONOMIQUES (OCDE)/ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

Bénédicte CALLAN (Mrs.), Administrator, Biotechnology Unit, Paris

COMMISSION EUROPEENNE (CE)/EUROPEAN COMMISSION (EC)

Géraldine FAGES (Ms.), Principal Administrator, Brussels

Patrick RAVILLARD, Principal Administrator, Brussels

Roger KAMPF, First Secretary, Permanent Delegation, Geneva

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

Abdellah OULD BABAKER, ministre conseiller, Délégation permanente, Genève

COMMUNAUTÉ ANDINE/ANDEAN COMMUNITY

Monica ROSELL (Mrs.), Legal Adviser, Lima

OFFICE EUROPEEN DES BREVETS (OEB)/EUROPEAN PATENT OFFICE (EPO)

Johann AMAND, Deputy Director, International Technical Cooperation, Munich

Bart CLAES, Examiner, Munich

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

Hassane YACOUBA KAFFA, chef du Service de la propriété littéraire et artistique, Yaoundé

ORGANISATION DE L'UNITE AFRICAINE (OUA)/ORGANIZATION OF AFRICAN
UNITY (OAU)

Sophie Asimenye KALINDE (Mme), observateur permanent, Délégation permanente, Genève

Venant WEGE NZOMWITA, observateur permanent a.i., Délégation permanente, Genève

Mustapha CHATTI, attaché, Délégation permanente, Genève

ORGANISATION REGIONALE AFRICAINE DE LA PROPRIETE INDUSTRIELLE
(ARIPO)/AFRICAN REGIONAL INDUSTRIAL PROPERTY ORGANIZATION (ARIPO)

Mzondi CHIRAMBO, Director General, Harare

Emmanuel Kofi-Agyir SACKKEY, Examiner (Bio-Chemistry), Harare

SECRETARIAT DU FORUM DU PACIFIC SUD/PACIFIC ISLAND FORUM
SECRETARIAT

John LOW, Resources Adviser, Suva

SECRETARIAT GENERAL DE LA COMMUNAUTE DU PACIFIC/SECRETARIAT OF
THE PACIFIC COMMUNITY

Rhonda GRIFFITHS (Ms.), Cultural Affairs Adviser, Noumea

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

ActionAid

Imeru TAMRAT (Food Rights Campaign Coordinator, Addis Ababa)

Association brésilienne de la propriété industrielle (ABPI)/ Brazilian Association of
Intellectual Property (ABPI)

Maria Thereza WOLFF (Mrs.) (Biotechnology Coordinator, Rio de Janeiro)

Association internationale pour la protection de la propriété industrielle (AIPPI)/International Association for the Protection of Industrial Property (AIPPI)

Ian KARET (Deputy Reporter General, London)

Association internationale des sélectionneurs pour la protection des obtentions végétales (ASSINSEL)/ International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL)

Bernard LE BUANEC (secrétaire général, Nyon, Suisse)

Biotechnology Industry Organization (BIO)

Richard WILDER (Partner, Powell, Goldstein, Frazer & Murphy, LLP, Washington, D.C.)

Jeffrey KUSHAN (Attorney-at-Law, Powell, Goldstein, Frazer and Murphy, LLP, Washington, D.C.)

Chambre de commerce internationale (CCI)/International Chamber of Commerce (ICC)

Timothy ROBERTS (Principal, Roberts and Company, Bracknell, United Kingdom)

Daphne YONG D'HERVÉ (Ms.) (Senior Policy Manager, Paris)

Christina WELLER (Ms.) (Policy Assistant, Paris)

Commission des aborigènes et des insulaires du détroit de Torres (ATSIC)/Aboriginal and Torres Strait Islander Commission (ATSIC)

John SCOTT (Manager, Cultural Rights, Woden, Australia)

D.J. AH KEE (Geneva)

Confédération internationale des éditeurs de musique (CIEM)/International Confederation of Music Publishers (ICMP)

Richard C. OWENS (London)

Conseil européen de l'industrie chimique (CEFIC)/European Chemical Industry Council (CEFIC)

François CHRÉTIEN (Chairman, High Level Steering Group for Intellectual Property, Brussels)

Conseil SAME/SAAMI Council

Mattias AHREN (Lawyer, Stockholm)

Déclaration de Berne/Berne Declaration

François MEIENBERG (Zürich, Switzerland)

doCip – Centre de documentation, de recherche et d'information des peuples autochtones/doCip - Centre for Documentation, Research and Information of Indigenous Peoples

Pierrette BIRRAUX-ZIEGLER (Mme) (directrice scientifique, Genève)

Fédération ibéro-latino-américaine des artistes interprètes ou exécutants (FILAIE)/Ibero-Latin-American Federation of Performers (FILAIE)

Luis COBOS (Presidente, Madrid)

Jose Luis SEVILLANO (Director, Madrid)

Miguel PÉREZ SOLÍS (Asesor, Madrid)

Fédération internationale de l'industrie du médicament (FIIM)/International Federation of Pharmaceutical Manufacturers Associations (IFPMA)

Eric NOEHRENBURG (Director, Intellectual Property and Trade Issues, Geneva)

Fédération internationale des conseils en propriété industrielle (FICPI)/International Federation of Industrial Property Attorneys (FICPI)

Danny R. HUNTINGTON (Reporter, Group 5 (Biotechnology), Alexandria, United States of America)

Fédération internationale des musiciens (FIM)/International Federation of Musicians (FIM)

Jean VINCENT (secrétaire général, Paris)

Thomas DAYAN (assistant du secrétaire général, Paris)

Fédération internationale des organismes gérant les droits de reproduction (IFRRO)/International Federation of Reproduction Rights Organizations (IFRRO)

Daniel GERVAIS (Vice-Chairman, Brussels)

Fonds mondial pour la nature (WWF)/World Wide Fund for Nature (WWF)

Gonzalo OVIEDO (Head of Unit, Gland, Switzerland)

Friends World Committee for Consultation

Geoff TANSEY (Consultant, Quaker United Nations Office, Geneva)

Matthew NAUMANN (Programme Assistant, Quaker United Nations Office, Geneva)

Genetic Resources Action International (GRAIN)

Renée VELLVÉ (Mlle) (Laguna, Philippines)

Groupement international de travail pour les affaires indigènes (IWGIA)/International Work Group for Indigenous Affairs (IWGIA)

Birgitte FEIRING (Mrs.) (Vice Chair, Copenhagen)

Indian Movement "Tupaj Amaru"

Lazaro PARY ANAGUA (General Coordinator, Geneva)

Indigenous Peoples' Biodiversity Network (IPBN)

Alejandro ARGUMEDO (Coordinator, Cusco, Peru)

Industrie mondiale de l'automédication responsable (WSMI)/World Self Medication Industry (WSMI)

Yves BARBIN (Pierre Fabre Santé, Plantes et Industrie, Gaillac, France)

Institute for African Development (INADEV)

Paul KURUK (Executive Director, Birmingham, United States of America)

Institut international des ressources phytogénétiques (IPGRI)/International Plant Genetic Resources Institute (IPGRI)

Susan BRAGDON (Ms.) (Senior Scientist, Rome)

Institut Max Planck de droit étranger et international en matière de brevets, de droit d'auteur et de concurrence/Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law

Silke VON LEWINSKI (Ms.) (Head, Department of International Law, Munich)

International Centre for Trade and Sustainable Development (ICTSD)

Marc GALVIN (chargé de programme, Genève)

Union des Confédérations de l'industrie et des employeurs d'Europe (UNICE)/Union of Industrial and Employers' Confederations of Europe (UNICE)

Ivan HJERTMAN (AstraZeneca Plc., Södertälje, Sweden)

Bo Hammer JENSEN (Principal Patent Counsel, Novozymes A/S, Bagsvaerd, Denmark)

Union internationale des éditeurs (UIE)/International Publishers Association (IPA)

Benoît MÜLLER (Secretary General, Geneva)

Hugh JONES (Copyright Counsel, International Group of Scientific, Technical and Medical Publishers (STM) and the Publishers Association (UK), London)

Richard CRABBE (Chairman, African Publishers Network (APNET) and member, IPA Executive Committee, Accra)

Union mondiale pour la nature (IUCN)/World Conservation Union (IUCN)

María-Fernanda ESPINOSA (Ms.) (Indigenous Peoples Specialist, Social Policy Programme, Gland)

World Federation for Culture Collections (WFCC)

Philippe DESMETH (International Cooperation Programme Officer, Belgian Coordinated Collections of Microorganisms (BCCM), Brussels)

IV. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE DE LA
PROPRIÉTÉ INTELLECTUELLE (OMPI)/
INTERNATIONAL BUREAU OF
THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Francis GURRY, sous-directeur général, conseiller juridique/Assistant Director General, Legal Counsel

Faith ODIBO (Ms.), administrateur principal de programme, Division des questions mondiales de propriété intellectuelle/Senior Program Officer, Global Intellectual Property Issues Division

Wend WENDLAND, juriste principal, Division des questions mondiales de propriété intellectuelle/Senior Legal Officer, Global Intellectual Property Issues Division

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Donna GHELFI (Mrs.), administrateur de programme, Division des questions mondiales de propriété intellectuelle/Program Officer, Global Intellectual Property Issues Division

[Annex II follows]

ANNEX II

STATEMENTS NOT PRESENTED AT THE SESSION

Statement by the Friends World Committee for Consultation, represented by the Quaker United Nations Office in Geneva

The Friends World Committee for Consultation (FWCC), represented here by the Quaker United Nations Office in Geneva (QUNO), thanks the Intergovernmental Committee and WIPO for the opportunity to be at the session. QUNO focuses on the processes by which agreements are reached and our experience suggests equitable processes are critical to the success of many agreements and to minimizing any future potential conflicts that might arise from them.

In the light of this, we want to make the following points, which are drawn from comments made at various meetings we have had in connection with our work on TRIPs, biodiversity, food and trade.

First, that the involvement of traditional and indigenous communities should have a very high priority in developing the work of this Committee and will require considerable efforts to achieve. Secondly, that there is a considerable gap between the views of some traditional and indigenous communities, which do not accept the approaches discussed here, and the discussions in the Committee. Thirdly, that intellectual property (IP) is no longer, if it ever was, a simply technical issue but one having a wide ranging impact on social and economic welfare. IP issues will continue to attract attention from NGOs – and as such we appreciate the wider NGO representation in the meeting. We suggest the Committee grants permanent observer status to a broad range of NGOs concerned with this area, but makes special efforts to assist traditional and indigenous communities to prepare for meetings and to take part. Fourthly, that there have been concerns that WIPO should be able to look beyond its present mandate of promoting intellectual property and take more open-minded approaches to these issues, some of which might seek alternatives to the use of existing or *sui generis* forms of intellectual property rights.

In Geneva, the FWCC, through QUNO, works to develop a balanced dialogue between parties with very different views and we believe that it will help the future success of this Committee's deliberations - but not necessarily make them easier - if it recognizes the need to engage with the full range of concerns about the complex issues of genetic resources, traditional knowledge and expressions of culture.

[End of Annex II and of document]