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GENEVA

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

## Tenth Session
## Geneva, November 30 to December 8, 2006

REVISED DRAFT REPORT

*Document prepared by the Secretariat*

TABLE OF CONTENTS

## INTRODUCTION

1. Convened by the Director General of WIPO in accordance with the decision of the WIPO General Assembly at its thirtieth-second session further to extend a revised mandate, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ("the Committee") held its tenth session in Geneva from November 30 to December 8, 2006.

2. The following States were represented: Algeria, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belgium, Benin, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Congo, Costa Rica, Croatia, Czech Republic, Democratic Republic of the Congo, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Finland, France, Gabon, Germany, Ghana, Greece, Guatemala, Holy See, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Jordan, Kazakhstan, Kenya, Lesotho, Lithuania, Luxembourg, Madagascar, Malaysia, Mauritania, Mexico, Moldova, Morocco, Netherlands, New Zealand, Nigeria, Norway, Oman, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Senegal, Singapore, Slovenia, South Africa, Spain, Sudan, Swaziland, Sweden, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Kingdom, United States of America, Venezuela, Yemen, Zambia and Zimbabwe. The European Commission was also represented as a member of the Committee, and Palestine participated as an observer.

3. The following intergovernmental organizations ('IGOs') took part as observers: African Intellectual Property Organization (AIPO), African Regional Industrial Property Organization (ARIPO), European Patent Office (EPO), Food and Agriculture Organization of the United Nations (FAO), International Union for the Protection of New Varieties of Plants (UPOV), Office of the United Nations High Commissioner for Human Rights (OHCHR), Pacific Islands Forum Secretariat, Secretariat of the Convention on Biological Diversity (SCBD), United Nations Conference on Trade and Development (UNCTAD), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Environment Programme (UNEP) and the World Trade Organization (WTO).

4. Representatives of the following non-governmental organizations ('NGOs') took part as observers: American BioIndustry Alliance, American Folklore Society (AFS), Assembly of First Nations, Biotechnology Industry Organization (BIO), Call of the Earth (COE), Central and Eastern European Copyright Alliance (CEECA), Centre for Documentation, Research and Information of Indigenous Peoples (doCip), Centre for Folklore/Indigenous Studies, Centre for International Environmental Law (CIEL), Centre for International Industrial Property Studies (CEIPI), *Coordination des ONG africaines des droits de l'homme* (CONGAF), Creator's Rights Alliance, European Federation of Pharmaceutical Industries' Associations (EFPIA), Federación Folklorica Departamental de La Paz, Foundation for Research and Support of Indigenous Peoples of Crimea, Friends World Committee for Consultation (FWCC) (represented by the Quaker United Nations Office, Geneva), *Groupe des jeunes agronomes actifs pour le développement intégré au Cameroun* (JAADIC), Hawai'i Institute for Human Rights (HIHR), Hokotehi Moriori Trust, Ibero-Latin-American Federation of Performers (FILAIE), Indian Council of South America (CISA), Indian Movement "Tupaj Amaru", Indigenous People (Bethechilokono) of Saint Lucia Governing Council (BGC), Indigenous People's Council on Biocolonialism (IPCB), Indonesian Traditional Wisdom Network (ITWN), *Institut du développement durable et des relations internationales*

(IIDRI), Intellectual Property Owners (IPO), International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), International Association for the Protection of Intellectual Property (AIPPI), International Center for Trade and Sustainable Development (ICTSD), International Chamber of Commerce (ICC), International Environmental Law Research Centre (IELRC), International Federation of Industrial Property Attorneys (FICPI), International Federation of Pharmaceutical Manufacturers and Associations (IFPMA), International Federation of the Phonographic Industry (IFPI), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), International Society for Ethnology and Folklore Studies (SIEF), International Trademark Association (INTA), Inuit Circumpolar Conference (ICC), Maasai Cultural Heritage, Max Planck Institute for Intellectual Property and Tax Law, *Métis* National Council, Music in Common, Pauktuutit Inuit Women of Canada, South Centre, Sustainable Development Policy Institute, The Fridtjof Nansen Institute (NFI), The World Conservation Union (IUCN), Third World Network (TWN), *Traditions pour Demain*, Tsentsak Survival Foundation (*Cultura Shuar del Ecuador*), Tulalip Tribes, West Africa Coalition for Indigenous Peoples' Rights (WACIPR) and the World Trade Institute.

5. A list of participants was circulated as WIPO/GRTKF/IC/10/INF/1, and is annexed to this report.

6. Discussions were based on the following documents and information papers:

- WIPO/GRTKF/IC/10/1 Prov 2.: Revised Draft Agenda;
- WIPO/GRTKF/IC/10/2 Rev. and WIPO/GRTKF/IC/10/2 Add.: Accreditation of certain Organizations;
- WIPO/GRTKF/IC/10/3: Participation of Indigenous and Local Communities: Voluntary Contribution Fund;
- WIPO/GRTKF/IC/10/4: The Protection of Traditional Cultural Expressions/Expressions of Folklore: Revised Objectives and Principles;
- WIPO/GRTKF/IC/10/5: The Protection of Traditional Knowledge: Revised Objectives and Principles;
- WIPO/GRTKF/IC/10/6: Practical Means of Giving Effect to the International Dimension of the Committee's Work;
- WIPO/GRTKF/IC/10/INF/1: List of Participants;
- WIPO/GRTKF/IC/10/INF/2: Circulation of Comments Received on Documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5;
- WIPO/GRTKF/IC/10/INF/2 Add.: Circulation of Comments Received on Documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5;
- WIPO/GRTKF/IC/10/INF/2 Add.2: Circulation of Comments Received on Documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5;
- WIPO/GRTKF/IC/10/INF/2 Add.3: Circulation of Comments Received on Documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5;
- WIPO/GRTKF/IC/10/INF/3: Circulation of Comments Received on Documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5;
- WIPO/GRTKF/IC/10/INF/4: Brief Summary of working documents;
- WIPO/GRTKF/IC/10/INF/5: Information Note for the Panel of Indigenous and Local Communities;
- WIPO/GRTKF/IC/10/INF/6: Voluntary Fund for Accredited Indigenous and Local Communities: Information Note on Contributions and Applications for Support;

- WIPO/GRTKF/IC/10/INF/7: Response to the Questionnaire on Recognition of Traditional Knowledge and Genetic Resources in the Patents System;
- WIPO/GRTKF/IC/10/INF/8: Voluntary Fund for Accredited Indigenous and Local Communities. Decisions Taken by the Director General in Accordance with the Recommendation Adopted by the Advisory Board;
- WIPO/GRTKF/IC/9/8: Recognition of Traditional Knowledge within the Patent System;
- WIPO/GRTKF/IC/9/9: Genetic Resources; and
- WIPO/GRTKF/IC/8/9: Overview of the Committee's Work on Genetic Resources;
- WIPO/GRTKF/IC/9/INF/4: The Protection of Traditional Cultural Expressions/Expressions of Folklore: Updated Draft Outline of Policy Options and Legal Mechanisms; and
- WIPO/GRTKF/IC/9/INF/5: The Protection of Traditional Knowledge: Updated Draft Outline of Policy Options and Legal Mechanisms.

7. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions and provides the essence of interventions, without reflecting all the observations made in detail nor necessarily following the chronological order of interventions.

## AGENDA ITEM 1: OPENING OF THE SESSION

8. The session was opened by Mr. Francis Gurry, Deputy Director General of WIPO, who welcomed the participants on behalf of the Director General of WIPO, Dr. Kamil Idris.

## AGENDA ITEM 2: ELECTION OF OFFICERS

9. At its ninth session, the Committee had elected as its Chair Ambassador I Gusti Agung Wesaka Puja of Indonesia, and as its two Vice Chairs, Mr. Lu Guoliang of China and Mr. Abdellah Ouadrhiri of Morocco for the ninth and following two sessions of the Committee, including the current session. These officers therefore continued in those capacities. Mr. Antony Taubman (WIPO) was Secretary to the tenth session of the Committee.

## AGENDA ITEM 3: ADOPTION OF THE AGENDA

10. The Chair submitted, and the Committee adopted, the revised draft agenda for its tenth session, document WIPO/GRTKF/IC/10/1 Prov 2.

## DECISION ON AGENDA ITEM 4: ADOPTION OF THE REPORT OF THE NINTH SESSION

11. The Chair submitted, and the Committee adopted, the report of its Ninth Session (WIPO/GRTKF/IC/9/14 Prov 2.).

## DECISION ON AGENDA ITEM 5: ACCREDITATION OF CERTAIN ORGANIZATIONS

12. The Committee unanimously approved accreditation of all the organizations listed in the Annexes to documents WIPO/GRTKF/IC/10/2 Rev. and WIPO/GRTKF/IC/10/2 Add. as *ad hoc* observers (i.e. Arts Law Centre of Australia (Arts Law), ASIDD Cultural Association/*Association culturelle ASIDD*, Casa Nativa "*Tampa Allqo*", Centre for African Culture and Traditional Indigenous Knowledge, Centre for Indigenous Cultures of Peru/*Centro de Culturas Indígenas del Perú* (CHIRAPAQ), *El-Molo* Eco-Tourism, Rights And Development Forum, Indigenous ICT Task Force (IITF), Intellectual Property Owners Association (IPO), International Council of Museums (ICOM), International Organization for Sustainable Development (IOSD), *Kirat Chamling* Language & Cultural Development Association (KCLCDA), *Mulnivasi Mukti Manch, Rapa Nui* Parliament, and Research Group on Cultural Property (RGCP)).

## AGENDA ITEM 6: OPENING STATEMENTS

13. The Delegation of Indonesia on behalf of the Asian Group expressed its concerns on the misappropriation of TCEs, TK and GR. It reiterated the Group's conviction that the protection of GR, TK and TCEs was a fundamental principle of the Committee's work while taking into account the importance of development dimension in its work. This effort should ensure the interest of the Groups people in promoting its interest and preserving its rich cultural TCEs, TK and GR. Therefore it would be very timely for the Committee to advance its discussion on the issues related to GR, prior-informed consent, and benefit sharing, in a holistic and comprehensive approach. The Group also welcomed the debate and exchange of views which would contribute greatly in building international consensus, including the possible development of an effective international instrument for the protection of GRTKF. The sharing of experience and best practice would be extremely needed. The Group requested WIPO and its Member States to continue to support the developing countries in improving the capacity and establishing policies to protect their GR, TK, and TCEs/expressions of folklore (EoF). The Group realized the need for the Committee to accelerate its work and make progress on the protection of GRTKF, as envisaged by the General Assembly. It hoped that the progress achieved could also guide the Committee's future work.

14. The Delegation of the United States of America stated that the Committee had made to date some significant accomplishments. These accomplishments included PCT minimum documentation, amendments to the IPC, an agreed international data standard for TK databases, and a collection of standard contracts that may be used to regulate access to GR and TK. Building on the successes of the past, the Delegation came prepared to continue work on the complex issues before the Committee. At the ninth session of the Committee, the United Sates had benefited greatly from the discussion of the revised objectives and principles for the protection of both TK and TCEs. The Delegation looked forward to continuing and deepening that discussion at the tenth session of the Committee, with a view toward enriching its understanding of these complex issues. The Delegation was extremely interested in learning from the experience of other Committee members, listening carefully to specific issues and concerns related to protection of TK and, and exchanging views, information, and best practices on preserving, promoting, and fostering an environment of respect for TK and TCEs. Such a sustained and focused discussion would lead to the kind of deep, mutual understanding that would inform and clarify the Committee's future work, including the international dimension for the protection of TK and TCEs. The Delegation looked forward

to sustained and robust discussion of these issues at the tenth session of the Committee. The Delegation also welcomed the opportunity to continue the discussion of GR at this session of the Committee. As made clear in the statements of many Delegations at the ninth session of the Committee, discussion of issues related to GR was an important, integral, and inseparable part of the Committee's work. The Delegation looked forward to learning more about the specific proposals of other delegations, with the longer-term view of advancing the Committee's work in this important area.

15. The Delegation of Finland, on behalf of the European Community and its twenty five Member States and the Acceding States Bulgaria and Romania, appreciated the progress made by the Committee during the first years of its work, especially in the areas of TK and TCEs, where the Committee had conducted extensive technical work on complex questions, which would serve as a good basis for the future work. The Delegation underlined the importance of further discussions in these areas as well as in the field of GR. The European Community and its Member States continued to support and welcomed the participation of indigenous and local communities and appreciated the establishment of a voluntary fund for this purpose. The European Community and its Member States recognized the importance of ensuring appropriate protection of TK and therefore supported the Committee's work on Draft Objectives and Principles for the protection of TK and in particular reiterated the support for further work towards the development of international *sui generis* models or other non-binding options for the legal protection of TK. In line with the European Community's and its Member States' preference for internationally agreed *sui generis* models, the Delegation reiterated that the final decision on the protection of TK should be left to the individual Contracting Party. The TCE's of all communities, whatever size and wherever situated in the world, plaid an important role not only for one's communal and personal identity and well-being, but also for the safeguarding of the world's cultural diversity. The work of the Committee over the past four years had demonstrated this precious variety and exposed both the differences and similarities. As indicated in its submissions, the European Community believed that a constructive way forward would be possible on those parts of the discussions which had so far demonstrated a certain consensus. The Objectives and General Guiding Principles appeared to distil much of what was being sought after and the European Community would therefore propose that the Committee's future work concentrated on these two texts. European Community would like to see the Committee make equal progress in the field of GR. The European Community would have tabled several proposals on GR and the disclosure requirement which were contained in document WIPO/GRTKF/IC/8/11. The consideration of this issue was an important task for the Committee and such a serious proposal would be entitled to proper discussion within the body where the proposal was made. The European Community continued to support the work and outcomes of the Committee and the outcome of other Committees in WIPO, such as the SCP and the SCCR which were doing equally important work on advancing on further developing international IP law. On working procedures, the European Community believed that the work should be inclusive, systematic, focused on the draft texts, and based on existing working procedures of the Committee.

16. The Delegation of China welcomed the convention of the Tenth Session. It observed that over the past five years, with the common efforts made by all Member States, the Committee had done enormous work for the protection of genetic resources, traditional knowledge and folklore, which resulted in preliminary outcome by collecting inputs from various players and accumulating extensive data. The Delegation believed that the preliminary outcome would help Member States better understand the mission and objectives of the Committee, and lay a solid foundation for further and more in-depth discussions of the

relevant issues. It went on to express its appreciation to the Secretariat for its carefully prepared and very informative documents, but regretted that the documents had not been made available in Chinese. It added that studying these documents in English, which is not its native language, plus the fact that some important documents had been made available immediately prior to the meetings had restricted its involvement in the discussions. It expressed its hope that documents could also be prepared in Chinese so as to help it fully understand the documents and freely express its opinions, thus facilitating its active involvement in the deliberations. The Delegation highly appreciated the unremitting efforts of WIPO and the international community in advancing the discussions in the Committee. It should be recognized that the Committee is entrusted with an important yet arduous mandate, which not only touched upon various fields such as environment, human rights, natural resources and cultural heritage, but also had an important bearing on the further development and improvement of the international IP regime, and played a critical role in the construction of a harmonious world and for the social and economic development of all Member States. However, the Delegation expressed regret over the unsatisfactory progress made so far in this regard after nine sessions of the Committee and various symposiums over the last five years. It was proposed that in line with the principles of mutual coordination and promotion with other international treaties, and in accordance with the practical experiences and specific demands of Member States, the Committee should build on its existing achievements, and continue to make comprehensive and in-depth research into the various issues within its competence, thus accelerating its work towards the conclusion of a binding international instrument on this matter as soon as possible. The Delegation indicated that it had taken an active part in all the previous sessions of the Committee, and pledged its commitment to continuous support of the Committee and active involvement in the deliberations on all related issues. It concluded by expressing its hope that under the auspice of WIPO, and with the common efforts of all Member States, a reasonable solution acceptable to all players could be found on the IP protection of genetic resources, TK and folklore, that would help better address the concerns and demands, especially of developing countries.

17. The Delegation of Thailand considered the draft Policy Objectives, Guiding Principles, and Substantive Provisions on TCEs and TK (WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5) to be beneficial in refining its own national IP protection laws and regulations. The Committee had a strong role to play in realizing the issues of disclosure of origins of GR, TK and TCEs or EoF with prior informed consent and benefit sharing. It hoped that the Committee continued to move towards achieving such objectives in due course. Thailand had benefited greatly from technical cooperation with the Secretariat, through the exchange of views and knowledge sharing, and from expert assistance in various areas, ranging from legal development to capacity building. In particular, the technical support from the Secretariat on several occasions in Bangkok, namely the Meeting on TCEs, GR, and TK and the WIPO-ASEAN Regional Seminar on the Strategic Use of Intellectual Property for Development, had served to educate Thailand’s public and private sectors on the use of IP for development. The Delegation called for the strengthening of such cooperation with the WIPO Secretariat to help deve1oping countries to protect their TK, TCEs and cultural heritage in general. Thailand was establishing a database to identify and acknowledge TK, developing a benefit-sharing scheme for the use of TK and drafting national legislation. It would be equally important and extremely useful to learn from other States whose experiences on protecting and preserving their rich cultural diversity could serve as useful lessons and best practices for Thailand’s policy makers. Given that its mandate would expire after its next session, the Committee should be practical and pragmatic in its approach. The Session should devote more time to discuss the content, nature and the approach on how to achieve tangible outcomes. It would be essential at this juncture to come up with a clear

roadmap for the next session, mapping out specific recommendations and a work program for consideration by the General Assembly in 2007. The Delegation welcomed the document (WIPO/GRTKF/IC/10/6) presenting options on the legal status or form of any outcome on the protection of TK and TCEs/folklore. The discussions of the Committee should eventually progress towards a legally binding international instrument. Nonetheless, the Delegation recognized the still divergent views on how best to take forward the international dimension of the Committee's work. This would call for greater international cooperation to narrow down these differences in order to make progress towards an international instrument. The Secretariat could play a useful role in comparing the different options, whether it should be a binding international instrument, model provisions or political declarations, and what steps needed to be taken to achieve that outcome. It would be essential to involve the stakeholders as much as possible in the deliberations. For this reason, the Delegation welcomed the positive developments on the implementation of the WIPO Voluntary Fund for Accredited Local and Indigenous Communities.

18. The Delegation of Bangladesh stated it was closely following the developments in Committee sessions, and appreciated the work done by the Committee. The Committee's current mandate would end in July 2007, but the work was not likely to be concluded by then. A consensus would have to be reached on the outcome and the roadmap for the Committee's future work. During the present session the Delegation looked forward to reaching an agreement on the outcome. It should contain the objectives and principles including protection, status of the outcome and work procedures on GR, TK and folklore. The sixth session of the Committee had set out possible approaches for reaching an outcome. The Delegation held that the following issues should be taken up during this and the next meeting: a statement in clear terms of the political will of the Member States for elaboration of core principles in view of the needs and expectations; establishment of guidelines or model provisions; a decision to begin negotiations on a binding international legal instrument. The Delegation believed that the binding instrument would be helpful to the member states in applying the prescribed standards in their national law. For the protection of GR, TK and folklore, a favorable environment would have to be created for the developing and the least developed countries, so that they could benefit from the process. While elaborating the protection regime, its impact on the least developed countries in particular needed to be taken into consideration. The Delegation called upon the Committee to keep this in focus. Provisions should be made for providing adequate policy space, essential capacity building and much needed technical assistance to the least developed countries. Special attention should be given to the clauses related to the acts of misappropriation, exceptions and limitations, and sanctions and remedy. The Delegation referred to Article 27 of the TRIPS Agreement on access and equitable sharing of the benefits of GR. This article gave flexibility to the WTO Members to exclude plants and animals, biological processes and plant varieties from patentability. WTO Members should grant patent protection for plant varieties or provide protection by means of an effective *sui-generis* system. The relevant question that came to mind was how to protect misuse and misappropriation that prevented the benefits that could accrue from the use of genetic resources in developing countries. This issue had to be considered in depth, given the development potential they held for developing countries and the least developed countries.

19. The Delegation of Canada committed to working cooperatively and constructively with other Member States and observers over the duration of the mandate of the Committee. It recognized the Committee's unique technical expertise and capacity for developing international understanding in matters related to TCEs, TK and GR. For some time now, many developing and developed Member States, including Canada, had stated that this WIPO

Committee would be the pre-eminent multilateral forum to discuss and work upon these issues. Building on discussions at previous sessions, Canada encouraged the Committee to take full advantage of the tenth session to engage in discussions on all three pillars given that the Committee would be approaching the end of its two-year mandate. Canada believed that the Committee should focus its work on areas with potential for agreement, such as some of the draft policy objectives and guidelines for TCEs and TK. This would provide a solid base on which future work could be built. In Canada's view, the most opportune way for the Committee to make good progress on its mandate would be to work on areas of shared understandings and existing common ground. It would not be the most efficient or effective use of this session of the Committee to address areas where there would be little or no consensus. Canada thanked Member States and observers for contributing written comments on documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5 in preparation for this session. It invited Member States and observers to consider Canada's submissions on these two documents. It also thanked the panelists from the morning's session for their interesting and informative presentations which helped contribute to its overall understanding of the issues.

20. The Delegation of Malaysia aligned itself with the statement made by the Delegate of Indonesia on behalf of the Asian Group. It reiterated its support for the Committee's work to prevent the misuse or misappropriation of GR and provide an equitable protection system for TK and TCEs. It was equally concerned with the phenomena of biopiracy cases as well as the misappropriation of TK. The renewed mandate of the Committee would focus in particular on the consideration of the international dimension where no outcome was excluded including the possible development of an international instrument. In this context, the Delegation believed the Committee should continue its work with a view to reaching consensus on a possible outcome with the objective of establishing a practical and effective system of protection for TK and TCEs. The Committee within its mandate should take a comprehensive and holistic approach to facilitate discussion in order to make progress on issues related to GR. In addition, the Committee's work should also advance in harmony and supportive to the work being pursued in other fora such as the CBD and should not merely become a forum of endless discussion. The Delegation would engage in future discussion with regard to achieving the desired result.

21. The Delegation of Colombia stated it would like to safeguard the valuable work carried out by the Committee which, without doubt, had contributed to illuminate the course of work to be realized on protection of TK, GR and folklore. As to the form and legal conditions of the results of the Committee's work, Colombia, from the beginning of the work, had supported different ways of action. The first was to develop model clauses of IP for the protection of TK and GR where the parties, as had suggested the Delegation of Finland on behalf of the EU, could chose to adopt them or not. This would permit to appropriately complement the work on these issues carried out for the CBD. The second was a binding international instrument for the protection of folklore, which would certainly appertain to this forum. As to the necessary proceedings to reach the expected results of the Committee's work, the Delegation considered it important to integrate the interested communities in this process of the norm creation which concerned them, for which reason it had supported the idea of the creation of a common fund for the participation of indigenous and local communities. The Delegation supported the commitment of the Committee for effective representation of these communities. The Delegation found it opportune that the comments on the documents about the protection of TCEs/EoF and TK (WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5) would be included above the respective Articles with clear and concrete proposals to be revised in following sessions of the Committee. The Delegation

agreed with the position of the Delegation of China on the necessity to improve the results of the Committee. The Delegation proposed that all the presented proposals be included in one single text, presenting alternatives so that each state could support those which it found pertinent to advance the work on TCEs/EoF and TK.

22. The Delegation of Japan shared the view with many countries that the issues of GR, TK and folklore were important. At the same time, it recognized that they were very complex issues involving a number of points that were difficult to understand and needed to be clarified. These included the understanding of the identifying basic problems and the relationship between the issues and the IP System. The Delegation believed that WIPO, as the specialized agency of the United Nations responsible for IP, should respond to the high expectations of many countries on this issue. The Delegation considered the Committee the most appropriate forum for discussion concerning these issues from the IP aspect, had submitted a document at the ninth session of the Committee, and had been making active contributions to the discussion at the Committee. In this session, the Delegation looked forward to constructive and pragmatic discussion, taking full advantage of the extension of session that entailed expense and time. It was willing to participate positively in the discussion in this session. With regard to folklore and TK, it was important to clarify the basic elements, such as subject entity and object scope of folklore and TK and definition of the terms, where a common understanding seemed to have not yet been reached. However, the Delegation supported advancing the discussion based on the working document on a pragmatic basis. Considering the current situation where there was a lack of common understanding in basics and where great difference of opinion were among countries, it would be premature to speak about the establishment of a legally binding instrument. Therefore it would be essential to have a constructive and step-by-step discussion focusing first on policy objectives and general guiding principles to establish a basis for further discussion. Regarding GR, the issue of the so-called biopiracy had been raised. The best way to achieve a fruitful result in this area was to make a clear distinction between the underlying issues in biopiracy and discretely address each issue in an appropriate manner. The Delegation considered biopiracy to contain two issues: erroneously granted patents and ensuring compliance with provisions of prior informed consent and benefit sharing. The former issue related to the patent system and the latter arose from the compliance with CBD provisions. In this regard, Japan had submitted the document WIPO/GRTKF/IC/9/13 mainly focusing on erroneously granted patents. Concerning compliance with prior informed consent and benefit sharing, the problem should be clearly articulated through fact-based discussion. Ensuring compliance at the upstream of the research and development process would be more important. The significance of seeking a solution in the patent system, which was downstream of the research and development process, would be unclear. Many points should be discussed on each issue. With a view to the Assemblies of the Member States of WIPO in 2007, the Delegation looked forward to achieving progress through constructive and pragmatic discussion and would like to take part in such discussion.

23. The Delegation of Switzerland stated it had always maintained that the issues of IP, GR, TK and folklore should be addressed by the competent international forum which would be primarily the Committee. Therefore, it welcomed the decision of WIPO's General Assembly to continue this work. This would allow the Committee to carry on its work of the previous nine sessions. The Committee should focus its work on areas where there is potential for agreement. This applied in particular with regard to documents WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5. The Delegation considered all three agenda items of the Committee, GR, TK and TCEs to be on an equal footing. They should all receive the proper attention they deserved. This had not been the case at least at the ninth

session. At this session, a better balance could be found when addressing the three items. The Delegation considered it to be important that the Committee continued to collaborate with other relevant international fora, including in particular the CBD, FAO and UPOV, and provided substantive and substantial input to the work of these fora. The Delegation thanked the Secretariat's work for preparing the tenth session but regretted that the documents had been made available to delegates only a late stage.

24. The Delegation of India stated that the Committee had achieved some progress in the nine previous sessions. However, substantial progress had been eluding the Committee so far with the result that the misappropriation of GR, TK and TCEs had been continuing unabated. As a consequence the real stakeholders had been denied the benefits that legitimately belonged to them. It was therefore imperative to move forward in a business-like manner in a program to ensure that at the end of the deliberations the Committee reached some tangible progress which could ultimately bring about some consensus and maybe a stepping stone for a legally binding instrument in due course of time. The Delegation was committed to work in a very constructive manner so as to bring about the desired results. Realizing that the codification of TK was imperative to prevent its misappropriation, India had embarked in a large project of this kind and had catalogued medicinal TK on a database which it was willing to share with the other patent offices on an access sharing agreement. Access to the database would be possible in different languages in order to break down the barriers of format and language. The Delegation would cooperate constructively during the deliberations to ensure the Committee reached some tangible progress at the end of it so as to move towards the desired goal of a legally binding instrument.

25. The Delegation of the Republic of Korea stated that, despite the efforts that have been taken place over the past 6 years up to and including the ninth session, the Committee had been unable to reach a substantive agreement on how to move forward. With the hope of breaking this impasse, the Delegation reminded Member States of the cooperative and enthusiastic attitude that pervaded the Committee's first session in April 2001. At that time, the need to address the important issues of the Committee would have been understood very clearly. Since then, the issues under discussion had only become more important. By recalling the initial readiness to move forward, the Committee could find once again the commitment to move forward. During the ninth session, it had been agreed to give this session two additional working days to discuss in detail the comments received on the documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5. The Delegation looked forward to in-depth discussions on these documents over the next days through which real and concrete outcomes could be achieved. The Delegation stressed the value of in-depth and inclusive fact-based discussions, through which firm and broad understanding of any problem or solution to the issues on the table could be achieved. At the same time, the Delegation highlighted the importance of standardizing the data fields for the database of TK. Despite the Committee's best efforts, there was currently no internationally agreed standard for the database. Establishing such a standard would be an important part of the work in enhancing protection for TK. For example, the field of traditional medicine could be discussed as one of the items in the standardization of the TK data fields. On the issue of GR, the Delegation found it very useful for countries to share their experiences and insights gained in this area. It extended its appreciation to the Delegation of Japan for its excellent contribution at the Session in April concerning the patent system and GR. This work was not only highly useful in explaining the lessons learned from Japans experiences, but it also presented a good example of what other members could do in terms of sharing their own experience.

26. The Delegation of Norway was pleased that the newly established Voluntary Fund was functioning well and acknowledged the broad participation of observers from civil society and in particular indigenous peoples at this meeting. Furthermore, it reminded delegations of the Norwegian proposal presented at the last session in WIPO/GRTKF/IC/9/12 focusing on misappropriation of TK as well as a proposal to introduce a mandatory requirement to disclose the origin of GR and TK in patent applications as was introduced in the TRIPS Council in WTO in June. The proposal also bore relevance in the Committee as it concerned a treaty under the auspices of WIPO and was contained in WIPO/GRTKF/IC/10/INF/2. It looked forward to fruitful discussions leading up to a tangible outcome from the Committee within the present mandate.

27. The Delegation of Panama expressed its satisfaction in participating in this important Committee since the efforts being undertaken in this area in the Committee's work would be significant. The Delegation wished to share Panama's experiences. After the adoption of Panama's special IP legislation on collective rights of indigenous peoples, with which indigenous peoples originating from within Panama's territory would have been given legal security protecting their TK and EoF, thus safeguarding their intangible heritage and giving them social justice, recognizing and respecting their IPR, which would be the goal of the *sui generis* law of Panama, important results would have been reached. WIPO had played an active role during the course of Panama's activities on this matter following the law, above all in the development of national capacities and in the support of promoting and diffusing information on the subject. This engagement by WIPO had stimulated and enlarged interest and the mutual cooperation, for which Panama was very grateful. Until now, the results had been satisfactory and answers had been found in the national government in the form of the approval and the financing of an investment project to save and preserve the current and disappearing TK in Panama, as well as the recent approval of the regulation to standardize, regulate and control the access and the use of GR in general. The most important other actors were the proper owners of the TK who would have realized own efforts directed to save their knowledge through workshops which had allowed transmitting their knowledge to new generations, for example, on medical plants. All this, without losing the value of its information and part of their effort, had been published with the support of a project which Panama would carry out through the Ministry of Commerce and Industry with the BID and WIPO to foster and develop the IP of the country. Other actors of the national task involved in the subject would include the private sector and the academic community with which a program of dissemination of IP and to preserve indigenous languages had begun through the publication of tales in the *Ngobe Bugle* language and in Spanish so that new generations will not lose the language of their ancestors. The Delegation felt very committed to participate in concretely advancing the work of the Committee. Finally, the Delegation congratulated the initiative for a Voluntary Fund which allowed the participation of the main actors in this activity, the indigenous groups and local communities.

28. The Delegation of Peru reiterated the importance of the Committee's work for its country. It emphasized the participation of the indigenous communities and thanked those who contributed to the Voluntary Fund for the participation of indigenous representatives. He stressed that those were the ones who could advise on which direction the Committee's work should take. There had been a number of presentations at the panel that morning that clarified the true needs of the indigenous peoples. They explained how very often they felt defenseless faced with biopiracy and discussed the protection the Committee wanted to give them combined with effective protection of the TK, GR and TCEs of these indigenous peoples. The Delegation considered that WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5 were a real and concrete basis for the Committee's work. After ten sessions and more than six years

of work in this Committee, there should be concrete decisions on the future and concrete results. In paragraph 5 of WIPO/GRTKF/IC/10/6 on the options for giving effect to the international dimension of the Committee's work one could find the options on which the Committee could work on specific outcomes and might emerge from the work of this Committee. The best way of protecting the indigenous peoples was through a binding international instrument. The final outcomes of the Committee's work did not prevent from continuing to work for additional or parallel results or initial outcomes. It was important to look at the picture of the possible outcomes the Secretariat had given. Even WIPO was an organization that tried to make sure that a number of IP treaties were respected and, on this occasion, the work could help achieve at a very initial stage a minimum proof of what the Committee is committed to in respect of TK. This first phase might take the form of an international political statement covering the needs and expectations and political commitment. This might give the impulse needed to achieve a final outcome to this Committee's work, in other words, a binding international instrument. Since the Delegation of Peru had followed the Committee from the start, it believed it was time to reach a concrete outcome. If the States really wanted to make an effective response to these needs, they had to listen to the request of indigenous peoples. They had to give them a real and effective outcome that would assure them that states were not just here to discuss their interests but also provide real alternatives to solving their problems. The Delegation finally stressed that the Secretariat had been involved in regional activities that allowed for the exchange of experiences and complemented national work that countries carried out in various part of the world. It would appreciate seeing more of this work in its region as Latin America had done a lot of work these last few years. There had been a great development in national legislation, national activities and consolidation of practices in each country. Work of this type with the support of WIPO would further improve the conditions in the region.

29. The Delegation of the Islamic Republic of Iran associated itself with the statement of Indonesia on behalf of the Asian Group. It stated that the Committee, in its previous meetings had been trying to develop and overview policy objectives and core principles for the protection of GR, TK and TCEs and folklore. This draft of objectives and principles had been improved through extensive comments from the Member States and observers. After nine substantive meetings with successful outcomes, the Committee would be at a critical juncture. It should be focused, and not expand the issues under consideration. It should consider substantive issues, advance its deliberations and reach a clear understanding on its future work and activities and further development of the draft on the protection of GRTKF. The Delegation reiterated that one of the fundamental issues that have been constantly discussed during the previous meetings of the committee was the nature of the document, that should be a legally binding instrument to protect GR, TK, and TCEs and folklore. The developing countries needed such a legally binding document to provide the international protection of GRTKF and ensure the right of their nations to benefit from their TK and heritage, TCEs and GR, as well as preventing illegitimate uses, misappropriation and piracy. Unfortunately, lack of international instruments and weak national capacities to protect GRTKF, did not serve these objectives. Another important aspect would be how to protect GRTKF at the national level. As a rich country in the field of GRTKF, the Islamic Republic of Iran believed that national protection would be necessary and had taken major steps in this direction. While the proposed criteria and paradigm could be considered appropriate guidelines, in undertaking various measures at the national level, to protect GRTKF, even the most comprehensive national protection, within the conventional IP protection or in any other form or system, would protect GRTKF solely at the national level. Therefore, the endeavors of the Committee should be mainly focused on the preparation and finalization of an internationally binding instrument to protect GRTKF globally while contributing to their commercial use at the

global level. Such an instrument, while facilitating the access and commercial use of GRTKF with economic benefits for local communities, should prevent illegitimate uses, misappropriation and piracy at the international level. The promotion of international protection of GRTKF could contribute to the various policies of creativity and innovation, and social and economic development of local communities. The Committee, in this session, should advance its discussions on the documents and various aspects of international protection of GR. Sectoral approach and partial consideration of the issues and documents would not serve this purpose. It was also necessary that the Committee expedited its work in the provision of substantive protection of GRTKF, as envisaged by the General Assembly. The Delegation supported the continuation of the Committee's work and the extension of its mandate for another two years.

30. The Delegation of Ecuador considered there was a need to recapitulate those points on which there had been a majority of consensus in order to identify them and decide what to do to achieve successful outcome. The need for proper coordination with other forums dealing with common issues should be considered to define limits and avoid any dispersal of efforts. Points on which there had been a majority of agreement were undoubtedly a theme in world thought which would affect all countries that would have the obligation to work internally and try and identify these points so as to move towards the future while trying to adapt legal norms to cover these concerns at the world level. The Delegation congratulated the Secretariat for all the documents that gave a good overview of what was being discussed. It associated itself with the concern expressed by the Delegation of China. It was necessary to have translation into mother tongues to avoid any distortion of concepts in areas of such a tricky nature as the ones dealt with in this forum. It expressed its satisfaction at having heard the positions of traditional groups during the panel chaired by a compatriot from Ecuador. However, they were still all at the stage of denouncing ills without any expectation of receiving any answer to their problem in such a forum. There was a need to make progress jointly on matters of fundamental importance to this Committee. It was important to identify these issues and pay the greatest attention to them. The Committee had to be quite clear about the intentions of all delegates in order to know in which direction to go and make constructive and concrete proposals.

31. The Delegation of Brazil attached great importance to the mandate of the Committee. As a megabiodiverse country, home to more than 180 indigenous communities and an even larger number of traditional and local communities, Brazil had made every attempt to move the Committee's agenda forward. It believed there was urgent need to adequate legal response to the demands of local and indigenous communities. And this response must come from within the IP system. This would be one rare instance where developing countries had taken the lead as demandeurs vis-à-vis the international IP system. Unfortunately, and despite the best endeavors, very little progress had been made. None at all, in fact, on GR since the sixth Committee held in 2004. The documents on TK and folklore (WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5) had not changed for the last three sessions of the Committee, as a result of divergence among members, on substance, procedure and on the form of the outcome. For this stalemate to be broken, it were essential that the Committee followed through on the mandate, fully respecting the parameters set out therein, in particular the one on not prejudging the outcome of the work. The Delegation thanked the Secretariat for circulating the comments received from members on the documents on TK and folklore. Brazil had presented its comments on all three pillars of the respective documents that were: policy objectives; guiding principles; and substantive provisions. Work in the Committee should not duplicate, prejudge or negatively affect ongoing work in other competent forums. It was necessary for the Committee to provide a broad view of how to deal with TK and

folklore under the international IP system, focusing, in particular, on the international dimension of issues such as misappropriation, biopiracy and erroneously granted patents. Disclosure requirement was one element that had not evolved in the Committee at all, but had made considerable progress in the WTO, both in the DDA, as an outstanding implementation issue, and as integral and substantive item of the TRIPS Council's regular sessions. Brazil and several other developing countries had cosponsored a draft amendment to the TRIPS Agreement on the mandatory disclosure of GR. This were a fundamental first step ever by developing countries towards introducing a concrete measure of respect for the TK, with the aim of preventing unauthorized appropriation of traditional culture through the institute of a private IPR. The Delegation supported the shared objective of developing countries of a legally binding agreement, and considered that this form of outcome could not be ruled out beforehand, for it was a core element of the agreed mandate under which the Committee is convened. The Delegation was, nevertheless, open to explore a work program or an agreed process through which phased consideration of all substantive issues could begin. For this, perhaps, it would be best to postpone, for the time being, the divisive debate on the legal nature of an outcome, and begin an in-depth exchange on all elements of documents WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5, in their integrity, and without pre-conditions.

32. The Delegation of Pakistan expressed appreciation for the Committee's work. The Committee had made good progress in its work towards developing effective and workable forms of protection for GR, TK and Folklore. This positive technical work of the Committee was most concretely reflected in the draft provisions on TK and TCEs, that were the subject of this and next week's discussions. The Delegation aligned itself with the statement made by Indonesia on behalf of the Asian Group. Pakistan also recognized that the Committee had been working for five years and there were still no legal outcomes from its work on the protection of TK and Folklore. The necessary concepts were discussed several years and the Delegation was pleased to see that the committee had moved into a second phase of working on concrete texts. Pakistan now wanted the Committee to improve and finalize the texts in a manner that can find consensus among all members of the Committee, so that a final outcome could be adopted by the committee and the WIPO General Assembly in 2007. It considered this to be critical for the credibility of the Committee and WIPO as a forum which could produce outcomes rather than merely generate discussions. In order to improve and finalize the texts, the Committee would have to take a practical and pragmatic approach for finalizing tangible outcomes and a clear roadmap for next biennium of Committee. Pakistan would have further suggestions on this in the course of the session. As a first step, it looked forward to the detailed, technical comments on the draft texts, which had amply been submitted by the members, and thereafter it would like to discuss how these comments should be integrated into the existing texts. The Delegation suggested to have a rolling text format incorporating the comments submitted by members on different issues respectively. This would lead to a more focused and result oriented outcome.

33. The representative of UNCTAD reiterated that the issues addressed by the Committee were an important cluster of trade and development issues. She added that UNCTAD had done some research and policy analysis on these issues. One area had been the holistic nature of TK, the protection, preservation and promotion for development. There had also been some analytical work on disclosure options for GR. UNCTAD had also been playing a consensus building and a brain-storming role to a certain extent and it would like to continue to do so. She reaffirmed UNCTAD engaged in and supported the work of this Committee, as well as the work in the CBD, WTO and other forums. UNCTAD would be happy to do

anything to help the work progress to an actual outcome as the members here were also their Member States.

34. The representative of Tupaj Amaru stated that in these five or six years there had been no or little progress on the drafting of an international binding instrument on the protection and promotion of TK, GR and TCEs. At the indigenous panel, customary law had been mentioned. The question was how to exercise this right in every day life. He realized that customary law could not be exercised in practice and could not be guaranteed unless states recognized the right of indigenous and local communities to self-determination. It was a basic instrument, a condition *sine qua non* for communities to have their own autonomy, administration and government with which to administer their GR, TK and folklore. This was not happening. The representative expressed his great disappointment at the fact that the draft statement by the UN on the law of indigenous peoples had been turned down in the Third Committee of the UN General Assembly. There had been rejection of work that had been done for more than twenty years, work that produced just a declaration not even a binding instrument. Due to the ill will of governments that declaration had been turned down. Several chapters in the declaration concerned the protection of GR, TK and TCEs and the cultural and intellectual heritage of indigenous peoples. Why did governments refuse to accept a straightforward and simple declaration? He added that many governments today like Peru asserted that an instrument had to be adopted but the Peruvian government has been handing over the basic GR of its country to transnational enterprises under the slogan of free trade or other instruments. Governments were speaking in two tongues when talking of the IPR of indigenous communities. Tupaj Amaru hoped that much more progress could be made on this and that states would put forward concrete proposals on the text. There had been a text for two years now and it should be adopted as an international binding instrument for the protection of GR. Otherwise, as Brazil was saying, it was difficult to see how to defend GR from national and international biopiracy that today undermined the whole heritage of the indigenous peoples and of all peoples. It was the basis for the survival of the whole of humanity and it was the obligation of states to protect this TK because it was the common heritage of mankind. It was the future for the peace and sustainability of indigenous communities.

35. The representative of the Federation of Industrial Property Attorneys (FICPI) stated that his organization represented IP attorneys in private practice. FICPI had 4,500 members spread over more than 80 countries, its membership coming from both developed and developing countries. It did not directly represent IP owners and users but its members worked directly and closely with such persons. The comments he made were based on FICPI's experience in representing these users in various IP systems. Since the inception of the Committee in 2001, FICPI had attended as an observer all the Committee meetings held in Geneva and supported the work done by the Committee. The discussions at the Committee had helped all parties involved form a better understanding of the relevant issues. He however observed a deep division within the Committee. Certain countries believed the issues under discussions were complex and required further investigation and discussion. At the same time, these countries acknowledged the very useful documents and guidelines developed by the Committee. These countries were mainly from the developed world. On the other hand, there were countries that were now calling for an internationally binding instrument to take care of the issues under discussion. These were mainly from developing and least developed countries. Although the establishment of an international legally binding instrument may appear to be an attractive solution to coordinating the protection and preservation of TK, TCEs and GR, FICPI believed it was not a practical and achievable solution in the near term. An analysis of existing *sui generis* legislation adopted by some

countries relating to the protection of TK, TCEs and GR, pointed to the individual character of the needs in different countries in relation to it. Furthermore, the participation of indigenous people in the deliberations of the Committee emphasized the diverse needs of traditional communities. To date, no attempt had been made by those countries in support of an international legally binding instrument to explain the substance and practical implementation of such an instrument. Given the varying character of TK, TCEs and GR in each country, it would not be practical or feasible to attempt to have a "one-size-fits-all" approach to address their protection. FICPI therefore believed it was the responsibility of each country to adopt appropriate legislation to deal with the protection and preservation of TK, TCEs and GR existing within its boundaries.

36. The Delegation of Peru made a clarification regarding the statement of the representative of Tupaj Amaru. It realized that the declaration had not been adopted at the UN General Assembly but added that Peru had presided over the Working Group to prepare a draft Declaration in Geneva for more than ten years. With great efforts, Peru had submitted that declaration to the first session of the UN Human Rights Council held in June 2006, where the text of the declaration was then adopted. While it was true that there had been a postponement of its discussion and adoption in the UN General Assembly in New York, Peru was disappointed about that and hoped that next year the declaration would be adopted. There was no double language or double position by Peru here. The Delegation wondered if there were any other country more committed to the cause of the indigenous peoples than Peru. Peru had done everything for that declaration to be adopted in Geneva and was disappointed at the current turn of events. It hoped those States that had problems with the declaration would think about what had been heard in New York and Geneva over these past twenty years and help that declaration to be adopted next year in New York.

37. The representative of the Indigenous Peoples Council on Biocolonialism (IPCB), an indigenous peoples' non-governmental organization that monitors and evaluates the complex linkages between human rights, biotechnology, IPR, and the forces of globalization in relation to Indigenous peoples rights and concerns, stated that, although new to this process, the IPCB had closely followed the Committee's work by commenting on previous drafts of the objectives and principles on TK. Both its executive director and the representative were also part of the Call of the Earth/*Llamado de la Tierra*, another accredited Indigenous organization comprised of Indigenous experts on IPR and TK issues that had participated significantly in the Committee's previous sessions. IPCB had extensively participated in various meetings of the CBD, in relation to Article 8(j) and ABS. The representative hoped that IPCB's experiences with those related topics would be a valuable contribution to the Committee's work. The representative, acknowledging that her participation was possible as a result of the Voluntary Fund, thanked the other Indigenous nations and organizations that had lobbied tirelessly to bring this funding mechanism to fruition, the governments who had generously donated, and the Secretariat for its efforts in implementing the Fund. IPCB recognized that the participation of Indigenous peoples in the Committee would be enhanced by the existence of this Voluntary Fund and therefore looked forward to hearing a diversity of Indigenous peoples' organizations voices and concerns in this committees' deliberations. At this time, IPCB wanted to share the principles that it would continue to advocate for in this Committee. Indigenous peoples who had participated in the CBD, WIPO, and other UN processes, had consistently asserted their proprietary, inherent, and inalienable rights over their knowledge and biological resources. Indigenous knowledge permeated every aspect of their lives and was expressed in both tangible and intangible forms. Indigenous knowledge reflected the wisdom of their Ancestors, and as their descendants they had a responsibility to protect and

perpetuate this knowledge for the benefit of their future generations. Western property law, and in particular, IPR, were contradictory to the laws of Indigenous peoples to safeguard and protect their knowledge, which required collective ownership, inalienability and protection in perpetuity. Their existing protection systems were legitimate on their own right and any new mechanisms for protection, preservation and maintenance of TK and associated biological resources must respect and be complementary to such existing systems and not undermine or replace them. For this reason, while IPCB appreciated the intent to establish legal mechanisms to protect Indigenous knowledge and GR this must be done without displacing the long existing systems of management and protection of Indigenous peoples. In Indigenous territories, the primary means of protection and transmission of biodiversity-related traditional knowledge continued to be through their own legal systems, traditional practices, and oral histories. The representative recognized an urgent need to halt the misuse and misappropriation of TK and associated biological resources, innovations and practices of Indigenous peoples. She urged States to establish international standards and mechanisms that ensured equity, justice, and recognition for their collective rights. They recognized hat their knowledge constituted the collective heritage and patrimony of their peoples, and the genetic material contained within the flora and fauna around them constituted their sustenance.

38. The representative of the Tulalip Tribes of Washington believed much progress had been made in the draft objectives and principles on TK and TCEs that the Secretariat had ably compiled and explained. He looked foreword to making progress on GR and associated TK during this session, appreciated the opportunity to directly present indigenous views to parties during the opening indigenous panel at this session and at Committee, and thanked the large number of delegates who attended and listened attentively. He especially thanked the States for establishing the Voluntary Fund and its contributors for helping to ensure indigenous presence and participation. It was time to take this relationship to a new level. He hoped that together could be forged a dazzling engagement ring at this and the next session of the Committee, so that they may announce their full intentions and commitment to the next General Assembly. In regards to the program of work, there were still many options. Some fully reflected the rights and aspirations of indigenous peoples and other holders of TK and TCEs. Some did not. As they simplified and chose among options, they urged parties to incorporate indigenous participation in utmost good faith. Delegations should carefully consider indigenous submissions, presentations and interventions, as well as national experiences, to choose options that fully respected the rights and aspirations of indigenous peoples and other owners of TK and TCEs. They must be ever vigilant against problem displacement and unintended consequences. Delegations here were trying to resolve issues in IP law. This body of law did not reflect the primary motives of indigenous peoples for their practices and innovations in TK and TCEs. Indigenous peoples were trying to adapt in a holistic manner to many changes in their economies, cultures and environment that imperil their traditional ways of life. Many are engaged in desperate battles for cultural survival, with loss of and threats to their ancestral homelands, the loss of cultural resources necessary to the practice their traditions and maintain their cultures, and the degradation and loss of TK, tribal integrity and tribal identity. When nations first regulated air pollution, many industries built higher smokestacks. This solved local air quality problems, but created acid rain that harmed distant communities. Green tags perhaps contributed to solving global carbon problems, but allowed higher pollution in distant regions that harmed local communities. It must be ensured that proposed solutions to IP problems did not similarly effect the holders of TK and TCEs. TK registers, for example, might make TK more available to the public. If not constructed to fully protect indigenous control over their TK associated cultural resources, a patent monopoly solution might violate customary laws, impose insurmountable documentation

burdens, and make non-monopolistic use of traditional cultural resources more common. This might remove any practical hope of control or benefit sharing for indigenous peoples. An improperly constructed instrument to prevent unjust enrichment could contribute to cultural extinction by disturbing spiritual relationships, eroding traditional values and preventing indigenous peoples from accessing resources necessary for cultural survival. If this grand policy experiment failed, it would not be the nation states that would bear the burden of policy failures. It would be indigenous and local communities themselves. Economic interests must never be traded against cultural survival. The Tulalip Tribes believed the primary directives should be protection and respect for customary law. Customary law was the law that most mattered for indigenous peoples and was inalienable from their identity and integrity. Their interpretation of the "promotion" of TK and TCEs was that measures should protect and reinforce their use and regulation by their owners. Sharing could only occur with the free, prior informed consent of their owners using terms of protection, use and benefits that were mutually agreeable. The representative called the Delegations to faithfully discharge their trust obligations. There should be no picking the fruits unless first protecting the roots.

39. The representative of the Pacific Islands Forum (PIF), an inter-governmental organization representing 14 Pacific Island States, noted that TK protection had formally come onto its agenda in 1999 when its Leaders had tasked it to develop a response to the unfair use of the region's GR and TCEs and associated TK taking place outside the region. In 2002, in collaboration with the Secretariat of the Pacific Community and under the guidance of WIPO, the regions' Ministers of Culture, followed by Trade Ministers in 2003, had endorsed the Pacific Model Law on TK and Expressions of Culture for adoption by its member countries according to their national contexts. Guidelines assisting its members to adopt national legislation based on the model law had been developed and in this regard the representative acknowledged the important and useful contribution of New Zealand in the development of this resource. Fiji, Papua New Guinea, Palau and Vanuatu had taken concrete steps to implement the model law. The PIF also would be presently developing a framework for the protection of, and access, to GR and associated TK, in collaboration with the South Pacific Regional Environment Program. While national laws and regional systems governing TK were considered positively amongst Pacific island States, the PIF was aware that these efforts were unsustainable and futile in the long-term as long as international binding rules remained outstanding. Therefore, the PIF joined the concerns expressed earlier by other Delegations that, in spite of reaching the tenth session of this Committee, agreement on this important subject appears some way from being resolved. The PIF look forward to the advancing of this issue at this session. On a separate but related note, the PIF aligned itself to the call for a development agenda to be incorporated broadly in the work of the WIPO. It believed that only then norm-setting priorities would fairly reflect the interests of both developed and developing countries, including in the work before the Committee.

40. The representative of the Indigenous Peoples of St Lucia (BGC) expressed his thanks to WIPO for providing funding from the voluntary fund to participate at the tenth session of the Committee which would enable him to present the views of the Caribbean Antilles and the Small Island Developing States (SIDS). During the Deliberations he would input on behalf of the above mentioned organizations drawing attention to the concerns of indigenous and local communities from the Caribbean Antilles, the Indian Ocean and the Pacific. He assured that the presence of the BGC would provide for anew dimension to the deliberations, providing Island perspectives.

41. The representative of the International Association for the Advancement of Teaching and Research on IP (ATRIP) acknowledged and understood the concerns of developing

countries and indigenous communities for the development of a holistic system for the protection of TK. He called the attention of the delegates to an important international NGO that seeked to provide *pro bono* IP representation for developing countries and indigenous and local communities under the existing IP regimes. The organization was called the Public Interest IP Advisors (PIIPA) which was an international network of *pro bono* IP lawyers committed to advising developing countries and indigenous and local communities in IP matters. The website for PIIPA which described the many services the organization provided could be accessed at piipa.org.

42. The Delegation of Nigeria, on behalf of the African Group reiterated the importance that it attached to the Committee's work. The Group's fundamental objective in the Committee's work was the protection of TK, TCEs and GR through the adoption of a legally binding international instrument. Its expectation also aimed at combating the misappropriation and misuse of TK, TCEs and other resources of African communities due to weak or inadequate protection offered by existing mechanisms. The African Group was of the view that since the eighth session of the Committee, work had not progressed appreciably in spite of the extensive comments that have been submitted by Member States and other accredited Delegations. Whilst it was true that there still remained a lack of consensus regarding the ultimate objective of the Committee process, namely the adoption of a legally binding instrument for the protection of TK and TCEs, there appeared to be a growing support for the adoption of a legal binding instrument. The African Group believed strongly that the Committee process should ultimately lead to the formulation and adoption of new rights. Existing IP systems tended to grant private rights to natural or legal persons while ignoring the collective rights of communities and nations. This was more so when the interests of traditional, local and indigenous communities are concerned. The interests of these communities in the area of TK, TCEs and GR could only be adequately protected through the adoption of a legally binding international instrument. African Member States had already adopted a model law for the protection of biodiversity and interests of local communities. They were also in the process of adopting a regional framework for the protection of TK and TCEs which had been developed jointly by the two regional inter-governmental organizations, namely OAPI and ARIPO, in collaboration with WIPO. There were also other important initiatives for the protection of these resources at both the national and regional levels. The Libreville Initiative for the protection and development of African inventions in the area of medicines, the WHO/African Regional office draft guidelines on the protection of traditional medicine, as well as the South African policy on Indigenous Knowledge Systems were other cases in point. In the light of the existence of these and other instruments and policy frameworks, the African Group was of the view that it was not impracticable and indeed impossible to adopt a legally binding international instrument for the protection of TK, TCEs and GR. Developing countries, local, traditional and indigenous communities had consistently called for such an outcome. It was time that the members of the Committee lived up to their expectation and heeded their call. Today more than ever before, the Group's traditional heritage and natural endowments were being gravely threatened. Unauthorized and illegal appropriation and exploitation of its GR, TK and biological diversity was on the increase. Environmental hazards and natural disasters were also impacting heavily on its natural endowments. The reservoirs of its biodiversity and TK were being undermined. If comprehensive measures for their protection were not adopted, there would be nothing left in years to come for future generation. If there was really commitment to protecting the collective heritage of humanity, one had to move away from polemics and politicization and take concrete action. In the interest of accelerating the Committee's work and moving it towards the desired outcome, and mindful of the need to rationalize the limited time available to the Committee, the African Group proposes the following courses of action: (i) That

Member States should agree to adopt the documents prepared by the Secretariat and the comments submitted by Delegations after the 9th Session of the Committee as the basis for its work. (ii) To adopt a methodology for comprehensively discussing all issues related to policy objectives, general guiding principles as well as substantive provisions related to the protection of TK and TCEs. In this regard the work of the present Session of the Committee should be structured as follows: Morning Sessions should be dedicated to consideration of policy objectives and general guiding principles of, the three elements, namely, TK, TCEs and GR. Likewise; afternoon Sessions should discuss substantive provisions of these elements. This was in line with the suggested draft program of the tenth Committee Session prepared by the Secretariat. Concerning future work of the Committee, the IB should update documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5 taking into account the comments and observations already received and others that may result from this session. Such updated versions should be submitted to all members three months before the eleventh session. Members' reactions to these updated versions should he forwarded to the IB 2 months before the 11th session of the Committee to enable the IB submit the final versions of the documents for consideration at that session. (iii) The Committee should consider on equal footing all issues before it, particularly the three core elements, namely TK, TCEs and GR while ensuring that its work was mutually supportive of processes in other fora. The African Group believed that these were practical and concrete proposals on the way forward which should effectively guide the Committee's work. The Group remained flexible and open to suggestions. It also hoped that others were prepared to make concrete proposals and contribute to consensus building in the interest of accelerating the Committee's work. It was in this spirit that the African Group took note of the proposals made by Norway. The African Group reiterated its appreciation regarding the establishment of the Voluntary Fund for Indigenous Peoples, and registered its expectation that it would add value to the Committee's work by increasing the level of participation of the representatives of these communities. It therefore called upon Member States to contribute to the Fund to enable it to effectively fulfill its mandate. The Group also supported the continued participation of traditional, local and indigenous communities in a transparent and all-inclusive manner in the proceedings and work of the Committee. The African Group pointed out that the mandate of the Committee was not an open-ended endeavor without a time limit in view. It urged the Committee to expedite its work in a positive and constructive manner and deliver a concrete outcome in line with the expectations of the majority of the member states, indigenous, local and traditional communities. Their expectations were plain and clear. They would like the process to lead to the adoption of a legally binding international instrument to protect their TK, TCEs and GR.

43. The Delegation of Egypt reiterated the importance of protecting TCEs in particular which were of great wealth to humanity. Indigenous peoples believed that their knowledge was worth greater than economic worth. In fact, their moral rights needed to be protected both collectively and individually. As this was a simple question which had not been dealt with before, the Committee would like to continue discussing such important issues in order to reach consensus to protect the IPR of these aspects. The Committee had made progress given the complex nature of these hitherto unaddressed questions. The Committee reached an agreement at the ninth session stating the objectives and principles in the light of the discussions held over the previous sessions. Therefore, it was important to work on the basis of the principles and objectives agreed upon earlier in order to achieve legal instruments or other instruments for the protection of these rights otherwise the Committee would be getting into a viscous circle in which rights were not protected. TK and TCEs were a very specific area hence the important of working in close collaboration with legal experts to find a way to protect these rights. Some parties were trying to undermine the Committee's work by saying that it was very difficult to define the protocol or define TCEs. Finding a global definition for

culture was extremely difficult. It was in fact practically impossible. There were two hundred different definitions of cultural expressions and folklore was also covered by countless definitions. Definitions of folklore had also changed over the past fifty years. In addition, specialists of folklore and anthropologists had different views too concerning these definitions hence the complexity. Every culture created its own terms and definition. It was not possible to make a distinction between culture and the terms they created. That led to other difficulties if the terms used at local level were taken into consideration. TCEs, a single term, was being used to refer to folklore, folk traditions. It was very difficult to translate this word into Arabic as it could not be translated literally. As an university professor and an expert in folklore having worked on these issues for 43 years, the Delegation proposed to try to agree upon a procedural definition that could be further developed including folklore, TCEs and TK. There were great sensitivities which led to some refusing terms such as protection, local protection, standard or right and some parties were extremely sensitive to these definitions and refused to find a new regime or mechanism to help protect the rights of peoples. Therefore, this issue needed to be resolved. Human expressions had been extremely enriched through free exchange and reciprocal influences without pre-existing knowledge of the holder of those rights and that could not be accepted. Some parties were saying that in order to prevent the Committee from obtaining concrete results in protecting the rights of the holders of TCEs. Exchange was a normal process with a number of conditions attached and that had helped enrich human culture in terms of form and content. Cultural expressions had been stolen from some people without their consent or authorization. It was important to look into the future to try to build a culture of peace to bring development and justice. The Delegation added that every problem had a solution except death. The problems before the Committee could be resolved if there were good intentions. What was preventing the Committee from reaching a consensus in this area was not a technical or legal problem but politics and economics. Standards and criteria tend to be established by the powerful. Those representing their peoples and universities present at the Committee did not want to accept the law of the most powerful. Principles and slogans that refer to human rights, equality, justice and tolerance could be made a reality.

44. The Delegation of Tunisia wished to achieve results that were in line with its aspirations and the major responsibility assumed towards future generations. The protection and safeguarding of the cultural heritage and traditional popular wealth in all its forms were now at their most vital. Only the adoption of a legally binding instrument would be able to thwart misappropriation and the daily abuse committed against traditional knowledge, traditional cultural expressions and genetic resources throughout the world. Tunisia had always attached to the protection of traditional knowledge and traditional cultural expressions the importance of which they were worthy. This was illustrated in particular through the establishment of pioneering legislation from the 1970s onwards. The Tunisian Model Copyright Law, designed for developing countries and which provided indefinite protection for national folklore, was a very relevant example. For that reason, the Delegation considered that it was time for the IGC to move on to the following stage, that which should lead, without further delay, to the ultimate aim of producing a legally binding instrument. That aim had been fully achieved in relation to other aspects of intellectual property. It was also time to move towards an in-depth and structured examination of both aims and principles, as well as the substantive provisions relating to traditional knowledge, traditional cultural expressions and genetic resources. A pre-established timetable was also of use in channeling the efforts made and achieving a clearer perception of the aims. The Delegation of Tunisia also believed that it was important to ensure that developing countries participated and enjoyed fully the benefits resulting from the exploitation and commercialization of their traditional knowledge and genetic resources, as well as having the possibility to exploit, by themselves, their

national wealth, by benefiting from the assistance required to set up a solid technology skills base. The Delegation subscribed to the realistic and flexible position of the African Group, expressed by Nigeria, and remained open to the constructive and rational suggestions made by the other delegations.

45. The Delegation of Ghana reiterated the importance that Ghana attached to the cultural and economic value of these discussions. Ghana was one of the victims of the illicit exploitation of its TK, GR and TCEs through commercialization of its Kente and Adinkra designs by other jurisdictions. In view of the importance that Ghana attached to the Committee's work, the National Commission on Culture, in May this year, constituted an all embracing committee representing the Ghana Traditional Healers Association, Department of Traditional and Herbal Medicines of the Ministry of Health, the universities, the Center for Research into Plant Medicine, the National Commission on Culture, the Folklore Board, the Copyright Office, among others. The Committee's terms of reference were to deliberate and provide national input to be scrutinized by a pool of experts in the three subject matter areas for submission to the Committee. The Committee was yet to submit its report. However, the National Commission on Culture had submitted interim comments on documents under discussion by this Committee to the Ghana Permanent Mission. Ghana appreciated that some efforts had been made by international organizations such as WIPO and UNESCO among others to protect TK, GR and folklore. The Delegation recognized that indigenous traditional communities had discovered valuable knowledge and created knowledge systems relating to medicine, biodiversity conservation of the environment, agriculture, music, dance, artisanat and social history. That knowledge of these sciences had helped to systematize the well being of communities for centuries and continued to be used for the benefit of many deprived people and much of this knowledge still remained to be tapped for the benefit of mankind. Much of the knowledge had been developed overtime by individuals and individual families who used them and affirmed their veracity and effectiveness. Such TK and cultural expressions, while evolving through observation, trial and error, had been preserved through the collective memory of communities. Many users of this knowledge developed and formed specialized groups such a traditional medical practitioners, guilds, casts, secret societies, individual families and indigenous gender related and specialized groups. Ghana recognized that the world, and for that matter the intellectual community needed this TK and expressions for research, new discoveries, to develop new medicines, conservation techniques for the benefit of mankind. There was the need for the owners of this TK and its cultural expressions to be available and accessible to mankind. This would be done through assurance of protection of their rights, the guarantees of financial gain. The regime for disclosure would lead to the creation of employment, wealth, protection of the environment and human development especially in the highly impoverished areas of the world. This TK, GR and TCEs needed to be accessed, studied, developed, preserved and protected for the benefit of the owners and the users. The Delegation acknowledged that international norms or legal regimes had been put in place to protect IP of one kind or the other. It acknowledged that individual members of indigenous communities discovered certain forms of TK, TCEs and GR such as medicine and contemporary herbal medicine practice, varieties of foods and modes of their preparation, that this knowledge which had been used, propagated and kept in those communities needed to be protected with enforceable intellectual property rights. It acknowledged that the rights in the TK that could not be traced, was credited to the communities that had used, retained and transmitted the knowledge. The Delegation affirmed that knowledge developed within a particular community needed to be protected as the community's IP through the creation of a binding international normative regime. The Committee should make urgent efforts to close the gap between the international protection of other forms of IPR and traditional knowledge. Protection must be extended not only to the

owners, but also the disclosures, researchers, databanks, application and exploitation of the products. The Delegation supported the statement made by Nigeria on behalf of the African Group. It further affirmed the statement made by other Delegations noting the slow progress by the Committee on the creation of a binding international instrument to protect GR, TK and folklore. The Delegation was of the view that the objective of the Committee to protect the subject matter against misappropriation only was quite narrow. As much as the Delegation admitted that some researchers into TK, GR and folklore had not acknowledged the source of their discoveries and extractions and this had deprived the owners of their moral rights and share of financial gains from the discoveries, it was necessary to expand the objectives. TK, TCEs and GF were intellectual endeavors and the owners were entitled to be needed with enforceable IPR. It was not enough to create an international instrument to prevent misappropriation. The instrument must provide adequate remedies against the infringement of the rights of owners of TK, GR and TCEs as were applicable to the other IPRs. The Delegation welcomed with appreciation the decision of the WIPO General Assembly to establish the Voluntary Contribution Fund by member countries to facilitate the participation of the representatives of the indigenous peoples. The Delegation was committed to support the efforts of the Committee.

46. The Delegation of South Africa aligned itself to the Statement made by Nigeria on behalf of the African Group. South Africa wished to see tangible outcomes on substantive issues during this session to move towards the formulation of an internationally legally binding instrument. It appreciated the progress made during the last session of the Committee when concerned members had offered constructive comments on certain aspects of the substantive provisions of the Committee's documents. The challenge during this week was to embrace these comments subsumed in the updated documents. The Delegation recommended that these substantive comments be integrated into a consolidated working document. South Africa had taken initiatives at the national level by firstly revising its current legislative framework, the South African Patent Regulation of 2005, the Indigenous Knowledge Systems Policy, and the Biodiversity Act. Nigeria on behalf of the African Group had highlighted tangible regional initiatives that underpinned the need for an internationally legally binding instrument. South Africa reiterated the African Group's position on the integrated approach to the negotiations in the spirit of consensus building. South Africa, as the third most biologically diverse country in the world, viewed the outcomes of the Committee's work as complimentary to the negotiation of an international regime on access to genetic resources and benefit sharing arrangements in the context of the CBD and the achievement of the objectives of the Millennium Development Goals. South Africa believed that the harmonization of the work in GR took place within other international fora such as the TRIPS Council of the WTO, the WIPO SPLT and the FAO. South Africa acknowledged that substantial progress had taken place in the development of the TCEs' framework. As a country this carried hope for sustainable cultural development in the promotion of cultural diversity and shared economic benefit to engender social cohesion in its new democratic state. South Africa's commitment to the protection of indigenous knowledge was premised on the recognition of its role in the sustainable livelihood of the communities and its potential for wealth generation. South Africa encouraged further contributions to support the Voluntary Fund for Indigenous and Local Communities to enhance the participation of representatives of these communities in the Committee's work. South Africa believed that the voice and experience of indigenous and local communities had been a vital contribution to the Committee's work. The harnessing of indigenous knowledge, TCEs and GR could empower and enable the South African local communities to participate more effectively in the global arena. In conclusion the Delegation hoped that the deliberations of the tenth Committee would yield fruitful and tangible outcomes.

47. The Delegation of Morocco expressed its support and endorsement of the speech made by the Delegation of Nigeria on behalf of the African Group. Morocco have accorded a lot of importance to TCEs and folklore for many years now. To this end, very clear legislation was adopted in the context of its national laws which covered in great details TCEs and TK by adopting definitions, exceptions and other areas covering these TK areas. Morocco had also adopted a text which covered activities resulting from TK and had very strict legal system which controlled these. This was testimony to the importance given by Morocco to the work of this Committee. The Delegation had followed extremely closely the discussions held recently regarding the protection of TK, TCEs and GR and had noted progress made by the Committee and this thanks to the participation of delegations and the recommendations and proposals made which it considered positively and hoped that all countries will adopt without prejudice. However, the progress was not yet up to the expectations of Morocco. The collective work characterized by a great degree of flexibility would help the Committee examine in great detail all the subjects and help achieve solutions, reach consensus which this required and cover all the elements contained in these recommendations. The Delegation endorsed the Committee's work and hoped that it would make speedy progress based on concrete proposals before the end of the mandate. It endorsed informal negotiations to bring positions closer together and more flexible approach. The Delegation was very pleased to represent local indigenous populations as this participation would help make progress in particular for those who needed it most. Of course, TCEs when misused or misappropriated required the Committee to adopt an instrument to protect them. All participants should pursue efforts to reduce the devide and work speedily to achieve commonly held objectives and use in the best way possible these TK and TCEs.

48. The Delegation of Kenya, while recognizing the complexity of the issues, reiterated its concern for the need to advance the dialogue on the international dimension of the Committee's work. It associated itself with the statement by Nigeria on behalf of the African Group. It desired that the Committee's work would lead to an internationally legally binding instrument. It saw this instrument as an important milestone on the road towards addressing the needs, desires and expectations of its local and indigenous communities and addressed the inequitability and inadequacy permeating in existing IP regimes. It pointed out that Kenya was committed to the protection of TK, GR and folklore at the national and international level. In April this year, the Government had appointed a Task Force comprising key stakeholders from Government institutions and Non-Governmental Organizations to develop policies and legislation to protect Kenya's TK, GR and folklore. The Task Force was expected to develop draft policies and legislation by the end of 2007 for public debate in Kenya. Two weeks ago, the Kenyan Government had launched a policy on traditional medicine and medicinal plants which would be subjected to public debate before adoption and subsequent conversion into law. This policy was aimed at mainstreaming use of traditional medicine in its national healthcare system and regulating this important sector in Kenya. Statistics indicated that in Kenya approximately 8o% of the population used traditional medicine and a good policy framework would go a long way in uplifting healthcare for its people. The Delegation welcomed with appreciation the decision of the General Assembly last year to establish the voluntary contribution fund to facilitate the participation of representatives of local and indigenous communities in the Committee's work. Kenya was honored to have been elected as a member of this Committee.

49. The Delegation of Botswana joined other Delegations that had spoken about achievements made thus far, and reiterated the need to see the Committee build onto those achievements, for a concrete and fruitful conclusion of the Committee's work. It had

followed closely the concerns raised by many Delegations regarding the lack of clear progress in the Committee's work, particularly given the amount of time and energy expended in the deliberations thus far. It wished to express its continued interest, participation in, and support for ongoing efforts towards the conclusion of this work. Botswana had always taken a keen interest in these negotiations over the years, in the efforts towards the protection of TK, TCEs and GR. It believed that progress in this regard would require more flexibilities as well as a concerted effort towards consensus building, based on the proposals already put forward. It reiterated the need to expedite the work in the Committee to achieve a positive outcome – that was, the adoption of a legally binding international instrument for the protection of TK, TCEs and GR. Botswana firmly associated itself with the Statement delivered by Nigeria on behalf of the Africa Group.

50. The Delegation of Lesotho supported the statement made by Nigeria on behalf of the African Group. It was of the view that however complex the subject matter was, it should not be a hindrance to the Committee agreeing on a positive outcome of putting in place legally binding international instruments for the protection of these rights. IP was about creativity. Therefore the Committee should be creative enough to meet the challenges posed by this subject matter and come up with a mechanism for protection of TK, TCEs and GR. While lengthy discussions and debates continued, illegal appropriation and biopiracy continued, so time was of the essence here, the Committee had to speed up the process of discussions and come up with international instruments that would adequately protect for posterity TK, TCEs and GR. The Delegation supported the establishment of the voluntary Fund. For indigenous peoples, the participation in the Committee was invaluable. The Delegation was committed to supporting the constructive work of the Committee.

51. The Delegation of Algeria associated itself with the statement made by the Delegation of Nigeria on behalf of the African Group. It stated that the Committee's work should not loose sight of the essential objective i.e. to conclude a legally binding instrument which would protect TK, TCEs and GR. There was a need to undertake a global and comprehensive study including the three elements. It was also necessary to accelerate the Committee's work. The Delegation hoped that partners would react positively to the concrete proposal made by the Delegation of Nigeria on behalf of the African Group which might enable the Committee to move ahead in the work. The Delegation informed the Committee that its country had adopted legislation to protect TK and TCEs and had created a national centre to protect cultural diversity and TK. Algeria had participated very actively in the preparation of the African Model Law on protecting biodiversity and collective knowledge. This law was finalized at the African regional meeting in Algiers in 2000 before being adopted by the African Union.

52. The Delegation of the Republic of Congo stated that its Government was following very closely the different work done since the previous sessions up to the tenth session, as it had many differing interests. The first was that the great rich virgin forests of the Congo Basin were exploited by forestry companies from the countries of the North. Surreptitiously, the country's resources were being exploited in a very intelligent manner. The Pygmy people, an indigenous people whose traditional medicine had a strong reputation, saw its cultural heritage plundered, looted and trafficked towards large industries in the countries of the North. The Government had put in place a battery of legislation linked to the protection of forests and traditional culture. However, this legislation was waiting to be strengthened and the Delegation constantly referred to a legally binding instrument that had the force of law. The fact that UNESCO had introduced the World Heritage Convention in 1972, the Intangible Heritage Convention in 2003 and, more recently, in 2005, the Convention on the Diversity of

Cultural Expressions, was not a matter of chance. It was to avoid the undesirable exploitation of the cultural heritage of peoples. An initiative had been successfully launched, that of protecting, rehabilitating and recognizing the right of the peoples keeping custody of and owning expressions of folklore, traditional knowledge and genetic resources. Not to take such a step would amount to guilty acceptance of the disappearance of the common heritage of humanity. Consequently, the IGC should aim straight for the target. The Delegation was reassured and convinced that enormous progress had been made and congratulated the IGC on it. However, specific steps should be proposed with a view to making real progress on the text. Nigeria had spoken on behalf of the African Group and had referred to a draft regional text, harmonized between ARIPO and OAPI. The Government of the Congo had played an active part in producing that text. In conclusion, the Delegation therefore intended to protect its cultural and natural heritage, but also intended to see the peoples of the world have their rights rehabilitated, and subscribed to the position of the African Group, as mentioned by the Delegation of Nigeria.

53. The Delegation of Swaziland fully supported the statement by the Delegation of Nigeria on behalf of the African Group and of other African states that had spoken positively in taking the discussions further into the formulation and adoption of new rights. Swaziland still strived on TK, TCEs and GR.

54. The Representative of the OAPI supported and associated himself with the statement made by Nigeria on behalf of the African Group, and endorsed the comments made by the delegations that had preceded him in calling for real progress in the work being done. He noted with satisfaction, after reading the different observations made, that the future path of traditional knowledge and expressions of folklore was essentially marked out and that nothing in fact stood in the way of significant progress. Actions designed to move towards appropriate protection for traditional knowledge, expressions of folklore and genetic resources had been undertaken. Thus, OAPI had undertaken a series of actions, following its Board of Directors meeting, held in 2001 in N'Djamena (Chad), during which it was recommended to the Director General to guarantee effective participation by the Organization and its Member States in the work of the IGC. In cooperation with WIPO, OAPI had organized a regional meeting in April 2002, bringing together delegations from 18 countries, in order to devise the strategies to be followed. At that meeting, each delegation consisted of three representatives and included an expert on each of the subjects of genetic resources, traditional knowledge and expressions of folklore. OAPI had taken advantage of this meeting in order to set up a restricted scientific committee of two experts for each of the subjects. The Committee was responsible for monitoring the work of the IGC on behalf of the Member States and the Organization, and for making proposals to the Member States. From the creation of the scientific committee, OAPI had guaranteed the participation of the incumbent members in the different IGC sessions and the annual meetings of said Committee. In February 2003, at the scientific committee meeting held in Dakar to examine the two documents on expressions of folklore and traditional knowledge submitted by the International Bureau to the members of the IGC for comments and observations, the OAPI scientific committee had decided to take as a basis the comments and observations made on these documents in order to produce two draft instruments for protection of expressions of folklore and traditional knowledge. In December 2003, in collaboration with WIPO, OAPI had organized, on the fringes of the work of its Board of Directors, a meeting of its scientific committee in order to discuss the form which the protection instruments might take and to make proposals to the IGC. In 2005, the OAPI, which had opted to produce a protection instrument, had given guidelines of use to the scientific committee in order to prepare two protection drafts. To do that, OAPI had held a meeting of its scientific committee and had participated in a harmonization meeting with its

sister organization, ARIPO. The meeting to harmonize the two drafts had been held in Kampala in November 2005, shortly before the ARIPO Administrative Council with the participation of a Nigerian expert. At the meeting, the two drafts had taken into account the observations, concerns and expectations of both Organizations. In June 2006, following consultation with the experts and associations of traditional holders, OAPI had held a meeting of its scientific committee in Niamey (Niger) in order to review the criticisms expressed with regard to the two harmonized drafts and to correct the breaches noted. At the meeting, the preamble and the guidelines had been merged and exclusive rights recognized for the holders of traditional knowledge in order to provide them with the means to protect their knowledge effectively and to allow judges to have clear texts available, which they could interpret and apply without great difficulty. Thereafter, in October 2006, a second harmonization meeting with ARIPO had been organized in Dakar (Senegal) with the cooperation of WIPO. In terms of the harmonization meeting, the two documents produced at the Niamey meeting had been improved and finalized. Those documents had already been submitted to the ARIPO Administrative Council and were submitted for adoption to the OAPI Board of Directors, held from December 5 to 14, 2006 in Douala (Cameroon). OAPI called on the members of the IGC to show greater willingness and flexibility with a view to making substantive progress in the work of the IGC, in order to produce protection instruments for traditional knowledge and expressions of folklore, without forgetting genetic resources. OAPI recalled the investigations which had covered all regions of the globe, the studies done by eminent specialists, the excellent documents which were prepared and continuously improved by the International Bureau, and the numerous contributions made by indigenous members and communities. Working bases were now available, to the preparation of which intelligence from all over the world had contributed. The representative deplored the lack of tangible results, since he believed that it was simply a matter of good justice and fairness to request protection for traditional knowledge, expressions of folklore and genetic resources. OAPI considered that the best possible protection which would be the most effective would consist of one or more legally binding international instruments. It was necessary to be pragmatic but pragmatism did not mean accepting an empty shell. All the members should work towards and contribute in good faith to the progress made by the Committee.

55. The representative of ARIPO had time and again drawn the attention of the Committee on the need to accelerate its work towards the development of a comprehensive international normative framework that would enable the establishment of an international instrument for the effective protection of GR, TK and EoF. In determining the most effective way of achieving this noble task, it reiterated that TK and EoF were important cultural and economic assets and potential sources of wealth creation and future prosperity of knowledge owners and the slow pace of work and entrenched positions were contributing to the continued misappropriation and exploitation of the knowledge. All acknowledged the need for these resources to be protected. What had brought about divergence in the Committee was the lack of consensus on the best approach for advancing work on the policy objectives and principles contained documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5 which had been reproduced as WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5. In giving further consideration to these issues, it would be important for the members of the Committee to be flexible and compromises to achieve the ultimate goal of elaborating an international instrument or instruments. In spite of the need to address the complexities and differences associated with defining the most appropriate legal mechanisms that were balanced, consistent with international treaties and responsive to the needs of the knowledge owners as well as the continued engagement in the cross-fertilization of ideas to tackle the challenges facing the Committee, ARIPO believed that the work already done by the Committee could be built upon in a constructive manner to advance the work. ARIPO therefore found great

wisdom in the chairman's call during his opening statement for the Committee to develop a road map and come up with goal-oriented work program that would move the Committee process forward. However, the road map would fail to achieve its goal if the main documents for the session, WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5 were not updated and reviewed to provide the platform for norm setting. While national and regional experiences were very enriching and would provide a practical basis for the Committee's work, ARIPO found that mere sharing of experiences alone would not fulfill the goals of the Committee nor would it sufficiently address the expectations and concerns of traditional and local communities who were suffering from misappropriation of their GR, TK and EoF and had consequently become marginalized and impoverished. ARIPO urged the members of the Committee to adopt a win-win approach in charting the way forward. The Delegation reminded that ARIPO had informed the Committee during its ninth session that the Organization had put in place a road map aimed at ensuring that an appropriate and effective instrument was established by ARIPO and its sixteen member states to prohibit and repress the misappropriation of TK as well as empower TK holders to exercise their rights over their knowledge. ARIPO had highlighted that the road map involved the development of legislative framework for the protection of TK and EoF, harmonization of the framework with that of its sister organization OAPI, the establishment of regional consultative processes and expert meetings on the development of a regional legal instrument on the protection of TK and EoF. The road map had also included the need for the development of a TK databases for defensive and positive protection of TK. ARIPO had vigorously pursued this course of action and informed the Committee that at the just ended thirtieth Session of the Administrative Council that was held in Maputo, Mozambique, from November 20 to 24, 2006, the Council had adopted the ARIPO Regional Legal Instrument on the protection of TK and EoF and also launched the national consultative process on the instrument and the possible development of ARIPO Protocol on the protection of TK and EoF. This important milestone was aimed at addressing the needs, desires and expectations of traditional and local communities within the ARIPO sub-region as well as giving effect to the development of an internationally binding legal instrument. ARIPO was optimistic and looked forward to much progress and concrete outcomes at this session. ARIPO fully supported the statement made by Nigeria on behalf of the African Group.

56. The representative of the Inuit Circumpolar Conference of Canada (ICC) and the Pauktautit Inuit of Canada encouraged the Committee to work towards a renewed mandate and the continuation of these discussions. Both ICC and Pauktuutit were working on the difficult task of engaging their regions and communities on the subject matter before the Committee and felt the Committee would benefit from the efforts. ICC would be working to evaluate the Inuit Land Claims Agreements and Self-Government Agreements in the context of research involving Arctic GR. They believed their findings would inform the Committee's work on GR. Additional time, however, was needed. Considering the growing number of accredited observers to these proceedings - with thirteen new observers approved this session - it was clear that indigenous organizations and communities were interested in the progress of the Committee The success of the Voluntary Fund was an additional measure of the importance indigenous peoples placed on the Committee's work. They encouraged the Committee to make sufficient progress in the days to come to ensure the Committee's mandate would be renewed.

57. The representative of Maasai Cultural Heritage thanked the Voluntary Fund for supporting his travel and participation in the Committee and thanked the African delegations for their pragmatic statements and vibrant participation. During his twelve years of participating in the indigenous movement, this was the first forum where African

governments were participating in an upfront manner. He hoped they would take cognizance of the existence of the African Commission on Human and Peoples' Rights Resolution that was passed about indigenous and local communities. He appreciated the fact that for the first time, the governments were talking about indigenous peoples as they had always denied the existence of indigenous peoples. Talking about critical things such as TK, TCEs gave them the opportunity to know that certain communities do hold and practice certain unique cultural folklore and expressions. He added that indigenous TCEs was strongly related to the aspect of land and one could not really talk about TK or TCEs without talking about right to land. It would be up to the African governments to also address this issue as right now indigenous peoples' lands still continued to be expropriated by state and non-state actors. These TCEs actually happen on land. He further commented on the issue mentioned by the Kenyan delegation on the establishment of a traditional task force. It was a very positive step but at the moment there was still very minimum participation of indigenous communities. It was still more or less a government NGO. It would be up to the Kenyan government to strengthen the traditional taskforce by including indigenous voices, in the Kenyan aspect that meant the traditional pastoralists who continued more or less to be excluded from decision-making processes. The representative mentioned the continued misappropriation or abuse of indigenous cultures which continued right now. The Maasai culture was one of them. He added that the Kenyan Delegation was much aware of this. It would help the traditional taskforce come up with legislation that would help protect the Maasai and other indigenous communities from abuse by either state-related forces or other non-state forces.

58. The representative of Tsentsak Survival Foundation (TSF) thanked the Voluntary Fund which enabled him participate in the Committee and understand the reality on where the Committee stood. Historical leaders had lost their credibility and had betrayed their principles for which many people were wondering what could be done in view of this reality. TSF had been set up to defend the rights of peoples and their TK in particular of the Shoar nationality people and was trying to find solutions and have an impact on public policy. TK and TCEs were extremely important issues which should be known by young indigenous peoples. They should be aware of how much of this knowledge was being lost because of the lack of interest of leaders and young people. This knowledge was being developed by indigenous peoples over the years as a result of their own skills or the natural resources had been taking away or this link between people and nature had been lost. Ancestral knowledge was protected by those called *ubechin* in his community. They transmitted their knowledge to those interested, tying to find new ways of protecting that knowledge so that it could serve for new communities. TK covered a whole range of ancestral practices which went beyond the cosmovision of the peoples, including the biological resources important for commercial use but also their value for the cultural survival of different peoples. For many years, this knowledge had been kept alive. There was a huge task force through states and leaders to find mechanisms to protect such knowledge. In Amazon region countries, indigenous peoples had reached declarations which protect the rights of indigenous peoples in various areas linked to all of those in the Enunque and Erutu regions. A number of basic principles need to be taken into account by indigenous peoples and by the states. The knowledge and use of resources were collective and inter-generational for his community. No indigenous people or government can sell or transfer the rights of this knowledge which was the property of his people. All areas of this IP should be linked to the control of cultural heritage, of the resources and land and the way they took advantage of this. This was linked to their free determination. He added that a lot of work on these issues had to be done. Biodiversity and TK were closely linked, they were the cultural heritage of indigenous peoples first, and secondly, to states who were responsible for working for the benefit of their peoples. States were showing greater interest now in this aspect and needed to work hand in hand with

indigenous communities to develop national strategies for the protection of TK of indigenous peoples. Indigenous peoples were the inheritors of this thousand-year hold traditions.

59. The representative of Tupaj Amaru associated himself with the position of the African Group, Egypt and others. He reasserted that today indigenous peoples and local communities were being gradually extinguished. If these communities disappeared tomorrow it would not make any sense to prepare a text or a binding instrument for the protection of TK. Regarding the role played by the major multinational companies such as agro-industrial companies, pharmaceutical companies and even anthropologists, they were looting TCEs an TK as mentioned by the Delegation of Congo. In the face of the major challenges faced by indigenous communities, there was an urgent need to prepare an internationally legally binding instrument because today countries were in the stage of globalization and through market forces had dismantled their national legislations which covered GR and TK.

60. The representative of the Indonesian Traditional Wisdom Network (ITWN) presented his organization as a network that had mission to strengthen and sustain the traditional wisdom of the traditional communities and Indigenous People in Indonesia. ITWN encouraged this forum to increase awareness of Indigenous people and traditional communities on situations and conditions which had had global policy impact. He supported the legally binding system or treaty on the protection of GR, TK and TCEs and agreed with the step by step approach. GR, TK and TCEs were one system in the Indigenous people and traditional communities which should not be separated. Cultural expression was customary practice by Indigenous people in the maintenance and use of GR with the TK base. In the customary practices they were to be guided by norms, ethics and customary laws. He proposed an additional article to the three draft provisions, especially in the substantive principles. Regarding 'the international and regional mandate to protect GRTKF', this article: (i) Established a Special Body in WIPO to strengthen and develop a program to protect GRTKF. For example, WIPO by a special body with the member states and the Indigenous People set up the pilot project in five villages where Indigenous People had GRTKF to maintain and develop. (ii). Established the Regional Body or Regional Agreement established by two or more national authorities in which indigenous people and traditional communities had similar history, territory, social and cultural background in two or more countries. It was intended to prevent the horizontal conflict on the Indigenous people and traditional community. For example, the Dayak Community in the Indonesian and Malaysian border countries in Borneo island. Regarding WIPO/GRTKF/IC/10/INF/2, WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5, ITWN supported the special Permanent Forum on Indigenous Issues comments and suggestions.

61. The Delegation of Zambia fully supported and associated itself with the Statement made by Nigeria on behalf of the African Group. It attached great importance to the protection of GR, TK and TCEs and was therefore looking forward to the development and adoption of a legally binding instrument as means or mechanism of protecting these new rights that are not covered under existing IP regimes. Zambia congratulated the Committee for the establishment of the Voluntary Fund to facilitate indigenous people and local communities to participate in future Committee meetings. The Delegation fully supported the adoption of a legally binding international instrument in order to arrest the misappropriation and misuse of these resources.

62. The Delegation of Uganda aligned itself with the statement made by Nigeria on behalf of the African Group. Uganda was committed to the protection of TK, TCEs and GR and felt that the current legal regimes did not adequately protect them. The Ugandan Government had

made efforts to address this issue which included a draft law on the practice of traditional medicine and a draft policy on indigenous knowledge. It was therefore appreciative of the work done thus far by the Committee. The Delegation was concerned that there was need at this point in time, to arrive at a more substantive outcome at the end of this session. It was hopeful that members would come to a common understanding on the outstanding issues and looked forward to a healthy and constructive debate with a tangible outcome towards a legally binding international instrument.

63. The representative of the International Publishers Association (IPA) recalled that IPA represented books and journal publishers worldwide. Book publishing still remained the largest global cultural and creative industry, since it sold books worth of about USD 88 billion worldwide each year. He added that this sum was larger than the combined sales and rentals and online purchases of music, films and computer games worldwide. The representative attributed great importance to the recognition of traditional knowledge and expression of folklore and for this reason had actively participated in all meetings of the Committee. He observed firstly that a large part of the discussion in the Committee focused on areas of conflict between creative industries, researchers or mainstream society on the one hand, and indigenous peoples and their values on the other. Some submissions cited examples of cases where publishers and indigenous people conflicted. In reality, such cases were very rare, since the relationship between publishing industry and indigenous peoples was by and large positive. He stressed the great benefits drawn from the interaction between individual creators, their traditions or those of indigenous peoples and book and journal publishers. The recording, communication, distribution and preservation of expression of folklore and traditional knowledge was not a secondarian exploitation of a culture, but instead a primary element of these cultures, that kept these cultures alive. Publishing promoted this exchange and interaction that created mutual understanding and learning. He claimed that thanks to publishers of folklore related content indigenous expertise and traditions continued to be alive, that awareness of their moral, scientific values raised, that interest in their preservation was safeguarded. With rare exceptions, there was a public interest in the engagement of publishers and other creative industries with traditional knowledge and expressions of folklore, and this engagement should be encouraged, not made more cumbersome. He added that the real problem that the world faced was the shortage or lack of folklore related publishing, not the combat with isolated cases where publishers did unduly offend those defending their folklore. To further promote the possibility to preserve and exchange this kind of contents through publishing, he supported the Committee's attempts to establish consensus on general policy objectives and guiding principles for dealing with folklore content. Such consensus could help both publishers and indigenous people to do the symbiosis beneficial for culture and cultural diversity generally. He therefore supported those delegations which encouraged the Committee to continue its work on the policy objectives and guiding principles proposed by the Secretariat. At the same time, he resubmitted that it was premature to discuss more detailed substantive provisions at that stage. He noted the absence of international consensus on the overall bases and complexity of numerous technical issues. This included vague definitions and questions related to the administration of any international protection system. But most importantly his concerns regarded the possible impediment of one's freedom of expression and freedom of research. As an example, he pointed out that there was a real risk of censorship when indigenous people disallowed critical researches into controversial aspects of their history or sociology. All cases that had been presented in the Committee to this point were highly individual and strongly dependent on the particular circumstances of the case. The nature of the content involved, the way it was used, the intention on either side, the perception of the content by the indigenous peoples, and the reason for the special value attributed to the relevant content were all very much individual.

Therefore decisions on such cases must be taken by courts as close to the actual circumstances as possible. He said that it was impossible to do justice to all those cases through an international instrument, unless it would stick to very general principles. He made a proposal for a way forward and hightlighted the provisions for moral rights in the Bern Convention, namely Article 6bis, which had protected similar concerns and had allowed an individualized local legislation and juridiction to develop. Extending these provisions to the very core secret knowledge might provide an adequate solution. He looked forward to participating in the on-going debate about these matters and looked forward to a constructive solution of the issues outlined in his submission.

## AGENDA ITEM 7: PARTICIPATION OF LOCAL AND INDIGENOUS COMMUNITIES

*Indigenous panel presentations*

64. In accordance with the decision of the Committee at its seventh session (WIPO/GRTKF/IC/7/15, paragraph 63), the tenth session was immediately preceded by a half-day panel presentations, chaired by a representative from a local or indigenous community: the panel was chaired by Mr. Rodrigo de la Cruz, representative of the Pueblo Indígena Kichwa/Kayambi, Indigenous Regional Consultant for Andean Countries, Regional Office for South America of the World Conservation Union (UICN), and presentations were made according to the program (WIPO/GRTKF/IC/10/INF/5). At the invitation of the Chair, the Chair of the panel submitted the following report of the panel's proceedings to the Committee:

> "1. The Indigenous Panel on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore held its introductory meeting with the participation of seven indigenous experts from different geographical regions of the world: Mr. Rodrigo de la Cruz, from Ecuador; Mrs. Gulnara Abbasova, from Ukraine; Mr. Muhammad Nurul Huda, from Nigeria; Mr. Ikechi Mgbeoji, Bangladesh; Mrs. Tarcila Rivera Zea, from Peru; Dr. Jacob Simet, from Papua New Guinea; and Mr. Grez Young-Ing, from Canada, who presented their reports on the situation of traditional knowledge and the role played by customary law in the conservation and protection of such knowledge.
>
> 2. The presentations made by the indigenous speakers focussed on the need for the Committee to move ahead firmly with the construction of the components for a sui generis system for the protection of traditional knowledge associated with genetic resources and folklore issues, taking into account their own customary laws that had made the intergenerational existence of such knowledge possible.
>
> 3. The recognition and reaffirmation of the ownership of collective intellectual property rights of individual people, with regard to traditional knowledge and folklore issues, was a key element mentioned by the experts in this process, with the aim of guaranteeing the collective, integral and evolutionary nature of such knowledge.
>
> 4. A sui generis system for the protection of traditional knowledge should also envisage fundamental principles such as prior informed consent and equitable benefit sharing, for the purpose of guaranteeing the ownership of their collective rights and the improvement of the living conditions of indigenous peoples and local communities.

5. In their reports, the indigenous experts also expressed their reservations insofar as the work of the Committee was directed towards the protection of traditional knowledge within the intellectual property rights systems in force, since traditional knowledge differed as a result of its collective intellectual property nature and often did not pursue commercial aims, although it was relevant above all owing to the value per se, which it held for indigenous peoples. By contrast, intellectual property rights were legal systems with international standards that were established with aims directed towards the appropriation and commercial exploitation of the creations and inventions of the human intellect. Traditional knowledge did not fall within these parameters of positive law.

6. The current situation of traditional knowledge in the countries of origin of indigenous peoples was another of the aspects mentioned by the indigenous experts and, in that connection, they made clear their concern at the lack of national policies and legislative measures, and of a binding international instrument which had resulted in the misuse of traditional knowledge; mention was made of various cases of biopiracy and cognopiracy that had occurred among indigenous peoples, as noted in the individual reports.

7. The indigenous experts also stated that they welcomed the establishment of a Voluntary Contribution Fund allowing indigenous peoples and communities to participate in the Committee's work and encouraged its distribution to the different geographical regions of the world, and above all to indigenous peoples from developing countries.

8. The indigenous experts made clear the need for the WIPO Secretariat to offer support in conducting more comprehensive individual studies on the situation of traditional knowledge in the countries of origin of indigenous peoples and the role played by customary laws in the protection of such knowledge, in the face of the different kinds of pressure to which it was currently subject and which affected their own cultures and traditions.

9. The introductory meeting of the Indigenous Panel on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore made a significant contribution to dealing with the key subjects on the official agenda of WIPO IGC 10, which was to meet immediately from November 30 to December 8, 2006."

*Voluntary Fund for accredited indigenous and local communities*

65. The Chair drew the attention of the Committee to documents WIPO/GRTKF/IC/10/3 and WIPO/GRTKF/IC/10/INF/6 and recalled that the Committee had discussed at lenght how to enhance the participation of indigenous and local communities in its work. It had implemented several practical measures including the panel of indigenous and local representatives, like the one organized just before the present session. One important development in that context was the decision by the General Assembly (WO/GA/32/13 paragraph 168) in its 32nd session to create a Voluntary Fund to support the participation of representatives of accredited observers representing indigenous and local communities. That decision was based on the recommendation made by the Committee developed in the course of eight previous sessions of the Committee. This Fund had now been formally established in line with the General Assembly decision. The Chair informed the Committee that the Swedish International Biodiversity Programme (SwedBio/CBM) provided a generous

contribution to the Fund for the benefits of the holders of TK and TCE's and that the Governement of France and the Government of South Africa had made generous pledges. The Chair warmly thanked those generous donors for their valuable show of support. He noted that one applicant was obliged to withdraw due to external factors, but that the Fund had been able to finance the remaining seven applicants recommended by the Advisory Board. The General Assembly Decision foresaw that the binding recommendations for funding be taken by an Advisory Board appointed by the Committee on the proposal on its Chair and that the membership of the Advisory Board was required to be reappointed at each session of the Committee.

66. The Secretariat introduced WIPO/GRTKF/IC/10/3 and WIPO/GRTKF/IC/10/INF/6, adding to the Chair's presentation that the first document mentioned items asking for the action of the Committee and that the second document was an information update on the operation of the Fund. The Secretariat informed the Committee that a generous pledge had been made to the Fund the same day and that finalization of details was going on. This was a very encouraging development for future sessions of the Committee. The generous contribution by SwedBio/CBM was recorded in document WIPO/GRTKF/IC/10/INF/6 as well as the pledges recorded at that stage, and the funding of recommended applicants that had been made available already, ensuring that seven representatives of indigenous and local communities were present at the present Committee's session. The Secretariat recalled that recommendations concerning funding of representatives under the Fund were not adopted by the Secretariat. Those binding recommendations were adopted by an independant Advisory Board appointed directly by the Committee. The role of the Secretariat was simply to carry out those recommendations. The Secretariat pointed out that the key practical issue before the Committee was the reappointment of the membership of the Voluntary Fund Advisory Board. The rules governing the Advisory Board spelled out that the Committee at each session needed to elect the members of the Advisory Board on the second day of its session. The members of the Advisory Board appointed by the Committee at its previous session were mentioned in document WIPO/GRTKF/IC/10/3. As paragraph 6 pointed out, the mandate of the current members of the Advisory Board expired with the present session of the Committee. However past members of the Board were eligible for reelection. The Secretariat gathered that they were consultations still on the way regarding nominees to be considered for the Advisory Board but it did not have nominations for all of the positions foreseen under the procedure for the Advisory Board. In addition, the Secretariat highlighted one technical point that required guidance from the Committee. Part of the standard financial arrangements for any travel that was officially funded under the common regime of the United Nations System included a sum for terminal expenses. This sum was set by a standard rate throughout the United Nations System so that any delegates funded by WIPO or other UN Agencies received that standard rate. In the rules of procedures applicable to the WIPO Voluntary Fund as established by the WIPO General Assembly, the rate applicable under the United Nations System was explicitely quoted as USD 60. That rate had been in the meantime increased throughout the United Nations System to USD 76. The Secretariat felt that it could not take the initiative to provide this new rate to the recommended applicants without confirmation from the Committee. Therefore document WIPO/GRTKF/IC/10/3 paragraph 9(v) asked for the Committee's confirmation that the Secretariat could make this technical adjustment to the operation of the Fund.

67. The representative of Indian Movement *Tupaj Amaru* recalled that for five or six years he had been fighting to obtain the Voluntary Fund and recognized that this fair claim made by indigenous peoples had been achieved thanks to the Governments which had supported that initiative. He regretted that he did not know which procedure applied to the appointment of

nominees to the Advisory Board and particularly whether each indigenous or local community organization submitted a nominee to the Advisory Board, whether that nomination process had been preceded by consultations among indigenous peoples, and whether they had clearly discussed the matter, consulted their organizations before putting forward candidates to the Advisory Board. He stressed the fact that this consultation procedure would have been the most democratic procedure possible. He did not know where the nominees and recommended applicants came from, where they were going and pleaded for transparency, since money was involved, recalling that there was widespread corruption in the context of globalization nowadays. He wanted to avoid corruption with more transparency. He shared his experience of what had been going on in the United Nations the last twenty years, recalling the setting up of the United Nations Voluntary Fund for Indigenous Populations. In twenty years time he had seen that many indigenous peoples had come to the United Nations for touristic purposes only and had not really contributed constructively to the work of the subsidiary bodies or sub-committees of ECOSOC. Indigenous peoples had gone back to their peoples and had not even conveyed information to their communities about what went on in the United Nations. He added that the international community was blinding its own eyes to that situation. Additionally he expressed the wish that the same selection criteria be applied throughout the whole United Nations system and needed also to receive more information about how fair geographical distribution was ensured. He said that the Committee had to take account of countries where indigenous peoples were more numerous, referring to lessons drawn from the United Nations Permanent Forum on Indigenous Issues. He cited Mexico, Guatemala, Peru, Bolivia and Ecuador as countries which were distinctly made out of indigenous peoples. He also referred to the conclusions of Mr. Alfonso Martinez, United Nations Special Rapporteur, who had defined who could claim to be indigenous peoples and who could not be so described. Experience had also showed him that everybody wanted to join indigenous people's caucus, because indigenous peoples were beneficiaries of a Voluntary Fund. He recalled the Committee that he put forward reasons why the WIPO Voluntary Fund should serve the purposes of the indigenous and local communities in poor countries as it was the case in Latin America. He said that the fairest system would be that the rich countries of the North should pay for their own indigenous peoples, pointing out that rich countries had pharmaceutical companies which plundered and patented their resources and traditional knowledge through WIPO. He requested applicants for the Voluntary Fund to make substantive contributions to the Committee's work or other bodies and not merely come and go home, and requested also that each indigenous organization represented a given community or a given people. In the case of Indian Movement *Tupaj Amaru*, he said it represented the indigenous peoples of Bolivia, Peru and also minorities and communities in northern countries. He asked for fairness and equity in the distribution of the funds.

68. The representative of the Center for Indigenous Cultures of Peru (CHIRAPAQ) asked whether it would possible for the Committee to envisage use of customary rights to designate indigenous rights and was concerned with the fact that customary rights were not given a level that the indigenous peoples actually deserved. She asked that indigenous rights be put at the same level as rights within the legal field. She expressed another concern related to traditional knowledge, pointing out that indigenous peoples's cultures were alive. For this reason, she would feel more comfortable if the Committee could use the term of indigenous knowledge, instead of traditional knowledge. She was also concerned about the use of the term "folklore". She acknowledged that social sciences and anthropological sciences used that term. However indigenous peoples and cultures had dynamic cultures, adapted to each era. Therefore she suggested the Committee used the following expression: "cultural

expressions of indigenous peoples" instead of "folklore". She recalled that it was a recommendation made by the indigenous panel.

69. The representative of the Indigenous People's Council on Biocolonialism (IPCB), speaking also on behalf of Call of the Earth (COE), the Center for Indigenous Cultures of Peru (CHIRAPAQ), the Permanent Workshop of Indigenous Women of Peru and the South American Indigenous Women's Network, congratulated the Committee for the establishment of the Voluntary Fund as one vital mechanism to increase the participation of Indigenous peoples' nations and organizations. She said that the efforts would need to focus on increasing the diversity of applicants and additional mechanisms to support and facilitate Indigenous peoples' full and effective participation in the Committee's sessions. She made several specific recommendations on this topic. Referring to paragraph 6(h) of the Annex in document WIPO/GRTKF/IC/10/3 which stated *inter alia* that the Advisory Board should ensure that "a balance is maintained between the male and female beneficiaries", she commended the effort to achieve gender equity of beneficiaries to the Voluntary Fund and noted that three women had benefited from this inaugural funding round. She also noted that only 5 of 14 applicants for the next session were women. Therefore, it seemed apparent that further efforts were needed to actualise the full and effective participation of Indigenous women specifically in the Committee's work. She recommended that the Secretariat establish a communication mechanism with Indigenous women's organizations and expressed willingness to suggest some relevant contacts to the Secretariat. She further recommended the initiation of capacity building workshops for indigenous women on WIPO and the Committee's work to precede future Committee sessions. The United Nations Permanent Forum on indigenous Issues and the CBD Secretariats had successfully completed such capacity building workshops which WIPO could simulate on WIPO-specific issues and processes. She also suggested that the Advisory Board's composition included Indigenous women. Accordingly, she wished to nominate an indigenous woman to the new Advisory Board and urged nominations of indigenous women to be given special consideration. In regards to geo-regional balance, also contained in paragraph 6 (h) of Annex to document WO/GA/32/6, she emphasized the need to specifically increase participation of Indigenous peoples of Latin America and Small Island Developing States (SIDS). She recalled that indigenous peoples from developing countries, particularly from Latin America and SIDS, were consistently underrepresented in most United Nations fora, and the Committee, unfortunately, had not been an exception. She noted that there was only one beneficiary for this session from Latin America and one from a small island developing state listed in the information note WIPO/GRTKF/IC/10/INF/6. And for the next session, there was only one applicant from Latin America and none from SIDS. This situation was not for lack of interest by peoples from these regions. Therefore, she recommended the development of mechanisms for information dissemination about the Committee and the Voluntary Fund to indigenous peoples of Latin America and SIDS. In this regard, she was ready to communicate with the Secretariat about possible contacts with Indigenous organizations who could participate in such a process of information dissemination. As more indigenous peoples participated in the Committee, she pointed out that there would be an increasing need for communication among indigenous peoples of diverse languages. Therefore, she foresaw specifically a need for interpretation services in English, Spanish, French, and Russian. She also commended the indigenous panel that took place just before the opening of the session as a positive and constructive way to highlight the unique concerns of indigenous peoples in relation to indigenous knowledge. She expressed the wish to see such a panel to continue for future sessions of the Committee and suggested that a panel on indigenous peoples' Genetic Resources could be organized for the next session and positively contributed to the genetic resources strand of the Committee's work.

70. The Secretariat recalled the arrangements that had been established for the Voluntary Fund. It was the Committee that developed a recommendation and agreed upon it, passed it the WIPO General Assembly, which then adopted it- The rules governing the operation of the Fund were reflected in Annex to document WO/GA/32/6. Those rules were the framework which the Secretariat provided the administrative support for and those rules set out that the Advisory Board should be directly elected by the Committee following consultations with the regional groups and with the non-governmental organizations represented in the Committee. The understanding of the Secretariat was that consultations were taking placewith the Secretariat simply receiving the nominations and passing them to the Committee for consideration. Concerning the principles that should govern the Voluntary Fund, the Secretariat mentioned paragraph 5 (c) of the rules which required that beneficiaries from the Fund should be members of an accredited observer which represented indigenous or local communities or otherwise represented customary holders or custodians of traditional knowledge or traditional cultural expressions. Paragraph 5 (d) required to ensure a broad geographical spread of participation among seven geo-cultural regions recognized by the Permanent Forum on Indigenous Issues, with a particular focus on developing and least-developed countries and small island developing countries. As the statement of the representative of the Indigenous People's Council on Biocolonialism (IPCB) had just pointed out, there was a requirement in paragraph 6 (h), to ensure both gender balance and balance between the geo-cultural regions insofar as this is possible. The Secretariat added that document WIPO/GRTKF/IC/10/INF/6 was also a formal requirement under the rules of the Voluntary Fund. This information note set out fully all the funds received and the beneficiaries of the Voluntary Fund. This communication standard was established to ensure transparency in the operation of the Voluntary Fund. Further decisions made by the Advisory Baord would be reported in exactly the same way. The Secretariat added that it had taken steps to publicize the Fund and to make it known, for example at relevant events such the United Nations Permanent Forum on Indigenous Issues, meetings of the Convention on Biodiversity (CBD), relevant working groups and the like. The Secretariat would nevertheless be grateful for any further suggestion on how to make the Voluntary Fund more widely and better known.

71. The Delegation of Brazil recalled that Member States negotiated the rules of procedure governing the Voluntary Fund and that particular care had been taken to try to make it as transparent as possible. It was for that reason that the Committee received a number of documents circulated by the Secretariat. Document WIPO/GRTKF/IC/10/INF/6 informed the Committee about contributions made to the Fund and gave out the names of those organizations or countries that had made such contributions, and also indicated those individuals who had received financial support from the Voluntary Fund. The Delegation of Brazil believed that this was a positive step towards transparency within WIPO and felt important to compare this procedure with the general practice in WIPO and other international bodies, where funding based on regular budget was not necessarily submitted to the same level of transparency. The Delegation of Brazil pointed out that many delegates received support from the International Bureau by means of resources coming out of the regular budget WIPO. But it noted that the names of those who had come to meetings under those particular conditions and how they had actually been selected and appointed was not really spelled out in any formal document distributed to Member States. Eventhough it heard some criticism, it noted that in terms of WIPO standards the procedure under the Voluntary Fund was more transparent than the usual procedures. It commended members as well as the Secretariat for having achieved this additional level of transparency. Finally the Delegation of Brazil requested clarification on how the names of those who are interested in applying for support

did reach the Secretariat and wondered whether that happened through the Member States' channel or through those interested NGO's or organizations that represented indigenous communities or even directly from individuals as such.

72. The Secretariat replied that support by the Voluntary Fund was reserved for organizations which were already accredited by the Committee. Therefore the applicants needed to be proposed by an accredited organization to the Committee. The Secretariat did receive directly from accredited organizations nominations of the individuals who applied for funding under the Fund. Document WIPO/GRTKF/IC/10/INF/6 listed those individuals who had been nominated by the accredited observers concerned. Therefore document WIPO/GRTKF/IC/10/INF/6 listed the name of the accredited observers which nominated the candidates as well. That procedure was implemented in accordance with paragraph 5 (c) (iii) which required that nominees should be duly nominated in writing by the observer to represent it at the session designated for the financial support and should be also nominated as a possible beneficiary of support from the Voluntary Fund. In other words, the rules of the Voluntary did indeed require a direct nomination by the accredited observer. The Secretariat added that it received therefore nominations for possible funding in writing from the accredited observers. Details were available on the website to facilitate the process.

73. The Delegation of New Zealand referred to the process of appointment of the members of the Advisory Board and said that it put forward a nominated member of the Advisory Board from Papua New Guinea, namely Mr. Jacob Simet. It realized actually that there was no regional subgrouping for the Pacific region *per se* and was disappointed at that. It asked that the Committee gave consideration to the contribution that the Pacific people had made to intellectual property and the contribution it would make in the future. Dr. Simet's name had been put forward as a member of the Pacific Arts Council which was made out of indigenous people of 23 countries of the Pacific. The work that this organization had carried out in the past five years had been significant. It developed a framework and guidelines for the protection of TK and expressions of folklore, which was a very significant piece of work. The Delegation of New Zealand asked that steps were taken to ensure that there was somekind of degree of participation allowed for the Pacific and particularly in the work and subgroupings of the Committee. At the moment, it could not see a way forward to obtain the endorsement by the Committee of Dr. Simet's nomination. But it wanted to draw the Committee's attention to the Pacific area as such.

74. The representative of the Indigenous People's Council on Biocolonialism (IPCB) supported the statement and efforts made by the Delegation of New Zealand to nominate Mr. Jacob Simet from Papua New Guinea as a member of the Advisory Board. Although Mr. Jacob Simet was a delegate of Papua New Guinea, she noted that he was also an indigenous person who represented his peoples and other peoples of the Pacific in other fora, such as the Pacific Arts Council. As previously stated in her earlier intervention on Item 7 of the agenda regarding participation of indigenous peoples, she stressed the fact again that special consideration needed to be given to the indigenous peoples of the Small Island Developing States. She believed that Mr. Jacob Simet's nomination could have furthered that objective in the Committee. For the future, she called upon the Committee to take this issue into consideration and make all efforts to ensure participation of the Pacific region.

75. The representative of Indigenous People (Bethechilokono) of Saint Lucia Governing Council (BCG) strongly supported the position submitted by the Delegation of New Zealand.

76. The Chair said that the Committee took note of the statement made by the Delegation of New Zealand, the representative of the Indigenous People's Council on Biocolonialism (IPCB) and the representative of Indigenous People (Bethechilokono) of Saint Lucia Governing Council (BCG).

*Decision on Agenda Item 7:*
*Participation of Indigenous and Local Communities: Voluntary Fund*

77. The Committee (i) took note of the implementation of the WIPO Voluntary Fund for Accredited Local and Indigenous Communities; (ii) welcomed the pledges and contributions received; (iii) encouraged its members and all interested public or private entities to pledge or to contribute to the Voluntary Fund; and (iv) confirmed that in future terminal expenses should be payable to beneficiaries under the fund at the rate currently applied under the United Nations system.

78. The Chair proposed, and the Committee elected by acclaim, the following eight members of the Advisory Board to serve in an individual capacity: as members of delegations of WIPO Member States: Mr. Gilles Barrier, France; Mr. Oscar Echeverry Vasquez, Colombia; Ms. Jean Kimani, Kenya; Mr. Yazdan Nadalizadeh, Islamic Republic of Iran; Mrs. Larisa Simonova, Russian Federation; as members of accredited observers representing indigenous and local communities or other customary holders or custodians of TK or TCEs: Mrs. Debra Harry, representative of the Indigenous Peoples Council on Biocolonialism; Mr. Johnson Ole Kaunga, representative of the Maasai Cultural Heritage; and Mr. Stuart Wuttke, representative of the Assembly of First Nations. The Chair nominated Mr. Abdellah Ouadrhiri, Deputy Chair of the Committee, to serve as deputy Chair of the Advisory Board.

## AGENDA ITEM 8: TRADITIONAL CULTURAL EXPRESSIONS/FOLKLORE

79. The Chair briefly introduced documents WIPO/GRTKF/IC/10/4., WIPO/GRTKF/IC/10/6, WIPO/GRTKF/IC/10/Inf 2, WIPO/GRTKF/IC/10/Inf 2 Add, WIPO/GRTKF/IC/10/Inf 2 Add. 2, WIPO/GRTKF/IC/10/Inf 2 Add. 3, WIPO/GRTKF/IC/10/Inf 3, and WIPO/GRTKF/IC/9/Inf 4. The Chair encouraged delegations to comment on the draft objectives and principles for the protection of TCEs as set out in the Annex to WIPO/GRTKF/IC/10/4., refer to comments made by other Delegations as set out in the various WIPO/GRTKF/IC/10/INF documents or draw attention to any comments they had themselves made.

80. The Delegation of Brazil stated that it had submitted comments which had been reproduced in WIPO/GRTKF/IC/10/INF/2. The comments were guided by three main concerns. First, the duty to comply with PIC should not be conditioned upon registration. PIC was a general principle, and any enterprise or individual interested in making use of or commercializing TCEs was obliged to obtain PIC from the respective custodians or relevant community. Conditioning PIC on registration would undermine any legal protection granted to TCEs. Second, the enforcement of TCE related rights must not depend on registration or any other formality. Protection for TCEs should not be conditioned on registration, nor should registration be related to counting the term of protection. The Delegation preferred the inclusion in the draft TCE provisions of an article similar to that found in Article 11 of the provisions dealing with TK in WIPO/GRTKF/IC/10/5. Third, TCEs should be eligible for protection by the mere fact they were part of the cultural heritage of indigenous and local communities, and there should be no qualification that they should be of "particular cultural

or spiritual value or significance" as referred to in draft Articles 3(a) and 7(b). Limiting certain levels of protection to TCEs of such a nature would lead to problems such as determining who or which authority would be entitled to classify TCEs as of particular value. The Delegation favored deleting references to TCEs of "particular cultural or spiritual value or significance" in Articles 3(a) and 7(b). The Delegation's other comments were contained in WIPO/GRTKF/IC/10/INF 2. The Delegation sought two clarifications. First, the meaning of the term "derivatives of" TCEs in Articles 3 and 10, and the term "tacit consensus" in Article 1. Finally, the Delegation stated that the draft provisions on TCEs also needed to deal with the TCEs of immigrants.

81. The Delegation of El Salvador stated it would present written comments on WIPO/GRTKF/IC/10/4 at a later stage, but that it wished, in the interim, clarification on the meaning of Article 6 of the provisions.

82. At the invitation of the Chair, the Secretariat took the floor to respond to the questions posed by the Delegations of El Salvador and Brazil. In response to the request for clarification on the meaning of Article 6, the Secretariat stated that the central principle of the article was that TCEs would be protected for as long as they continued to reflect the characteristics of TCEs and to meet the criteria for protection for TCEs as set out in draft Article 1 of the provisions. In other words, a TCE would be protected indefinitely for as long as the TCE remained a TCE for purposes of Article 1. Comments by Committee participants on an earlier version of this Article in WIPO/GRTKF/IC/7/3 had suggested that certain categories of TCEs might require differentiated terms of protection, and, for this reason, the present draft of the Article provided, in sub-paragraphs (i) and (ii), for special terms of protection for two categories of TCEs, namely, those of particular cultural or spiritual value for which a higher level of protection was sought and which had therefore been registered or notified to an authority in terms of draft Articles 3(a) and 7(b), and secret TCEs, whose protection as secret TCEs would endure for as long as they remained secret (they might remain protected, however, but not as *secret* TCEs with the kind and level of protection specifically afforded secret TCEs. This was the effect of the words "as such" in draft Article 6(ii)). In relation to the meaning of "derivatives of" TCEs, the Secretariat noted that the term "derivative" was common in copyright parlance, but acknowledged that the term might not be as well-known in other IP systems. In copyright, "derivative" referred to a creation or production based on a pre-existing work, such as a translation, abridgement, arrangement, or any other recasting or adaptation of, a pre-existing work. In the various fact-finding and consultations the Secretariat had held with communities in relation to TCEs, and based also on the valuable comments it had received from Committee participants, it had appeared that TCEs were more often adapted, interpreted and re-used by third parties than directly reproduced. Therefore, communities and others had suggested that in any scheme for the protection of TCEs the right to control the making of derivatives of TCEs, in addition to their wholesale reproduction, was important. In addition, TCEs were constantly being adapted, recreated and re-interpreted within and by communities themselves. In response, draft Article 3 suggested, in respect of TCEs of particular cultural or spiritual value, a right of adaptation (the right of communities to prevent or authorize the adaptation of their TCEs). In addition, the exclusive rights that would be applicable to such TCEs would apply not only to the TCEs themselves but also recreations and adaptations ("derivatives") of them. As the commentary to the draft provisions in WIPO/GRTKF/IC/10/4 noted, key policy questions pivoted on the question of an adaptation right and the treatment of derivatives. The term "tacit consensus", which appeared in the commentary to draft Article 1, referred in that context to a community's implicit acceptance, over time, of a cultural expression as being an authentic expression of the community's identity and heritage, i.e., such cultural expressions

would over time become "characteristic" of the community's identity and heritage. The Secretariat thanked the Delegations concerned for their questions and stated that it remained available at any time to discuss these or other questions further.

83. The Delegation of Japan stated it did not agree with a PIC requirement, and it was also against a rights-based approach, in relation to TCEs. Under the principle of flexibility and comprehensiveness in paragraph (d) of the General Guiding Principles in WIPO/GRTKF/IC/10/4, countries should be free to choose their domestic system with which to protect TCEs, including through an approach that did not involve the establishment of a new legal right. A rights-based approach was too rigid and it restricted exploitation of cultural assets that helped to enrich cultures. Preservation of TCEs, which the Delegation understood to be the main concern of many indigenous peoples, could be achieved in other ways, such as through cataloguing and recording of disappearing traditions and subsidies. Historically, culture had evolved through mutual borrowing of cultural expressions, often without the consent of the original creators. If the Chinese had denied Japan the right to use aspects of their ancient culture, a significant part of the Japanese culture would have been inaccessible today. On the other hand, traditional Japanese art and culture had inspired the West to enrich its art and had been used by Westerners without the consent of the Japanese. However, such uses had generally been mutually beneficial. Participants should be cautious, the Delegation stated, in attempting to create a system of IP protection for TCEs as it would interfere with the development of each culture through mutual exchange and enlightenment. A discussion of PIC was unnecessary at this point and might even be confusing. Enforcing PIC should be precluded by the application of the flexibility and comprehensiveness principle. Such confusion and inconsistency between the general guiding principles and the substantive provisions, could be avoided by first discussing the policy objectives and general guiding principles in the document (parts 1 and 2), to set out the general design of what it was that was being sought to be achieved, before discussing specific mechanisms as depicted in part III. Through reading the comments submitted by Committee participants, the Delegation was even more convinced that views were too diverse to discuss such specific mechanisms as those in part III. The discussions should begin where there was a possibility for agreement. This meant discussing first the draft policy objectives and general guiding principles.

84. The Delegation of Colombia considered it necessary to make progress with the protection of TCEs by producing a specific binding instrument. It considered that different studies, documents, analyses and debates had been produced, which had given rise to relevant materials enabling the Committee to move on from drafts of an international document, the aims of which included the protection of TCEs. The time had already come to work on an international text and to negotiate such a text within WIPO. The Delegation reiterated once again its proposal to include alternatives in WIPO/GRTKF/IC/10/4, allowing States to take decisions on specific texts. That methodology had worked very well in the negotiations currently being conducted on a draft treaty for broadcasting organizations. It was a more practical and less diffuse model. In relation to objectives and core principles, Colombia considered those objectives and principles to be relevant, complete and consistent with the political and legal framework in force in Colombia, as well as the expectations of indigenous peoples and traditional communities. It therefore had no objection to the proposal contained in the document. As to substantive principles, Article 1, the subject matter of protection, a glossary should be produced in order to facilitate understanding of the terms used and the single interpretation of the articles, rather than leaving such work to the national and regional authorities, with the aim of producing a binding international instrument which primarily defined its intended purpose. On Article 2, beneficiaries, it was important to differentiate the concepts of State, country, and people or nation. In countries with great cultural diversity

such as Colombia, where there were 91 indigenous peoples with more than 60 different languages and specific organizational systems of government, it was essential to channel the benefits adequately to those peoples or nations, which even went beyond national borders. In other words, although the concept of cultural community was sufficiently broad to cover even a country or a nation, it was important to establish the fact that the benefits might be at country level, for countries consisting of a single cultural community, people or nation; also, they might relate to peoples or nations within regions, which actually exceeded territorial limits between neighboring countries. Similarly, within the concept of cultural community, local or regional identities should be considered, as they did not necessarily constitute separate peoples and, although they shared the same national language, religion and identity, they had authentic TCEs/EoF specific to a particular cultural community, which in turn formed part of a larger cultural community or national society within a country. On Article 3, acts of misappropriation, expressions of folklore that were registered were treated differently from those which were not registered, although in the field of copyright registration had a declaratory function and did not constitute rights. Member States should recall that protection resulted from the act of creation and therefore the Government of Colombia did not agree to consider registration and notification as a condition for the exercise of the right to PIC. Protected moral and economic rights must be the same and have the same enforcement measures (civil, criminal and administrative). As regards TCEs/EoF of cultural and spiritual value, it was important to consider that some indigenous peoples had stated that, since different levels and types of knowledge existed, they should be treated separately, but those which were located in the spiritual dimension must be seen from a defensive perspective, as in principle there were no economic interests but important spiritual expectations. Consequently, strict protection must exist and mechanisms other than registration and notification be established in order to control the right to PIC and make that right effective. A *sui generis* system of protection must establish a limit to those TCEs/EoF which, owing to their spiritual and sacred nature, could not be marketed. Peoples and communities had their own authorities which must protect and preserve that knowledge with their specific legal and justice systems, and the competent national authority must take care to protect that right and to strengthen the authorities and organizations of the peoples and communities so that they could exercise the right. Similarly, the existence of scientific evidence of collective ownership of TCEs/EoF must be sufficient proof to enjoy the right to PIC, eventhough there was no registration or notification within the competent government authorities for the protection of IP rights. Scientific evidence included ethnographic studies, monographs, compilations and scientific publications, produced by both social and natural scientists, as well as by members of the communities which conducted specific research as a strategy for retrieving and revitalizing TCEs/EoF. Furthermore, in complex geopolitical contexts, the greatest expectation of cultural communities related to guaranteeing their physical and cultural continuity, owing to the different forms of pressure which they faced. In those contexts, the protection of TCEs/EoF moved onto another level but, for a different reason, such expressions were no longer legal subjects and, therefore, requirements should not be established which, in certain cases, could not be satisfied by communities. In other words, the rights of the most vulnerable peoples and communities in contexts of conflict and displacement must be guaranteed as a matter of priority and unconditionally. On Article 4, on the management of rights, the formation of a body or authority which channeled the benefits to communities must be carefully reviewed in such a way as to avoid bureaucracy which limited the direct benefits to communities. Furthermore, the reservations concerning any body or authority acting on behalf of indigenous peoples must lead to the strengthening of the bodies specific to peoples and communities, and the establishment of a competent national authority which must carry out supervisory and monitoring functions, as well as guaranteeing lawful, inclusive and diverse representation in its decision-making authorities. In addition,

although the proposal gave priority to protection against the misappropriation of TCEs/EoF, it was also essential to guarantee that the protection instrument promoted the revitalization, maintenance and conservation of such expressions. The proposal should be broad and flexible so that each country defined its approach in accordance with particular processes and contexts, and include defensive and protective actions, so that complete protection, including retrieval and promotion, were fostered. On Article 5, exceptions and limitations, Colombia considered the proposed exceptions to be relevant to the objectives and core principles. On Article 6, term of protection, limiting the term of protection to the existence of registration or notification limited the scope of the instrument, contradicted the objectives and principles established and made the defense of rights difficult, where such rights, by their very nature, should not be subject to prescription, particularly in the case of indigenous peoples, whose original or specific law was unified, complete and permanent. It was not acceptable to place a time limit on the right to the protection of TCEs/EoF, in view of the characteristics specific to such expressions. It should also be recalled that expressions of folklore must be protected while they were expressed, made apparent or manifested by a community. No distinction should be made between registered or unregistered and secret TCEs. On Article 7, on formalities, once again the problem of registration arose, in relation to which Colombia reiterated its position that registration had a declaratory function and did not constitute rights. In real terms, the principle established in Article 7(a) contradicted the condition for TCEs/EoF of particular cultural or spiritual value, established in Article 3(a) and developed in Article 7(b). The requirement of registration or notification as a prior formality for such expressions to be legal subjects was not acceptable in any case, and less still in those TCEs/EoF of spiritual and cultural relevance. That also contradicted what was established in Article 7(iii), where it was stated that registration was declaratory and did not create rights, but did in fact limit the scope of the right, insofar as the exercise of the right to prior informed consent was conditional on the existence of registration or notification. Colombia agreed with the existence of different forms of publicity for TCEs so as to provide certainty for third parties regarding the protected subject matter and for whose benefit, but it did not agree with establishing the compulsory nature of the registration of those creations. The Committee should equip itself with alternative mechanisms of proof, seeking greater consistency with customary practices, own law, government autonomy and links between different authorities in order to guarantee mutually agreed terms on conditions of equality. Rather than formalizing the status of legal subjects, what should be guaranteed was complete access to information for communities so that they could actually protect and revitalize their TCEs/EoF, defend their rights and obtain benefits on fair and equitable conditions relevant to well-being and the improvement of quality of life, on the basis of their cultural principles. The Government of Colombia did not accept registration as a formal requirement in any case, less still in TCEs/EoF of spiritual value. On the other hand, where knowledge was established as secret, it would limit oral transmission and be a disincentive to the continuity of the traditional systems of transmission of TCEs/EoF. On Article 8, sanctions, remedies and exercise of rights, in Article 8(b), it was recommended to include an "agency or agencies" in the cases in which different support agencies may exist in a country for different peoples (for example, this may be a high level consultancy for black communities and the Standing Committee for Indigenous Peoples). On Article 9, transitional measures, an intermediate position with regard to the subject of retroactivity and future orientation was interesting and relevant, although it was important to clarify that subjection to rights acquired previously by third parties should apply if, and only if, those rights did not contravene the framework of rights for which protection was sought, i.e. which guaranteed in any case both fair and equitable benefit sharing and prior informed consent. On Article 10, relationship with intellectual property, protection and other forms of protection, preservation and promotion, the complementarity between different forms of protection was relevant, given the diversity of expectations and

interests, including within peoples and cultural communities. However, the ambiguity between collective rights under a *sui generis* system and exclusive rights covered by IPRs might confuse communities and lead to conflict within those communities, in the case of individuals seeking personal gain who used collective TCEs/EoF unduly. The Government of Colombia recommended that consideration be given to the implications which an ambiguous application of instruments (conventional IP and *sui generis*) in traditional cultural communities might have. On Article 11, international and regional protection, the Government of Colombia accepted the proposal. As to WIPO/GRTKF/IC/10/INF/2, which contained comments on WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5, the Government of Colombia took note of its contents and wished to emphasize the comments made by Norway, a country which supported the inclusion of an obligation to disclose the origin of GRs and TK in patent applications. However, it was important to point out that for Norway the absence of that requirement did not invalidate the patent applied for, contrary to what happened in the Andean Community Rules. Similarly, Brazil had pointed out *inter alia* that the registration of PIC was not a requirement for the protection of TK. Another important element mentioned by Brazil was that the TK instrument must include elements for obtaining PIC and achieve fair and equitable benefit sharing, as derived from the use of TCEs. As for document WIPO/GRTKF/IC/10/INF/3, Colombia agreed with the comments made by Mexico, especially concerning the use of the term “poseedor” (“owner”) to replace the term “titular” (“holder”) and the term “holístico” (“global”) to replace the term “global” (“global”); these were important clarifications which should be taken into account when drawing up an international instrument on the subject.

85. The Delegation of China thanked the Secretariat for document WIPO/GRTKF/IC/10/4 and for the compilation of comments in the WIPO/GRTKF/IC/INF documents. They provided a useful basis for further discussion. The summary of the draft provisions in paragraph 19 of WIPO/GRTKF/IC/10/4 was especially appreciated. The Delegation reported that the Chinese Ministry of Culture had submitted to the State Council a law on protection of intangible cultural heritage on which the State Council was seeking opinions. The National Copyright Administration of China (NCAC) had also proposed to include the elaboration of regulations on the protection of TCEs on the agenda of the State Council. Studies on the protection of folklore would be carried out, drawing from international discussions and the experiences of other countries and regions. There was a need to clarify the meaning of the term “misappropriation” and the scope of acts of misappropriation. The notion TCEs “of particular value” was almost impossible to evaluate, the Delegation stated. This was because the value and significance of folklore was not able to be judged and what might not be valuable now might be valuable later. Further, value and significance were not relevant to protection in copyright, and who would decide what was valuable and what was not. Therefore, such a distinction between TCEs in general and TCEs of particular value should be deleted. Regarding draft article 8, it could be amended to reflect that disputes be settled as far as possible according to customary law and alternative dispute resolution.

86. The Delegation of the United States of America endorsed the continued work of the Committee to elaborate and refine the draft objectives and principles with respect to TCEs/EoF. Under its current mandate, and lacking a consensus for further development at this time of the materials set forth in part 3 of the Annex to WIPO/GRTKF/IC/9/4, the Delegation believed that the elaboration and discussion of draft objectives and principles was a useful technique to enrich and deepen the understanding of the members of the Committee on these complex issues. Such a sustained, focused discussion within the Committee might lead to a consensus on the form or status of the outcome of the Committee’s work on the draft objectives and principles. The Delegation stressed that convergence on the objectives and

principles is essential before the Committee could move forward to any outcome. At the same time, the Delegation recognized that much work remained to be done on the draft objectives and principles before such a consensus could emerge. Many of the draft objectives and principles were broadly worded and wide-ranging in scope. As a number of delegations had pointed out in their comments, other draft objectives and principles were overlapping, and, in some cases, might be duplicative. Reducing the number and clarifying the draft objectives and principles would itself be an accomplishment because their sheer number, lack of clarity, and imprecise wording appeared to impede rather advance the Committee's work, including the possibility of reaching any consensus on this aspect of its work. To help structure and focus discussion of the draft objectives and principles, the Committee would need to develop a framework for analyzing and prioritizing the draft objectives and principles, an important task that a number of Committee members already had begun, as reflected in the many excellent comments submitted to date. The Delegation stood ready to play a constructive role in such discussions within the Committee. The Delegation further believed that the draft objectives and principles should be widely disseminated and discussed at the national level among all stakeholders, including indigenous peoples and traditional and other cultural communities. The results of those national conversations should be reported to the Committee to inform and enhance its discussion. In this spirit, the Delegation noted with approval the report of the previous day's panel discussions of indigenous groups recognizing a need for in-depth studies on the state of TK and TCEs/EoF in their own nations and calling for such groups to report back to the Committee. Successful national experiences might facilitate progress. After identifying sufficient convergence on the draft objectives and principles, drawing on successful national practices and experiences, the Members of the Committee could then consider possible, achievable outcomes. During the current biennium, the Delegation believed that the Committee could and should set a realistic and productive goal of reaching a mutual understanding on the most important draft objectives and principles.

87. The Delegation of Canada congratulated the Committee and the Secretariat in bringing forward the work on the protection of TCEs to this point. Canada had submitted written comments on WIPO/GRTKF/IC/9/4, which have been circulated by the Secretariat in WIPO/GRTKF/IC/10/INF/2 Add 2. The draft policy objectives and principles provided the Committee with an excellent basis to continue its discussion on the substance of the future work on TCEs, with particular attention being given to how they relate to the specific role and nature of IP protection. The Delegation wished, first, to provide a brief outline of its general comments on WIPO/GRTKF/IC/9/4. First, and as indicated on a number of occasions, Canada was of the view that any possible policy approach that might be developed in the Committee for the protection of IP rights of TCEs holders must be consistent with both the mandate of the Committee and with Member States' existing obligations with respect to international treaties relating to IP. Second, Canada stressed the need for the policy objectives to strike the appropriate balance between the interests of the creators of TCEs and their respective communities and users, on one hand, and the interests of broader society, on the other. Third, Canada recommended that further consideration be given to the meaning of some of the terms used in WIPO/GRTKF/IC/10/4 and on their implications for TCEs. For example, the meaning of "indigenous and customary laws and practices", the definition of "community" and the implications of importing the terms "prior informed consent" and "derivatives" into the discussions on TCEs had to be considered. Assuming clarity could be brought to these concepts, the scope of these should then be explored before entering into further discussions. Finally, with respect to the structure of the document itself, Canada noted a number of similarities between objectives and recommended that consideration be given, in those instances, to combining them. Canada has indicated in its submission where draft policy objectives could be combined. Canada again thanked the Member States and observers

that had contributed written comments on WIPO/GRTKF/IC/9/4 and noted that great consideration had and would continue to be given to those submissions. As the Chair had stated, the Committee was a long way from tangible outcomes and like several other delegations, the Delegation believed it was premature to engage in discussions on the nature of what those outcomes might be at this time. There was a need for greater clarification on many points that had been raised by both developed and developing countries in the comments submitted, and more work was needed in order to refine the objectives and general guiding principles. Canada would, therefore, welcome the creation of a compilation document in which participants' comments, including general comments, could be seen next to the relevant paragraphs and sections of WIPO/GRTKF/IC/9/4. It was believed that this factual tool would assist greatly in the Committee's analysis and might point the way to achieving a greater consensus.

88. The Delegation of Switzerland referred to the comments it had submitted on document WIPO/GRTKF/IC/9/4 which were included in document WIPO/GRTKF/IC/10/INF 2. The Delegation considered that document WIPO/GRTKF/IC/10/4 took the Committee's work one important step ahead. The Committee had discussed policy objectives and general guiding principles for the protection of TCEs at previous sessions. Agreement on policy objectives and general guiding principles was one of the corner-stones of the further work of the Committee, and it needed to discuss these in greater detail. A working definition of TCEs also needed to be established. Once these issues were clarified, a further step would be the drafting of substantive provisions for the protection of TCEs. These depended however on objectives and principles on which there was as yet no agreement. If work on substantive principles were to begin now a fundamental step would be left out. This did not represent a step back, but would ensure effective and efficient results. The substantive provisions in part 3 of the document were in a treaty-like format which was premature, as it prejudice further discussions on objectives and general guiding principles.

89. The Delegation of Finland, on behalf of the European Community, its Member states and Acceding States, Bulgaria and Romania, was keen to continue the constructive work of the Committee. The Delegation thanked the WIPO Secretariat for having once again prepared extensive and useful documents for this meeting, notably WIPO/GRTKF/IC/10/INF/2, WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/06 on the subject of TCEs/EoF. In answer to the various questions the WIPO Secretariat asked in document WIPO/GRTKF/IC/10/4, the Delegation recalled the elements already provided at the occasion of the ninth session. In view of the great variety of indigenous communities and the multiplicity of their aspirations for and experience of their TCEs/EoF, it would be difficult to include detailed and specific obligations in any text that the Committee would produce. Rather, one should focus on common denominators and issues which enjoy a consensus of support from members of the Committee. Regarding the form or legal status of any outcome, it was believed that after the many years of discussion on TCEs it was still apparent that to endeavour to produce legally binding obligations, depending on the form and content of the instrument chosen, could interfere with the current international IP system and might pose difficulties for balancing the interests of those seeking protection against the legitimate use of works in the public domain. The Delegation rather supported soft law which could take the form of a statement, recommendation or guidelines. On preferred procedures required to achieve any such outcome, the Delegation supported expert-level consultations and intersessional commentary processes as ways to move forward to optimise the successful completion of the Committee's work in a reasonable time frame. It appeared useful that consultations with all stakeholders continued in parallel. As regards the objectives and the general guiding principles set out, the Delegation recalled the comments made at the 9th session. It also reiterated its previously

expressed standpoint that it was not prepared to talk about Part 3 regarding substantive provisions of the document at hand at this stage.

90. The Delegation of Norway thanked the Secretariat and those delegations which had submitted comments on WIPO/GRTKF/IC/9/4, which had been very useful. Regarding document WIPO/GRTKF/IC/10/4, the Delegation supported the listed objectives. Two of those objectives could be singled out as they merited further substantial discussion: objective (iv) "Prevent misappropriation of TCEs" and objective (xii) "Preclude unauthorized IP rights". The general guiding principles in the document were also supported. As many other delegations, the Delegation wished to emphasize the importance of consensus on the objectives and principles. Although the Committee had come a long way, it was also important that it tried to move a little forward in the coming year. As it had stated before, the Committee needed to work more with the concept of "misappropriation". It was important to prevent misappropriation, this was agreed, but what constituted acts of misappropriation or disrespectful or unfair use was perhaps not so clear. National experiences gave useful information, but the international dimension had also to be considered. Discussion on "misappropriation" would also give guidance on what kinds of legal and practical means could best protect TCEs/EoF. In addition, a common understanding of what constituted "misappropriation" would make it easier to prevent unauthorized IP rights.

91. The Chair drew attention to the proposal made by the Delegation of Norway at the ninth session of the Committee (WIPO/GRTKF/IC/9/12).

92. The Delegation of India stated that there was a need to move forward in the direction of a comprehensive instrument that would extend well beyond a statement of policy objectives and guiding principles to substantive principles setting down the form of protection, eligibility for protection, beneficiaries of protection, the scope of protection and so on. Therefore, it was essential that the Committee take into account WIPO\GRTK\IC 10\4 in its entirety. Otherwise, the Committee would end up in a statement of moral platitudes without substance. The Chair had been sagacious enough in suggesting that Member States might also make suggestions on the way forward. As the Delegation had observed in its opening statement, the Committee had to take forward the discussions in a more business like manner towards an international instrument. What was needed was a lot of dialogue even during the intersessional period. There could be a series of interregional informal consultations in the form of workshops where the member countries could have a freer exchange of views to understand each others view points and concerns. This should help in arriving at a result in the deliberations at least in the next session. The Delegation also supported the suggestion that written comments and suggestions on the documents be continued to be furnished to the WIPO Secretariat even after the session.

93. The Delegation of Mexico stated that, without going into the substance of the document, there was a need for a systematic and orderly discussion, paragraph by paragraph, of WIPO/GRTKF/IC/10/4. The Committee could recommend that a working party on this subject be set up, as proposed by Mexico at the last session. Mexico's comments had been included in WIPO/GRTKF/IC/10/INF/3.

94. The Delegation of the Russian Federation thanked the Secretariat for the documents prepared. The Russian Federation had submitted its comments on WIPO/GRTKF/IC/9/4. A review of the documents prepared for the session showed that some of the comments made had been general in nature, while others contained a detailed analysis, including wording for the provisions in Part 3 of WIPO/GRTKF/IC/9/4. The comments made by the Russian

Federation were directed more towards the objectives and principles, since it considered that at the current stage it was too early to discuss substantive provisions, without having reached a consensus on the policy objectives and core principles. In its comments, analogies had therefore been made with the provisions contained in Russian legislation, which related to the development and preservation of culture, including the right of peoples of the Russian Federation to preserve and develop their cultural originality, and to the defense, renewal and preservation of the indigenous cultural and historical habitat of the peoples of the Russian Federation. Certain concepts used in WIPO/GRTKF/IC/9/4 required clarification. In relation to the grant of protection for IP subject matter, it was important to provide a clear definition of the subjects of the protection granted, the subject matter, the scope of the rights granted and the term of validity of the protection. In that connection, the provisions contained in Part 3 of the Annex to WIPO/GRTKF/IC/9/4 required more detailed study and clarification. In that vein, Article 2 was worthy of attention, concerning the fact that the subjects of protection included indigenous peoples and also traditional and other cultural communities. The eligibility of persons as subjects of rights included entrusting to them the preservation of their traditional law and practice. From the provisions submitted, the subject of legal protection could not be sufficiently well defined. In addition, in traditional terms the protection granted to IP subjects was always limited in time but also, from the provisions cited in WIPO/GRTKF/IC/9/4, it followed that the protection granted, which in essence was close to the protection of IP subject matter, might actually prove to be unlimited, in which connection it was expedient to study in greater depth the possible consequences of granting such protection. In conclusion, the Delegation said that the provisions relating to policy objectives and general guiding principles appeared on the whole to be applicable. The Delegation also reserved the right to make a further statement on WIPO/GRTKF/IC/9/4.

95. The representative of the International Publishers Association stated that the IPA attributed great importance to the recognition of folklore and for this reason had actively participated in all meetings of the Committee. Publishers of folklore content played a crucial role in promoting and preserving folklore within and between cultures: local publishers of children’s books and school books might make reference in their works to the cultural context and environment of their readers; academic publishers published works of scientists describing ethnological observations; and, many writers of fiction were inspired by their local customs, traditions and the cultural environment in which they were raised. A large part of the discussion in the Committee focused on areas of conflict between creative industries, researchers or mainstream society, on the one hand, and indigenous people and their values on the other. Some submissions cited examples of cases where publishers and indigenous peoples conflicted. In reality such cases were very rare. The relationship between the publishing industry and indigenous peoples was by and large positive. There were great benefits in the interaction between individual creators, their traditions, or those of indigenous peoples, and book and journal publishers. The recording, communication, distribution and preservation of expressions of folklore and traditional knowledge was not a secondary exploitation of a culture. It was a primary element of these cultures that kept these cultures alive. Publishing promoted the exchange and interaction that created mutual understanding and learning. Thanks to publishers of folklore-related content, indigenous expertise and traditions continued to be alive; awareness of their moral and scientific value was raised; interest in their preservation was kindled. There was a public interest in, with rare exceptions, the engagement of publishers with folklore and this should be encouraged, not made more cumbersome. The real problem was the shortage or lack of folklore-related publishing, not the isolated cases where publishers unduly offended those defending their folklore.
To further promote the possibility to preserve and exchange folklore content through publishing, the IPA supported the Committee’s attempts to establish consensus on general

policy objectives and guiding principles for dealings with folklore content. Such consensus could help both publishers and indigenous people build a symbiosis beneficial for culture and cultural diversity generally. The IPA therefore supported those delegations which encouraged the Committee to continue its work on the "Policy Objectives" and "Guiding Principles" proposed by the WIPO Secretariat. At the same time, it was premature to discuss more detailed substantive provisions at this stage. The IPA noted the absence of international consensus on their overall basis and the complexity of numerous of technical issues. These included vague definitions, and questions related to the administration of any international protection system, but most importantly concerns regarding the possible impediment of one's freedom of expression and freedom of research: as an example there was a real risk of censorship, where indigenous people disallowed critical research into controversial aspects of their history or sociology. All cases that had been presented to this point were highly individual. They were strongly dependent on the particular circumstances of the case. The nature of the content involved, the way it was used, the intentions on either side, the perception of the content by the indigenous peoples and the reasons for the special value attributed to the relevant content were very individual. Decisions on such cases must be taken by courts as close to the actual circumstances as possible. It was impossible to do these cases justice in an international instrument unless it stuck to general principles. In this context, the IPA wished to highlight the provision for moral rights in the Berne Convention, namely Article 6bis, which protected similar concerns and had allowed an individualized local legislation and jurisdiction to develop. Mirroring these provisions to the very core of sacred knowledge might provide an adequate solution. The IPA looked forward to participating in the ongoing debate about these matters and to a constructive solution of the issues.

96. The representative of the Tulalip Tribes referred to the issue of the rights-based approach on which several delegations have expressed concern. Describing the situation in the United States of America, most (but not all) of the tribes derived their rights from the Law of Nations, the same law by which States represented here claim their sovereign authority. It was clear from the legal history of the United States of America that in order to gain legal title to tribal lands and resources, the founders of the United States of America believed they were obligated, through the Law of Nations, to negotiate treaties with tribal chiefs. They rejected the Doctrine of *Terra Nullius*, the Doctrine of Discovery and the Doctrine of Just War. The Constitution assigned the power to negotiate treaties with the Indian tribes to the President and Senate as part of their power to negotiate treaties with other nations. A series of cases, known as the "Marshall Trilogy" or the "Cherokee Cases" (1823-1832) settled debates about the standing of tribes in constitutional law. Justice John Marshall led the court in reaffirming that the tribes, prior to colonization, had aboriginal rights and title to the land and the governance of their affairs. These aboriginal rights and title were sovereign rights and title, and survived the formation of the United States of America. These rights existed prior to the formation of the nation. The Supreme Court affirmed that the aboriginal rights and title were not granted by the United States of America to the Indians, but recognized as reserved, or prior, rights. The status of the tribes within the United States of America was that of "Domestic Dependent Nations" - domestic in the sense that they were not foreign, and dependent in the sense that there was a federal fiduciary obligation to protect their reserved rights. In the United States of America, the tribes had a government-to-government relationship which had been official policy since 1972. In the treaties, the tribes did cede certain rights and territories. But they had reserved their self-governance. In return for vast ceded lands, they secured a national promise that their rights to govern their own affairs would be respected. It was true that the tribes were not full sovereigns - they did cede some significant powers and potentialities. Leading among these was the power to negotiate treaties directly with other nations. They were currently depended on the federal government, as their

trustee, to ensure that their domestic rights were not compromised by international agreements. International agreements present the tribes and the federal government with some grave difficulties. The federal government had plenary power over the tribes, in that it did have the Constitutional right to terminate, or abrogate aboriginal rights. However, the standards by which it did so were very high, and they could not do so accidentally as a byproduct of international agreements or domestic law. Any limitation of tribal sovereign powers had to be done explicitly by the houses of Congress. This brought one to the current situation. Domestically, the federal government had rarely abrogated aboriginal rights, but rather had negotiated with the tribal governments through comity - in a government-to-government manner that was the same process being followed in the Committee and other international negotiations. Without explicit abrogation, national law and international agreements could not gain supremacy over reserved tribal rights. At the same time, the national IP system had been applied to tribal territories, knowledge and resources without a legislative history granting it supremacy. Clearly, one could not simply impose tribal customary law on citizens of the United States of America or foreign nationals, and it had no extraterritorial application. By symmetry, however, without the agreement of the tribes and in the absence of explicit abrogation, national and international intellectual property laws could not be applied to the tribes without their consent. They were dependent on the actions of their fiduciary representatives to protect their rights in international negotiations, and were at a loss when they failed to do so. This was the situation that most of the Committee participants found themselves at the very origin of the modern intellectual property system. The nations entered into negotiations to reach agreements on cross-recognition of national laws based on comity of relations. At the very least, this was what indigenous peoples in the Committee were seeking. They believed that the nation states should not take and use what was theirs without their assent, and should negotiate with them to recognize their customary laws, both nationally and internationally. There were other approaches. Indigenous peoples were subjects of international law. Many international agreements recognized their distinct status as indigenous peoples. The human rights arm of the United Nations had for the past 25 years been working towards a Declaration on the Rights of Indigenous Peoples. ILO Convention 169 recognized them as a distinct group with distinctive rights based on a number criteria that identified them as indigenous peoples. The UN Permanent Forum on Indigenous Issues had been established. All of these initiatives recognized that individual human rights were insufficient to protect the collective rights of indigenous peoples. Indigenous peoples themselves lobbied at both the establishment of the League of Nations and the UN to argue that there should be international recognition of their collective rights. They had been working for such international recognition therefore for nearly 100 years. The thrust of these developments clearly pointed towards a rights-based approach. Unlike the laws of the United States of America that assert a right of termination of aboriginal rights, the human rights approach proposed that indigenous rights were part of a system of *erga omnes* norms - norms that applied to all nations as a universal limitation on national sovereignty. It was believed that the right to cultural integrity, collective identity and self-determination were as inalienable as other fundamental human rights. Included in these inalienable human rights was the right to control access to and use of indigenous cultural heritage. Many nations recognized these inalienable rights in their Constitutions and their domestic statutes. We believe this was the direction in which the UN human rights system had been moving, and believed that the Committee should take this path. In regard to comments regarding historical diffusion of culture and the need to maintain balance in IP, the representative cautioned against the selective use of history and the formulaic application of IP logic. The Committee was reminded that in many cases the historical diffusion of culture and ideas had not been passive, but had involved conquests, forced assimilation, cultural theft, and other actions. By the time of the great diasporas, the world was beginning to acknowledge

the rule of law, including the nascent law of nations. Perhaps more importantly, the context might change acceptable rules. There were over 6 billion people on the planet. Of these, only about 370 million were indigenous. The approximately 15% of the world's population that was indigenous was dominated by a few very populous peoples, such that in many nations they made up less than 5% of the population. In this context, any principle that sought "balance" was a recipe for cultural disaster. Indigenous peoples had very specific beliefs about the proper uses of their TCEs and TK that touched on deeply-held spiritual and cosmological beliefs. Public claims on indigenous knowledge would therefore put severe burdens on indigenous peoples. In addition, these peoples lacked the legal and financial resources to effectively defend their rights. A continual siphoning of TK and TCEs by a numerically dominant culture was a recipe for cultural extinction and loss of control by indigenous peoples. On the issue of PIC, the representative referred again to tribal sovereignty, self-determination, and inalienable cultural heritage. Any direct and fair reading of these terms required the recognition of the right of FPIC.

97. The Chair requested the Committee to consider in particular how WIPO/GRTKF/IC/10/4, and the comments made on it, should be dealt with.

98. The Delegation of Mexico stated that it supported the Delegation of Canada's proposal to draw up comparative tables to enable a comparison of the comments made on WIPO/GRTKF/IC/10/4.

99. The Delegation of the United States of America reserved further comment on the format of any such compilation or informational tool as proposed by the Delegations of Canada and Mexico.

100. The Delegation of Indonesia stated that many delegations had expressed their views on the need to have an organized and structured debate. That morning the Delegation of Nigeria, on behalf of the African Group, had also made useful suggestions on dedicating the morning sessions for the discussion on general objectives and guiding principle, while in the afternoon session the Committee could discuss the substantive provisions. The Delegation believed that this was a proposal worth considering. The objectives, principles, and provisions were an integral part of the deliberations.

101. The Delegation of Bangladesh noted that during the intersessional commentary process a number of delegations had submitted their views and positions on the principles and objectives for protection of TCEs. On the discussion on this item, it seemed that the Committee was going around in circles since many well-known views were being reiterated. It was important to think on the way forward. The Delegation suggested producing a basic text on principles and objectives on TCEs in a single paper along with a list of the areas of convergence and divergence. The Secretariat might help in this regard. This paper would give a glimpse of how much the Committee could achieve. Moreover, it would help to think on specific ways to deal with the principles and objectives with regards to TCEs. The form or status of the principles and objectives of TCEs should be decided first, whether it should be a legally-binding instrument or non-binding soft laws, declaration, guiding principles or simply a consensus text. Depending on the outcome of this discussion, the Committee might reflect further and decide on next steps.

102. The Delegation of Japan had deliberated on the African Group proposal to discuss policy objectives and general guiding principles of the document in the morning and discuss the substantive provisions in the afternoon, and had also made some analysis over the

weekend on the current situation. Based on such deliberations, the Delegation wished to make a constructive proposal on how to proceed. According to the Delegation, it might be difficult for the Committee to proceed according to the African Group proposal, as many Member States had not agreed to proceed to discussing the substantive provisions at this point. However, the current situation where some countries engaged in making detailed comments on specific articles of the substantive provisions, or part 3, while other countries refused even to engage in discussions on part 3 until there was agreement on the policy objectives and the general guiding principles, or part 1 and 2 namely, was confusing and counterproductive. It was as though some people were discussing the design of the steering wheel while others argued that it had never been agreed whether to build a car or a motorcycle. The true underlying conflict here was not simply over the formatting of the document but over its content. Those that argued for treating all three parts in their integrity perhaps did so because they wished to fix the existence of certain contents in part 3 as an accomplished fact. Those that argued against discussing part 3 were probably against it because some of its contents were unacceptable to them. Japan would openly admit that many aspects of the contents of part 3, as they were now, were unacceptable, in addition to the fact that a prescriptive, treaty-like format could not be accepted. Japan proposed that the way to move forward was to defer the unconstructive and difficult discussions on which part of the document to include until at a later stage, but to go straight into the heart of the problem. That was to first focus discussions on some of the fundamental issues that had consistently proven to be controversial. The Delegation's proposal was that first a list be created of several important controversial questions and that the Committee focus on answering them in a written format, perhaps one paragraph to answer each question. Some of the questions the Delegation proposed were: (i) what was the scope and definition of traditional cultural expressions / expressions of folklore?; (ii) what was the true problem the Committee was trying to address and how much of it was an IPR issue?; (iii) if misappropriation was the problem, what was its definition?; (iv) what was meant by 'communities'?; (v) what was the appropriate mechanism to address the problem?; (vi) how much flexibility would Member Sates be owed to have in addressing the problem? Such step-by-step, "fundamental-issues-first" approach to first answer such important questions would significantly move the discussion forward. This proposal built upon the proposals made by Delegations such as Norway, Canada and Egypt to first agree on certain "working definitions" or "procedural definitions".

103. The Delegation of Colombia stated that there had already been adequate discussion of the documents and it supported the African Group's proposal.

104. The Delegation of the United States of America stated it was prepared to engage constructively on the draft objectives and principles related to TCEs and TK, with a view toward laying a foundation that could lead to a consensus on the Committee's future work, including the form or status of a possible outcome or outcome for the Committee's work. However, there was no consensus to further elaborate the draft provisions in Part 3 of documents WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5 and the Delegation believed that any premature attempt to do so could have the unintended consequence of impeding rather than advancing the Committee's work. The Delegation also believed that by elaborating the draft objectives and principles in the documents, the Committee would be in a position to undertake a sustained and robust discussion of the complex substantive issues underlying these objectives and principles. The proposal of Japan to undertake a "step-by step, fundamentals first" approach to the work had great merit. Accordingly, with all due respect, the Delegation was not in a position to structure the Committee's conversations along the lines proposed by the Delegation of Nigeria.

105. The Delegation of Canada stated that the Committee should focus its work on areas where there was potential for agreement, such as some of the draft policy objectives and guidelines for TCEs. This would provide a solid base on which to build future work. In Canada's view, the most opportune way for the Committee to make good progress on its mandate was to work on areas of shared understandings and existing common ground.

106. The Delegation of Nigeria, speaking on behalf of the African Group, stated that it was confident that the negotiations would be enriched and advanced by the adoption of an integrated approach wherein the various documents should be consolidated into one comprehensive working document. Further, the African Group approached these negotiations in the true spirit of consensus-building and invited other parties to join in this effort. The African Group advocated the consistent application of customary laws in the interpretation of TCEs and TK. Regarding the Annex to WIPO/GRTKF/IC/ 10/4, on Article 1, the operational definitions were a good starting point and the domestic legislation of the respective States could deal with the detailed provisions. On Article 2, the general principles should have regard to the interest of all beneficiaries. It was also propose to add "and local" wherever reference was made to "indigenous peoples." On Article 3, the acts of misappropriation were a good point of departure. However, consideration should be given to a possible expansion of these to illicit acts. On Article 4, collective rights should be emphasised. These new legally binding communal rights should be expressed in positive terms so that the communities would be vested with these rights. On Article 5, the exceptions and limitations were supported with the proviso that "incidental use" should be deleted, because this concept was vague and open to abuse. On Article 6, the current text was supported in so far as protection should granted so long as the objects of protection met the criteria for protection. However, collective rights were perpetual and should be protected in perpetuity. In Article 7, the Delegation supported the concept of formalities as it operationalized the process of protection. However, caution should be exercised in requesting mandatory registration. Under Article 8, it was proposed that dispute resolution in accordance with customary law should be exhausted prior to resorting to WIPO structures. Under Article 9, the transitional measures were necessary. Under Article 10, the complimentarily and mutual supportiveness of this instrument in relation to other existing international legal instruments was supported. However, there should not be instituted a hierarchy of instruments whereby this instrument would be subordinate or inferior to other international instruments.

107. The representative of ARIPO expressed its appreciation to the Secretariat for the production of the document and supported the call made by the Delegation of Nigeria on behalf of the African Group for the document to be updated and reviewed to provide a common reference for furthering the work before the Committee. In this regard, WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5 should be updated and submitted to the members of the Committee during the inter-session period for consideration at the 11th session of the Committee. In determining the most cost-effective approach towards the realization of this goal, it was the view of ARIPO that the policy objectives and the substantive provisions, since they were organically linked, should be considered as an integrated package. This view had been widely expressed by some members of the Committee at the ninth session. ARIPO further believed that the formulation of the document concerning general policy objectives and the guiding principles provided clear direction and reflected common understanding on the protection of TCEs/EoF. It was from these objectives and principles that a significant number of national and regional instruments had been developed and were being implemented by a number of States and international organizations. The three pillars of the document should be discussed in an all inclusive manner because the Committee could not continue to

share national and regional experiences without a clear indication of the expected outcome of this process. ARIPO therefore called on the members of the Committee, particularly those with entrenched positions, to engage in informal consultations to find common ground. With respect to the contents of WIPO/GRTKF/IC/10/4, ARIPO and its sister organization OAPI had since the last two sessions made useful contributions to enrich the document and would continue to do so to improve the document with the view to developing international standards for protecting TCEs/EoF. ARIPO wished to highlight that its Member States had had a series of consultations and organized seminars to examine and discuss all the three pillars of the document. In order to save time, ARIPO would make submit its comments in writing to the Secretariat to be included in the report.

108. The Delegation of Ghana identified itself with the statement made by on behalf of the African Group on the protection of TCEs/EoF. A number of developing countries, including Ghana, had provided for the protection of TCEs/EoF in their domestic copyright legislation. In Ghana, the legislation governing the administration of copyright and related rights, and TCEs/EoF, was the Copyright Act of 2005. The Act defined expressions of folklore, and vested rights in them, in perpetuity, in the President of the Republic of Ghana, in trust for the people of Ghana, as if the expressions of folklore had been created by the people of Ghana. TCEs/EoF were to be administered on behalf of the Republic of Ghana by a National Folklore Board, which was established by the Act and it comprised nine members. The members of the Board were to be appointed by President and they were to be nominated as follows: six members to be nominated by the President, the copyright Administrator and one person nominated by the National Commission on Culture. The Board had as its functions the following: administer, monitor and register TCEs/EoF on behalf of theRepublic of Ghana; maintain a register of TCEs/EoF ; preserve and monitor the use of TCEs/EoF in Ghana; provide members of the public with information and advice on matters relating to folklore; organise activities which would increase public awareness on the activities of the Board; organise activities for the dissemination of TCEs/EoF within Ghana. The Act provided that persons who intended to use TCEs/EoF for any purpose other than as permitted in the case of copyright works should apply to the Folklore Board for permission. Such persons should pay a fee to be determined by the Folklore Board. The Minister responsible for copyright matters was the Minister for Justice who, with the approval of the Accountant General, should establish a fund for the deposit of any fees that might be charged in respect of the use of TCEs/EoF. The fund should be managed by the Folklore Board and be used as follows: (a) for the preservation and promotion of folklore, and, (b) for the promotion of indigenous arts. Domestic copyright legislation in a number of developing countries contained provision for the protection of TCEs/EoF. What was currently lacking was international protection and in the view of the Delegation, the Committee had the mandate to provide a harmonized internationally binding instrument to protect TCEs/EoF. A wealth of material was available to the Committee from the provisions in the copyright legislation of WIPO member countries as well as the excellent materials put together for the Committee's work by the International Bureau to move the Committee's work forward. The National Commission on Culture of Ghana had set up a Working Committee to provide input to be submitted by Ghana as input into the Committee's work. As soon as the Committee completed its work, further input would be made available for the protection of not only TCEs/EoF but also TK and genetic resources.

109. The Delegation of South Africa expressed support for African proposal for moving forward. The Committee should aim at consensus building. The Delegation also supported ARIPO that there should be informal discussions between delegations. Integration of the comments into one document and a holistic approach to all three parts of the document were

essential. Discussions on the document had commenced in 2003 and urgency was now needed.

110. The Delegation of Congo supported the African Group's proposal and drew attention to the earlier statement of OAPI which referres to the research conducted in various countries and the results of this research would benefit the discussions of the Committee.

111. The Chair proposed that having listened to the proposals made in the session and on the basis of further informal consultations, and in line with the suggestion of the Japanese Delegation, the Secretariat develop a list of the main issues that Delegations might wish to comment on, and that, in relation to the existing documents WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5, the Secretariat reorganize all the comments received in one document. The Chair called for comments on this proposal.

112. The Delegation of India was amazed that after nine sessions, the Committee was still reflecting on objectives. The basic issue was whether there was something to protect. If so, other issues such as the scope of protection would follow and could be discussed. First, there had to be clarity on the object of protection, the object that had to be secured. Ongoing misappropriation had to be stopped.

113. The Delegation of Canada sought clarification of the Chair's proposal. Would documents WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5 be updated based on the comments received or would the comments be compiled in separate document?

114. The Delegation of Brazil stated that it had been supportive of the positions of developing countries, including the African Group, in their desire to try to move discussions forward to a meaningful result, as the Delegation of India had also just stated. The Chair's proposed list of issues would map what were the relevant issues to address. What was the scope of protection and what was the object of protection, as the Delegation of India had mentioned, would be some of these issues. Such a proposal moved forward while avoiding discussion of whether to update the documents, which should, however, remain on the table. The proposed list of issues would not prevent discussion of the main issues and would focus debate on a list of core issues.

115. The Delegation of South Africa called for consensus-building approaches to the discussions and appealed for informal consultations to break the deadlock. The Chair's proposal was supported. The positions in this regard of the delegations of Brazil and India were supported. In addition, the main documents WIPO/GRTKF/IC/ 10/4 and WIPO/GRTKF/IC/ 10/5 would remain on the table, and these should be updated in line with the comments made.

116. The Delegation of the United States of America welcomed the concept of moving toward an issue rich discussion. The proposed list would be seed corn for such a discussion. This would be an initial list prepared by the Secretariat which could be added to, subtracted from or modified by Member States. This would be a helpful way forward. The effort spent to date and the wisdom captured in the documents and comments were an important information tools for the Committee, and they should therefore remain available as is, not in an updated form. The Delegation looked forward to a robust and sustained discussion on the key policy issues underlying the documents.

117. The Delegation of Norway supported the proposed list to be prepared by the Secretariat.

118. The Delegation of Japan was supportive of the Chair's proposal for making a list of fundamental issues. Such kind of fundamental discussion would help the Committee to focus its discussion and move forward to concrete results. Regarding future documents, Japan favored the current documents remaining as is rather than being updated.

119. The Chair stated that, without prejudice to final outcome, there was a need to find a breakthrough. A list of core issues could be used to move the debate forward. Such a list could be ready during the session and it could be discussed at the next Committee session or intersessionally. The existing documents would be kept alive, and the Secretariat would be asked to reorganize the comments made on them. There was also the question of the proposal made the Delegation of Norway at the previous session.

120. The Delegation of the United States of America enquired what was meant by a reorganization of the comments. Would they be compiled in a separate document?

121. At the request of the Chair, the Secretariat outlined three possibilities, which could be cumulative or taken independently. First, the comments could be integrated into the existing documents. Second, the comments could be categorized according to the list of issues to be developed. Third, all the comments could be compiled in one single document.

122. The Delegation of the United States of America rejected option one, believed option two to be premature, and stated that option three could be useful, subject to the views of other delegations.

123. The Delegation of Algeria stated that in principle it supported the Chair's proposal, but would await a consultation within the African Group before expressing a final position.

124. The Chair stated that the proposal was that the Secretariat would prepare the list of issues and have it ready by the next day in the various working languages.

125. The Delegation of Pakistan stated that it strongly supported the Committee's work on TCEs. It was necessary to take account of cultural expressions that included a "combination" of cultural traditions. The underlying aim should be to protect traditional forms of expression. The system could not protect everything about the entire life or culture of a people; this was the reason for aiming at folklore in a more narrow sense, to focus on protection of expressions of folklore. It was also necessary to consider the hazard of distortion of TCEs to respond to the demands of the commercial market; at what point did such expressions cease to be legitimate expressions of folklore? There was an element of social approval or sanction in the definition of a TCE, so that a legitimate TCE was accepted as such by the community. It might require a certain passage of time to ensure the acceptance of the community. The question of the development of "new folklore" was important, and the Delegation wanted to clarify its underlying that folklore or traditional cultures were not "new" in themselves, even if certain expressions of traditional cultures or expressions of folklore were "new" or creative. In Asia, there was, therefore, a distinction between "new folklore" and "new or modern expressions of folklore", which might be new, contemporary or originally creative, exemplified by the case of an indigenous artists using acrylic paint to express traditional cultural forms. In applying the principle of balance, it was important to consider how to strike the right balance and resolve potential conflict between the rights of a community regarding its folklore, and the scope for individual creativity and legitimate individual use of cultural material. This was a crucial element of balance. In considering effectiveness and

accessibility of measures for protection, and responding to the specific nature of TCEs, it was important to make use as far as possible of established customary classifications of cultural expressions. This had both a normative aspect – it should be obligatory to defer to customary classification systems – and a practical aspect, as it was an element of effective administration to make use of established systems. In considering the scope and nature of "beneficiaries" of protection (article 2), it might be useful to narrow or more closely define the group of beneficiaries so as not to cover, for example, entire civilizations, or much broader cultural communities, such as faith communities, potentially on several continents. The definition of beneficiaries needed some element of "particularity" of law and practice, and of cultural or social identity. The duration of protection of a secret TCE should take account of the need for continuing protection in the event that it had been disclosed against the wishes of the TCE holder. It might be necessary to clarify in what circumstances TCES were considered to have ceased to be "secret". It was also important to note that in article 6 if a TCE/EoE ceased to be secret, it was only protection *as such* (as secret TCEs) that ceased; other protection would endure if the TCEs were otherwise eligible for other protection. Similarly, TCE/EoFs that ceased to enjoy the higher level of protection under Article 3(a) might yet continue to be protected under Article 3(b). The exceptions and limitations should be interpreted to permit legitimate publication of non-commercial research through normal (i.e. commercial) publishing channels.

126. The Delegation of Canada supported the creation of a list of issues, and regarding the comments made, favoured the compilation of the comments, including general comments, in such a way that the comments could be see next to the relevant paragraphs of the documents.

127. The Delegation of Brazil supported option one, but was aware that others did not find it acceptable. Option two would be the minimum required, because a stand-alone document of comments would not be helpful. Another option could be to first look at list of issues, then decide what to do with comments.

128. The Delegation of Australia welcomed the proposal to establish a list of issues. Option three was preferred in relation to a compilation of the comments.

129. The Delegation of Algeria stated that in the light of the previous interventions, it supported the Chair's proposal.

130. The Chair proposed to request the Secretariat to prepare a list of core issues and to have the list ready by the next day. This was agreed and decided. Regarding the updating of the documents, this would require further discussion.

131. The representative of Tupac Amaru stated that indigenous peoples were lost and confused by this procedural discussion. The Committee should not be dealing with procedural questions. Western countries and Japan were responsible for the blockage and the failure to draw up intentional instruments was their fault. There was document WIPO/GRTKF/IC/10/4 and why could this document not be studied, paragraph by paragraph, the representative asked.

132. The Delegation of Colombia stated that it supported option one.

133. The Chair stated that there was no consensus on the updating of the documents. He proposed that work begin on the list of core issues, and that the question of what to do with existing documents and new documents be put aside for the time being.

134. The representative of the Indigenous Peoples Council on Biocolonialism (IPCB), speaking also on behalf of Call of the Earth (COE) and the International Indian Treaty Council (IITC), said that she was committed to the protection of the cultural heritage of indigenous peoples and that she was particularly interested in the Committee's work on legal measures to prevent the misappropriation and misuse of indigenous peoples' cultural heritage and cultural property. The representative found the separation of TCEs and TK artificial and contrary to the holistic nature of indigenous peoples' cultural heritage. Although she took note of principle (f) in WIPO/GRTKF/IC/10/4 regarding complementarity with protection of TK, she expressed concerns about the deliberate and separate treatment of TCEs and TK and added that an expression of culture did not come about without the TK to inspire such creativity. As had been explained before by indigenous peoples on many occasions, one could not simply divide different aspects of cultural heritage into categories or parts and try to individually protect each aspect, because in this case, the sum of the parts did not equal the whole. Rather than protect the whole, she added that such a process could jeopardize the whole, was reductionist and actually threatened rather than safeguarded the indigenous peoples' cultural heritage. The representative recognized, however, that the Committee's work was ongoing and would likely continue with or without the participation of indigenous peoples. Therefore, she believed it was necessary to make some general observations on specific principles and substantive provisions. She wanted, however, at the outset, to qualify her comments by stating that her provision of comments on the draft did not imply any ascension to the process or document WIPO/GRTKF/IC/10/4 as a whole, and stressed that it was entirely premature for those organizations she was speaking for to indicate a preference for a legally binding instrument based on document WIPO/GRTKF/IC/10/4. She said that until the substantive provisions were entirely illuminated, it would be irresponsible of the organizations she spoke on behalf of to make such a commitment. Furthermore, although she commended the Committee's efforts to increase participation of indigenous peoples in this process, she believed that the work to-date had been developed without the broad-based participation of indigenous peoples. She added that until this process had much broader participation by indigenous peoples, it would be inappropriate to endorse any standard-setting or legally binding instrument that would impact on all indigenous peoples. She said that her specific comments on document WIPO/GRTKF/IC/10/4 would be limited to indigenous peoples' TCEs, as a specific subset of general TCEs, adding that indigenous peoples' TCEs were first and foremost the subject of indigenous peoples' customary law and protected by international human rights. Indigenous peoples had both traditional rights under their own legal systems and inherent human rights as collectivities. As a general comment to this process, she stated that she did not see any specific provisions that recognized their unique legal status nor that document WIPO/GRTKF/IC/10/4 reflected this reality. Her concern at the ability of this process to deliver positive, tangible, legal outcomes to indigenous peoples was particularly highlighted by principle (b), the principle of balance, and the related commentary on page 7 of the Annex to WIPO/GRTKF/IC/10/4, which stated, in part, that "protection should reflect the need for an equitable balance between the rights and interests of those that develop, preserve and sustain TCEs/EoF, and of those who use and benefit from them." She stressed the fact that indigenous peoples, as guardians, stewards, originators and owners of their cultural heritage, were rights holders of their TCEs, that their rights were inherent and inalienable and that non-indigenous users were not rights holders in their TCEs. She added that those users might have an interest in using their TCEs, but that they could never become rights holders in the same respect, even with a license given with the free prior informed consent of the indigenous owners. She was aware that some State interventions in the past had stressed a need to balance the rights of indigenous owners with the broader public interest to access and use TCEs. In her opinion, the scales of justice must always tip in favor

of the indigenous peoples as rights holders of their own TCEs. In a similar respect, she expressed concern with the practical application of the principle of respect for and consistency with international and regional agreements and instruments and noted that this principle would imply a balancing act where the playing field was already uneven in favor of users of TCEs, rather than the traditional originators and owners of TCEs. Because some existing international agreements and instruments, particularly in the IP and trade arena, had facilitated and continued to facilitate the misappropriation and misuse of indigenous TCEs, she felt obliged to question how this process would be able to achieve consistency with those same agreements and instruments while still delivering truly protective legal measures for the benefit of indigenous peoples. On the substantive provisions, she noted that article 3 dealing with acts of misappropriation (scope of protection) envisioned three different categories of TCEs, with varying levels of protection, highlighting the fact that it was a dangerous exercise to start to categorize different TCEs and assign each a different legal status and that following the proposed categories in this document, only the first category of registered or notified TCEs would require free prior informed consent. She maintained that all use of indigenous peoples' TCEs should be subject to the free prior informed consent of the relevant indigenous peoples. It was further unacceptable to her to make registration or notification a prerequisite for protection, as referred to in Article 3 and the corresponding Article 7. Although this provision appeared to apply to so-called "public domain" TCEs and not to secret TCEs, it was problematic for those indigenous peoples who did not recognize the imposition of the "public domain" on the indigenous domain. She noted that in many cases of TCEs of a spiritual nature, such disclosure would be culturally unacceptable and that the proposed process of registration therefore became a double-edged sword: on one edge, it was necessary for the heightened protection that it needed and deserved; but, on the other side, it required public disclosure that placed the TCE in jeopardy. Furthermore, with regards to the second class of TCEs labelled here as "other TCEs", she questioned why benefit-sharing would only be required "where the use or exploitation is for gainful intent". She noted that non-commercial uses generated benefits for the users and asked why those users should be exempt from delivering appropriate benefit sharing. Although such benefits might not realistically be monetary, there should be other innovative measures that would adequately share benefits. On Article 4 dealing with management rights, she shared the concerns expressed by others about a government agency acting on behalf of indigenous peoples. She maintained that such agency action should only occur with the free prior informed consent of the relevant indigenous peoples and that measures should be developed to empower the indigenous peoples to act on their own behalf. On Article 5 dealing with exceptions and limitations, she was concerned by two of the exceptions listed in section (a)(iii). She added that it was unfortunate that non-commercial research remained one of the typical avenues of misuse of indigenous peoples TCEs, noting that in the United States of America, research on indigenous peoples TCEs often started in a non-commercial manner, but eventually ended up being misappropriated for commercial purposes. Therefore, the Committee needed to develop provisions that would put a stop to unauthorized non-commercial use. With regard to the archival exception, she expresed the wish to see the development of measures to facilitate repatriation of indigenous peoples' TCEs that have inappropriately fallen into the custodianship of museums, archives, and inventories. On Article 6 dealing with the term of protection, she maintained that the term of protection of TCEs, whether registered or not, must last in perpetuity, based on the inalienable nature of indigenous peoples' TCEs. Regarding the term of protection of so-called "secret TCEs/EoF", as it was proposed to last "for so long as they remain secret", she noted that the burden was put on indigenous peoples to keep their TCEs confidential. She stressed the need for protective measures that would prevent others from publicly disclosing such TCEs, such as the avenues of non-commercial research, photography, sound and video recordings, and other documentation, which were

currently unregulated and rampant. On Article 7 dealing with formalities, she reiterated her concerns stated in relation to Article 3 regarding registration. On Article 9 dealing with transitional measures, she noted that this article attempted to address the issue of "public domain.", adding that the concept of the public domain had facilitated the misappropriation and misuse of our TCEs. She concluded that this article had failed to adequately address this issue in any constructive way and saw this issue as a glaring gap in document WIPO/GRTKF/IC/10/4.

135. The representative of the Indigenous People (Bethechilokono) of Saint Lucia Governing Council (BGC) reiterated its support for the full and effective participation of representatives of indigenous and traditional and other communities from small island developing states (SIDS) at sessions of the Committee. The representative reported on various awareness-building and capacity-building activities being conducted within States in the Caribbean, the Indian Ocean and the Pacific, and called on the Committee to support such activities. Building on the progress made by the Committee in relation to the protection of TCEs, there should be regional constructive engagement to accelerate the Committee's work. The BGC was encouraged by the inclusion of PIC in WIPO/GRTKF/IC/10/4, and also noted with appreciation the reference to "ancient rock art" cases in the commentary to the document.

136. The Delegation of Nigeria, speaking on behalf of the African Group, thanked the Chair for his genuine interest and attempts at creating the right conditions for achieving progress in the Committee's work. The Afrucan Group had served as a bridge between different and opposing positions before in other processes in WIPO. In all modesty, members of the Group had helped to produce consensus before in processes such as the PCDA, SCCR and others, and the Group could do so here in the Committee if its partners were willing to move forward constructively. What had been presented earlier by the African Group was a practical, attainable and rational work programme on the way forward for the Committee. It sought to ensure parity, objectivity and balance in the consideration of the three procedural aspects of the Committee's work namely, policy objectives, general principles and guidelines and substantive provisions. The Group did not want to present a *fait accompli* especially in regards to the final outcome of the Committee process. Likewise, it would not accept a situation whereby the entire process was derailed, compartmentalized or made redundant through temporization and endless definitions of concepts and terminologies. It was believed that enough work had been done on the general principles and policy objectives. What was now needed was systematic discussion of the substantive provisions of the documents under consideration. The African Group would therefore, support the integrative approach that the Chair proposed, especially the first option. This would provide the much needed impetus to the Committee to accelerate its work and also, give an indication of the progress made. It was noted that the Secretariat had indicated that the three options that you put forward this afternoon were not mutually exclusive. If that was the case, the African Group was of the view that two separate lists be produced as follows**:** the first list should itemize all the issues over which there was convergence of views in the integrated documents taking into consideration the three areas of interest contained in them namely policy objectives, general principles and guidelines and substantive provisions on both TK and TCEs. Secondly, the Secretariat should also produce a list of items or issues over which there was no convergence of opinion or views. The Grpup however reserved the right to examine the final outcome of the process of integration of documents and listing of issues. It also noted that a majority of delegations prefer an integrated and holistic approach to this process. Therefore, if some delegations were particularly concerned about definition of concepts and clarification of issues, they could do so and submit their proposals to the Secretariat.

137. The Delegation of Indonesia reiterated that the effective and efficient protection of TCEs/EoF would not be achieved if the international community had not at least one international legally binding instrument. However, there was still a divergence of views among member countries. Therefore, based on a spirit of IP where an author or inventor always tried to create new creations for the sake of humanity, the Committee should search for another way of realizing this aim in a pragmatic and practical manner. One of the alternatives was establishing a roadmap aimed at an effective and efficient protection of TCEs. Yet, the roadmap should lead to international legally binding instruments and the process towards achieving this goal should not be without a clear and reasonable timeframe. Moving to the revised objectives and principles in WIPO/GRTKF/IC/ 10/4, and without prejudice to the future outcome of this session, the Delegation of Indonesia wished to make some comments which reflected its position related to all the three parts of the objectives and principles, including the text of the comments to the draft articles of the substantive provisions, as follows. Regarding, objectives, in objective (iii), "Meet the actual needs of communities", Indonesia reaffirmed that the protection of TCEs should be carried out regardless whether indigenous peoples, traditional and other cultural communities directly requested the government to do so. It was inherent in policies and measures taken by the government to protect people's interests including indigenous peoples, traditional and other cultural communities. he absence of any demand did not always mean that a community did not have any interest in something, but might be because of lack of information on the process going on at international level. Relating to objective (xiii), "Enhance certainty, transparency and mutual confidence", the meaning of this objective should probably be elaborated. In many cases, the problem was not that indigenous peoples, traditional and other cultural communities did not trust academic, commercial or other users of TCEs/EoF, but on the contrary, those who benefitted from the TCEs had misused that trust. For example, some of these users pretended to collect information for establishing databases of TCEs/EoF whereas such databases were used for their own commercial interest. Indonesia was also of the opinion that the term "transparency" should be further clarified considering that indigenous peoples, traditional and other cultural communities could not be forced to disclose and disseminate their TCEs beyond their own will. On the general guiding principles, in regard to principle (a) "Principle of responsiveness to aspirations and expectations of relevant communities", the application of indigenous and customary law should be in compliance with national policy and regulations. As a country with at least 583 ethnic and sub-ethnic groups and 19 different customary law system, it was imperative for the Indonesian government to establish policies and measures that would guarantee a unity of the culturally mega-diverse country and avoid any potential and harmful conflict if an indigenous and customary law of some ethnic or sub-ethnic groups prevailed over others. There had been enough experience of suffering from conflicts between ethnic groups, and it had best exemplified that national policy and regulations should prevail over indigenous and customary law. There was agreement with the aim of the principle itself which called for promotion of cooperation among communities and not engendering competition or conflicts between them. Concerning principle (b) namely "Principle of balance", Indonesia was of the view that the term "actual needs" should be understood in a broad sense to include not only what was needed in the short term, but also for indigenous peoples, traditional and other cultural communities' long term interests. Through a process of enlightenment of the communities, their view about what was considered as a simple "actual need" would be changed. With regard to the substantive provisions, in Article 1 or "Subject Matter of Protection", Indonesia reaffirmed its statement made in the 8$^{th}$ session of the Committee especially in regard to paragraph (a)(iv). There should be a clarification concerning types of protected tangible expressions as there was some overlapping between some of them. For example, it was not appropriate to mention the term

"terracotta" as it was a part of "pottery". In addition, in paragraph (a)(i) it was mentioned that examples of verbal expressions were, among other, "stories" and "legends" whereas both of them could be similar. Therefore, further discussion on this matter would be most welcome. Relating to Article 2 "Beneficiaries", Indonesia was in favor of a principle that the rights to TCEs could be vested in the government. In some cases, government was the only medium adequate to manage the rights. As there would be a TCE in which it could be very difficult to find a specific community proprietor of such expression, it was a responsibility of the government to act as a custodian of this national heritage and to defend the rights on behalf of all the people. This was relevant to the concept that there were TCEs/EoF regarded as "national folklore" and that all nationals of an entire country could be considered indigenous people as is the case of Indonesia. As stated at the 8th session of the Committee, it should be left to the indigenous peoples, traditional and other cultural communities to decide whether a tradition-based creation developed by an individual would be a part of their tradition or not, the latter which could lead to the copyright regime. Concerning Article 3 "Acts of Misappropriation (Scope of Protection)", Indonesia raised the same concern a stated by the Delegation of Brazil and the Saami Council as to the obligation of indigenous peoples, traditional and other cultural communities to register their TCEs as a condition of protection. A registration merely functioned as part and parcel of efforts of the government to establish an adequate database of TCEs/EoF belonging to its people. It did not create any rights. Besides, in principle, any use of TCEs should meet a requirement of PIC. This principle had been incorporated in the country's draft Act of Protection and Utilization of Traditional Cultural Expressions. In terms of Article 4 "Management of Rights", especially subparagraph (a)(i), Indonesia was of the view that it was not appropriate to completely surrender the issue of PIC to indigenous peoples, traditional and other cultural communities because the level of understanding about IP law and its relationship with TCEs would be differ between regions. There were some regions where the indigenous peoples, traditional and other cultural communities still needed an enlightenment process to come to have sufficient knowledge of what their rights and obligations were. For that reason, the government had responsibility to have an autonomous authority to act on behalf of the communities concerned based on the government's own discretion. Hence, the absence of any request from indigenous peoples, traditional and other cultural communities should not prevent the government to take necessary measures for the communities' own sake. This was consistent with the Delegation's comment as to the objective (i) and general guiding principles (a). Concerning paragraph (a)(ii), Indonesia was in favor of this provision in general. However, one should also find a way to avoid further potential problem arising from the direct granting of monetary and non-monetary benefits to the respective community. To avoid any potential problem, the role of the government was very important. Moreover, as the government had a responsibility to protect and promote cultural development of an entire country, then it was suggested that the government should also have authority to use some amount of a monetary benefit for the purpose of a national cultural development. Indonesia did not have any objection to the Article 5 "Exception and Limitation" in principle. Notwithstanding, as the Delegation had mentioned at the 8th session, it should be clarified what was the meaning of "incidental uses". As a general rule, concerning Article 6 "Term of Protection", Indonesia was of the view that the protection of TCEs/EoF should last indefinitely. It would be difficult to determine when a TCEs/EoF was no longer protected while it was very difficult to find when the expression was created for the first time. Even if one knew exactly the beginning of the expression, it would become a problem to decide a duration of the protection. For example, Wayang (Indonesian traditional leather puppet) had been invented for the first time in Indonesia in 400 B.C. As the expression had been living for more than 2000 years, then, how long would the protection last? In fact, there was no need to be concerned about this issue as there was a possibility for an individual to obtain

copyright protection from the development of a TCEs/EoF as far as it was not being considered as a part of tradition by indigenous peoples, traditional and other cultural communities whose expressions were being used. Concerning secret TCEs/EoF, Indonesia shared its concern with the Tulalip Tribes through its comment on WIPO/GRTKF/IC/10/4 that secrecy was not the only requirement to protect this kind of expressions. Should other criteria of protection be met, it would remain protected as a TCEs/EoF. It was essential to prevent the secret TCEs/EoF being subject to actions revealing their secrecy. Relating to Article 9 "Transitional Measures", the meaning of the phrase "subject to respect for rights previously acquired by third parties" in the paragraph (b) needed clarification. Indonesia proposed to add "acting in good faith" after this phrase, based on the notion that generally users of TCEs/EoF would have a sufficient knowledge about their origin and should keep indigenous peoples, traditional and other cultural communities and/or the government of a country from which such expressions were derived.

138. The Delegation of the Islamic Republic of Iran agreed with the African Group and Indonesia. The Committee's task was to bring the interests and desires of members towards effective protection of TCEs/EoF, and the Committee should make every endeavour to establish an international instrument on TCEs/EoF. The main goal of the binding instrument should be to provide criteria at the international level to protect the TCEs against misuse and misappropriation by third parties. The said document would show how to benefit from TCEs, as discussed during past Committee sessions.

139. The Delegation of Panama stated that it had reviewed WIPO/GRTKF/IC/10/4 and wished to take the opportunity to congratulate the WIPO Secretariat on the quality of the document, which demonstrated the hard work done by the Committee in relation to the protection of TCEs/EoF. In accordance with the Committee's renewed mandate, Panama considered that great efforts had been made within the Committee to achieve the results hoped for and many alternative regulatory mechanisms had been assessed for the protection of TCEs/EoF, on the basis of the experience acquired at different levels. Mechanisms had been analyzed and reports presented on common elements of protection, in addition to case studies, as well as others which were still in progress, as indicated by the document itself. The objectives and core principles of the protection of TCEs/EoF had been produced as a result of the great efforts made within that framework. The Committee was currently discussing the specific comments made by delegations, which had been distributed previously, and it would be appropriate to take a decision also on the work done by certain delegations, which would allow the consultation process to be completed and the Committee's mandate to be furthered. Panama shared the views expressed on the core principles, especially in relation to flexibility. Experience had clearly shown that it was unlikely that a single international model could be found to provide adequate protection of TCEs/EoF, which could serve as an instrument in keeping with national priorities and laws, and also with the needs of specific traditional communities from the different countries. The draft provisions were broad in scope and had the necessary flexibility for national authorities and communities to be able to choose the legal mechanisms which allowed them to apply the provisions at the national level, in the same way as in other fields of intellectual property. As mentioned in a previous statement to the Committee, Panama had taken specific initiatives not only with its special rules for*sui generis* collective rights for indigenous peoples, but also now with new initiatives to protect the rights of local communities and also with the regulation of access to genetic resources, as already embodied in national law. In addition, special projects had been carried out, designed to conserve and preserve TCEs/EoF and TK, and thus to avoid those elements dying out. Work had also been done to create awareness of the knowledge of indigenous peoples, not

only within the national community, but also between such peoples. The importance which the subject had acquired in Panama had enabled legal texts to be adopted for the protection of territorial collective rights and had alerted the country to the work being done by the Committee, which Panama had followed closely and which had inspired it to continue its efforts with WIPO's support, as requested by the Panamanian Government. The Delegation's position was positive and it was very pleased that efforts were being accelerated at the international level to fulfil the Committee's mandate. Panama had felt part of that work since its inception, as it was the collective work of all concerned that would lead to success, irrespective of the achievements made by each country at the national level. The Delegation reaffirmed that it was convinced of the need to have a binding international instrument in order to protect the collective rights of the indigenous and local communities in the countries which so desired. As stated by one delegation, that was the Committee's main challenge, above all in relation to future generations.

140. The representative of the Ibero-Latin American Federation of Performers (FILAIE) congratulated the Secretariat on the excellent documents which, as always, had been provided and without which it would be impossible for the Committee to do its work. Concerning the Committee, the representative wished to refer exclusively to the possible legal regulation of TCEs, known colloquially as folklore. FILAIE's position had not varied from its previous statements and, given the degree of confusion which appeared to exist on the working methods to be adopted, the representative made clear that FILAIE supported the production of a single document containing, as a precursor to the explanation of the reasoning behind a possible instrument, the principles and guidelines which FILAIE considered essential and, in the same document, the substantive provisions which might give rise to an international legal instrument should be incorporated. Among the different opinions expressed, FILAIE considered the views put forward by the Delegation of Nigeria, on behalf of the African Group, to be appropriate. In that regard, and given that numerous subjects in relation to the general and guiding principles that might be grouped together, FILAIE believed that three specific areas should be covered in relation to folklore. The first was the recognition of TCEs/EoF, with an indication of the subject matter that should be recognized, along with the owners of such cultural expressions, who should undoubtedly be the community, nation or people that had custody of the cultural heritage. The second issue was that of respect for the living cultural heritage, which could not be effective if it did not possess adequate legal protection. In that connection, criminal, administrative or other rules should be developed to combat the misappropriation or unlawful use of TCEs/EoF, although FILAIE criticized the term "misappropriation" which had different interpretations in the various national legislations. Criteria should be unified or the expression "unlawful use" employed to cover all offences. Logically speaking, legal regulation should take account of rights for indigenous communities, as owners of both economic and moral rights in order to avoid harm to or disrespect for the cultural heritage received by those peoples. Economic rights *mutatis mutandis* should recognize for owners rights of public communication, fixation, reproduction, private copying etc, along the lines of those recognized for other rights' owners. Finally, in the core principles adequate reward should be recognized for indigenous communities, for the duly authorized use of folklore. FILAIE was in favor of the cultural heritage not entering the public domain, since that would be tantamount to the destruction of cultural heritage. Moreover, when the WIPO Performances and Phonograms Treaty (WPPT) was approved in 1996, the phrase "expressions of folklore" had been added to the definition of the concept of performer with the classic regulation from the Rome Convention as "persons who act, sing … or otherwise perform literary or artistic works". Consequently, the management societies incorporated in FILAIE, which covered 17 countries distributed between the Iberian Peninsula and Latin America, considered that they needed to register as rightsholders the

performers of expressions of folklore. FILAIE therefore supported the continuation of the work and its fastest possible acceleration so that the legal treatment of folklore was appropriate at the world level, through the production of a legal instrument which, with the relevant reservations, could be ratified and brought into force by WIPO's Member States, as well as the implementation of the relevant parts of the WPPT, while establishing a system of reciprocity of rights between the performers who were the main guardians of the permanence and survival of traditional cultural expressions.

*Decision on agenda item 8: Traditional cultural expressions/expressions of folklore*

141. The Committee took note of documents WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/6, and the comments, submitted according to the intersessional process, that were contained in documents WIPO/GRTKF/IC/10/INF/2, WIPO/GRTKF/IC/10/INF/2 Add., WIPO/GRTKF/IC/10/INF/2 Add. 2, WIPO/GRTKF/IC/10/INF/2 Add. 3 and WIPO/GRTKF/IC/10/INF/3. The composite decision taken by the Committee on future work on agenda items 8 and 9 is reported under agenda item 11.

## AGENDA ITEM 9: TRADITIONAL KNOWLEDGE

142. The Delegation of Finland, on behalf of the European Communities and their Member States and the Acceding States Bulgaria and Romania, thanked the Secretariat for the comprehensive documents regarding the revised draft Objectives and Principles for the Protection of TK as well as the documents on the international dimension of the Committee's work. The European Communities looked forward to continuing and deepening the discussions of these objectives and principles with a view towards enriching all Committee members on these complex questions. WIPO/GRTKF/IC/10/5 constituted a good basis for the future work. A constructive way forward was possible on those parts of the discussions which had so far demonstrated a certain consensus. They supported a flexible approach and considered it essential in order to take into account the diverse options of TK protection which already existed and had been presented to this Committee. They also considered it important to develop prior art databases of TK for use by patent examiners when they were examining patent applications relating to TK. This would be an effective way of preventing the grant of erroneous patents. The European Communities acknowledged and appreciated the valuable work that Member States and WIPO were doing in this regard. They reiterated their support for further work towards the development of international *sui generis* models or other non-binding options for the legal protection of TK. Moreover, in line with the European Communities' preference for internationally *sui generis* models, they also reiterated that the final decision on the protection of TK should be left to the individual contracting party. As regards the list of questiond received that morning, they only had very preliminary views and stated they would come back to this list at a later stage. The list seemed very useful and could provide a basis for further discussions.

143. The Delegation of Mexico expressed gratitude for the efforts made in trying to produce a methodological or working instrument which would enable progress to be made in the discussion of TCEs and TK. It was also grateful for the list provided by the Secretariat in such a short space of time, identifying the subjects on which delegations had reached a consensus so as to move ahead, and from which the other subjects on which agreement had not been reached could be inferred. Mexico had studied the list provided very carefully but

believed that, in practical terms, it would not be of any use in moving the discussion forward. It recalled that in document WIPO/GRTKF/IC/3/8, analyzed at the Committee's third session, a list of central issues had been drawn up, which had been updated at subsequent meetings, to produce a list very similar to that now provided. The list, combined with numerous presentations, field research and contributions by States, civil society and different indigenous peoples and communities had resulted in a rich and broad knowledge base, from which the Secretariat had prepared WIPO/GRTKF/IC/6/4 and WIPO/GRTKF/IC/6/5 for the Sixth Session of the Committee. It was obvious that these documents had not been produced out of nothing, but working on the basis of a list similar to that worked on in June 2002, far from assisting the discussion and helping to obtain specific relevant results, would generate the risk of wasting time and a great deal of work which the Member States and all the interest groups had devoted to reaching the current stage. Certain delegations could object that on the previous day agreement had been reached to draw up a list of subjects on common terms. That being the case, the Delegation of Mexico considered that agreeing to draw up a list did not imply a commitment to work with that list. The list should first of all be studied and it should then be determined whether it could serve as a basis for discussions. It had already made it clear that what was under consideration was not appropriate. All the comments made by Member States should be included in the original WIPO/GRTKF/IC/6/4 and WIPO/GRTKF/IC/6/5. That was the best way of moving ahead with the Committee's work.

144. The Delegation of Nigeria, on behalf of the African Group, stated that regarding the method of work the Delegation of Mexico had already made a proposal on their behalf. The Committee had spoken *ad infinitum* regarding the Policy Objectives and General Guidelines and Principles. As from the first or second session up to the sixth session, detailed submissions had been made by delegations regarding a number of important issues. The Group believed those should suffice in laying the groundwork for making substantive progress in the Committee. The Delegation referred to WIPO/GRTKF/IC/6/14. The African Group had made substantive proposals regarding the conduct of the work at that session. The proposal of the African Group had received very wide support in that deliberation as actually contained in the report. Paragraph 191 (page 69) which contained the intervention by the Delegation of Canada on behalf of Group B welcomed the African Group statement and indicated that Group B agreed with several of the objectives and principles set out by the African Group. The statement also welcomed the pragmatic flexibility in the Group's paper which left options opened with respect to ultimate products of the Committee. The Delegation further recalled the Group's statement of the previous day and that they did not at any time make pre-conditions or actually provide a *fait accompli*to this meeting. They were not willing to entertain suggestions or opinions from other Groups. However, on the one hand, they set clearly their ultimate objective, what they wanted to see out of this process which was the adoption of a legally binding international instrument. They expected that issues related to the work of the Committee would be debated, discussed and elaborated with a view to advancing the process forward. The listing received that morning appeared as a retrogressive step taking the Committee back three of four sessions into the past rather than conducting the Committee forward. What the African Group had proposed the day before, was as follows: "Look at the first part of WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5 which were Policy Objectives. Then empower the Secretariat under the guidance of Member States and the distinguished Chairperson to draw up a list of areas of consensus on both TK and TCEs and then proceed to General Guidelines and Principles and draw a list of issues that needed consensus within the Committee on TCEs and TK. Then, we move to the Substantive Provisions of both texts and draw up a list of areas that needed the convergence of opinion." The Delegation added that the Committee would then be proceeding in a systematic, practical and appreciable way towards the establishment of the work program of the Committee. This

would establish a balance in the work of the Committee in regards to discussing the three broad areas on equal footing without prejudice to any of the three. The Committee was now carrying the two documents on the same level in order to discuss TK and TCEs exhaustively. The Delegation indicated that what the Group submitted on the previous day was very practical, pragmatic, not ambiguous or diversionary in the attempt to provide a work program. If the Committee were disposed to making progress, it should adopt what the Group proposed and then it could seat down to elementizing the points under TK and TCEs with respect to Policy Objectives, General Principles and Guidelines and Substantive Provisions.

145. The Delegation of Japan stated that its basic position towards TK was the same as for TCEs as stated under that agenda item. First of all, the fundamental term "TK" itself was not yet clear nor there was any common understanding. The concept or nuance of TK might depend on diverse customary laws and tribes, or demanding positions, which could cause common understanding even complicated issues and necessitated empirical studies. Second it was hard to catch and focus what should be the real problem underlying this issue. There seemed to be too many diversifying dimension of demand or request from interested parties for this exercise, for example respect and honor for traditional culture or custom/preservation, conservation, or transmission of traditional activities/economic reward for traditional activities/characterization of TK as proprietary nature and so on. From these divergent situations, the Delegation believed the exercise should first focus upon examining "policy objectives" and "general guiding principle" in order to lay common ground and understanding. It was premature to go into the "substantive provisions" and Japan was not in a position to make any comments on these provisions at this stage. In this connection, clarifying the concept of TK, identifying problem in an empirical way, studying and exchanging national experience should also be a crucial part of the exercise of the "policy objectives" and "general guiding principle". For discussion of the "policy objectives" and "general guiding principle," It was opposed to presupposing to create any new type of right in any manner and these objectives and principles should be consistent with existing IP regimes and international treaties like the CBD. Japan had submitted detailed comments on "policy objectives" and "general guiding principle" in WIPO/GRTKF/IC/10/INF/2 Add. This kind of way of proceeding was the most probable way for the Committee to achieve concrete results in a realistic and pragmatic manner. Regarding the List paper distributed in the morning, it believed it was a right direction to guide the discussion. Since this list came up in the morning, it reserved the right for comment and made a preliminary comment. Fundamental issue should be addressed first so it should be prioritized. First, the Committee should focus on what were TK and TCEs and, second, what protection meant should be another important fundamental issue. Regarding Question 3, it was important to identify what the problem really was and this question should be taken up in a broader context. Regarding the issue related to Question 4, 5, 6 and 8, it believed these kind of issue should be taken up later once the fundamental issues were clarified.

146. The Delegation of Finland, on behalf of the European Communities and their Member States and the Acceding States Bulgaria and Romania, referring to the statement of the African Group, stated that they were keen on having real substantive discussion in the Committee. As regards TCEs and TK, in line with their previous interventions, they also believed that the objectives and general principles needed to be discussed as a basis for further work. They however found difficulties in discussing the substantive provisions at this stage. They did not yet have a final view on the Nigerian proposal so they reserved the right to come back on this issue at a later stage. At that moment however, they could not accept the proposal.

147. The Delegation of Indonesia believed that, after hearing the proposal by the Delegation of Nigeria, this alternative could also help the Committee in making progress towards the work especially on the provisions, general objectives and principles on which there was already a common ground. It was looking forward to having more exploration on this proposal.

148. The Delegation of the United States of America recalled that under the existing mandate of the Committee and with no consensus to further elaborate the draft provisions set forth in Annex III of WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5, it considered that the elaboration and discussion of draft objectives and principles were the useful technique to enrich and deepen the understanding of the members of the Committee on the complex issues related to TK. As noted in their statements on the draft objectives and principles related to both TCEs and TK, the Delegation considered that a sustained and focused discussion within the Committee of the draft objectives and principles on these issues may lead to a consensus on the form or status of the outcome of the Committee's work. It was convergence on the objectives and principles that was essential before the Committee could move forward to outcomes. At the same time, much work remained to be done on the draft objectives and principles before such a consensus could emerge. There were vague terms and phrases that needed to be defined. More thoughts were needed for clarifying or merging, overlapping draft objectives and principles and eliminating provisions that were redundant. Similar to the reasoning expressed by the Delegation of Japan, the Delegation also agreed that the Committee needed a better definition of particular problems and concerns that members had raised and, in addition, to better define fundamental terms. It was premature to further elaborate or discuss the substantive provisions as proposed by the Delegation of Nigeria and some other delegations. Reducing the number and clarifying the draft objectives and principles would help advance the work of the Committee. A first step in the process could be envisioned to develop a framework for analyzing and prioritizing these draft objectives and principles, further steps could include the dissemination and discussion of draft objectives and principles once agreed at the national level for consultations among all stakeholders. This would of course include indigenous peoples and traditional or other cultural communities. The Delegation considered that the results of those national conversations would then enhance the discussion within the Committee and further the goals. Successful national experiences would facilitate progress. After identifying sufficient convergence on the draft objectives and principles and drawing on successful national practices and experiences, the Committee will then be in a better position to consider whether guidelines or joint recommendations or any other outcome would be the next logical step. It was aware of differences of views that continued within the Committee on how to proceed with the work. It appreciated the effort by the Chair and the International Bureau in creating the List of issues. If the Committee were to pursue such a list, the USA did have a number of preliminary concerns involving how such issues were prioritized, how such issues may be phrased. However, it was willing to listen to other delegations to see whether such an approach would be acceptable. In that case, it would plan to detail its views on such a list item and how they would be expressed at the appropriate time.

149. The Delegation of Morocco supported the statement made by the Delegation of Nigeria on behalf of the African Group as it considered that at the present time the list before the Committee did not cover all the concerns expressed at the meeting which were aimed at achieving the objectives the Committee aspired to. The documents on TK or TCEs could not be separated. Therefore, the Delegation would have liked this list to reflect the concerns relating to all the documents. There were also issues that gave rise to problems or difficulties. It was important to establish a prioritization of these draft objectives and principles as well as

the substantive provisions. It was important to know what problems they covered. If there were a priority list of the principles, it would then be clearer about what the Committee wanted to achieve in the work. It believed this list was insufficient and did not meet the Committee's expectations and concerns.

150. The Delegation of China recalled that WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5 were made on the basis of the theory and the results of the international organization. It was the summary of legal measures and practices. They provided a very good basis for further discussions. Although member states had different opinion on the contents and forms of these documents, the Delegation had already got a prerequisite which was to protect TK. The protection of TK should be respected. Under these circumstances, the difference of opinions should not become a reason to obstruct further discussions. On the contrary, it should be a motivation to push forward the discussions. Only through active discussions to coordinate the opinions of different countries could the situation be improved. Therefore, the Delegation was of the view that the Committee should base itself on the existing work to adopt appropriate measures and ways to efficiently push forward the progress of the substantive issues. According to this list, the Delegation informed it would contact its capital to put forward its opinion.

151. The Delegation of Canada had submitted comments on WIPO/GRTKF/IC/9/5 which were distributed under WIPO/GRTKF/IC/10/INF/2 Add 2. Building on its intervention made on the previous week on TCEs, the Delegation was of the view that the draft policy objectives and principles provided the Committee with an excellent basis to continue its discussion on the substance of the future work of TK with a particular attention given to how they related to the specific role and nature of IP protection. It added that Canada's submission on TK was also divided into two sections: the first provided comments on the document as a whole and the second was a paragraph by paragraph detailed analysis of the objectives and general guiding principles outlined in WIPO/GRTKF/IC/9/5. First it was worth reiterating that any possible policy approaches that may be developed in the Committee for the protection of IPR of TK holders must be consistent with both the mandate of the Committee and with member states existing obligations with respect to international treaties relating to IP. Second, it was equally important to keep in mind the need for maximum flexibility for member states at the national level during the further development and refinement of policy objectives. Third, the Delegation stressed the need for the policy objectives to strike the appropriate balance between the interests of the TK holders and users on the one hand and the interests of the society. Fourth, it recommended for clarity and consistency that "references to rights" in the documents be changed to "specify IPR". In addition, it also recommended that further consideration be given to the meaning of some terms inserted in WIPO/GRTKF/IC/9/5 and on their implication for TK. For example, more work and discussion with regard to the meaning of PIC and misappropriation was needed. Fifth, recognizing the relationship between the work of the Committee and the ongoing TK-related discussion under the CBD and other international fora, it reiterated that the WIPO Committee was the appropriate body to discuss the IP related aspects of the protection of TK. Other TK related issues that go beyond the scope of IP should be discussed in the appropriate international fora such as the CBD, UNESCO or other fora. Finally, with respect to the structure of the document itself, the Delegation noted a number of similarities between objectives both in spirit and meaning and recommended that consideration be given in those instances to combining them. It had indicated in its submission where draft policy objectives could be combined. With respect to the way forward, it reiterated its suggestion regarding the creation of a compilation document in which participant's comments including general comments could be seen next to the relevant paragraph and section of WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5. It saw

the need for greater clarification on many points that had been raised by both developed and developing countries in the comments submitted to this body. More work was needed in order to refine the objectives and the general guiding principles. To that end, this factual tool would assist the Committee greatly in the analysis and may point the way in achieving a greater consensus and could help in better advance the discussion in this Committee. The Delegation added it would give careful consideration to the list and reserved its comment to a later stage.

152. The Delegation of Brazil stated that TK should be the priority issue out of the three issues, TK, GR and TCEs as it was the broadest of the three issues, TK encompassing the issue of GR but going beyond. It believed TK was perhaps more relevant in regards to its potential economic or commercial implications. TK had a lot of disclosed and undisclosed content that may be of commercial value perhaps even more so than folklore which were forms of expressions that had been studied for a longer period of time and that were better known. That brought slightly different challenges to protection when compared with TK. TK was an area where there was more substance of potential trade and economic implications to be dealt with. Solutions that could be worked out for TK might be later on extended to cover also folklore with a few adaptations. There already existed an international agreement, the CBD, and although it had not been subscribed to by all members of WIPO, it was a valid international treaty. There were some definitions that had already been agreed to and provided a point of reference for the work on TK that may be useful in analyzing the IP related aspects of TK within WIPO. The Committee could benefit from the fact the CBD existed. Regarding the comments made by Brazil on TK and on WIPO/GRTKF/IC/10/5, many of the comments sought to achieve the mutual supportiveness between what was done within the Committee and the CBD. The comments tried to make the wording more compatible with what was contained in the CBD. It also attached a lot of importance to reinforcing somehow a respect for the principles of PIC and ABS. These principles should be referred to in the course of the work of the Committee. Whatever outcome there were, these principles should be reinforced and not weakened. This did not mean these principles had to be enforced directly through any kind of treaty or outcome in the context of WIPO but they should be acknowledged and supported by the work at WIPO and not undermined. Regarding procedure and process, the Delegation fully supported the proposal put forward by the Delegation of Nigeria on behalf of the African Group as well as the statement made by the Delegation of Mexico which was fully within the mandate of the Committee regarding the international dimension. The very good documents that had been prepared in the course of the several sessions of this Committee by the International Bureau should be fully updated in light of comments received from members. That would be fully compatible with the mandate the Committee had. On the other hand, there were members of this Committee who had not been able to accept this. This was why there had been a deadlock for the last three sessions. The Delegation believed it was important to see some progress in this Committee. The Committee owed this to the indigenous local or traditional communities that were expecting a relevant outcome out of six years of work. Insisting on a position that was not acceptable to a significant number of members was simply reinforcing the deadlock. It understood that the listing provided by the Secretariat as an attempt to overcome the deadlock without members having necessarily to abandon their respective positions. It was a good attempt from the Secretariat to capture what the main relevant issues were that needed to be addressed if the Committee was serious about an outcome significant to the objectives of the mandate which was seeking ways and means of protecting TK, folklore and access to GR by means of IP or IP-related solutions that were usually negotiated within WIPO. This was a very important set of issues put to the Committee by the Secretariat. Some members had indicated that the listing represented a step backwards but the Delegation believed it was a step back in order to

move forward. If the Committee insisted on taking the same steps that had not led to agreement in the last two meetings of the Committee, it did not see how this course of action would lead the Committee to any useful outcome. The list included issues that were related to matters of general principles and objectives as well as questions that were related with matters currently dealt with under the substantive provisions of WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5. Most important of all, the listing provided a roadmap to a relevant outcome, they had logic behind them. To protect TK, one had to go through these ten steps and provide answers to them, otherwise there would be no result. The Delegation supported updating both documents as proposed by the Delegation of Nigeria and the Delegation of Mexico. It was opened to examining a different path forward. The list may open the door to a different constructive solution. It was open to discussing this list of issues and how it could become a platform for reorganizing the work of the Committee.

153. The Delegation of Norway believed that the list provided focused on the core questions. It agreed with the Delegation of Brazil that it was a step back to move forward. It added that it would be happy to engage in discussions on the substantive issues on the list and hoped this might bring the process forward.

154. The Delegation of India agreed with the views expressed by the Delegation of Nigeria and the Delegation of Brazil. It was important to focus on the comprehensive discussion in a holistic manner to achieve the intended objectives i.e. that no outcome be excluded. As it insisted on progressive codification and expanding the scope of the IP rights, the Committee should not exclude discussion on the substantive provisions which logically follow from the discussion on the objectives and principles. In the Indian context, there were a number of steps that had been taken which gave effect to the provisions that were being discussed. For instance, the Patents Amendment Act 2005 made non-disclosure or PIC and ABS both a condition for refusal of pre-grant patent and revocation at a post grant state. India had a Biodiversity Act and an authority that allowed exploitation of TK for commercial use. India had also moved for amendment of the TRIPS Agreement along with Brazil and others so as to bring these provisions in line with the CBD. The Committee should proceed with an open mind to achieve a constructive outcome which enhanced progressive codification of IP regime as well as ensured that the interests of stake holders in TK which were generally not in an evident situation were protected against misappropriation. The Committee should go on in a constructive manner.

155. The Delegation of South Africa thanked the Delegation of Brazil for putting the list into perspective and for aligning itself with the Delegation of Nigeria on behalf of the African Group. It approached these negotiations in the true spirit of consensus building and invited other parties to join in this effort. South Africa was confident that progress in these negotiations would be greatly enriched and advanced by the adoption of an integrated approach wherein the various comments on the three sections of WIPO/GRTKF/IC/10/5 should be consolidated and produced into a comprehensive working document. The Delegation wished to reiterate the African Group contribution regarding TK where it pointed out that "the objective is to create new rights in order to protect innovation and technology inherent in traditional knowledge and to enable the excise of control by communities over their knowledge". It was flexible to further discussions of the challenging issues so long as they cumulatively led to the attainment of the objectives set for the Committee to provide protection at the international level. It sought consensus building mechanism and in that spirit the African Group willingness to participate in the discussion of objectives and guiding principles was a sign of good considering that in the 6$^{th}$ Session it was the African Group that put on the agenda the objectives and guiding principles. Since then progress on this issues

had been slow. In view of the request by the African Group for the creation of new legally binding rights aimed at protecting innovation and technology the Delegation viewed this as a significant step by which African countries proposed to meaningfully exercise their will over international standard setting by calling for new rights to protect TK including when it was associated with genetic resources. To this end it was not sufficient for standard setting on intellectual property rights to be viewed from a defensive approach that viewed the protection of TK from a misappropriation perspective. African creative and innovative intellectual endeavours inherent in TK required positive protection. South Africa was on the record of having submitted comments to the Secretariat on document WIPO/GRTKF/IC/9/5 and needed not repeat them in this session. The Delegation noted that the list of objectives was not exhaustive and allowed for member states to further develop them. Owing to the finite number of objectives proffered in document WIPO/GRTKF/IC/10/5, it held the view that the work of elaboration, alignment and streamlining of the objectives was a surmountable challenge in the context of consensus building spirit. The General Guiding principles in WIPO/GRTKF/IC/10/5 provided a logical link between the objectives and the substantive provisions and hence made this set a complete document which must be discussed holistically. South Africa had critically evaluated the process of arriving at these general principles and postulates that the general guiding principles provided a reasonable start off point for constructive engagement between parties. The substantive provisions on TK had raised a lot of concern not because of the process and content but because of the form it had taken. What was important to focus on was the objective of the substantive section, the form by itself was not important. The purpose of the substantive section should preoccupy the business of the house. The content of the substantive section provided the most valuable information and the explanatory comments by the secretariat provided invaluable insight in the processes involved. A positive interaction with all parties on the substantive issues may allow for much more positive outcome of the tenth Session. Without *a priori* determination the outcome of the Committee should be built on consensus and the South African delegation remained committed to working towards developing an internationally legally binding instrument for the protection of TK.

156. The Delegation of Ecuador stated that because of forms or procedures the Committee was slowing down dealing with topics which tacitly had achieved a consensus. The themes in the documents drawn up in the previous sessions demonstrated a considerable amount of progress and showed an alignment which the Committee wished to follow. As a response to the concerns voiced by other delegations, a list of topics was prepared so as to make progress in this debate. These topics were also concordant with what existed in the documents. Therefore, there was a supposed tacit consent as to the themes. The Delegation was surprised that the Committee did not wish to use topics which went towards a constructive discussion. It suggested the Committee continued listening to the opinions of the other delegations. It was of the opinion that these topics could be made more viable and productive. It would make the meeting of this Committee more productive. It submitted comments in writing so that the rapidity in the processing of these topics be more agile but unfortunately the Committee had not been able to focus on these specific topics. It invited all the delegations to move ahead. Having found some agreement in the discussion, it would be very sad not to build something concrete.

157. The Delegation of Colombia thanked the Secretariat for submitting the list of issues regarding TK and TCEs. However, the Committee needed time to study this list, as at this moment it did not have any comments. The Delegation reminded the Committee of the existence of consensual points as regards substance. It recalled the proposal made by Nigeria of having two lists, one with the topics of consensus and those where there was no consensus.

It also referred to the initiative put forward by the Delegation of South Africa of making more substantive comments in this regard. It submitted an overview regarding TK before making more focused comments on each and every article contained in WIPO/GRTKF/IC/10/5. As mentioned in its opening statement, as well as in different meetings of the Committee, it considered it necessary to make headway in the IP type clauses which could be used in the protection of TK. The Committee had had different documents, studies and discussions which already brought forward the points of consensus which the Delegation had spoken of. These were relevant contributions which could already enable the Committee to have a tangible, specific document. The Delegation then submitted focused comments on WIPO/GRTKF/IC/10/5. First, the objectives and the general guiding principles were considered as relevant, comprehensive and consistent with the regulatory and policy framework in Colombia as well as what Colombia's indigenous populations had developed. It supported the full participation of indigenous communities and added it was important to have some procedure, particularly objectives for promoting the development of communities and the legitimate commercial activities in order to really focus on the concept of development for the different people and cultural communities for their current plans and future projects. As regards TCEs or EoF, prior informed consent must be adopted as a guiding principle not as a right which was acquired after notification and registration. It was a fact that the concordance with legal instruments in force as regards access to GR was relevant for the Western legal instruments but was contradictory to the cosmic visions and aspirations of people and cultural entities which had demonstrated the importance of understanding the comprehensiveness, the sacrality as essential components of TK. Therefore, as a basis for the physical and cultural reproduction this involved necessarily reconciling policy instruments which attained against these cultural principles. Legislation regarding GR complied specific economic interests which had to be limited giving a priority to the fundamental heritage rights of the communities and indigenous populations. The Delegation of Colombia complied with these principles and stated it was necessary to have more knowledge about these objectives and principles and saw them in their comprehensive nature to be in line with development principles which was included in the instrument. PIC should be obtained not just as a right after registration or notification but should be an essential guideline. As to Article 1, it believed it was necessary to include what this article said on "protection against misappropriation" on misappropriation in each country. As to Article 2, legal form of protection, the treatment here was comprehensive, took into account and complied with pre-existent legal structures. It also took into account protection entities. Therefore, it believed this proposal was viable and its implementation nationally possible after consultation processes. As to article 6 regarding equitable benefit sharing and recognition of the right holders, this extended to the non-commercial use of TK. It was important to consider that this access might not have an immediate commercial impact but it could be the case with time. It was important to establish control measures for the compensation and distribution of benefits and include the topic of non-monetary benefits. The Delegation proposed to include "uses with immediate non-commercial ends but with commercial potential". There should also be conditions which protected the rights of communities in time. Non-monetary benefits should also be included. As to Article 8 regarding the exceptions and limitations, paragraph 2(ii) which conferred exceptions for other public uses in particular for people who gain benefits from public health. Only in those countries where health was a state priority, its management was part of human rights. The use of medicinal TK that were already found in the public domain could be exceptions to PIC and not only to the distribution of benefits. It would be desirable to prioritize market change which would benefit local communities rather than individuals. With this focus there could be synergies between pharmaceutical companies, local communities for a better distribution of the benefits coming from the use of natural resources and TK associated to it. As to Article 10 regarding transitional measures, the

provisions were adequate and relevant. However, the Delegation believed that it was important to explain why acquisition was mentioned in this article while it was included in Article 13. As to Article 12, consistency with the general legal framework, there was a political and cultural chock between the indigenous perspective and the Western perspective. An intermediate position should be envisaged conferring special treatment to these specific products of TK. As for Article 13, enforcement, the Delegation considered it very institutional. The instrument should have decentralized models through the administration of social networks which helped with the protection and acquisition of TK in such a way that the benefits really reached local communities. As to Article 14, international regional protection, the topic required reflection to identifying different points which agreed with simple flexible measures. Difference of treatment in this case was extremely relevant. The individuals who belonged to indigenous communities had special rights and the protection of TK was of a collective nature. The benefits should therefore also be collective. The people which go beyond political borders should be treated as nations as a whole. Regional management as regards TK should be dealt with within a priority basis. As to the remaining articles, the Delegation believed the proposals were viable and implementation at a national level would be subject to consultation. Colombia had joined the countries which had already submitted substantive documents regarding each article. Therefore, the Committee could have a better list more in line with what had been proposed by the Delegation of Nigeria with consensual points.

158. The Delegation of Papua New Guinea stated that given the very high degree of cultural diversity the protection of their diverse TK became very important for communities in its country. This importance did not accrue from any economic considerations but related to the value of this knowledge to every day life in a situation where as much as 80% of the population depended on this knowledge for their daily lives, such as traditional medicinal knowledge and food crop management techniques. Commenting on WIPO/GRTKF/IC/10/5, the Delegation supported the recognition of the holistic nature of TK in the policy objectives. Its protection should then be as a whole rather than as in parts. The integrity of the TK would also be recognized and be protected and the value could be identified in separate units but integrity remained holistic. In relation to Article 9 of the Substantive principles, it understood when reading Part I that when TK no longer fulfilled the criteria of eligibility for protection it fell into the public domain. On this basis, it believed TK should remain protected in perpetuity. On formalities as outlined in Article 7, it supported the proposal that protection against misappropriation did not require any formalities. However, it used caution against registration as proposed in Part II as creating exclusivity of items not registered. The notion and understanding of TK as being heritage was shared by many indigenous groups in the Pacific. As heritage, it was passed down to them from those before them and they had the responsibility to pass it on to those who came after them. In this way, it was not for them to decide to dispose of it by way of definition as proposed in Article 9 Part II of the Substantive provisions. It was with this understanding that the indigenous people of the Pacific Islands developed the Pacific Model Law for the protection of TK and EoF, a document which now had some popularity in this Committee. In relation to the list of issues, it supported the view expressed by the Delegation of Nigeria on behalf of the African Group. It also assured as suggested by the Delegation of Brazil that it was a step backwards before taking a step forward.

159. The Delegation of Botswana took note of the emerging signs of a deadlock on the issues at hand. In its opinion, the gap should not been insurmountable to close for purposes of progress. It remained steadfast in seeking the work of the Committee, particularly during this session, to take a constructive and forecast shape. The Delegation firmly believed that the

potential to unlock the deadlock lay in finding a middle ground, particularly in the framework of necessary flexibilities by Member States. On consideration of the task of finding this breakthrough on the issues of TK and TCEs, without prejudice to various interventions already made, it registered its support for the proposal tabled by the Delegation of Nigeria on behalf of the African Group. Much energy had been expended during previous sessions of this Committee on the Guiding Principles and Policy Objectives regarding TK and TCEs. It therefore reiterated the position that it was perhaps apt to seek to move forward towards consideration of the Substantive Provisions of WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5 together with the relevant observations and comments already received in an integrative fashion, as had been suggested by the Delegation of Nigeria. It further wished to support the interventions made on this subject earlier by the Delegations of South Africa, Brazil, Mexico and others who spoke in support of this pragmatic proposal. There was still sufficient room to explore even more thought processes in the same line, in the spirit of consensus building and with a view to making progress on the work program of the Committee. It therefore remained open to listen to other views from other delegations regarding the future work of this Committee as that was the rational way that it could constructively make headway in establishing conversions.

160. The Delegation of Egypt made some preliminary comments on the list, which had been submitted by the Secretariat and on WIPO/GRTKF/IC/10/5. With regard to the list of issues, which had been submitted for discussion, it was a step backwards. It did not help to make progress because it did not reflect the interest of developing countries including Egypt. Discussions should be exhaustive and comprehensive and if a list needed to be drawn up, it was necessary to have two lists as the Delegation of Nigeria had proposed on behalf of the African Group. One list on TCEs that had been subject to consensus and another detailing those in which there had been a divergence of views. These issues needed to be discussed very clearly and very flexibly so that a consensus could be reached. On Item 9, TK that had been transmitted from generation to generation over the centuries were a tremendous material and moral wealth for national communities which will be of great help for developing countries in achieving sustainable development. Consequently, there was no doubt that TK should be considered one area of IP and that was why the international community had attached such importance to it by setting up this august committee with a view to protecting TK, TCEs and GR. A number of other conventions of went into details on the issue of TK. The Committee was now coming to the end of its 10th session and yet it was still not responding to the expectations of the developing countries, which process such a wealth of TK. The aspirations of developing countries were to ensure effective fair and balanced protection for that wealth otherwise we were going to simply continue to go around on circles. Of course there were enormous divergences between developing countries and the advanced countries on this issue and in order to bring the diverging views closer together it proposed to hold informal meetings between the representatives of groups to try to reach a consensus. Continuing the work of this Committee was a great opportunity that could not be lost in order to overcome in balances in a protection of IP and that needed to take into account the interests and needs of all parties concerned. If this issue was left to national legislation there would be two weaknesses: firstly, national legislations were very rigid and not based on any international references; secondly, the protection of legislation was insufficient at the international level given that national legislation only guaranteed domestic protection for TK. In fact such knowledge required international protection. National protection was insufficient whoever compared issues. The protection of the rights of peoples and states for TCEs and TK particularly in developing countries was only possible if we took steps such as eliminating piracy balanced benefit sharing and prior informed consent and that was only possible through an internationally legally binding instrument under a sui generis regime based on international

conventions that had adopted such a regime. That regime should also contain precise criminal and civil legislative previsions and mechanism to resolve possible disputes between the different parties. Like the system in the WTO. Such a mechanism should be similar to the TRIPS agreement in Article 27(3b). It urged the Committee to draw up a draft instrument as quickly as possible since over previous sessions general principles and policy objectives had already been examined and substantive provisions had yet to be addressed. The consideration of Article 10 of WIPO/GRTKF/IC/10/5 should be a single whole without excluding any of its elements. Egypt is at a very cutting edge in terms of protecting TK, GR and folklore thanks to its IP law. Egypt was drawing up a national database, which was almost finished which confirmed the interest in the work of the issues discussed by this Committee. All Delegations should take part effectively in the work of this Committee and show flexibility to reach a consensus and achieve the desired results, namely the protection of TK.

161. The Delegation of Kenya supported the position as stated by Nigeria on behalf of the African Group as well as stated by the Delegations of Mexico and South Africa. It also welcome the suggestion by Brazil that the list of issues prepared by the Secretariat formed a basis for further discussion and believed that this list provided a way forward with regard to the impact or deadlock. However, it commented on the substantive provisions as contained in document WIPO/GRTKF/IC/10/5 with regard to policy objectives and guiding principle. It found them sufficiently broad. They form a good basis as a preamble to a legal instrument. With regard to Article 2 on the legal forms of protection Kenya proposed that customary law be included as a basis of protection but only in so far as it was consistent with national law. With regard to Article 5 on beneficiaries of protection, it should be clarified who the TK holders were. TK holders should be members of the indigenous local or traditional community where the TK originated. With regard to Article 6, fair and equitable benefit sharing, where the issue of benefit sharing arose they should be done in a manner that did not discriminate against certain members of the Community. For instance, customary law as applicable must not contradict national laws that outlaw discrimination on grounds of gender. With regard to Article 7 principles of prior informed consent, the Delegation proposed the word “free” be added to read “free prior informed consent”, as this will ensure that TK holders were protected against misrepresentation and that they did not act under the rest. With regard to Article 9, duration of protection it supported an unlimited period of protection to be given to the nature of TK. With regard to Article 10 on transitional provisions it recommends the retroactivity of these provisions or previous ongoing a new utilization of TK should become subject to authorization under the new law or regulation. Rights acquired by third parties in good faith should be subject to review. With regard to Article 11 on formalities it proposed that registrations should be optional and protection must not be dependent on this formality. Articles 12, 13 and 14 were supported.

162. The Delegation of Australia stated that it had provided detailed comments on WIPO/GRTKF/IC/10/5, which were included in WIPO/GRTKF/IC/10/INF/2. It was not possible to have meaningful discussions on the substantive provisions in Part III of WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5 in their current form. Until there was agreement on the policy objectives and general guiding principles, there could be no real consensus on a basis for further development of issues and the appropriate outcomes for the Committee’s work. It welcomed the several suggestions that had resulted in a list of questions developed by the Secretariat. It would like to further consider the questions contained in the list and the way in which the list might be used to facilitate discussion of the important substantive issues included. Full consideration of the issues broadly outlined in the list in the mandate that was not prejudicial to find the outcome had a capacity to provide a constructive way forward.

163. The Delegation of Ghana supported the statement made by Nigeria on behalf of the African Group on the future work of the Committee. This Committee had spent substantial time in discussing gender issues as against discussing the substantive issues. It supported the integrated approach to the discussions that was taking together policy objectives, general principles and guidelines and the substantive provisions. That would aid the progress of dedications on the protection of TK and TCEs. A study of the list of issues outlined by the Secretariat seemed to suggest that discussing their items were more to discussing the substance of TK and TCEs. In that case we could as well focus our discussion on the excellent documents WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5. On Article 1, the Delegation had already stated that it would not be enough to protect TK against misappropriation. Rather TK was IP and the owners needed to be invested with enforceable IPR. Enforcing this right would naturally prevent the misappropriation. On Article 2, on the legal formal protection, it believed it could be done through existing IP regimes or by *sui generis* law. Provisions must also be made in the instrument to provide remedies for the infringements of the rights to be provided. On the general scope of protection it recognized that the following groups of rights should be protected i.e. the owners of the TK that disclosed knowledge or the disclosure must also be protected. On Article 4, i.e. eligibility, protection should not require formalities. Competent authorities could be provided for to maintain registers or inventories of the available or protected TK. Registrations should not be the basis of protection but like in Ghana's Copyright law registration was done to maintain a record of works to publish the rights of the owners and to give evidence of the ownership and authentication of the knowledge. A similar provision would help in the protection. On Article 5, beneficiaries, as already stated in the scope of protection, the beneficiaries of protection should be the owners, researchers, and manufacturers of products from the knowledge. On Article 6, this Delegation favored beneficiary but such beneficiary must be evidenced by a contract or a license from the various beneficiaries of protection. On Article 9, TK was and ageless property and needed to be protected in perpetuity. Any derived right from the TK may have stated or definite term of protection. On the other items, the Delegation reserved the right to give further detailed comments as and when the discussions proceeded.

164. The Delegation of New Zealand first provided the Committee with an update on some domestic consultations on the draft WIPO Objectives and Principles on both TK and TCE contained in WIPO/GRTKF/IC/10/5 and WIPO/GRTKF/IC/10/4. It shared some domestic experience in the protection of TK/TCEs in particular through the activities of Te Waka Toi, the Maori Arts Board of Creative New Zealand, which was a New Zealand Crown Entity. Through its engagement with domestic stakeholders to date, more discussion, debate and capacity building on the underlying issues was needed at the local level before comprehensive consideration of the proposed policy objectives and principles could be undertaken. For the time being therefore, it reserved its position on the various principles and policy objectives and on the questions contained in the list of issues distributed by the Secretariat, but continued to support the general approach of preserving flexibility, achieving balance, respecting international agreements, and meeting the needs of indigenous and local communities. It updated the Committee on the outcomes of the further consultation undertaken with domestic stakeholders and on an expert peer review of the objectives and principles that the Delegation had commissioned. The submissions and the peer review report were contained in WIPO/GRTKF/IC/10/INF 2 Add 3. In preparation for the tenth session of the Committee, the New Zealand government had sought submissions from stakeholders on the draft WIPO Objectives and Principles for TCEs and TK. It had received three submissions from Maori and Maori organizations. These submissions were the views of their authors only, but

provided some useful insight into issues of concern to some Maori. The submissions raised a number of themes that were general in nature and common to both the WIPO Objectives and Principles for the Protection of TK and TCEs. Some of the themes from these submissions included: issues related to possible enforcement of the Principles and Objectives and how enforcement provisions could be addressed and strengthened; acceptance of the need for some flexibility, in particular to take into account the Treaty of Waitangi in the New Zealand context, but also some concern that flexibility should not enable States to pick and choose the application of protection; comments about the inter-related nature of many of the issues associated with both TCEs and TK; concerns that it was important that Maori had direct input into the process for shaping the WIPO Objectives and Principles; and some more specific issues associated with the formalities of IP protection and the term of protection provided through IP rights. It drew the attention of the Committee to the peer review of the WIPO Objectives and Principles that had been commissioned from Mr. Maui Solomon. Mr. Solomon's report, which represented his personal views only, identified areas where the WIPO Objectives and Principles were seen as helpful for addressing particular Maori concerns around the preservation and protection of TCEs and TK. The report also identified limitations of the objectives and principles from a Maori perspective. Themes from the report included: that flexibility of the objectives and principles were particularly important for ensuring that any domestic use of them took account of the Treaty of Waitangi; and a broader concern that the principles and objectives potentially constrained TK issues within an IP-based framework and that, as a consequence, TK and TCEs were artificially separated from an holistic relationship with the physical and spiritual environment. The Delegation then turned to its domestic experience with the protection of TCEs and TK. It introduced a member of the New Zealand Delegation, Elizabeth Ellis, a Companion of the New Zealand Order of Merit for services to the arts and Chair of Te Waka Toi, the Maori Arts Board of Creative New Zealand, from 1994 to 2006. She provided observations in her personal capacity. Ms. Ellis outlined some of the initiatives taken by Maori in the last 12 years for the protection and preservation of TK and TCEs. She spoke as a Maori in personal support of the Peer Review Report by Mr. Maui Solomon on the revised WIPO Objectives and Principles for TCEs and TK, contained in WIPO/GRTKF/IC/10/INF 2 Add.3, which had been commissioned by the New Zealand Government. Maori were the *tangata whenua*, indigenous people of Aotearoa New Zealand, and as such they had a distinct and unique culture. In 1840 many Maori chiefs signed a treaty, the Treaty of Waitangi, with Queen Victoria guaranteeing Maori the ownership of natural resources and continued authority of the chiefs. Subsequently, the terms of this Treaty were overlooked by a rapidly changing New Zealand society and over the following century more than 90% of Maori land was permanently alienated. Maori now comprised 15% of Aotearoa's population of 4 million. Most of them lived in urban centers in Aotearoa but maintained strong links with their tribal territories, nearly all of which were rural. They were striving to have greater recognition and protection of their cultural, biological and intellectual rights and obligations. In 1963, 123 years after the signing of the Treaty, an Arts Council was established to foster and promote the practice and appreciation of the arts in New Zealand, initially with an emphasis on the Western performing art forms, such as opera, ballet, orchestras and theatre. However in 1994, new legislation recognized the arts and the role of Maori as tangata whenua with the creation of a Maori Arts Board called Te Waka Toi, comprising seven Maori people representing the tribes of Aotearoa. This group had clearly defined roles and responsibilities and beneficiaries of their work must be Maori, with outcomes that were managed and directed by Maori, to be of benefit to Maori. She spoke about some aspects of the work of this group relevant to the Committee. Regarding TK and TCEs, protection, support and development of Maori TK and TCEs were extremely important goals for Maori and for *Te Waka Toi* and they, like many other indigenous peoples, regarded them as part of a whole, as parts of the holistic being. There were significant

numbers of practical ways that their goals were being met each year. For example a traditional meetinghouse, Hinerupe Marae at Te Araroa, had reopened in 2002 after extensive rebuilding, following a fire, which erased the meetinghouse. Te Waka Toi funded the creation of new carvings and artworks based on the original TK and EoF that had been destroyed. A *waka* or Canoe Group in the north of New Zealand, *Te Taitokerau Tarai Waka*, had been supported in the constructing and sailing of Waka Hourua, i.e. ocean going traditional canoes, and the prestigious Polynesian Society was supported in the editing and reprinting of the traditional and ancient songs and chants of Maori, *Nga Moteatea*. Another important initiative responded to the threat of the loss of TK with the passing of their elders and experts. In this program the elders, kuia and kaumatua selected and mentored younger established artists, with economic and administrative assistance from *Te Waka Toi*. Regarding *Toi iho*, the Maori mark of authenticity and quality, a significant initiative taken by *Te Waka Toi* in 1997 was the development of the *toi iho* Maori Made mark as a registered trademark denoting authenticity and quality for Maori artists, as referred to earlier in this Committee meeting. It had been developed as a response to calls from Maori for protection of Maori artworks and as a way of countering the proliferation of cheap look-alike Maori design derivations that had flooded New Zealand from other countries in the last ten years and a way of acknowledging high quality cultural expressions made by Maori. Artists comment on economic benefits from toi iho, and tourists and buyers registered gratitude for identifying Maori-made work. Toi iho took 5 years to develop and at the time there were criticisms about the cost of the process and questions asked about the benefits to the wider NZ public. Maori communities were consulted in the beginning and throughout the process and Maori owned and led every aspect of the trademark's establishment. Toi iho was launched five years ago in 2002. To date there were 130 Maori artists who were registered to use the mark and they represented traditional and contemporary expressions of culture. There were also increasing numbers of businesses that were licensed to advertise and promote toi iho artists and their work. The trademark was a success and the growth of its visibility and emphasis on high quality Maori cultural expressions had raised a positive economic and cultural profile for Maori and for Aotearoa as a whole. As noted in earlier papers Maori TK continued to be misappropriated at an alarming rate. Te Waka Toi would continue to be asked to comment on possible infringements until there was a mechanism established for dealing with TCE/TK and IP related matters. For example, in December 2005 a prominent fashion house in Paris asked for comment about the use of traditional Maori images and themes on a proposed scarf. The images were taken from illustrations and photographs included in a number of books. Te Waka Toi advised that there was no legal basis for giving consent to the fashion house for the use of the images as they were neither the owners of the designs nor the authors of the books. (Apart from references to the 1993 Mataatua Declaration on Cultural and IP rights, the NZ Trademarks Act 2002, the Waitangi Tribunal Wai 262 claim). Te Waka Toi had no legal rights in connection with the proposed designs. However, the board appealed to the moral conscience of the fashion house and recommended two options for consideration: first, that they advise the authors of the publications that contained the images and themes that inspired the design for the scarf and, second, that they commissioned a Maori artist to create an original design for the scarf and in so doing mutually agreed on the future ownership and use of the design produced. To date the advice had not been taken. As noted in Maui Solomon's report they would have benefited from an international regime that aimed at preventing and penalizing misappropriation where legal rights were not necessarily being sought by the appropriators. Aotearoa was a Pacific nation and as such belonged to the Pacific Arts Council. This group was formed in 1977 with 27 countries and territories of the Pacific claiming membership. The Council's main role was to manage the Pacific Arts Festival. To date there had been nine Festivals of Pacific Arts, from the first in Fiji in 1972 to the most recent in 2004 in the Republic of Belau. While there was a strong desire to protect, preserve

and promote indigenous cultures of the Pacific, organizational issues related to the substantial cost of hosting festivals remained a huge problem. A number of speakers had already noted the initiative taken by the Pacific Arts Council themselves in safeguarding their TK and TCEs. The Regional Framework for the Protection of TK and Expressions of Culture was developed from 1997 and endorsed by the Ministers of Culture from Pacific Island Countries and Territories (PICTs) at their first ever gathering in Noumea in 2002. Presently, Fiji, the Republic of Belau, Vanuatu, the Cook Islands and Papua New Guinea were adapting the guidelines to suit their situations. The initiative had been supported throughout by WIPO. This was the first time that Guidelines had been developed for the protection of collectively owned property. One of their guiding principles had been that lawyers/legal experts should not outnumber indigenous cultural experts and for that reason the outcomes were always clear, immediate and very practical. The issues surrounding collective ownership of TK and TCEs that were held in perpetuity from generation to generation had a particular and real relevance to Maori. Earlier in the year 2005 the Government had provided SPC with a technical person to develop an Implementation Package or Kit to assist PICTs in the enactment of legislation. This Kit was published by the SPC last month. PICTs were considering the possibility of developing a Regional Convention for PICTs in an effort to protect elements of culture that would have value in situations where the convention could not legally enforce its provisions such as with non-signatory states. However, the Council had not met since 2004 because of resource constraints and the issues remained urgent but unresolved. A Maori academic, Professor Mason Durie's goals for all Mäori were: "to live as Mäori, to participate as citizens of the world and to enjoy good health and a high standard of living." The Maori did this through culture. They continued to seek ways to hold fast to their TK and TCEs of their tupuna, their ancestors. Their artists needed no urging to be creative and daring in a competitive changing world, to take hold of new technologies and to be resilient and tough in the global society.

165. The Delegation of Indonesia reaffirmed its position which was similar to what it had stated in regard with the issue of TCEs. In order to protect the knowledge effectively and efficiently, the Committee should have at least one international legally binding instrument. Keeping in mind the divergences of views among the Committee's Member countries it also suggested that Member countries should be more pragmatic, even though the Committee would never reduce its commitment to establish an international legally binding instrument in the future. Without prejudice to the possible outcomes regarding the draft WIPO Objectives and Principles, which were contained in document GRTKF/IC/10/5, the Delegation's comments were as follows: in policy objective (iii) regarding the actual needs of holders of TK, it proposed the elimination of the word "directly" as aspirations and expectations of TK holders might also possibly be represented by the Government. Relating to policy objective (xv), concerning enhanced transparency and mutual confidence, it called for more clarification of what the meaning of the term "mutual respect" was. Concerning the principle to be responsive to the needs and expectations of TK holders, the term "actual needs" should be understood in the broad sense to include not only what was needed in a short term basis but also for indigenous peoples and other cultural communities' long term interest. Indonesia was in favor of the principle that measures for the legal protection of TK were voluntary from the viewpoint of indigenous people and other traditional communities, as long as it was in compliance with national policy and regulations. With regard to the Substantive Provisions it referred to its position that had been stated in the eighth session of the Committee. In brief, it was necessary to indicate the structure of parties authorized to give PIC in Article 1.3(ii); the term "communities" should be understood not only at a small scale of a community but also at a large scale of society in Article 5; a change of the words "or" into "and" in the second line of Article 7 paragraph 2 and the omission of "an obligation to

specify the direction of protection" in Article 9, paragraph 2. In addition, the Committee needed to further clarify the meaning of "use" for other public interest purposes in Article 8 on exceptions and limitations, as this activity could also generate an enormous commercial benefit.

166. The Delegation of Switzerland thanked the Secretariat for the list of issues and agreed in general that the discussions on the list could help moving forward the Committee's work. It reserved its rights to comment on it at a later stage. It also thanked the Secretariat for document WIPO/GRTKF/IC/10/5 and had the following comments: in the view of Switzerland, two fundamental tasks needed to be carried out at the outset of any discussions of this Committee on the protection of TK: first, agreeing on the policy objectives and general guiding principles and second establishing a working definition of the term TK. Up to now the Committee's work on these two fundamental tasks had not been completed. Accordingly, it was necessary for the Committee to continue discussing in greater detail and eventually agree upon policy objectives and general guiding principles and to establish working definitions. In contrast to what had been stated by some delegations continuing the discussions on these two fundamental tasks was not a futile exercise. On the contrary, Switzerland viewed these discussions as a necessary prerequisite for any meaningful and result-oriented work of the Committee on the protection of TK. In light of these considerations, Switzerland considered it to be crucial that the Committee intensified the work on the policy objectives and the general guiding principles of the protection of TK as well as on relevant terminology. Only once these fundamental tasks had been completed, could the Committee take further steps with regard to the protection of TK. If it were to commence work on substantive provisions at this point in time it would leave out one necessary and fundamental step in its discussions. Accordingly, Switzerland agreed with those delegations who had considered discussing possible substantive provisions on the protection of TK as contained in the Annex of document WIPO/GRTKF/IC/10/5 to be premature at this point in time. It would therefore provide comments on the proposed substantive provisions only at the latest stage in the discussions of the Committee on the protection of TK. Switzerland considered the revised policy objectives and the general guiding principles as contained in document WIPO/GRTKF/IC/10/5 to take the work of the Committee on the protection of TK one step ahead. Switzerland had more specific comments to offer on two draft policy objectives as set out in document WIPO/GRTKF/IC/10/5. Switzerland supported the addition of policy objective (iv) regarding the promotion of the conservation and preservation of TK. It considered this to be a crucial aim of the protection of TK and relevant to the work of the Committee as far as it related to IP. Switzerland did not support the revised wording of policy objectives (xiv). Instead preference was given to the retention of the wording contained in the previous version of the policy objectives and principles that was contained in document WIPO/GRTKF/IC/7/5. In the context of databases on TK, Switzerland referred to its proposals for the establishment of an international Internet portal for TK. This portal would electronically link existing local and national databases on TK and could facilitate access by patent authorities to TK stored in such databases. For more details on this proposal reference was made to paragraphs 30 to 32 of WTO document IP/C/W/400.Rev.1.

167. The Delegation of the Islamic Republic of Iran believed that the Committee's task was to identify and express the interest and desires of Member States for achieving an effective protection of TK and GR. The main objective should be exploring ways and means to recognize and agree on the protection of TK through an internationally binding instrument. The Islamic Republic of Iran welcomed the launching of a process towards formulating an international legally binding instrument in Committee. The comments of the Member States also contributed to a great extent for the preparation of such an instrument. This process, like

other processes in the IP conventions, could build on the instances and experiences of the countries in an inclusive but not in an exclusive form and then draw out the principles which could constitute the possible framework of an international instrument. Many of the policy objectives and issues in the document WIPO/GRTKF/IC/10/4 and WIPO/GRTKF/IC/10/5 were drawn from the existing international instruments and documents like UNESCO conventions on culture heritage and the CBD. Therefore, raising them again would not contribute to the progress of the existing process within the work program of the Committee. It underlined that since the first session of the Committee, the majority of Member States had always emphasized that the issues under discussion in this Committee on TK and GR were in conformity with the other related discussions of international instruments, including the CBD. The main objective of the Committee's work was establishing a protection regime for TK and addressing the needs of various Member States and various other stakeholders in this area. Therefore, policy objectives that had been identified in the document WIPO/GRTKF/IC/10/5 should address this major aim and target. Moreover, if some of the distinguished members still believed that there was no consensus to move forward, then like all other countries, they should present their views on various provisions principles and policy objectives, which will contribute more constructively to the Committee process and its progress. While supporting the amended proposals on disclosure of the origin of TK as well as GR in the context of TRIPS negotiation at the WTO, the Delegation underlined that such a mechanism alone would not be sufficient because it just provided defensive protection. However, all developing countries were looking forward for a positive protection for TK and GR. Finally, the Delegation reiterated the point, which had been raised by the Delegation of Nigeria on behalf of the African Group, that the Committee needed to move forward with textual negotiations if it was to keep its basic credibility as a forum of serious discussion on these issues. It announced that it would submit its comments on the substantive provisions contained in document WIPO/GRTKF/IC/10/5 in written form to the Secretariat.

168. The Delegation of the Russian Federation recalled that it had already submitted written comments on the protection of TK in WIPO/GRTKF/IC/10/5 and wished to see these comments incorporated. It had also submitted opinions on these issues which, in its view, merited further examination in order to reach a consensus. Following consideration of these issues, it believed that the Committee needed to continue considering these issues in greater detail, particularly with regard to TCEs and EoF and it believed the Committee needed to consider a larger range of issues. The Russian Federation wished to go phase by phase in this consideration of issues related to TK. The list of issues could be an important step in the work of the Committee and believed that it should consider those issues and incorporate their analysis into the work of the Committee. It believed that during the session, the Committee might perhaps formulate further issues and so it reserved the right to come back to this issue.

169. The Delegation of India commented on the substantive provisions (WIPO/GRTKF/IC/10/5). On Article 1, the definition of the TK holder needed to be broadened to include the country or region as a whole as the sole holder of TK in the case of codified but non-customary knowledge systems of health care such as *Ayurveda*, *Siddha* and *Yoga* in India. Positive protection should be provided to TK for encouraging commercial and industrial use of TK along with adequate benefit-sharing for TK holders. Relevant provisions for providing information on source or origin, prior informed consent, and evidence of benefit-sharing while keeping IP protection should be included. In respect of Article 2, the Delegation felt that the legal protection instrument of a country for TK should include specific provisions for codified and regulated TK. Provisions should include to grant of exclusive rights to nationally recognized systems of health care, the authority for which rests, in the view of the Delegation, solely with the national governments. In respect of Article 3, the term

TK was not qualified by a time frame. There is a need to evolve parameter for ascertaining the nature of knowledge to be protected by IPRs in view of the diverse and dynamic nature of the TK. In respect of Article 4, relating to eligibility of protection, the Delegation felt that codified and regulated TK like *Ayurveda* should be included to be accorded protection as a priority, through legal or other measures. On Article 5, relating to beneficiaries of protection, logically it followed that the country's government or nation as a whole should be included and entitled to benefit-sharing, where officially recognized and regulated TK systems are involved. In respect of Article 6, related to fair and equitable benefit-sharing and recognition of TK holders, specific laws governing education practice and the search of codified TK systems should be duly recognized when sharing benefits arising from commercial use of such knowledge. With respect to Article 7 on the principle of prior informed consent, the measures and mechanisms adopted to seek prior informed consent in case of country-regulated TK should duly recognize the role of concerned departments or ministries in the respective governments. The power to grant PIC should lie with the designated government or national authority. In respect of Article 8, related to exceptions and limitations, implementation of protection for TK, particularly for tradition-based products, should not adversely affect the scientific, commercial and industrial use within the country and out of the country, provided that benefit-sharing was ensured. Exceptions under paragraph 2 of the Article should be extended only to the nationals of the TK-holding country. Regarding Article 9 on duration of protection, the duration need not be specified in case of regulated TK of the country. Suitable legal instruments and measures needed to be put in place by the national authorities to prevent exploitation of regulated TK outside the country. In respect of formalities in Article 11, codified and regulated knowledge systems containing TK should be protected from misappropriation by formalities regarding prior informed consent and related matters by national authorities. In respect of Article 14, foreign TK holders should be eligible to make commercial use of TK only when prior informed consent and equitable benefit-sharing agreements had been received according to the national laws.

170. The Delegation of Panama supported the position set out by the Delegation of Nigeria with the support of the Delegations of Brazil, Colombia, Mexico and South Africa. In accordance with the relegated mandate of the Committee, it considered that the Committee had made large efforts to achieve the expected results. A number of options had been considered and delegations had been asked to submit comments. Many of those comments were duly received, including those that were distributed in Spanish, in particular from Ecuador, Guatemala and Mexico. These comments merited the attention of the Committee and they would enable the Committee to complete the process of open negotiations among all participants. It stressed that in its view flexibility should be a guiding principle, because it was not easy to find an international model of the protection of collective TCEs and EoFs at the international level. It supported a form of international protection that would allow countries to defend the interests of their indigenous peoples and local communities. It endorsed the comments of the Delegation of Egypt, which, like Panama, was at the cutting edge of the protection of TCEs, TK and GRs. Panama had been working for its indigenous peoples to try to protect the rights of communities who aspired to greater protection from the competent national authorities. The Delegation expected the Committee to come up with the legal instrument to protect these rights at the international level. Once protection existed at the international level that would in fact be the beginning of the real work. Panama continued to make progress on this issue and had become a real focal point internationally. There were a number of initiatives addressing this issue and Panama had included in its team people from the private sector and the academic sector. For example, Panama had come up with a very creative initiative trying to protect plays and linguistic expressions and a major percentage of benefits had been shared as a result of these activities. Panama had also supported other

indigenous peoples so that they could have their documentation to group together their IP and biological resources and summarizes all their customary knowledge that they can protect well. This was important because indigenous communities who place great value on their culture and their physical and spiritual world. Panama was also making efforts to ensure that indigenous peoples could have a stamp of authenticity on their protected products through collective rights. For example, they had created a mark with indigenous languages that indicated that a particular work was created by a woman from the Cuna tribe and that helped for publicity at the international level as well domestically. All of this had been done with the direct support of the Government of Panama. It was also working in rescue and conservation work, developing registers of TK and manifestations of TCEs/EoF through research, workshops, seminars and gathering of information in order to protect and register these expressions. It provided training, technical assistance and awareness raising among the communities and as a result Panama had seen a number of documentation centers coming up, which were like libraries of TK and were often based in local communities. As in Egypt, Panama was developing a database to incorporate documents, recordings, photos and videos, that would be backed up and protected through collective rights. On WIPO/GRTKF/IC/10/5, the Delegation noted that in the Panamanian legislation, there was a limited time of protection while the conditions of protection were a link between the community and the TCE whenever they were prepared to have a commercial use. It strongly stressed the principle of reciprocity in the Panamanian law. It reiterated that Panama urgently needed to have an international instrument for TK and TCEs in order to deal with national treatment, since Panama was part of global economies and would enable countries to protect these TK/TCEs and to protect the legitimate interests of their holders and producers. Every day Panama was seeing the international level of the socio-economic value of TK and TCEs and was witnessing their commercial use which did not benefit those who had developed these expressions and knowledge.

171. The representative of the Indigenous Peoples Council on Biocolonialism, also speaking on behalf of Call of the Earth and International Indian Treaty Council, commenting on WIPO/GRTKF/IC/10/5, noted that TCEs could not exist without TK and the comments the organizations had given under the previous agenda item regarding TCE also applied to TK. She reiterated that her comments on WIPO/GRTKF/IC/10/5 were qualified by the understanding that the provision of comments on the Draft Objectives and Principles did not imply any ascension to the process or document as a whole. She stated that it was premature for her organization to indicate a preference for a legally binding instrument based on this draft document. Until the substantive provisions were entirely illuminated, it would be irresponsible to make such a commitment. Unfortunately, the Committee's work to-date had been developed without the broad-based participation of indigenous peoples. Until this process had much broader participation by indigenous peoples, it would be inappropriate to endorse any standard-setting or legally binding instrument that would impact on indigenous peoples all around the world. TK was a topic of utmost concern to indigenous peoples because TK, and more specifically, indigenous knowledge, was all encompassing in that it represented the collective cultural heritage of indigenous peoples. Indigenous knowledge was the foundation of indigenous cultures, and therefore, any policy-related or standard-setting discussion about the protection of such knowledge posed significant implications to the lives and livelihoods of indigenous peoples and was of critical concern. Before discussing how the Committee could propose to protect TK, it was necessary to understand the different meanings of protection. Protection, from an IP law perspective, meant that the owner of a patent, copyright, trademark or other IP had a legal right to exclude others from using or reproducing it. The IP forms of protection for intellectual creations and innovations were time limited, individualistic, monopolistic and existed for economic benefit. By contrast,

when most indigenous peoples spoke of protecting indigenous knowledge, they meant it in a much broader sense that included safeguarding its continued existence and development and protecting the whole social, economic, cultural and spiritual context of that knowledge. Indigenous peoples were seeking mechanisms that protected the holistic, inalienable, collective, and perpetual nature of indigenous knowledge systems for purposes far more expansive than profit motives. Any attempt to develop IP rights-based mechanisms to "protect" indigenous knowledge actually posed more of a threat to the knowledge as a whole, than it could ever claim to prevent. Rather than protect, the imposition of IPRs over indigenous knowledge actually would serve to facilitate the alienation, misappropriation and commercialization of indigenous knowledge. Furthermore, dividing indigenous knowledge into artificial categories, rather than safeguarding its holistic and dynamic nature, posed a serious threat to its continued existence and development. It had to be made clear that any attempt to recast indigenous knowledge in IPR terms fundamentally changed the nature of the indigenous knowledge from that of belonging to the cultural heritage of indigenous peoples, to being private property in western law. With regard to the Policy Objectives, she provided some general comments and specific textual amendments. Regarding section (iii), in order to "meet the actual needs of holders of TK," those rights must not only be "respected", but more importantly these rights must be "legally recognized". Regarding section (vii), when referring to the specific intellectual traditions of indigenous peoples, the term "indigenous knowledge" should be utilized. Indigenous knowledge was holistic in nature and could not be separated into distinct categories. Indigenous knowledge was intrinsic to specific indigenous peoples and was fundamental to sustaining this distinct knowledge for future generations. As such, indigenous knowledge did not exist for the benefit of others but rather the peoples to whom the knowledge belonged. Protection of indigenous peoples' rights over their knowledge should be a priority, rather than trying to balance the interests of users of indigenous knowledge at the expense of compromising the rights of indigenous knowledge holders. Regarding section (xi), "free prior informed consent" of the affected indigenous peoples must be ensured. Existing and developing national and international regimes governing access to GRs had not consistently recognized indigenous rights to free prior informed consent, therefore, she expected the Committee not just to be consistent with the other regimes, but to uphold the highest degree of recognition of indigenous rights to free prior informed consent. Regarding section (xiv), the list of means to preclude the grant of improper IP rights did not meet the needs and aspirations of indigenous peoples. Disclosure of source and origin in a patent application and providing evidence of free prior informed consent and benefit-sharing for the country of origin was insufficient. In fact, she believed patent applications that included or were based on indigenous knowledge should be specifically excluded from patentability. In IP terms, she was sure that these patent claims would fail to meet the test of innovation, novelty or inventiveness. But more importantly for indigenous peoples, such patent claims had to be denied because indigenous knowledge was in the indigenous domain; i.e. it was already under the jurisdiction of indigenous legal systems, which protected the indigenous knowledge in perpetuity as the inherent and inalienable cultural property of indigenous peoples. As regarded the General Guiding Principles, indigenous knowledge belonged to the originators of such knowledge, as did the GRs originating from their territories. Indigenous knowledge systems could best be protected by ensuring the right of self-determination of indigenous peoples, including the right to territory and permanent sovereignty over natural resources. She was concerned about comments by some States that wished to strike any reference to the rights of indigenous peoples in the Committee documents. She noted with particular concern Canada's intervention that the language of the document should be changed to reflect only IP rights. The rights indigenous peoples were seeking were far beyond IP rights; they sought recognition of their human rights to self-determination, cultural heritage, and right of free, prior informed consent. Indeed, it was

precisely these rights that provided the legal framework for the protection of indigenous peoples' TK, TCEs and GRs. Regarding the Substantive Provisions, some topics clearly fell within the purview of IP, namely copyrights, patents and trademarks among others. Indigenous knowledge was not one of them. Therefore, she felt that at this point any comments on the substantive provisions would be premature. True protection of indigenous knowledge, responsive to the needs and aspirations of indigenous peoples, was fundamentally based upon the recognition of the rights of indigenous peoples, as established in international human rights laws. Given the mandate of WIPO to promote IPRs, and the fact that IPRs could not adequately protect indigenous knowledge, she proposed that this discussion should best be carried out in the human rights arena.

172. The representative of the BGC emphasized that the Committee must establish a recognized international legal instrument. Since the UN Draft Declaration on the Rights of Indigenous Peoples had fallen dead in New York he referred this august body to an existing instrument that protected the rights of indigenous peoples and tribal peoples, namely ILO Convention 169. The Committee should add to what already existed but should not diminish what already existed and was accepted at international law or by the United Nations. He noted that when certain comments were being made, they excluded indigenous peoples and individuals within the traditional communities. He read from ILO Convention Article 5, which stated that "[i]n applying the provisions of this Convention, (a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognized and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals; (b) the integrity of the values, practices and institutions of these peoples shall be respected." The Convention stated that the interpreter of the values, practices and institutions of these peoples, including indigenous peoples, shall be respected, that is the convention. The ILO Convention had to be respected. In Article 7 it provided that "The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly." He did not find this in this process of the Committee. What had been happening was a shifting the responsibility to representative of States and an exclusion of indigenous peoples, tribal peoples, or traditional communities. He implored this august body to remain focused on the international norms that had been accepted and ratified by many countries represented in this body.

173. The Delegation of Nigeria intervened on the overall direction of the session. It noted that discussions seemed to be going in parallel. On the one hand, the Committee had received interventions from distinguished delegations regarding the work program and, on the other hand, comments were being made on substantive issues related to Agenda Items 8 and 9. It was important to establish what was the object and utility of this exercise, when the Committee was not even agreed on the possible outcome of the process. The Delegation had heard objections to, for instance, consideration of substantive provisions, but had not heard any tangible acceptable proposals regarding what would happen logically and naturally after the Committee had considered policy objectives and general principles. It questioned what would be the outcome and where this would lead the Committee. It had not noted any clear indication as to where the Committee was going. If it had a clear indication that the 10th session was devoting itself to consideration of policy objectives and principle guidelines and after that the substantive provisions would follow, then it was understandable and possible to agree or to consider it positively, but in the absence of a clear indication of where the process

was leading the members it would be very difficult to accept a situation whereby the Committee would totally refrain from discussing a substantive provisions. It was in this regard that the Delegation had welcomed the opening of discussion on substantive proposals which the Delegation of India had made and the African Group would like to add to these. It also wished to thank the Delegations of Botswana, Brazil, China, Colombia, Ecuador, Egypt, Ghana, India, Indonesia, the Islamic Republic of Iran, Kenya, Mexico, Panama and South Africa for expressing their support for the proposals made by the African Group on the work of this Committee. It was clear that the majority of delegations in this hall would like to adopt the overall workprogram as outlined by the African Group. Having said so and taking note of the words of wisdom declared to the Committee from New Zealand, the Delegation recalled an African saying, namely that "putting heads together is easier than putting eggs together. If you put eggs together along the line you are bound to break some, but if you put heads together you are bound to come out with something workable." So in view of this deadlock, the Delegation suggested to the Chair to convert the meeting into an informal meeting whereby the Committee would agree on the process of establishing what the Committee was going to do with the list provided by the Chair and on such directions that the discussions would take. It was then urgently necessary to start substantive work on the policy objectives and the guidelines and principles, knowing that a certain outcome would follow in the process. So if it were could do so, it would justify the expenditure of all governments and by this Organizations over so many years of sponsoring people to come to Geneva and then go back empty handed. This was not justifiable and not morally right, unless the Committee made use of the means it had within itself to decide to make progress if it was really desirous of making progress. The Committee should decide what to do between now and July before the 11th session and finally what to do during its eleventh session. The Committee should draw up recommendations to the General Assembly next year.

*Decision on agenda item 9: traditional knowledge*

174. The Committee took note of documents WIPO/GRTKF/IC/10/5 and WIPO/GRTKF/IC/10/6, and the comments, submitted according to the intersessional process, that were contained in documents WIPO/GRTKF/IC/10/INF/2, WIPO/GRTKF/IC/10/INF/2 Add., WIPO/GRTKF/IC/10/INF/2 Add. 2, WIPO/GRTKF/IC/10/INF/2 Add. 3, and WIPO/GRTKF/IC/10/INF/3. The composite decision taken by the Committee on future work on agenda items 8 and 9 is reported under agenda item 11.

## AGENDA ITEM 10: GENETIC RESOURCES

175. Confirming the agreement of the Committee, the Chair invited the representatives of the Secretariat of the CBD and of the FAO to report to the Committee at the beginning of this agenda item.

176. The representative of the Secretariat of the CBD reported that a number of initiatives had been undertaken by the Secretariat, in the months following the eighth meeting of the Conference of the Parties, with a view to achieving the 2010 target to reduce the current rate of biodiversity loss, adopted by Heads of State at the World Summit on Sustainable Development, in 2002 and to increase worldwide awareness to the CBD. In addition to Governments, the Secretariat was reaching out to its partners and to major groups of stakeholders, including international organizations, non-governmental organizations and civil

society, indigenous organizations, scientific and technical bodies, industry and the private sector, and, last but not least, children and youth organizations to ensure that all could contribute to the achievement of the Global Biodiversity Challenge – that was the protection of life on earth for the benefit of future generations. In this context, the work being carried out in this Committee brought a crucial dimension to the achievement of one of the three pillars of the Convention: the fair and equitable sharing of the benefits arising from the utilization of GR. Paragraph 44 (o) of the Plan of Implementation adopted in Johannesburg provided for the negotiation "within the framework of the Convention on Biological Diversity of an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of GR." With regard to access to GR and benefit-sharing, COP-8 had mandated the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to continue the elaboration and negotiation of the international regime. Most importantly, the COP had instructed the Working Group to complete its work as soon as possible before the tenth meeting of the Conference of the Parties. In addition, co-chairs had been designated for the negotiating process: Mr. Fernando Casas of Colombia and Mr. Tim Hodges of Canada. The Working Group would meet twice before the ninth meeting of the Conference of the Parties in May 2008. The fifth meeting of the Working Group on Access and Benefit-sharing would be held in Montreal, Canada, probably in September 2007 and the sixth meeting of the Working Group would likely be held in Geneva, from 21 to 25 January 2008. This would provide the opportunity for those involved in discussions related to the IP and trade aspects of GR in Geneva to become familiar with the work of the Working Group. This could certainly contribute to greater mutual understanding among the environmental, trade and IP communities, of the issues and concerns at the heart of the negotiation of an international regime on access and benefit-sharing. An internationally recognized certificate of origin/source/legal provenance was a possible element of an international regime on access and benefit-sharing currently under consideration. COP8 had decided to establish a group of technical experts to examine this issue more closely and provide advice to the Working Group on ABS at its next meeting. This group would explore and elaborate possible options, without prejudging their desirability, for the form, intent and functioning of an internationally recognized certificate, and analyze its practicality, feasibility, costs and benefits. The group of technical experts would be hosted by the Government of Peru, in Lima, from 22 to 25 January 2007. With respect to the issue of the disclosure of origin/source/legal provenance of GR in IP rights applications, an issue of interest to this Committee, this matter would be further considered by the Working Group on Access and Benefit-sharing as one of the potential elements of an international regime on access and benefit-sharing. COP-8 had noted ongoing discussions on this issue, both in the framework of the WIPO and in the Doha Work Program of the WTO. The COP had invited "relevant forums to address and/or continue their work on disclosure requirements in IP rights applications taking into account the need to ensure that this work was supportive of and did not run counter to the objectives of the Convention. Finally, COP-8 had requested the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to further consider measures to ensure compliance with prior informed consent in cases where there was utilization of GR or associated TK, and with mutually agreed terms on which access was granted. Concerning TK, COP-8 had decided that the Ad Hoc Open-ended Working Group on article 8 (j) and related provisions should collaborate and contribute to the negotiation of an international regime on access and benefit-sharing by providing views on matters relevant to TK associated with GR. In light of the relationship between the work on TK and on access and benefit-sharing, the COP had further decided that the next meeting of the Working Group on article 8 (j) and related provisions would be held back-to-back with a meeting of the Working Group on Access and Benefit-sharing, in September 2007. With regard to the development of sui generis systems for the protection of TK of indigenous and local communities, COP-8 had specifically

acknowledged the work being done in the IGC on the IP aspects of sui generis systems for the protection of TK against misappropriation and misuse, as well as the discussions within the WTO to examine the relationship between the TRIPS Agreement and the Convention as regards the protection of TK. As requested by COP-8, the Working Group on Article 8 (j) would continue its work in order to identify priority elements of sui generis systems. Other elements of the work program on TK of particular interest to this Committee, which were being addressed in preparation for the next meeting of the Working Group on Article 8(j) included the further development of draft elements of an ethical code of conduct for submission to the ninth meeting of the Conference of the Parties; further work on the identification of processes that threatened the maintenance, preservation and application of TK; a request to the Executive Secretary to explore the possibility of developing technical guidelines for recording and documenting TK and to analyze the potential threats of such documentation to the rights of holders of TK; the convening of regional and sub-regional workshops to assist indigenous and local communities in capacity-building, education and training, and networking with particular emphasis on the participation of women; and the adoption of criteria for the operation of the voluntary funding mechanism for the participation of indigenous and local communities in matters related to the objectives of article 8 (j) and related provisions. The work of the Convention on TK and the work of the IGC therefore continued to be highly complementary. With respect to the work of the Convention on transfer of technology and cooperation, a number of activities were also being carried out with the active collaboration of the WIPO. The CBD program of work on technology transfer and scientific and technological cooperation foresaw the preparation of studies, to be undertaken by the CBD Secretariat, UNCTAD, and WIPO, that further explored and analyzed the role of IP rights in the context of the Convention and identified potential options to increase synergy and overcome barriers to technology transfer and cooperation. A first draft of this study had been prepared by the Secretariats of the CBD, UNCTAD and WIPO, and had been submitted for information to the Conference of the Parties to the CBD at its eighth meeting. COP-8 had taken note of the progress made and had invited UNCTAD and WIPO, and had requested the Executive Secretary, to finalize the study. The SCBD looked forward to further close cooperation with WIPO in the timely finalization of the study. COP-8 had also decided to establish an ad hoc technical expert group with a view to identify, collect, and analyze ongoing tools, mechanisms, systems and initiatives to promote the implementation of the CBD provisions on technology transfer and scientific and technological cooperation, and to propose strategies for the practical implementation of the program of work. The Secretariat of the CBD looked forward to the active and close cooperation of WIPO in this important activity and acknowledged with appreciation the WIPO initiative to develop, in close cooperation with the CBD Secretariat, an electronic search tool on the Intellectual Property Digital Libraries with a view to support technology transfer under the Convention, in particular with regard to providing tailored online access to information on proprietary technologies that were of relevance to the Convention. The Secretariat of the CBD looked forward to continuing cooperation with the WIPO Secretariat for the effective implementation of that important activity. Cooperation between the CBD Secretariat and the WIPO Secretariat in the framework of the Memorandum of Understanding between the two institutions remained excellent. Clearly, there were many areas of mutual interest in the work of the CBD and WIPO, particularly with regard to the IGC. The representative of the SCBD wished the IGC every success in the continuation of the deliberations in the course of that week, confident that they would also contribute significantly to the work of the CBD with regard to access to GR and benefit-sharing, as well as traditional biodiversity-related knowledge

177. The representative of the FAO underscored the long collaboration that FAO had had with WIPO in general and with the Committee in the years in which FAO had negotiated the international treaty on plant genetic resource for food and agriculture. Organizations needed to collaborate with each other in a coherent manner and in mutual respect for competencies. FAO would be delighted to continue working in every possible way in the IGC. The international treaty on plant GR for food agricultural was one of the only two international instruments that provided for access and benefit sharing. The other was, of course, the CBD. The international treaty had very similar objectives to the CBD. However, it specified those for sustainable agricultural and food security. The treaty was above all a treaty that aimed to ensure that GR were made available so as to feed the world. The time when the populations were burgeoning food crises were likely because of global warming. It was an instrument under the millennium development goal number one. The international treaty had been adopted in November 2001; it had come into force in June 2004. The first governing body had met the year before in June and there were currently 110 contracting parties to the international treaty. The number was growing rapidly and everything suggested that before long there would be a universal instrument. The international treaty was primarily a treaty that was designed to ensure sustainable agricultural development and food security, and so had many instruments or activities under it, which were not directly of interest to the Committee. However, it also created a multilateral system of access and benefit sharing for a list of crops and forages that provided humanity with about 80% of the intake from plant food. It created a system of exchange based on a contract, which was called the standard material transfer agreement. That was a contract between the provider and the recipient of that material that regulated how it may be used and provided for mandatory benefit sharing in certain cases. Now that instrument existed and had been agreed as a model for what can be done within this sector. Into that multilateral system the contracting party of the treaty, would bring the materials they had under their control in the public domain and put them as a pooled good to service of mankind. This pooling was something to bear in mind in the future work of the IGC, because clearly once those materials were pooled and available to everybody, they were no longer linked to the country that had provided them. In fact, in agriculture terms, almost all crops were already exchanged so many times and crossed so many times that the origin of a particular specimen if one went back one, two, three, four generations of crossing, was very difficult to find. That meant in terms of following the origin and the source of material, it was quite clear to ask that such materials from the multilateral system, in fact, came from the multilateral system and should be regarded as being from that multilateral system, and not from any long chain of suppliers. So to a certain extent, this standard material transfer agreement was absolutely certain to serve as a certificate of origin for those materials that came from the multilateral system. In the future work of the IGC this was one of the things to consider the fact of this pooled well. The representative thanked WIPO for the very real technical support over the years of negotiations. At the moment, FAO and WIPO were working together on a very complex and important project on how Patents may affect access and use of GR under the multilateral system. This was a technical study of patent landscapes, trying to identify exactly how those GR were used. It would be a very important study once finally completed. The representative mentioned he also represented the FAO Commission on GR for food and agriculture, which was the only standing international, inter-governmental body that dealt with all aspects of genetic resource for food and agriculture. It had been that body that in fact, had negotiated the international treaty. The Commission was now preparing a very important international technical conference the following year in Interlaken in Switzerland on animal GR for food and agriculture. The scope of the Commission was all the GR of importance for food and agriculture. It addressed plants, animals, fisheries, microbes and all within a single framework. That conference which was drawing on country reports from most countries in

the world, would probably be the first attempt to kick forward a coherent international framework for animal GR. He wished the IGC all success in its future work, and ensured FAO's interest in being present and in assisting in any possible way with the negotiations.

178. The Delegation of Switzerland on behalf of Group B commented that that group would continue to engage constructively in the discussion in order to find solutions of mutual benefit for all Member States. The Committee had been specifically set up by WIPO's General Assembly in 2000 to discuss the issues of IP and GR, TK and TCEs. The members of Group B had actively and constructively participated in the discussions of the Committee. The IGC had been able to considerably advance work on these three issues, and had made substantial progress. It therefore, welcomed the discussion of WIPO's General Assembly of 2005 for the Committee to continue this important work. One point that was of importance to Group B, was that it was disappointing to see that despite hard work and best efforts, work on GR had not advanced as much as it had on the other two issues. Group B viewed all three agenda items of the IGC (GR, TK and TCEs) to be on an equal footing. The Committee's on GR should thus be intensified and a proper balance should be found on dealing with these three agenda items. This balance between the three agenda items was clearly stated in the mandate given by WIPO's General Assembly to the IGC. The members of Group B remained committed to continue discussing all three agenda items in a constructive and balanced manner. Group B was looking forward to a fruitful debate on GR at that and future sessions.

179. The Delegation of Finland, speaking on behalf of the European Community, their Member States and acceding states Bulgaria and Romania, supported the ongoing work on defensive protection of GR and disclosure of origin requirements and recalled the EC proposal tabled at the 8th IGC (WIPO/GRTK.F/IC/8/11). That proposal attempted to formulate a way forward that should ensure, at the global level, an effective, balanced and realistic system for disclosure in patent applications. It continued to believe that consideration of that issue was an important task for the Committee and that such a serious proposal was entitled to in-depth discussion within the body where the proposal was made, and which had the expertise to tackle IP related aspect of GR. It appreciated the comments received at the last session of this Committee and invited other delegations to express their views on the EC proposal. The EC and its Member States looked forward to having a fruitful discussion on disclosure of origin requirements at that session and it stood ready to make more detailed comments at a later stage.

180. The Delegation of Nigeria on behalf of the African Group recalled that it had made a general statement in which it touched upon GR. It welcomed continued discussion on GR in the IGC, but believed that an instrument should be adopted, similar to the instruments in respect of TK and TCEs. GR should be placed on equal footing with TK and TCEs in the work of the Committee. Work on GR should proceed without prejudice to discussions on the subject in other fora and should be mutually supportive of processes in other fora. The Delegation called upon the Secretariat to invite comments for enriching and updating the existing documents on GR, along the lines of work it already did on TK and TCEs. It looked forward to positive, constructive and fruitful discussions on this important subject matter.

181. The Delegation of Canada wished to align itself fully with the statement made by Group B, saying that the Committee should seek to advance its work on all three pillars of the mandate, including the area of GR. To that end, it shared its experiences on activities conducted domestically with respect to that agenda item, commented on the content of WIPO/GRTKF/IC/8/9, and addressed the possibility of a work plan on GR. The main subject that was being discussed within the Committee under item 10 was the disclosure of origin or

source of GR in patent applications. In that regard, WIPO Member States were invited in 2004 to submit proposals and suggestions on the issue. The Delegation's analysis of the various proposals revealed a broad variety of models each with its own legal implications. Canada had a strong interest in learning about the effectiveness of disclosure mechanisms in countries that already had such procedures and alternative models for access and benefit-sharing. As part of the domestic work accomplished on the issue of disclosure of GR in patent applications, Canada had undertaken three main initiatives. First, Canada conducted an information-gathering exercise with a number of key Canadian stakeholders and National Aboriginal Organizations. That exercise revealed that while the majority of stakeholders appeared to be supportive of ABS objectives in principle, at that point in time they were predominantly of the view that those would not be advanced in practice by the introduction of a disclosure requirement in the patent system. Respondents appeared to be most comfortable with the Delegation of Australia's proposal to WIPO in December 2004, which supported the use of documentation associated with patent applications to disclose the source of any relevant GR while recognizing that there may be circumstances in which disclosure would not be possible or appropriate. Also, the majority of stakeholders were of the view that any disclosure requirement that could result in the invalidation of a patent was not desirable. Second, Canada undertook a similar information gathering exercise with domestic patent examiners, who commented on the challenges that would be associated with making a determination of source or origin in the current manner in which patent applications were drafted in Canada. Third, Canada had been a very active player on the access and benefit-sharing front. Federal officials had worked with their provincial and territorial counterparts to raise awareness about ABS, to gather information on provincial and territorial perspectives and to discuss possible legal and policy measures at the provincial and territorial levels. In the context of that domestic policy exercise, the Government of Canada, in close collaboration with the provinces and territories, also organized a series of workshops on ABS. The main objective of these workshops was to raise awareness and gather perspectives from different stakeholders including Aboriginal communities on ABS-related issues. Disclosure of origin or source of GR in patent applications had come up as a topic of interest at these workshops. The Delegation of Canada placed important value on the Committee's unique mandate and area of expertise and encouraged the Committee to pursue its work on the issue of disclosure of origin or source of GR in patent applications. A more exhaustive approach in assessing whether disclosure of GR could achieve effective ABS or if some other mechanisms might be more appropriate could prove to be a constructive and efficient way to further the work under this agenda item. The Delegation was of the view that WIPO/GRTKF/IC/8/9 provided a solid foundation on which to base a practical and informed discussion on GR within the Committee. That document provided a general description of the work accomplished on IP and GR in related fora before the creation of the Committee as well as an overview of the Committee's own work. It covered three clusters of substantive questions which had been identified in the course of that work, namely technical matters concerning (i) the defensive protection of GR; (ii) the disclosure requirements in patent applications for information related to GR used in the claimed invention; and (iii) IP issues in mutually agreed terms for the fair and equitable sharing of benefits arising from the use of GR. The Delegation strongly believed that the structure and content of that document pertaining to GR called for the continuation of practical technical discussions within the Committee. It saw merit in identifying potential deliverables for the Committee under these three clusters. For instance, it supported the compilation of an inventory of existing periodicals, databases and other information resources that documented GR and supported any proposal or pilot project that facilitates monitoring through improved searchability of any such material by International Search Authorities. It was also supportive of the development of guidelines and/or recommendations that encouraged existing search and examination procedures for patent

applications to take into account documented GR. There was also merit in the possibility of developing guidelines and/or recommendations for policy or administrative measures concerning the interaction between patent disclosure and ABS frameworks for GR. The Delegation underscored the insightful contributions made by Japan and the European Community respectively in documents WIPO/GRTKF/IC/9/13 on databases and WIPO/GRTKF/IC/8/11 on disclosure of GR in patent applications. In light of its comments, the Delegation encouraged the Committee to make technical progress in the area of GR. International discussions held within the WTO-TRIPS Council sessions and WIPO's response to the Conference of the Parties to the CBD both indicated that there were still more questions than answers to many of the key issues in that debate. Building upon the work already done by the IGC and international evidence, there was a need for greater analysis of IP issues related to GR including disclosure. The Delegation supported the Committee's consideration and development of a clear work plan in that area. The intent of that work plan would be to assist Member States in determining which GR related issues they would like the Committee to consider, what objectives they would like the Committee to achieve in relation to those issues, and what timelines and deliverables could be achievable in this context. It suggested that the Secretariat develop an initial draft work plan on GR related issues for circulation to Member States within the next intersessional period, allowing sufficient time before the next session for Member States to have a reasonable opportunity to review the initial draft and provide written comments to the Secretariat. The Secretariat could then be asked to compile all written comments on the work plan in a revised draft for discussion at the eleventh session. The Delegation was of the view that this would set in place a method for advancing the Committee's work, within the terms of its current mandate on GR, in a constructive and productive fashion. Also, that process would have be helpful in informing ongoing discussions in other international fora, including the WTO and CBD.

182. The Delegation of South Africa, as a member of Like-Minded Megadiverse Countries, attached great importance to the protection of GR and associated TK, and to the third objective of the CBD of ensuring fair and equitable sharing of benefits arising from the use of GR. As indicated earlier, South Africa noted the underdevelopment of the documentation relating to GR within the IGC and thought that it was premature to discuss GR in that meeting. However, the Delegation acknowledged progress made in other international fora such as the CBD and the work of the Standing Committee on the Law of Patents on the SPLT. The Delegation recognized the international dimension of GR and the associated TK particularly in the development of mutually agreed terms between provider and user countries. The work of the Committee was therefore important in supporting and complementing the work within the CBD on the development of an international regime on access to GR and fair and equitable sharing of benefits arising from the use of GR. The Delegation was supportive of mandatory obligations to disclose the origin of GR and of associated TK in patent application where the subject matter of the application concerned or made use of such knowledge in its development. An international system of mandatory disclosure of origin would prevent the misappropriation of GR and associated TK and would promote compliance with the CBD access and benefit requirements and would enhance the IP system. South Africa had put the legal framework in place in an attempt to regulate access and benefit sharing. Chapter 6 of the National Management Biodiversity Act No. 1 of 2004 provided a framework for the regulating of bioprospecting involving biological resources and access and benefit sharing. Regulations related to access and benefit sharing were being developed to ensure a clear process for both providers and users of biological resources and simplify the processes for prior informed consent and mutually agreed terms. A policy on Indigenous Knowledge developed by Department of Science and Technology and the regulations on the Patent Amendment Act from the Department of Trade and Industry allowed the Registrar of

Patents to refuse or revoke an application for a patent which did not disclose the origin of the biological material on which the invention is based or prior knowledge associated with biological material. However, the Delegation called for the establishment of an international regime, which would complement national initiatives. It recognized the importance of national efforts but given the complexity, international nature and commercially-oriented system of access and benefit sharing transactions, it reiterated its call within the Committee for an internationally legally binding instrument that effectively protected and guaranteed the rights of countries of origin of GR as well as the rights of indigenous and local communities in relation to their associated TK.

183. The Delegation of Norway associated itself with the statement of Switzerland on behalf of Group B. On disclosure in patent applications, it supported amending the TRIPS Agreement, the PLT and the PCT, and had proposed to introduce a mandatory requirement to disclose the origin of GR and TK in all patent applications. A proposal in that respect had been presented in June 2006 in the WTO. The communication to the TRIPS Council was included in document WIPO/GRTKF/IC/10/INF/2. It put the view that a disclosure obligation should be based on the following five key principles. First, a binding international obligation should be introduced to include information on the supplier country (and the country of origin, if known and different) of GR and TK in patent applications. The supplier country (or country of origin, if relevant) of TK should be disclosed even if the TK had no connection with GR. If the national law of the supplier country or country of origin requires consent for access to GR or TK, the disclosure obligation must also encompass a duty to state whether such consent had been given. If the country of origin was unknown, that fact must be disclosed. Second, the disclosure obligation should apply to all patent applications. That comprised international, regional and national applications. Therefore, the Delegation of Norway considered that also the relevant treaties under the auspices of WIPO, namely the PCT and PLT, and not just the TRIPS Agreement, must be amended in a similar way for the requirement to be made possible and mandatory. Third, if the applicant was unable or refused to give information despite having had an opportunity to do so, the application should not be allowed to be processed further. However, if the applicant could not with their best endeavors obtain the information in question, it was sufficient that the information they did have to be filed for the application to be further processed. Fourth, if it was subsequently discovered that incorrect or incomplete information had been given, that should not affect the validity of the granted patent, but should be penalized in an effective and proportionate way outside the patent system. That could for example be done in administrative or penal law. Fifth, a simple notification system should be introduced, under which all patent offices sent all declarations of origin they had received to the CBD Clearing-House Mechanism. The TRIPS Agreement, treaties under the auspices of WIPO and the Convention on Biological Diversity (CBD) could and should be implemented in a mutually supportive manner. The interaction between the treaties would be enhanced by introducing a mandatory obligation to disclose the origin of GR and TK in patent applications. It would make it easier to ensure that the substantive patentability criteria had been met, for example if a patent differed from TK to the degree required. The disclosure obligation should also apply where the invention related to or applied TK, even if the TK was not directly linked to GR. That would be of particular importance for holder of TK, as that was not regulated elsewhere in other multilateral instruments. The Delegation supported to introduce a mandatory obligation to disclose the origin of GR and TK in all patent applications. Such a disclosure obligation should provide that patent applications should not be processed unless the required information had been submitted. However, non-compliance with the disclosure obligation discovered after the patent was granted, should not affect the validity of the patent. An obligation to disclose the origin of GR and the relevant TK in patent applications would have enhanced transparency

and support the rationale of provisions on PIC and benefit-sharing. Information on origin would have also made it easier to ascertain whether the patentability requirements had been met, and help to prevent patenting in cases where the novelty or inventive step requirements had not been met. A disclosure obligation would, therefore, also be useful in ensuring that patents were not granted contrary to the fundamental principles of patent law. It thus welcomed further work on the subject in WIPO, and in that respect it also thought a work plan as proposed by the Delegation of Canada could be useful.

184. The Delegation of Japan said that with regard to GR, the issue of so-called 'biopiracy' had been raised. It was convinced that the best way to achieve fruitful results in that matter was to make a clear distinction between underlying issues in biopiracy and to address distinctively each issue in an appropriate manner. Japan considered that biopiracy contained two issues. One was the issue of erroneously granted patents and the other was the issue of ensuring compliance with provisions of PIC and benefit sharing. The former issue related to the patent system and the latter arose from compliance with CBD provisions. In that regard, it had submitted WIPO/GRTKF/IC/9/13 in the previous session which mainly focused on the issue of erroneously granted patents. With regard to erroneously granted patents, the Delegation was of the view that it could be addressed by utilizing the existing IP system, for example the system of information submission by third parties, or the invalidation system, and in particular, the improvement of a database for patent examiners worldwide which it considered an effective tool to prevent the issuance of erroneous patents which were already in the public domain. Elements for improvements were as follows. First, accessibility by examiners in all countries should remove language barriers to the maximum extent, e.g. by using an English abstract. Second, collecting information and building national databases on a country of origin or source basis should be established so to understand what was the best position to understand the sensitivities of TK. For this there were two types of database. One was a multi-stop type where examiners accessed each database separately by using a different search formulation. The other was a one-stop type where examiners retrieved information through every connected national database by using uniform search formulation. It was convinced that the one-stop type approach was better for examiners to retrieve in an easy way and raise the probability to find prior art. Other aspects to be examined included issues such as setting a standard format concerning data entries. To explore a standard format concerning data entries for national databases in each country would be beneficial not only for examiners but also for entities to collect or provide information. Also, a glossary for the terms of GR should be established. The name of a GR was usually differed from country to country. In each nation, it could be called differently from region to region. Although there might be an academic nomenclature for GR, it was not necessarily used countrywide or regionwide. For example, '*camu-camu*' is also called '*cacari,*' '*camo-camo,*' or 'rumberry' and its academic nomenclature was '*Myciaria dubia*.' Therefore editing the GR glossary would be helpful for examiners when they sought prior art exhaustively. Search efficiency would improve more by combining such glossary with one-stop type database. The Delegation responded to some of the concerns raised at the last session of the Committee. There was a concern that databases might facilitate misappropriation of GR or associated TK. It wanted to stress that the objective of improving a database system was to prevent erroneously granted patents, and to enable examiners in each country to access such improved databases. Since such a database was closed in nature and it believed that what was called 'misappropriation' could be prevented by restricting access to databases only to authorized users, namely patent examiners. Such a restriction might include a 'usage contract' between a database manager and a utilizing Patent Office where it could be provided on how to authenticate access, the aim to use, and possible sanctions in case of a violation of the contract. For example, authentication could be done by an Internet Protocol Address, a Private ID and a password.

Use could be further restricted to allow only for the purpose of prior art search for examination. With regard to databases for tracking patent applications rather than databases for the search of GR and associated TK, it was currently possible to track a patent application by using existing patent databases, such as WIPO's international application search system and patent application databases of each national patent office by retrieving the name of the GR or the name of the applicant. Furthermore that kind of request could be addressed by including provision in the contract between parties which require users of GR to report subsequent information regarding R&D or filing patent application. Regarding concerns about cost, it thought that it was possible to proceed cost-effectively by making utmost use of existing databases in each country. WIPO was the right forum to seek a way to develop a database in a cost-efficient manner. Compliance with PIC and benefit sharing should be addressed from a broader perspective and should not be dealt with just by seeking linkage with the patent system without in-depth study and consideration. The form of utilization of GR was not only related to R&D but also to the direct consumption of GR, or cultivation of GR. Not all R&D output lead to patents, but was also protected under trade secrets. Furthermore, when granted, the patent owner did not necessarily exploit the patent. Therefore patent related activities were just a fraction of use of GR relative to CBD compliance. So it did not consider that disclosure requirement on patent application was effective to secure CBD compliance. Until that time, there had been insufficient fact-based discussion regarding the problem of securing compliance with CBD. The problem should be clearly articulated through a fact-based discussion based on country experiences with the national ABS system. With respect to disclosure requirements, providing information like source country or country of origin of GR was not directly associated with criteria for patentability such as novelty and inventive step. Such information would not facilitate the task of preventing erroneously granted patents. On the contrary there were many items to be clarified with relation to disclosure requirements. For example, it was not clear to which extent GR and the subject matter of patent applications were related to each other, when disclosure requirement applied. It was deeply concerned that if the system became mandatory and punitive without making it clear enough, it would put an unreasonable burden on the patent system and its users and cause bad effects.

185. The Delegation of Brazil supported the disclosure of origin in patent applications and attached high importance to the protection of GR. That was the reason that lead Brazil and other developing countries including South Africa, China, Colombia, Ecuador, Cuba, India, Pakistan, Peru and Tanzania, to submit a proposal for amending the TRIPS Agreement, requiring patent applications to disclose the origin of the GR and the associated TK as well as to provide the evidence of compliance with PIC and ABS. However the Committee needed to focus its work on TK and folklore. Much more work and effort had gone to these two areas in comparison with the discussions held so far on GR. Furthermore, those two areas offered the possibilities of a significant outcome in the short term. Therefore it might be counterproductive to overextend the focus of Committee activities for the time being, especially since a breakthrough had been achieved on the way forward allowing for substantive discussions to take place on TK and folklore. There was a need to rationalize and prioritize the work of the Committee. With regard to the GR, even though the issue was part of the permanent agenda of the Committee, if it furthered the work, it would duplicate and undermine ongoing work in the TRIPS Council and the CBD. There was still a wide divergence of views among Committee members regarding the best way to achieve a protection of GR. That may explain why the Committee had not achieved any working document on the issue. Brazil had some concerns regarding proposals presented by other members. For example, there was a proposal for creating a database of GR. The Delegation expressed apprehension that that would widen the exploitation of GR and made them even

more subject to misappropriation. Brazil commended the Secretariats of the FAO and the CBD for their presentations and believed that the members of the Committee needed to remain fully informed about the ongoing work in other fora on the matter. In this sense, it encouraged the Secretariat to carry on informing members of progresses in other international organizations. WIPO/GRTKF/IC/8/9 was very useful and provided information regarding work elsewhere. The Delegation could go along with upgrading that document as proposed in WIPO/GRTKF/IC/9/9.

186. The Delegation of the United States of America associated itself with the statement made by Switzerland on behalf of Group B. It supported continued work of the Committee in the area of GR. As it had been noted at the founding of the Committee itself, GR, TK and folklore were integrally related and could not be separated. In that light, the Committee was uniquely suited to resolving differences among the Members on each of these matters. The Delegation reaffirmed support for working towards concrete outcomes of the Committee. The Committee had already had some success with respect to this area of work, including the establishment of an electronic database on contractual practices and clauses related to IP which was an ongoing process that should continue to be updated, the work on technical studies that had been done by this body, and the initial draft guide on contractual practices as last adopted in WIPO/GRTKF/IC/7/9, just to name a few accomplishments. Nonetheless, other pragmatic proposals to achieve concrete results should be pursued by this body, such as further developments of the draft guide on contractual practices as well as the establishment of a one stop shop type international database would be major achievements in helping resolve the concerns among members relating to the inter-relationship of IP and GR. Over the course of recent meetings of this Committee, there had been numerous written submissions, oral statements and positions, that had been offered with respect to proposals relating to the relationship of patents and GR which included proposals for new patent disclosure requirements and alternative proposals regarding contractual based ABS systems and other aspects to address concerns that had been raised. These had all contributed to useful discussion, but unfortunately had confirmed a wide divergence of views on how to address concerns underlying these proposals and statements. The Delegation recognized the importance of the issues raised and that the Committee was the proper mechanism to consider these matters. Nonetheless mindful of the divergent views of Committee members, future work should focus on analyzing real world examples and scenarios that illustrate the perceived concerns in order to help bridge differences among members. For reasons it had expressed in more in detail at previous sessions, the Delegation continued to consider that new patent disclosure requirements would not achieve the objectives sought. Indeed, they even had a negative effect and consequence on benefit-sharing aspects. As noted by the Delegation of Japan, objectives that were generally raised in the Committee included providing for appropriate access and equitable benefit-sharing and a minimization or prevention of mistaken or erroneously granted patents. These objectives were achievable through alternative proposals, such as contract based systems that more directly addressed these manners, and that new patent disclosure requirements were not an appropriate or effective solution to meet these concerns. Along those lines, the Delegation did not support proposals for new patent disclosure requirements relating to source or country of origin or other aspects relating to benefits sharing that had been mentioned by certain delegations. In order to bridge differences among WIPO members, future work should be a fact-based discussion directly addressed on how to best achieve what would appear to be the widely shared objectives. That future work could include among other things an examination of existing ABS systems as these systems appeared to be directly related to Member States perception what may constitute misappropriation. In that light, additional considerations by the Committee of real world examples of perceived misappropriation and national experiences

could help to bridge differences where possible and lead to useful conclusions about the extent of acts that were perceived to be misappropriation, and how systems or solutions could be implemented more successfully with respect thereto. Discussions that had occurred both in the Committee, but also in other international venues had raised a number of issues regarding the relationship of IP and GR, this included the aspect of trade and commodities of GR and how that affected perceptions of illegality of access issues, the relationship of any such goods, national ABS regimes in place and exceptions thereto as well as the relationship of any goods incorporating GR as their starting materials that may be used for research or innovative purposes among other uses. A deeper factual analysis of these issues could perceive solutions to the concerns raised and allow progress on these issues. The Committee, with expertise in both IP and GR, would appear to be uniquely suited to this task. Proposals such as that put forward by the Delegation of Japan regarding databases were important as an example of a direct, pragmatic solution for concerns that had been raised. The Delegation supported further consideration by the Committee of the proposal made by the Delegation of Japan in WIPO/GRTKF/IC/9/13, including issues raised therein such as use of various languages, assessments, identification of compilation of a database and the notion of a one stop shop characteristic for that database. It agreed fully with Japan that the CBD and the patent system were not in conflict and indeed they could and should be implemented in a mutually supportive manner. Further, it agreed with the analysis which was consistent with its own that new patent disclosure requirements on source or origin would not help remedy concerns regarding erroneously granted patents. Similarly, the detailed analysis provided in that document from Japan, with respect to the example of the turmeric and neem cases with respect to requirements for disclosure of origin and the goals of preventing erroneous patents was quite helpful as a fact-based analysis and leading to the conclusion that new patent disclosure requirements could not fulfil the objective. This type of fact-based approach was a positive approach for future work. With respect to particular issues of TK and the relationship with GR, one should bear in mind that Committee members should allow for consultation between the Member States and indigenous peoples, in order to maximise utility of any mechanism that was considered by this body, and to maximise the utility for all stakeholders and interested parties involved. During the consideration of these matters by this Committee, it should be recalled that the Patent system was a critical incentive mechanism for promoting research and development of new inventions of properly obtained or accessed materials. That ultimately resulted in new inventions that enhanced living conditions, including life saving medicines and other crosscutting high technological advances. All WIPO members had a stake in encouraging and not discouraging that process. The Delegation supported the proposal by the Delegation of Canada with regard to the development of a work program. Contrary to the statement of the Delegation of Brazil, it was of the view that such a work program would be complementary to the work of other bodies and not duplicate that work as long as it was consistent with the mandate and it was of the opinion that it was consistent. However any such work program had to be developed in consultation with Member States of WIPO, and not prejudice any positions of a WIPO member.

187. The Delegation of Kenya associated itself with the statement made by Nigeria on behalf of the African Group. It attached a lot of importance to the issue of GR. Indeed, Kenya had a dedicated ministry that dealt with issues of material resources and there were also other institutions, which were mandated to deal with GR. It noted the underdevelopment of documentation on the issues of GR as compared to other areas of the Committee's work. It further noted the slow process on the discussion on that issue. As stated by the Delegations of Nigeria and South Africa, it urged the Secretariat to prepare documentation for circulation to Member States before the next session. That would enable Members to study the documents

and to prepare detailed comments for discussion during the eleventh session. Kenya had taken some steps at the national level. The lead Agency on the issues, the National Environmental Management Authority (NEMA), had taken the initiative and was in the process of developing regulations on access and benefit sharing that would be published soon. The Delegation supported compulsory disclosure requirements of the source of GR forming part of an invention in a patent application, and reaffirmed its support to the work of the Committee in those matters to achieve concrete results.

188. The Delegation of China expressed its support and appreciation to the Committee for its active efforts in finding effective ways and means to advance the discussions, and committed itself to working together with all other Member States in accomplishing the mission of the Committee as mandated by the Assemblies. It observed that as much as the claim for the protection of TK and folklore, the claim for the protection of GR reflected the appeal of those countries and peoples who owned such assets and resources for respect, fairness and balance of interests. In its quest for more innovation by providing users with incentives, the existing IP regime had every reason and responsibility to provide for appropriate protection of the source of innovation – genetic resources. Through various domestic studies and communications with other Member States, it was realized that the IP regime, albeit not the only means for the protection of GR, could work in coordination with other means and forums to ensure an effective protection. The Delegation advised that China was preparing a third revision of its Patent Law, the draft of which incorporated requirements for disclosure in patent applications of the sources of the GR used in inventions, and introduced a new provision concerning non-patentability of any invention that had accessed or used GR in an illegal manner. It believed that such a provision would not only further improve the existing IP system, but would also be conducive to safeguarding national sovereignty, achieving the long-term objectives of ensuring prior consent and fair sharing of benefits, and protecting biological diversity. From the rich information provided by the Committee and other international forums, the Delegation learnt that many other countries were also considering the incorporation of similar provision in their respective domestic legislation. It commented that national protection measures would provide experiences to and serve as source materials for the work at the international level, which would, in turn, contribute to the perfection of national systems, with the establishment of international institutions. The Delegation concluded that although several international forums, including CBD, WTO-TRIPS, FAO and WIPO, were all involved in the deliberations on the protection of GR, they were doing so with different priorities and from different perspectives, and that Committee should play an irreplaceable role in this regard.

189. The Delegation of Honduras said that since the beginning of the first session of the Committee it had carefully considered all interventions of delegations and other stakeholders in this issue of TK, GR and TCE. It believed that introducing a mandatory international obligation to disclose the origin of GR in issues related to IP matters including patent procedures would be of great importance. That included reconsidering the introduction of improvements in the TRIPS Agreement on that specific field. It thought that any obligation that would ensure transparency with regard to the origin of biological materials, germplasm and other related materials would be useful, especially when those materials were intended to be patented. Those provisions should also be reflected in other fora where there would be more profitable counterparts since they had been previously informed on issues like PIC and equitable benefit sharing, which would in turn lead to a more efficient and effective process. Furthermore, it supported the tendency to ensure that IPRs related to GR should be supportive of and not against the objectives of the CBD. Since it focused its intervention on those issues in past sessions of the Committee, it the Delegation wanted the time to make some general

comments on GR, a field that had become lately of great importance to Honduras. It also considered it useful to discuss in the Committee any draft instrument that could be considered in the future in that field. It must contain provisions where IP applications should disclose he origin of IP assets associated to GR as well as evidence of compliance of benefit sharing from the country of origin. In general it wanted to stress again that issues like defensive protection of GR and disclosure requirements in patent application related to GR should be fully discussed, in order to meet the objectives, principles and provisions that reflected a fair and equitable sharing of benefits from GR. Discussion in the Committee on key issues of GR was essential to pave the way for countries to consider adopting appropriate legislation to ensure convergence between access and benefit sharing measures for GR as a way for taking into account the development dimension of that specific issue for the benefit and interest of a nation.

190. The Delegation of Malaysia was deeply concerned over the need for protection of TK and GR, and took note of suggestions by some delegations on the need to have a digital library that was restricted to the patent office to facilitate the formalities of patent applications on the ground of disclosure of GR and thus facilitate benefit sharing. Not all countries were at the same level of economic development to formulate such a library for GR. Thus, the Delegation wanted to suggest that the Committee were supportive of Malaysia's request that assistance be given by WIPO in setting up the needed genetic library to assist the work of the patent office to support examination of disclosure requirements concerning GR.

191. The Delegation of India emphasized that India had a rich heritage of biological diversity and that its country was committed to protect it. Consequently the Delegation attached great importance to the principle of disclosure of GR in patent applications at every occasion. Its position was very consistent and it had taken efforts both at the national level and international level in that regard. It realized the importance of codification and databases but at the same time it shared concerns raised by the Delegations of Brazil, Malaysia and others that it should not become a stepping stone for misuse. The use of such databases needed to be regulated for the designated and indicated purposes in a manner so that it was utilized for that purpose. At the national level India had enacted legislation with the effect of entitling the refusal at the applicant stage and revocation at the post-grant stage of any patent or patent application, which did not comply with the requirement of sufficient disclosure of GR and associated TK. India had also enacted a Biodiversity Act with a National Biodiversity Authority, which had the mandate regarding the use of GR on the basis of PIC and agreed benefit sharing. It had both implications: it prevented misuse, while permitting positive exploitation by the holders of TK associated with GR and vice versa. At the international level, as with the Delegations of Brazil, South Africa, Pakistan, Peru and others it also saw a need to bring the provisions under the TRIPS Agreement in consonance with the CBD. It attached great importance to the discussions and deliberations of the Committee and it hoped that their deliberations would lead to mandatory requirements to disclose GR and other provisions in consonance with the provisions of the CBD. As it had stated earlier, it was committed to a very constructive cooperation.

192. The Delegation of Ecuador endorsed the statement made by the Delegation of Brazil, since it considered that there would be a duplication of efforts if GR were discussed by both the TRIPS Council and the Committee. It was therefore more appropriate to focus attention on GR within the WTO and for the Committee to devote its discussions to aspects of TK and folklore.

193. The Delegation of Switzerland stated that as it had outlined in its opening statement, it considered all three agenda items of IGC; that was GR, TK and TCEs to be on an equal footing. They should thus receive all the proper attention they deserved. That was however not reflected in the ninth session of the Committee. It therefore expected that in this and future sessions a better balance could be found when addressing those three items. In that regard, it saw merit in the work program as proposed by Canada. It took the opportunity to briefly present the proposals Switzerland submitted to WIPO's working group on the reform of the PCT with regard to the disclosure of the origin of GR and TK in patent applications. The proposals by Switzerland are characterised by number of elements, of which it focused on three. First, the proposals would explicitly enable a national legislator to require a patent applicant to disclose the source of GR and TK in patent applications. That was to be achieved through amendments of the regulations under the PCT. Second, in order to further strengthen the effectiveness of the disclosure requirements, and to facilitate its working practice, it proposed an online line list of government agencies. Those agencies would be competent to receive information about the declaration of the source. Patent offices receiving patent applications containing a declaration of the source should have informed competent government agencies about those declarations. Third, the term source was chosen in order to assure consistency with the three primary international instruments on access and benefits sharing. Those three instruments were the CBD, the Bonn guidelines on access and benefit sharing and the FAO International Treaty. Those instruments foresaw a multitude of entities that should be involved in access and benefit sharing. In contrast, more limited concepts, such as origin or country of origin, would not have covered all entities potentially involved access and benefit sharing. Since presenting its proposals in 2003, the delegation of Switzerland had submitted several documents to WIPO. The latest was PCT/R/WT/A/7.

194. The Delegation of Brazil addressed some issues raised by other delegations. It was hard to deal with GR on an equal footing with other issues, because the Committee had not made as much progress on GR as it had on the other two issues, TK and TCEs. Any further work on GR, which it was not opposed to, would have to meet the stated requirement of the mandate of the Committee and therefore it would have to specifically address the international dimension and it would have to be developed without prejudice to work pursued in other fora. That was a very clearly stated element under paragraph (ii) of the mandate of the Committee when its mandate was renewed by the General Assembly in 2005. So, the Delegation would not support anything that strayed from those two clear requirements. Any further work on GR would have to be focused on the international dimension of the issue and would have to be done without prejudice to work pursued in other fora. It had heard many Delegations, and the Delegation of Brazil specifically, mentioning the work that was ongoing in other fora. For the Delegation of Brazil as to a broad group of developing countries, the issue of an amendment to the WTO TRIPS Agreement was of most importance and it believed that further work on GR in that particular body must be without prejudice to initiatives taken by developing countries in the WTO; both in the TRIPS Council and in the context of the Doha Round under the mandate of outstanding implementation issues. A third element of the mandate that it insisted to be respected was that no outcome of its work was excluded. So, they must not exclude any possible outcome in whatever it was that they did. That would therefore also include the issue of GR. Therefore even a mandate to a requirement of disclosure could not be excluded at the outset because that was what the mandate said, as it excluded no outcome including the possible development of an international instrument. Having said that, the Delegation still believed that the work of the Committee needed to be prioritized. It believed that they had found a reasonable agreement to make forward movements on substantive discussions regarding TK and TCEs. It did not object to updating documents regarding GR on the basis of the mandate as it had just expressed. If delegations wanted to have GR on an

equal footing, meaning that it was going to fill the agenda to the point where they would make no more movement on the issues of TK and TCEs, then the Delegation would not be supportive of that move, because it would look simply as a ploy to avoid any orderly progress of work in the course of the current and future session of the Committee. To make progress, the Committee needed to focus, to set priorities, and take the issues in an orderly and structured fashion. The Delegation, in commenting on issues raised by other delegations, affirmed that it did not object to real world examples and scenarios. However, a statement that disclosure would not achieve the objectives sought would have to be analyzed in terms of the objectives that were sought. The Delegation's understanding was that the objective sought was not limited to the issue of erroneously granted patents, but that it was focused on the issue of misappropriation of GR and TK by means of the use of IP instruments. Again, the notion of an erroneously granted patent was very misleading because a properly granted patent could in fact be granted to an invention that might have been obtained by means of illegitimate access to GR and associated TK. So, there might be no error in the granting of patents, since without a disclosure requirement, examiners did not have any obligation to look further beyond the existing patentability requirements. Whether or not the person claiming protection for an invention had access to GR and associated TK without respect to PIC, without providing access and benefits, and without complying with national access and benefit sharing regimes, was not something that an examiner in a patent office is required to approach. Therefore, something had be done about it. New norms had to be negotiated to require examiners to look into how the inventors actually had access to the TK and associated GR. The issue of national ABS systems was not in line with the emphasis of the Committee's mandate to look at the international dimension of the problem. So the Delegation did not support any updating effort that would take the Committee back to look at national regimes and how they functioned. The mandate was clear. The Committee had to deal with the international dimension and not with the different national legislation or the problems as they appeared in accordance with different national legal systems. The Committee wanted an international norm as a solution to the issue of misappropriation, which was a global problem and not an exclusively national problem. If misappropriation occurred only within countries then each country obviously could find a solution by adjusting its respective national legislation, but the problem was very akin to the problem of counterfeiting and piracy, and occurred across national borders and across legal systems. That was why an international system was required as a solution. The database issue was very controversial because without the disclosure requirement which would safeguard local indigenous communities or the original custodians of TK against misappropriation, the creation of a database for TK would have only lead to further exposure of that content and thus to further misappropriation. Additionally, it would result in an inclusion of all TK in the prior art meaning that people would have access to all information on the TK, so that any improvement on it would be considered an inventive step or an innovation. If only slightly different from existing levels of TK, these improvements would themselves be protected through patents. So, the Delegation did not see how that would in itself help a local indigenous community to assert their ownership and to obtain the benefits over their ownership, which was the objective. It did not see how that would solve the problem of misappropriation because inventions performed on top of existing TK would be themselves protected under current patentability requirements. By feeding TK into a centralized database system one would only further nourish innovations based on TK that would be protected without any concern whether the inventors had actually respected the ABS requirements established in the CBD or a in national ABS regime. There were also a series of moral and ethical issues that had to be addressed in addition to the economic issues. It was morally and ethically wrong for the patent system to close its eyes in regard to how inventors may had had access to GR and TK. The international IP system should not condone morally wrong behavior. For all those reasons, the Delegation

advocated organizing the Committee's discussions in an orderly fashion by dealing first with TK and TCEs in accordance with the agreement that they had achieved, this would allow substantive discussion in an orderly fashion. Some concepts and definitions would also become clear that might help further down the line in addressing more specific issues related to GR. An orderly progress was a requirement for positive results.

195. The Delegation of the Islamic Republic of Iran appreciated the very good effort of the Secretariat and the Chair in making the meeting successful and moving the discussion forward. First, the Delegation attached great importance to GR, as it represented a country that was rich in that regard. The Delegation included a member of the institute in the Islamic Republic of Iran which was responsible for registering and certifying seeds and plants, as part of the national effort that Iran was progressing. The Delegation was also interested in other areas of GR and in that regard IP-related issues were significant for them as a developing country with such great resources in GR. The second issue was the need for balance. As it read the documents, the Delegation saw that they emphasized a negative or defensive protection of GR. That however had to be balanced with works on positive protection, which was much needed. This included the need for informed consent prior to use of the GR, and there was therefore a need for positive legal protection. Furthermore, there should be balance, as mentioned by the Delegation of Brazil, and the work should focus on the social and international dimension. The negotiations in the Committee should by no means create an imbalance or negatively influence the negotiations under process in other multilateral fora. To put it differently, the work there should not erode the great work that developing countries were doing to amend the TRIPS Agreement. That was very significant. All that needed a balanced approach. The Delegation pointed to the need to develop concepts and underlined a very significant phenomenon that was a comparative lack of documentation in GR, as compared to the other areas of the work of the Committee. Documentation was significant. The Delegation appreciated the good work done by the Secretariat and suggested that the Secretariat worked on more documentation in that regard and went on creating concepts, which could help them through that very important task. The documents they had for the use on TK and TCEs could serve as a model for additional documents in that regard.

196. The Delegation of the United States of America responded to a number of earlier comments and significant concerns that had been raised. The Committee should try to address concerns and move forward as best as it could knowing that there were divergent views on a number of issues. The concern had been raised about how to characterize objectives that may be sought by the various proposals. As to preventing erroneously granted patents was not the only objective sought in the process of creating a database as proposed by Japan, the Delegation recognized that this was not the only objective sought. Nonetheless it was one of the objectives and it had been continuously raised in a number of interventions by many delegations and in various fora. It was something that would have to be addressed in the Committee unless those concerns had been remedied by the debate. Detailed analysis of for example the turmeric case and some other specific instances actually weighed heavily against patent disclosure requirements as a means of addressing that objective unless addressing those concerns could be handled through different matters. If concerns had been remedied, the Delegation was happy to focus on other items as well. Other objectives had been raised. It seemed that ensuring appropriate access and equitable benefit sharing from the utilization of GR or TK had also been raised in many contexts. The Delegation supported a contract-based solution with respect to such issues. The facts bore out the favorable aspects of such an approach and against new patent disclosure requirements with respect to that objective. Nonetheless if there was concern that either too few objectives had been considered or that some things had been overlooked, those other objectives should be

uncovered. It was important for a transparent discussion to have the objectives on the table and then look at the spectrum of alternatives that were available and see how best to remedy them. With respect to the international dimension, a specific comment had been raised by one delegation that a contract-based approach, which was supported by the Delegation and by others, would not be part of the international dimension. The Delegation disagreed. It was clear that a contract-based approach would directly address concerns about wrongdoings or other acts that occurred across borders which had been something specifically mentioned as part of the international dimension. It may be incumbent upon the Delegation to more fully explain that aspect of the proposal. It would continue to engage on these aspects in the debate to try to continue to reduce divergences among members. Another aspect raised had been that certain proposals may be prejudicial to other positions or proposals made in the TRIPS Council. Nothing in the statement by the Delegation of the United States of America would be prejudicial to any proposal raised in other fora; those proposals stood on their own. There was lively debate in multiple fora, each having its own expertise and separate focus. These processes were indeed complementary to one another. In addition, there had been some specific concerns raised on the database proposal by the Delegation of Japan. Nonetheless the Delegation supported the pursuit of that proposal. It wanted to clarify that it noted concerns over inclusion of all TK in the prior art. That was part of the work that remained to be done on such a proposal. It had not advocated adopting wholesale the Japanese proposal as a decision at this point of time, it was however a good basis of work and read in its context, it could be a very effective means of achieving at least one objective that was intended to be solved by the Committee. It supported further consultations, in particular with representatives of indigenous peoples to receive input from those groups. If such a database was to be created, it would have to be a workable database of benefit for all and that would address concerns from all stakeholders. The Delegation agreed with the Delegation of Brazil that the Committee had a newly agreed process for TK and TCEs. It expressed hope that the process would lead to progress on these issues. Further work on GR did not detract from other work. It was part of the recognized mandate of the Committee; the work would be complementary to one another. The Delegation recognized a wide divergence of views, but that was a reason for more work, not less.

197. The Delegation of the Russian Federation expressed its support for the work of the Committee to devise a system of protection for TK linked to GR. The Russian Patent Office had conducted research on what it considered to be the most important trends for the future, including on databases containing information on GR. It had produced methodological recommendations on the registration and dissemination of IP rights in agreements on access to and the transfer of GR and related TK. However, the question of including the requirements concerning the disclosure of the country of origin of GR in application materials currently remained open. The Delegation was aware that certain countries had introduced corresponding provisions in national patent legislation and was interested to learn of the experience of national patent offices in that regard. It was too early to ask patent offices that used the procedure of disclosing the source (or origin) of GR about the effectiveness of introducing that procedure, but it wished to receive answers to a number of purely practical questions. Firstly, what was included in the documents required for submission to a patent office when filing an application for an invention? Secondly, how did a patent office verify that information (if indeed it did verify the information)? Thirdly, where several types of GR were mentioned in an application, were documents required for all such types? Fourthly, was a copy of an agreement on the transfer of GR or another document required directly? On the one hand, the agreement itself might be quite voluminous and, on the other, an agreement sometimes contained commercial information which was confidential. If GR were in the form of a wild plant, growing both in the forest and fields, as well as in a town park, was a

document required for such GR, or did exceptions exist for wild flora? Also, where GR were obtained from a botanical garden, i.e. the GR were of so called ex situ origin, and the country of origin was known, but the characteristics of the plant GR might already have changed as a result of their being cultivated in a different environment, was it sufficient to state the name of the botanical garden and submit an agreement with it? At what stage of the examination of an application was a decision taken regarding the appropriateness of disclosing the origin of GR – at the examination of form stage or were examiners involved in that process for the purposes of carrying out a substantive examination? Was it necessary to devise special instructions for examiners and guidelines for applicants? Were such instructions and guidelines available for consultation? Which of the information submitted by an applicant on the origin of GR was published when a patent was granted? How was it planned to use information on the origin of GR in the future? Was it planned to produce some kind of database, provided of course that the information obtained from an applicant were verified as being authentic? The information in question could be requested from individual patent offices, although the Committee would perhaps consider it useful to obtain answers to the questions in a centralized manner, as an individual document. More questions could be raised subsequently.

198. The Delegation of Finland, on behalf of the European Communities and their Member States and the Acceding States Bulgaria and Romania recalled the basic features of the EC proposal on the disclosure of GR and associated TK in patent applications. In order to achieve a binding disclosure requirement, amendment of the SPLT, the PCT and, as the case might be, regional agreements such as the EPC would be necessary. The disclosure requirement would then apply to all international, regional and national patent applications at the earliest stage possible. The language used in the EC proposal was the same as in the CBD definitions of country of origin, GR and genetic material. According to the proposal, the applicant should be required to declare the country of origin of GR, if he was aware of it. If the country of origin was unknown, the applicant should declare the source of the specific genetic resource to which the inventor had had physical access and which was still known to him, such as a research center, gene bank or botanical garden. The requirement to disclose would apply when the applicant had used the GR in the claimed invention. The invention must be “directly based on” the specific GR. It also thought that there were good reasons for an obligation to disclose that an invention was directly based on TK associated with the use of GR. However, it still had concerns about the possibly unclear scope of the term “traditional knowledge”. In order to achieve the necessary legal certainty, a further in-depth discussion of the concept of TK was necessary. In its view, if the patent applicant failed or refused to disclose information on the country of origin or source, the application should not be further processed and the applicant would be informed of this consequence. Where it was proved that the patent applicant had disclosed incorrect or incomplete information, effective, proportionate and dissuasive sanctions outside the field of patent law should be imposed on the patent applicant or holder. For reasons of legal certainty, the submission of incorrect or incomplete information should not have any effect on the validity of the granted patent. The disclosure requirement as proposed by the EC would be supportive of any access and benefit sharing arrangements. To ensure that, it proposed the introduction of a simple notification procedure to be followed by the patent offices. It also had a few remarks on the working method. It looked positively at any proposal which aimed at creating a structured discussion on GR, allocating sufficient time for the discussion and which took the work of the Committee forward. Against this background, it welcomed the Canadian proposal on a working plan. At first sight it seemed practical and worth exploring.

199. The Delegation of Panama referred to specific statements concerning the need for a binding international instrument rather than producing only national-level solutions wherein answers had already been found. It shared the opinion expressed that the subject being discussed was just as relevant as the others dealt with by the Committee and was therefore given specific attention, owing to its direct link with Article 8(j) of the CBD. Although it was true that many countries were anticipating international protection mechanisms covering the various subjects being analyzed, national experiences could also help in devising a course of action and also to enrich the discussions, above all by making known the successes achieved at the national level, which reflected the fact that the subject was very much alive in each of the Member States. In Panama, for example, in order to enforce the Constitution and the laws in force, Executive Decree No. 257 of October 17, 2006 had recently been introduced to regulate the control of access to and use of biogenetic resources in general, excluding human species, while respecting IP rights. The Government's environmental policy aimed not only to develop a strategy to achieve the sustainability of natural resources but also to produce benefit, with specific results designed to improve quality of life. The regulation of access to GR served to produce sustainable benefit, with direct quantifiable returns, from those GR which were valued by industry in general, and by pharmaceutical companies in particular, with agreements between those who requested access and the State that governed the use of such resources. Similarly, the new national biodiversity policy was a policy generating selective and sustainable benefit from natural resources that helped to support biodiversity in order to allow Panamanian citizens to decide on possible commercial use of resources that were endemic to the national territory but had profitable industrial applicability for citizens. Specific legislation had been passed on access to and the transfer of TK, innovations and traditional practices, whereby contracts for access to genetic or biological resources located in indigenous or local communities must stipulate free prior informed consent and state the shared intellectual property rules governing research results, in accordance with the benefits contract signed. Access contracts included obligations towards the State, for example all patent applications, filed with the General Directorate of the Industrial Property Registry of the Ministry of Trade and Industry of Panama and/or any WIPO Member State, must communicate in writing the origin and source of the genetic material, or genetic and/or biological resource used in the development of an invention, for information purposes. The certificates of origin or source of the genetic/biological resource would be issued and the resource would be attached to all documentation linked to the access authorization and to subsequent applications for new collections, transfers or contracts. It was important to establish that any application for access to areas used by indigenous communities as sacred, religious or similar sites, which had spiritual value and whose preservation was essential to their cultural identity, as well as to all other areas so requested by the authorities of the respective communities, would be rejected. Clear sanctions were established against any person engaged in smuggling or illegal commercialization of plants or animals that directly threatened biodiversity, or in the unauthorized dispatch of GR of plant or animal origin outside the country, who would be punished with a fine, according to the seriousness of the offense, and without prejudice to the corresponding civil or criminal liabilities. The Delegation expressed approval for the proposal made by the Delegation of Japan concerning a database to provide restricted information to patent examiners, where it was necessary to disclose the origin of the resources, and the proposal made by the Delegation of Malaysia for the evaluation of the technical assistance and support mechanisms required by those countries that could not act within a short period of time.

200. The Delegation of Papua New Guinea echoed the statements made by indigenous peoples and some delegations since the Committee had been established concerning holistic character of TK. There had been consistent allusions to the belief that there could be some

adverse effects on indigenous people and traditional communities if they began to break TK up into parts such as GR and TCEs. In previous Committee sessions, the Delegation was among those that had raised this concern as a matter to be taken into account, as well as in the debate on TCEs in the current session. Many of the documents produced by WIPO over the years espoused the holistic nature of TK. It had always been assured that any separation would not effect that holistic integrity of TK. During the current meeting the Delegation noticed that GR was being treated differently from TK and TCE and regarded in the context of trade as a commodity. At the same time, there were suggestions that the Committee should take GR off its mandate and concentrate instead on TK and TCE and that GR should be left to other fora, such as the CBD or other more appropriate organizations. While it appreciated the spirit of those suggestions which was basically operational expediency, for the Committee to consider that would be an act of betrayal to indigenous people, indigenous communities and those delegations who had been assured by the Committee of the maintenance of the holistic integrity of TK, encapsulating GR and TCEs. Certain delegations represented states where the population was predominantly comprised of indigenous people. They had come to the Committee prepared to consider and negotiate on issues which were important to the common good as espoused by the Committee, but at the same time the Delegation kept the interest and well-being of the country's indigenous peoples and communities very much in focus. To turn around and say that the Committee was no longer interested in GR, after it had dissected it from the holistic TK with their concurrence, would be a tragedy. Without wanting to discuss matters of the CBD, the unbundling of GR and handing it to the CBD was frightening for some of them. It knew of the difficulties faced in that body with regard to congruence on some very fundamental matters such as the issues of protection, derivatives and the recognition of indigenous people's cultural rights. In that regard, the Committee could not abrogate from its responsibility to protect the TK of indigenous people, in its holistic nature and including GR. With regard to registers or databases, as had been expressed by some delegations, it too had reservations about that proposal, particularly when it related to management and access. If that proposal was to be considered at all, it should be mandatory that indigenous people be the ones who manage these facilities and that they were the only ones who should have authority over access to them. The Delegation's position on that particular issue was based on the experience that while the they may have the best intentions at the national level, and create mechanisms to this end, in some other states, the reality could be quite different and they ended up leaving scope for abuse and misappropriation.

201. The Delegation of Ghana recalled that the Committee had a mandate to provide a binding international instrument to protect GR. Ghana, like other countries in the tropics, was blessed with abundant organisms and parts thereof, and other component of the ecosystem which had actual or potential value for humanity. It attached so much importance to those natural resources that efforts were made through legislation, research institutions, establishments of botanical gardens, and reforestation to protect and preserve that valuable natural resource. One of such efforts was the Abul Botanical Garden, which was established over a century ago, a tourist attraction and visited by various heads of States. Individual Ghanaians and NGOs who were friends of the environment were helping to maintain the ecosystem and to encourage reforestation. The Ghana Forest Commission was established to regulate the use of the forests. Other departments also had mandates to ensure the preservation of effective use of the country's GR and the conservation of the environment. The abundant biodiversity was of horticultural medical value and provided timer for the local use and for export to other countries. The Delegation like other delegations stated that GR had to be protected from extinction. Consideration must be given to the economic value, natural habitat conservation, commercial, aesthetic, medicinal, ecological preservation and the value of the ecosystem to humanity. Like other delegations, it was aware that some persons

had lived on that earth for one hundred or more years by depending on those natural resources. Such persons had not used orthodox medicine, nor had they been to any supermarket to shop for food. Those persons must not be regarded as primitive. Some of them there could attest to certain roots and other herbal medicine, which had proven more efficient than well-known orthodox medicine. The Delegation could attest to roots, leaves and stems of trees which when applied, they gave quicker relief to ailments such as skin diseases, sore throats and impotency. To bring to light the benefit of traditional medicine and medical practice which were based on the use of GR, the Government of Ghana had established research institutions, such as the Center for Research into Plant Medicine at Mampong Akwanpim, the Naguchi Memorial Institute, which is attached to the University of Ghana, as a collaboration between the Governments of Ghana and Japan. Those institutions were collaborating with the local people to conduct research into the efficacy of the herbs and other forms of traditional medicine that were available in Ghana for the treatment of certain diseases. However, their efforts were hampered by the reluctance of the holders of the knowledge to give information on their TK to the users of GR. That was because they had not had the assurance that the knowledge they disclosed would be protected. Furthermore they had no guarantee that they would have a share from the profits generated by such type of research. It was against that background that the Delegation supported the statements made by Nigeria on behalf of the African Group and called upon the Committee to make progress in exercising its mandate to provide a binding international instrument to protect GR. Individuals and indigenous communities had valuable knowledge on the use of GR which when inventoried and preserved would become a huge asset or heritage for the benefit of humanity. The Delegation supported the statement by the Delegation of Nigeria on behalf of the African Group that the Secretariat should give equal attention to the provision of documents for discussions on GR as it does for TK and TCE for the work of that Committee. Additionally it had observed that there was a missing link in the importance that various delegations attached to the mandate of that Committee to provide a binding international instrument to protect GR. It was necessary to establish some dialogue to harmonize or serve as a ridge to bring home the various viewpoints on the importance to protect GR. Such an effort would help to accelerate the work of the Committee to protect GR. It was critical to address issues that were dividing or dissuading some delegations from hastening with exercising the mandate of the Committee in the protection of not only GR, but also TK and TCE. The position of the African Group and other delegations such as those of Brazil, Peru, Indonesia, India, China and others was that there was a parallel natural resource to what was known by the scientific community. That resource had been tried, tested, used and preserved by various local communities of the world since the beginning of times. The knowledge in that natural resource otherwise known as GR was being lost by humanity. It was necessary urgently to salvage whatever was available, otherwise humanity risked losing all of it. The Committee had the mandate to provide a binding international instrument to assure to individuals, families and communities that their disclosure was protected. That way they would disclose the knowledge that they were holding in the hope that whatever benefit accrued from the knowledge that they disclosed would be shared among the holders of the knowledge, the researcher and the exploiters of research findings. The same auspices of WIPO that had been used to provide protection to other IPR, should be used to provide protection to TK, GR and TCE. The Delegation did not support the view expressed by some delegations that the protection of GR should be designated to other international organizations such as the WTO or UNESCO. It was of the view that other efforts of other international organizations to protect GR should be complementary to the work of the Committee. The requirements of disclosure should be preceded or go along with the assurance that the knowledge to be disclosed was first protected internationally. In conclusion, the Delegation

urged the Committee to find a way around the diverging views and make progress so to provide an internationally binding instrument to protect GR.

202. The Delegation of Japan, responding to some points made in the debate, clarified that it had used the term “erroneously” in the phrase “erroneously granted patent” from the perspective of the patent system and not the CBD, namely the situation where a patent had been granted by mistake, which contained reasons to be refused as explicitly stipulated in the patent statute. In that context, a patent might be granted as long as there were no statutory reasons found for refusal, but as it had earlier stated, compliance with the patent system and with the CBD should be addressed distinctively in each appropriate manner and should not be linked together without in-depth study and analysis. Ensuring compliance with PIC and benefit sharing should be addressed from broader perspectives. There was still a need for a fact-based discussion of actual problems and analysis of experiences of countries with the ABS system. As regards concerns that databases might expose GR or associated TK to facilitate misappropriation or facilitate third parties to get a patent for a slightly changed invention, as it mentioned in its earlier intervention, the Delegation thought it was possible to design a closed database only for the purpose of patent examination through technical and legal measures to protect data from such abuse.

203. The Delegation of Mexico supported the comments made by other delegations, to the effect that the Committee should continue working on GR with the same intensity as that devoted to TK and TCEs. The Delegation considered that the development of alternative policies to ensure that patents and IPRs supported and did not oppose the objectives of the CBD was the central aim of the Committee’s work. As had already been explained by the representative of the CBD Secretariat, the work done to develop an international system of access and benefit sharing continued to make progress and it was important for the Committee’s work to complement that process. The Delegation believed that it was important for measures to exist to ensure that individuals had clear agreements for benefit sharing at the time IPRs were applied for, since when an individual sought exclusive rights in inventions based on GR, he did so with the intention of seeking benefits that should be shared in accordance with the third objective of the CBD. For that reason, great importance was attached to the analysis and negotiation of different options for disclosure requirements, such as a mechanism to enhance the monitoring and implementation capacity of measures in countries with users of GR within their jurisdiction, as already established in the Bonn Guidelines on the Convention. In that connection, disclosure was a valuable alternative which required analysis as part of a package of measures in order to guarantee compliance with the third objective of the CBD, thus demonstrating the importance of ensuring that the Committee’s work complemented that done in other fora. The Delegation considered the documents produced to date by the Secretariat and analyzed by the parties to have been very useful and welcomed the proposals made by different delegations as a legitimate effort to make the requisite progress. However, Mexico believed that, as part of the relevant plan of work, it was necessary to produce a number of technical studies to analyze more effectively the usefulness of different options and disclosure proposals. One of those studies would consist in developing and analyzing practical measures to identify patents that were related or used GR to a greater or lesser extent. The development of search tools would help to identify more clearly the realms of patents that might be subject to any form of disclosure requirement. That work should of course be done without prejudging any possible agreement on the definition of use of GR developed in the context of the CBD. As part of that study, the Delegation wished for a more detailed exploration to be conducted of the potential of the international patent classification system in the development of such a search tool. That would represent an expansion and refinement of the collaborative efforts already undertaken

between the CBD Secretariat and WIPO. Similarly, it would allow a clearer evaluation of the efficiency and effectiveness of different disclosure options. Secondly, the Delegation wished to propose the development of a technical study on the relationship between the CBD mechanism for providing information (Clearing-House) and the various existing patent databases and information systems at the national, regional and international levels. That was in order to explore in greater technical depth options such as the proposal made by the Delegation of Norway. Finally, the Delegation emphasized the need to analyze the existing proposals and others that might be generated in the light of the incentives necessary for individuals to make a reasonable effort to identify the origin of the GR used in inventions, as well as to satisfy their obligations stemming from the third objective of the CBD.

204. The Delegation of Australia acknowledged the work of the Committee to date on IP issues relating to GR. Some of the work already completed for TK such as the inclusion of TK related material considered by international searching authorities under the PCT minimum documentation and the development of search and examination guidelines for patent applications disclosing TK had been very useful. It therefore supported extending that work to GR. Work on PCT minimum documentation and development of search and examination guidelines for patent applications disclosing TK had been very useful. The Delegation thus supported extending that work to GR. It was continuing to explore the issues surrounding disclosure of GR in the patent system and learn from the experiences of others, and had not finalized its view on that matter. The issues were complex; however, the Delegation was convinced that the potential benefits on such disclosure requirements would outweigh the costs and disadvantages. Great benefits could be derived from a comprehensive implementation on access and benefit sharing arrangements in national law. Australia had implemented a national ABS regime, which it briefly described. Given that all nine Australian governments have a role in the implementation on the ABS system under the CBD, agreement was reached in 2002 on a nationally consistent approach, based on the Bonn Guidelines. That document set out the general principles on which legislation would be based in each jurisdiction and some common elements for ABS arrangements. It tried to achieve broad consistency across Australia without impeding the right of each government to develop arrangements appropriate to its situation. Since then, ABS systems had been created in the Commonwealth, the Northern Territory and Queensland. Work was continuing in the other states and legislation would be introduced in several soon. The Commonwealth Government introduced an ABS scheme in 2005 through regulations under the Environment Protection and Biodiversity Conservation Act. The system covers “Commonwealth areas” which meant lands owned and leased by the Federal Government, and waters and the seabed to the extent of national jurisdiction (but not including State Government waters within three miles). The system worked as follows. First, an applicant applied for a permit. Then the permit was granted if there would be no environmental harm if a benefit sharing agreement existed between the provider and the user. Third, permits were made publicly available through a database accessible on the internet. The provider in that system was the entity with the primary right to control access to biological resources and their informed consent was required before access was granted. That was the Commonwealth or a Commonwealth agency in most instances, but for indigenous lands it meant Aboriginal land trusts and land councils or the holds of native title, depending the type of title that existed. The benefit sharing mechanism was a contract, which set out the conditions of access, transfer and use of materials collected. Benefits could include not only royalties from commercialization, but contributions to conservation and scientific knowledge. Users were also required to keep and provide records of samples. As indicated previously, the Queensland and Northern Territory Governments had also implemented consistent ABS systems and other states were to follow. Returning to the patent system, it was currently unclear to the Delegation how a disclosure

requirement in the patent system which included requirements for evidence as informed consent and compliance with access and benefit sharing regimes would be useful. It believed further discussions on these elements in the Committee was necessary to determine if there was a role for them in the patent system. Inclusion of elements on the patent system without a careful and detailed analysis of their merits risked undermining the integrity of the existing IP system without providing benefits that would outweigh such risks. The Delegation therefore encouraged Committee members to participate and engage in constructive discussion about the issues so that further progress could be made in the Committee's important work on GR.

205. The Delegation of Brazil believed that the Committee had made an important breakthrough on the negotiations on TK and folklore and would benefit more if it focussed work on those two issues. The Committee had before it the two lists of issues prepared by the Secretariat. Members of the Committee could benefit from the two remaining days of the current session to advance work on them. Even though the Delegation recognized that GR were part of the permanent agenda of the Committee, it was of the opinion that focussing work on TK and folklore would strengthen the possibility of obtaining concrete results in the short term in order to prevent duplication of efforts regarding ongoing discussions in the TRIPS Council. The Secretariat could carry on the work of collecting information and keeping the members of the IGC informed of relevant work in other fora on GR. Also what was more a compilation of proposals on GR that could be presented at the next session could help members to navigate through the diverse documents that we had on this issue. As the Delegation of the United States of America had mentioned, a wide divergence of views still remained on the issue and with regard to the proposal made by the Delegation of Japan of creating a GR database. In its preliminary assessment of the Japanese proposal, the Delegation believed that the database would imply prejudicing the outcome of the Committee's work. The creation of such a database would imply an acknowledgement by the Committee that all TK and GR should be included in the prior art. The creation of such a database would require firstly a decision by the Committee of the best legal format for the preparation of TK, GR and TCEs. The representative of FAO had explained that the FAO had a bank for GR, but this bank did not exist alone - it was linked to an international treaty. With regard to the Japanese proposal, a legally binding treaty was needed before establishing a database.

206. The representative of the Third World Network commented that the CBD was currently working on an International Regime on Access and Benefit-Sharing with the aim of completing its work in 2010. So that the work at the Committee would not prejudice the outcome of work in that forum, it was suggested that whatever measures the Committee would develop on the substantive issues concerning that agenda item should be referred to the CBD, for possible consideration therein as an element of the International Regime. It was also important to emphasize that whatever measures the Committee would develop in pursuit of the substantive issues it had identified there should not run counter to, but be supportive of, the objectives of the CBD. With regard to the defensive protection of GR, the Committee should compile all the defensive measures it had identified to prevent misappropriation of GR and incorporate them in a binding international instrument such as the one currently discussed in the CBD. It should also explore ways how that compilation or code of defensive measures from within the IPR system could be integrated or harmonized with proposed measures on access and benefit-sharing regulations that were currently being developed by the Contracting Parties to the CBD. It must also be emphasized that without a corresponding positive measure about recognizing the rights of indigenous peoples to their TK and associated biological and GR, all these defensive measures would be of no use. The members of the Committee should also take into account in their proposed legislation provisions from the

United Nations Declaration on the Rights of Indigenous Peoples adopted on 29 June 2006 by the United Nations Human Rights Council. With regard to the disclosure requirements the Committee should take steps to support the proposal of developing countries in the TRIPS Council, regarding the amendment to the TRIPS Agreement, Art. 29*bis*, on that issue. With regard to mutually agreed terms for fair and equitable benefit-sharing the Committee should realize that mutually agreed terms for fair and equitable benefit-sharing were a matter of national determination in accordance with a country's access and benefit sharing legislation. The Committee should encourage countries that had no access and benefit sharing legislation to expedite the enactment of such legislation to ensure fair and equitable benefit-sharing in the utilization of biological and genetic resources. In the international dimension of that issue, it was suggested that the work of the Committee was an input to the ongoing negotiations of the International Regime on Access and Benefit Sharing of the CBD.

207. The representative of the Tulalip Tribes was heartened to hear the Delegation of Japan promoting a model very similar to the Storybase Model he presented to the IGC in 2002, the traditional knowledge management system presented by the Kaska Dena Council in 2004, and the Khipu Biocultural Heritage Register presented by Asociación Andes at the last session of the IGC. However, the models promoted by indigenous representatives had a number of significant differences. He had been concerned that open access databases proposed may make misappropriation of TK and associated GR more likely by distilling such knowledge and lowering transaction costs for its access, removing knowledge from traditional control under customary law, and perhaps fostering non-monopolistic misappropriation. He proposed in 2002 a multi-level database model, with one level open only to patent examiners with secure access, and requiring binding confidentiality agreements as a condition of access. He was concerned about databases compiled at the international and national level, and had proposed that any such databases only be compiled with the prior informed consent of the indigenous owners of GR and associated TK. Accordingly, he had proposed that such databases only were compiled by those indigenous and local communities wishing to do so. Local control of databases made local control of the content more feasible, important when dealing with the sensitive issues associated with TK. Those databases could be located in individual communities, or housed in organizations chosen by them. Modern distributed technology made such an approach feasible. But the principle of free, prior informed consent was fundamental. He believed that such databases were not a panacea. Many indigenous peoples might elect not to deposit their information in such a system. Much of their knowledge was sacred, and customary law may prohibit that kind of codification. There was also a documentation burden placed on indigenous peoples. They were being asked to go to extraordinary efforts to make public some of their most sacred beliefs and detailed knowledge of their GR in order to resolve problems generated outside of their control. It was as if in order to obtain police protection against the theft of property, one had to document every spoon, knife, fork, plate, cup, book, paper, CD, pencil, pen - every item in the house in detail - before a duty to protect against theft was respected. There needed to be substantial capacity building so that they made informed choices in providing their free, prior informed consent. While he recognized that some information needed to be exchanged for a preventive enforcement approach, but protection and rights could not be associated with any such database. Finally, there were issues about the security of any such system, as databases were open to external hacking and internal theft. In addition, information submitted to governments often fell under national administrative laws. In the United States of America, for example, information submitted to the government, without special protections, was subject to disclosure to public access requested under the Freedom of Information Act. For that reason, disclosure of origin might provide a more realistic mechanism to identify the source of GR and related GR. A reasonable duty of care should be borne by those who

sought commercial exploitation and had the resources to bear such documentation. This was opposed to a TK and GR system that sought to impose documentation burdens on those who own the knowledge and GR. Indigenous peoples should not be asked to bear the burden of protection against misappropriation that was caused by external demands over their GR and associated TK. He invited members to read UNEP/CBD/WG8J/4/INF/9, a background report for the Composite Report on the Status and Trends Regarding the Knowledge, Innovations and Practices of Indigenous and Local Communities on the Advantages and Limitations of Registers, and the composite Conference report, UNEP/CBD/WG8J/4/4, The Revised Phase One, and Phase Two of the Composite Report on the Status and Trends Regarding the Knowledge, Innovations and Practices of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biological Diversity, calling for this material to be made available as an information document at the next session of the Committee meeting of the IGC. Decision VIII/5, Section I Paragraph 4 of the COP of the Convention on Biological Diversity read: "It was recommended to Parties and Governments to bear in mind that registers were only one approach to the protection of traditional knowledge, innovations and practices, and as such their establishment should be voluntary, not a prerequisite for protection. Registers should only be established with the prior informed consent of indigenous and local communities." Additionally, he asked where the limits where of what was being discussed. Where were the boundaries of the rights of indigenous peoples related to access and benefit sharing? He reminded members that genes were connected in gene pools through gene flow. A number of species were migratory and even plants, traditional crops and varieties exchange genes through reproduction. Indeed, genes that flew across boundaries may have been selected through the activities of indigenous peoples, and there were many examples in which the pattern and distribution of biodiversity over a wide scale were the result of indigenous land and species management practices. GR could not be divided in the same way as commodities and other consumer products. GR were, in the language of economics, nonrival. Bioprospectors were looking for samples and information, not biomass. Material transfer agreements were just a means to access genetic information. In such cases, fair division of rights in commingled GR was impossible. From a national point of view, many species were found entirely within their boundaries, and so the bioprospecting catchment was large. From an indigenous point of view, many, if not most of their culturally important and traditionally used species were transboundary resources. Thus, that set up difficult problems in assigning ownership rights. They must avoid a "rights in a box" approach that only looked at access and benefit sharing issues solely within tribal territories. Bioprospectors, faced with the choice of working with indigenous peoples to negotiate a complex contract for access, or obtain samples in the same traditionally used species in adjacent areas. Similar issues arose in species that migrate over long distances. Many GR, particularly in food and agriculture, had been deliberately transported for thousands to hundreds of years. Many were held in biological collections around the world. Bioprospectors were interested in functional genes - those genes that affected significant biological processes. In medicine, that often involved events happening at the cell surface that affect plant, livestock, wildlife and human ability to resist pathogens. Those genes were often widespread, and the same genes might occur in many different species. The genes used to identify geographic origin in certificate of origin cases were often non-functional genes that showed high variability but were not themselves the objects of bioprospectors. Identifying genetic origin might therefore not solve benefit-sharing issues - It might actually allow bioprospectors to more efficiently identify genetic material originating from indigenous territories to be avoided, in order to bypass the transaction costs of negotiating access and benefit sharing arrangements. In such cases, the IGC would need to address issues of co-rights where genetic material was commingled. Solutions to such cases lay well outside the intellectual property rights system. There were two leading issues that needed to be

addressed in those approaches. The first was the differentiation of an indigenous rights regime from a local community regime. While indigenous peoples wish all peoples to be elevated, many states recognized prior, inalienable rights, and the United Nations was increasing giving recognition to those rights. There was also a need to separate access rights from rights to benefit sharing. In the situation above, an ABS regime was unlikely to provide lasting benefits to indigenous peoples. In fact, it operated like a biodiversity lottery, in which a few indigenous peoples were offered the right to benefit while the majority got nothing. Benefit sharing obligations did not stop at tribal boundaries, and rights to participate in access decisions, share in benefits, and in management of GR did not stop there as well. This was the "Lifestream Principle" - where upstream and downstream users of water flows are bound by mutual obligations, gene flow links peoples together in a web of mutual obligations and reciprocity. States should also consider the use of pooled funds, such as pooled bioprospecting fees, development deposits, less taxes, lower, tariffs and other border fees, and a variety of mechanism to provide a sustainable source of funds that might be shared among many indigenous and local communities for biodiversity-friendly development. He has heard many statements of formal processes. But much less evidence of actual benefits had been presented, and analysis of such benefits was necessary to evaluate the actual benefits of proposed ABS arrangements. He was still hopeful about that process, but his patience over the lack of substantive progress was being tested. He came into that process believing it to be a historical opportunity to negotiate outcomes that future generations might look back in pride at as an example of the highest examples of justice. He still held that hope. They must strive to put their differences aside and find a path to results that would will confer honor and respect for their solemn obligations to future generations to protect the diversity they held in their hands and the rights to self-determination of peoples.

208. The representative of the IPCB made a collective statement on behalf of the IPCB, Call of the Earth, and the International Indian Treaty Council. The intervention of the Delegation of Papua New Guinea was refreshing and much supported by those organizations. The representative supported Panama's intervention emphasizing recognition of the right of free, prior informed consent (FPIC) for Indigenous peoples when access to genetic resources is sought in Indigenous peoples' lands and territories, in particular, protecting sacred and spiritual areas or lands otherwise designated for protection from access by Indigenous peoples themselves. Despite the destructive forces of colonization, Indigenous peoples continued to maintain their collective resources for their collective good. Their territories were biologically diverse ecosystems that have nurtured their survival in the past and were essential to their survival in the future. They were greatly concerned that the global hunger for genetic resources posed a disproportionate threat to the food security, health, and well-being of Indigenous peoples. Examples of bioprospecting and biopiracy in Indigenous territories abounded where genetic resources had been taken without the knowledge and consent of the resource owners. There was a crucial need to develop mechanisms that recognized and respected Indigenous peoples' rights to make decisions regarding any access to and use of the genetic resources and IK within their territories. Unlike the previous discussions on TCEs and TK, the representative noted that discussion on genetic resources focuses on state interests rather than those of Indigenous and local communities. The representative respectfully reminded the parties that State sovereignty does not amount to absolute political or legal freedom. Sovereignty of states is limited by the Charter of the United Nations and by other principles of international law, such as human rights treaties. States certainly must recognize that any international agreements must be interpreted and applied consistently with human rights obligations. Similarly, the representative would expect the work of the IGC to comply with international human rights law and norms. The representative was hopeful that innovative work could emerge from the Committee that recognizes the unique legal status of

Indigenous peoples lands and mandates the FPIC for any access proposed on Indigenous territories. Their interests in these discussions went far beyond benefit-sharing. Any proposed mechanisms for disclosure of origin/source should reflect a mandate to recognize Indigenous peoples' rights to territories and resources, including the right of FPIC. Indigenous peoples had urged the Parties to the CBD to affirm that their existing human rights obligations are clearly reflected in the nature, scope, and elements of any proposed international regime without success. The representative urged the same of the Committee. Indigenous peoples were not just rights holders in relation to TK, but also rights holders in the genetic resources originating in the lands, territories and waters traditionally used and occupied by Indigenous peoples. With regard to the establishment of databases of genetic resources and traditional knowledge, for purposes of determining prior art, the representative had a number of concerns, many previously mentioned in the Committee. The representative believed that databases would not protect the knowledge per se, but instead would facilitate the further commercialization and misappropriation of TK and genetic resources. It had been proposed that Indigenous peoples should document their knowledge in registries or databases in order to establish proof of prior art for patent applications. In Indigenous territories, the primary means of protection and transmission of biodiversity-related traditional knowledge continued to be through their own legal systems, traditional practices, and oral histories. Indigenous knowledge was dynamic, not static and cannot simply be documented and "fixed in a tangible form" to suit intellectual property law purposes. The representative could not agree to such mechanisms that would jeopardize the collective heritage of Indigenous peoples. Rather than further jeopardize their knowledge, the representative encouraged the Committee to develop mechanisms for the repatriation of Indigenous knowledge and genetic resources that have been illegally appropriated. Indigenous knowledge and genetic resources should be classified as inalienable cultural heritage, which is not subject to the laws relevant to public domain. The representative was aware that members of the IGC are experts in intellectual property and particularly its technical and legal aspects. Considering that the Committee's discussions centered on TK and GR, including a specific focus on Indigenous peoples, the Committee members should also be familiar with international human rights law and human rights norms that are relevant to Indigenous peoples. To this end, the representative informed the Committee of some relevant recent developments in the human rights arena pertinent to access to genetic resources. First, in 2004, the final report of the Special Rapporteur, Madame Erica Irene A. Daes, on Permanent Sovereignty of Indigenous Peoples over their Natural Resources, found that, "the developments during the past decades in international law and human rights norms in particular demonstrate that there now exists a developed legal principle that indigenous peoples have a collective right to the lands and territories they traditionally use and occupy and that this right includes the right to use, own, manage and control the natural resources found within their lands and territories." Special Rapporteur Daes further found that genetic resources are among the natural resources belonging to Indigenous peoples. In relation to the right of permanent sovereignty over natural resources of Indigenous peoples, the Special Rapporteur concluded "it is a collective right by virtue of which States are obligated to respect, protect, and promote the governmental and property interests of indigenous peoples (as collectivities) in their natural resources." Furthermore, the Human Rights Council's UN Declaration on the Rights of Indigenous Peoples, passed on 29 June 2006, had several relevant articles of particular relevance to Indigenous peoples' rights to their TCEs, TK and GR. This Declaration was regarded as a minimum standard for the rights of Indigenous peoples. Article 26 stated that:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied, or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 31 of the Declaration, further stated:

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with Indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Given the status of this Declaration as representing the minimum standards for the rights of Indigenous peoples, it was incumbent upon States within the Committee to meet these standards in any outcomes of the Committee related to Indigenous peoples. The pervasive discussion on biopiracy centered on two issues: (i) erroneously granted patents and (ii) PIC and benefit sharing, in terms of provider or countries of origin. The Committee's past work on genetic resources had focused on the first area to address erroneously granted patents. Meanwhile the CBD's discussions largely focussed on the second area of compliance with PIC and benefit sharing, in the context of states. Unfortunately, both forums failed to address Indigenous peoples' rights in relation to genetic resources originating in the lands, territories and waters traditionally used and occupied by Indigenous peoples. To fill that gap, the representative recommended the following constructive steps:

(i) Request the Secretariat to prepare a report that includes the expert advice within the UN human rights system, which thoroughly evaluates the linkages between human rights law and access to genetic resources and associated traditional knowledge;

(ii) Request the Secretariat to seek submissions from Indigenous peoples about their practical experiences in the protection of their genetic resources and recommendations for how the work of the Committee can meet the needs and aspirations of Indigenous peoples;

(iii) Request the Secretariat to coordinate a panel at the eleventh session of the Committee on Indigenous peoples and genetic resources.

Efforts to establish regimes for ABS of GR should in no way diminish the fundamental right of Indigenous peoples of self-determination, nor deny their right to permanent sovereignty over their natural resources. If sovereignty over natural resources is to mean anything at all, it

must mean that Indigenous peoples are the only competent authorities to control access to and use of the genetic resources or associated Indigenous knowledge within their territories.

209. The representative of Call of the Earth said that biopiracy and morally offensive patents on TK and associated GR had become pandemic. The theft of genetic or biological resources without the PIC of indigenous peoples or a competent national authority had increased affecting poor farmers and indigenous communities. Patents that were morally offensive to indigenous peoples such as Terminator patents continued to attack their very survival. That was the case of the Syngenta Terminator patent on potatoes, a crop of great importance for the culture, society and economy of indigenous peoples in the Andes. On that issue she wanted to recall that at the last session she had requested that some work be done on GR and technologies which restricted their use. She regretted that that work had not been done yet in spite that that was of outmost importance for indigenous and local communities in the Andes and other regions of the world. She looked forward to that work done as part of the overall Program of Work on GR and that the results would be presented at the next session of that Committee.

210. The representative of ABIA supported the equitable sharing of benefits from the commercialization of GR. Based on industry's experience with mandatory patent disclosure obligations already in force in a number of WIPO member states, ABIA did not believe that disclosure obligations in patent applications relating to biotechnology inventions would likely advance that goal. The representative of ABIA urged the Committee to keep in mind, during its deliberations on the GR issue, the need to establish enabling conditions for the generation of ABS benefits for all stakeholders. The generation of such benefits was dependent on a meaningful engagement with industry. IP protection was critical to encourage industry's engagement. Patent certainty was a key component in an enabling IP environment for the generation of ABS benefits for all stakeholders. Bio-entrepreneurs at early stages of development needed, above all else, certainty, especially with respect to their IP. IP was often a biotech start-up's only asset and only variable on which venture capitalists could judge the potential of their investments in already high-risk ventures. Additional patent disclosure requirements would cloud patent validity and increase the uncertainties for an already risky endeavor. ABIA and its member companies believed that there were meaningful alternatives to patent disclosure that provided front-loaded benefits and prevented the issuance of patents based on prior art. Data bases, similar to the ones contained in the proposal by the Government of Japan, ABS Agreements that included Material Transfer provisions, and technology transfer all contributed to the establishment of an environment that enabled the generation of ABS benefits. The representative believed that the Committee should focus its GR work on positive measures that simultaneously helped all stakeholders achieve the objective of creating and sharing sustainable, mutual benefits through an ABS system; providing certainty for all stakeholders; and generating real technology transfer.

211. The representative of the Intellectual Property Owners Association thanked the members for their accreditation of IPO as an observer. IPO was a trade association for owners of patents, trademarks, copyrights and trade secrets in all industries and fields of technology. IPO members included over 200 corporations and a total of 9000 individuals, including individual, corporate and law firm members, as well as inventors. Earlier that year, IPO had formed a Genetic Resources & Traditional Knowledge Committee to specifically focus on developing positions relating to the intersection of genetic resource and TK issues and intellectual property law. IPO fully supported the objectives of PIC and fair and equitable benefit sharing. The GR/TK Committee of IPO sought to develop legal frameworks that would lead to increased international conservation and to effective and equitable utilization of

GR and TK. She welcomed the opportunity to participate in a substantive, fact-based discussion of how best to achieve those goals. IPO did not believe that proposals for patent disclosure would meet the access and benefit sharing goals they were meant to achieve. In contrast, IPO had examined other tools available to both users and providers of GR, including the electronic database of contracts found on the WIPO website. She found that website was particularly relevant to the discussions there. The contracts she had examined provided not only for technology transfer, licensing fees and other forms of payment to the provider organization, but they also safeguard the other two goals of the CBD, namely conservation and sustainable use of the genetic resource in question. Most importantly, by providing for up-front technology transfer, license fees or other such payments, contracts could ensure a flow of benefits to the provider even if the hope-for commercialization of a product was never realized. Many examples of successful contracts could be found on the WIPO website. For example, she had examined letter of collection agreements between the US National Cancer Institute and various provider organizations in over one dozen-source countries. Interestingly, the US National Cancer Institute agreements also addressed the very real-world situation of a single genetic resource being found in more than one provider country – an issue that she believed had not been adequately addressed anywhere else. IPO therefore encouraged the members of that committee to fully consider how the use of contracts may be a practical means of realizing fair and equitable benefit-sharing. She would be happy to provide more information or discuss these issues in detail with any members or other stakeholders who were interested in learning more.

212. The Delegation of the Republic of Korea thanked those members who put forward proposals on the question of disclosure requirements in IP rights applications. The Delegation supported the goal of providing access and prior consent of the use of GR and a fair sharing of the benefits from the use of such materials. However it did not feel that new disclosure requirements were the best means of accomplishing that goal. New disclosure requirements would introduce uncertainty into the probability of obtaining a patent, and as a result would discourage the necessary investment associated with innovation. Additionally, such a process would complicate and raise the administrative cost of patent applications. It was possible that an applicant would be unaware of the origin of a genetic resource since they obtained the materials through a third party. Thus they would be required to conduct a potentially lengthy and costly investigation. Such a burden would also discourage further innovation, resulting in fewer GR being utilized. For those reasons, it viewed that new disclosure requirements would in fact be counterproductive to new innovation and the utilization of GR. Therefore, any proposed modification on GR provenance should be treated separately from IP protection. To address the issue of how to appropriately and equitably deal with the question of origin and the sharing of the benefits, it found that it would be very beneficial for countries to share their experiences and insights gained in that area. From such an exercise, new mechanisms for addressing that issue, separate from the question of IP protection, could emerge.

213. The representative of the Assembly of First Nations (AFN) stated that the AFN was the representative body of over 633 First Nation governments in Canada. The Assembly served as a national forum and political advocacy organization established to advance the aspirations of the First Nations. The AFN had reviewed the documents produced for the current Committee session and conveyed preliminary comments. The AFN did not have adequate capacity to engage nor had they had the opportunity to fully turn their attention to the matters under discussion. Those comments were without prejudice to positions the First Nations governments might present once they had the opportunity to make interventions on their behalf, hopefully in the near future. The following comments were intended to facilitate further dialogue and discussion on GR. In general, First Nation governments in Canada and

other indigenous people placed great importance on protecting their GR, TK, and EoF. The representative shared the opinion of many delegations there who had identified the need to eliminate erroneously issued patents, eliminate misappropriation of GR, and preserve indigenous peoples collective interest in their GR. They all recognized the inability of the current international and national IP regimes to protect communal knowledge and ownership rights over GR. Clearly, changes were required. However, tinkering with the current IP regimes might not meet the requirements of indigenous peoples. For instance, the creation of a data base would not get around the problem of knowledge being kept secret by indigenous peoples as currently proposed by some delegations themselves and their communities, regardless of where information was currently stored. This principle of access also enabled First Nations communities and organizations to manage and make decisions regarding access to their collective information. While ownership over the health program identified the relationship between a First Nation community and their data in principle, possession or stewardship was more literal. Under the health program, it was the First Nation communities who had actual possession of data. As such, there was no risk of breach or misuse of data by others. The AFN had recently modified the national and regional longitudinal health survey model to so that a similar program could be established in the environment field. The AFN was in preliminary discussions with Environment Canada on the useful application of the modelto assist Canada in fulfilling its obligations under the CBD. First Nation governments should undertake a national cataloguing of plant and animal species in all First Nation communities and surrounding areas across Canada. Such cataloguing would provide comprehensive information on the status of the biodiversity population, estimates of health determinants of species, and an environmental scan from both a First Nation regional and national level. Data and information contained in the catalogue would be owned, controlled, possessed, and only accessible by the First Nation communities. In light of those developments, the representative submitted that the model was a viable option for the Committee to consider as it was a practical mechanism that may meet the interests of all parties in the creation of an international database or portal to enhance certainty in the granting of patents. With regard to disclosure requirements the representative was interested in exploring and examining the concept of disclosure of origin. There may be potential protections embedded in a requirement that all patent applications disclose the origin of a genetic resource. The representative agreed with the European Union and other distinguished delegations that there was a need for a binding obligation for applicants to disclose that an invention was directly or indirectly based on TK associated with the use of GR. Patent authorities were required to scrutinize applications and made assessments on the content of information submitted by applicants. An important component of the scrutiny was the determination of whether the patent applicant had obtained the relevant material in a manner consistent with the principles of PIC along with the proof adequate ABS arrangements. However, he acknowledged that more study was required in that area. With regard to incomplete patent applications, in the event that a patent applicant failed to provide necessary information on the country of origin or source of GR and associated TK, the patent application should not be processed. While the principles of administrative law required that an applicant be given an opportunity to cure any deficiencies in his/her application, that must be completed within a fixed timeframe. If the applicant failed adequately to complete any declaration, then the application should be rejected. Patents that were granted in error or based on incorrect or incomplete informal-information should be revoked. It was unacceptable to allow a potential biopirate to retain ownership rights over inventions they had not created. In addition, real criminal, administrative and civil sanctions should be available to indigenous peoples to prosecute those who misappropriate their GR and TK. State governments must create institutions that were accessible to indigenous peoples and processes were not overly complex or burdensome. In the comments above he had identified a number

of issues that warranted further consideration, including recognition of the inherent contradictions between the traditional and modern philosophical paradigms and the challenge those would create for the further development of an appropriate regime for the protection of TK and GR. His comments should not be construed to imply the full and informed participation of the First Nations in the dialogue.

214. The representative of the West Africa Coalition for Indigenous Peoples' Rights advised that WACIPR was a Coalition of Indigenous Organizations and community-based organizations in Nigeria, Sierra-Leone and Liberia. The representative appreciated the excellent manner in which the Chair had been conducting the affairs of that body as well as his demonstrated genuine interest in the affairs of the indigenous peoples and the local and traditional communities. Two years ago WACIPR had embarked on making a compendium of traditional pharmacopoeia of curative herbs and plants indigenous to several communities in Nigeria, Sierra-Leone and Liberia. For long, the communities had been subject to biopiracy and denied access to benefit sharing. If the millennium development goal of alleviating poverty was taken seriously, the TK of the indigenous and local communities, which had economic benefits for them, should be protected. He urged States to consider that truth. The principle of free, prior and informed consent was to be held sacrosanct and it should not be the business of the state to enter into an agreement with users of GR on behalf of the local or traditional communities. WACIPR and its affiliated communities believed that the role of the state should not exceed that of a facilitator providing a platform, and not that of a benefiting party to an agreement. The representative appreciated the viewpoint of the African Group as articulated by Nigeria and urged the developed countries to show understanding of that point of view.

215. The Delegation of Pakistan expressed its deep concern about the need for protection of GR. Equal importance should be given to all the three parts of the Committee including TK, TCEs and GR. The documents on the GR should be updated. It supported the requirement for the disclosure of origin requirement. The non-availability of databases should not become an excuse for misappropriation of GR.

216. The representative of ICC said his organization spoke for international business with members in over 80 countries. He recalled that ICC had taken part in the Committee discussions on the matter since the first meeting. They were the people who would be filing the patent applications, which were being discussed; therefore they had a strong interest in arrangements which were sensible and practical. They claimed some right to speak about GR. Their members included professional plant breeders. Plant breeders were among the first to draw attention to the importance of conserving GR, in particular for agricultural crops, around seventy years ago. Regarding the proposal for mandatory disclosure of GR in patent specifications, the representative of the ICC welcomed that the Committee was at last having serious and specific discussions. These proposals, if they came to fruition, would have a considerable effect on international patent systems, both on Patent Offices and on patent applicants. The Committee, not WTO, was the forum that had the appropriate expertise, because it had the advantage of being guided by an extremely knowledgeable Secretariat. Mandatory disclosure was not an easy topic. He was embarrassed to admit that ICC had no agreed policy on it, having been unable to achieve a consensus. But perhaps this reflected their worldwide membership, and mirrored to some degree a similar wide divergence of view within the Committee. In general, they were greatly concerned about any proposals for protecting indigenous knowledge, which would encroach on the public domain. He recognized that there were difficult problems, and he did not rule out some restriction on the use of knowledge, which may have become public in special circumstances, e.g. as a result of

fraud. Nevertheless it was vital to preserve the public domain as far as possible. He noted that one of the earliest patent laws – the UK Statute of Monopolies of 1623 – had been introduced in large part to prevent the Crown encroaching on the public domain by granting monopolies over well-known and necessary commodities (such as salt), limiting such grants instead to new inventions. If we encroached on the public domain, we were going back over 300 years. On mandatory disclosure, he respectfully supported the proposal of the United States of America to make further practical investigations. One such that might be useful was as follows: a review of all patent applications published over a specific recent period (maybe six months, a quarter or a single month) in one or more of the most active patent offices (European Patent Office, the United States of America, Japan or China). The review could detail how many of the applications dealt with GR; in how many of these the existing disclosure was inadequate; and in how many a mandatory disclosure requirement might have helped to pinpoint behavior in breach of the CBD. Such an investigation would help to judge the promise of the proposed measure in relation to the burdens it would place on the patent system.

217. The Chair commented that the day before and that morning, some interesting proposals were heard with regard to GR. He sought advice whether to request the Secretariat to prepare an approach on a way forward which consisted in some suggested issues on how to proceed with regard to the GR and to prepare a collection of issues on GR. If there was an agreement to be put in the future work and a request the Secretariat to prepare it, there was at least a decision and conclusion in this respect. Therefore, he asked the Secretariat to explain what was needed.

218. The Secretariat welcomed the opportunity to be able to put before the Member States some suggested elements of a way forward for the work that was taking place in the Committee. It gave a brief sketch of the Secretariat's view at the moment that would not necessarily be comprehensive. Some direction from the Member States was very much welcome. There were a number of items on which a considerable amount of work had been done, but in some cases they remained in a rather embryonic state. The elements that the Committee had worked on in the past probably fell into three main categories. In the first category there was the question of the disclosure requirement. Everyone was very familiar with the work that had taken place and with the various positions that had been expressed during the meeting. A second group or cluster concerned the interface between GR and the patent system. There were a number of the elements or items the Committee had worked on in this regard and there were a number of suggestions as to things it might do in the future. In the past there had been some deliverables in this regard, notably that the International Patent Classification had been revised recently. The eighth edition had come into effect at the beginning of that year and contained a new class related to TK-related inventions, which facilitated search and retrieval. Minimum documentation of PCT as mentioned during the discussions had been revised so as to include twelve periodicals, which were devoted to TK. But there were other elements in this particular area such as the suggestion to develop a database for prior art purposes which would either contain or link to virtually other databases disclosed TK and information about GR that had been made available voluntarily pursuant to free prior informed consent of the possessors or holders of that information. There were a lot of elements to that, for instance the specifications of any such database. That was one of the reasons why it would be sketched out in greater detail by the Secretariat for the consideration of Member States. A second item was an improved search facility of existing patent documents. It had also been mentioned by the Delegation of Brazil at the ninth session. In a sense it already existed with respect to patent information collections. It would be a question of making the search facility more sensitive to this particular area by building specialized

vocabularies by for example linking to a resource such as the FAO resource concordance if the FAO was willing to permit to do so. Capacities in that area as well as the accessibility of patent information collections could be improved very much. The search and examination guidelines remained in an incomplete state and could no doubt be improved. Other elements could be fitted into this category if the Member States wished to work on them such as some patent mapping on landscaping work. A third area concerned the IP component of access contracts and benefit sharing arrangements. Some guidelines for contractual practices remained in an incomplete state. The database of contract clauses, could be improved and further populated with new contracts and guidance that that provided. In these three main areas work had proceeded or there were suggestions that work should proceed. That would form the basis of what the Secretariat would be putting forward if it was adopted by the Member States for comment and consideration before the next meeting.

219. The Delegation of the United States of America found the Secretariat's approach acceptable in general. It suggested a correction on the title or name given to the first area of discussion and that the Secretariat had characterized as a discussion about disclosure requirements. Certainly there was a set of proposals about disclosure requirements, but there were alternative proposals as well. Dealing with the issues and concerns that had been raised in the Committee it would be an inappropriate name for that part of the discussion to be limited in such a fashion. The Committee could draw from experience and other bodies in for example the TRIPS Council appropriate to that body. They used the title of relationship between the TRIPS agreement and the CBD. That would not be appropriate for the Committee, but perhaps something along the lines of the relationship between IP and GR could be something that would be inclusive or at the very least something that recognized the disclosure requirements and alternative proposals relating to concerns raised. But otherwise the approach looked fair.

220. The Delegation of Brazil commented that that was an important issue: either disclosure was not being discussed in the Committee or it was. What would not be interesting was to repeat the broad mandate that was contained in the Doha declaration, the relationship between the TRIPS agreement and the CBD. That kind of approach did not work in the Committee. Either the Committee dealt specifically with the issue of a disclosure requirement. Perhaps one could do away with the word requirement but then the Committee could just give up this issue because alternative approaches did not address the international dimension and that did not fit into the mandate. The Delegation of the United States of America had indicated that it would further elaborate on the issue to indicate how it did address or how it may address the international dimension. However, the Brazilian Delegation was willing to look at whatever additional information or arguments put forth whenever they were made available. It preferred to know at that point what exactly the members wished to do, whether they wished to acknowledge that the Committee had an ongoing discussion on a disclosure requirement or not.

221. The Delegation of the United States of America responded that it was simply a matter of correctly describing the discussion. There were a set of proposals on disclosure requirements based on certain objectives and concerns that had been raised. There was a set of proposals for every action to meet the concerns that had been raised. There had been no consensus on any particular approach to address these concerns. Nonetheless, the concerns had been raised and that was why the Committee had to address them. It could not accept something that would only reference one proposal that had been made. That would be incorrect to describe the work that had been done. The Committee was not pursuing that approach so it was a matter of just correctly describing the work. If the initial formulation involving relationship

was not acceptable, the Delegation was happy to work on other formulation that just had to include the topics that had been discussed in the Committee and that would continue to be discussed.

222. The Secretariat suggested the term 'disclosure requirement and alternative proposals' dealing with the relationship between IP and GR.

223. The Delegation of Brazil pointed out that the last intervention raised an additional point of concern. It had an understanding that the issues on which the Secretariat would provide information for the next meeting was a list of items on which there was consensus. But there was not any consensus on the other items either. There was no consensus on the database. The Delegation could not support the new proposals on a database put forward that morning. It considered them premature as it had repeated several times. It asked what the nature of that list of issues was. The Delegation of the United States of America indicated that it read the list as indicating that there was consensus on these particular issues. If that was the case, it would have to really ask for a lengthy discussion on each of these and on the drafting of these issues, which would be a waste of time.

224. The Secretariat assured the Delegation of Brazil that the intention had been simply to give an indication of the scope of the items that had been discussed and the work that had taken place or was proposed to be discussed. This listing might not be fully comprehensive. It would be put to the Member States simply to get the view of the Member States; there was no consensus at this stage. It would be prepared in order to be addressed by the Member States as elements of a way forward for work on GR within the Committee inviting the Member States' observations on the various items.

225. The Chair asked whether it was possible to conclude the debate and to request the Secretariat to prepare the necessary document.

226. The Delegation of Brazil asked what kind of a document was going to be prepared and whether it would be a factual information document on activities that had been carried out in the Committee up until now or whether there would be analysis, additional suggestions and proposals. This would make a great difference regarding the type of exercise the Committee members were agreeing to.

227. The Secretariat commented that the suggestion was that it should put forward a list of items that might constitute a way forward for work in future sessions of the Committee. This would not be a lengthy document at all, but it would seek nevertheless to accurately characterize each of the items so as to avoid confusion. For example, many different views were expressed on the question of a database. The Secretariat would seek to be sensitive to the views that had been expressed, simply in characterizing the proposal. Member States' comments on these would be invited. On the basis of Member States' comments it would seek to provide information to the next session of the Committee as to the views of Member States on all of the items and whether they wished work to proceed or not. That document would furnish in turn the basis of the discussion for the next session.

228. The Delegation of Brazil expressed its view that it was more useful if the document was simply prepared for the next meeting instead of having an intersessional commentary procedure. There was already additional work to do on the broad issues of TK and TCEs. This could be to the extent possible an informational, factual document. Some adaptation would have to be provided to give some kind of an indirect indication of issues that could be

picked up. But there was perhaps no need for this open additional process for commenting by Member States. The Member States could simply receive this document for debate in the next meeting along with other meeting documents.

229. The Chair commented that was what the Secretariat was preparing for reference for the eleventh session; therefore at the current stage there was no need to seek further comment. He proposed to discuss that under future work.

230. The Delegation of Mexico sought clarification on when the proposals that Delegations had made on new studies that WIPO could carry out would be included in the document to be prepared by the Secretariat.

231. The Secretariat stated that it had in discussion not given a fully comprehensive list of all the work that had been undertaken or proposed, but that it would seek to make the document itself a comprehensive account.

*Decision on agenda item 10: genetic resources*

232. The Committee took note of documents WIPO/GRTKF/IC/8/9 and WIPO/GRTKF/IC/9/9. The decision taken by the Committee on future work on agenda item 10 is reported under agenda item 11.

## AGENDA ITEM 11: FUTURE WORK

233. The Chair commented that there had been some discussion related to the future work since the morning, but that the Committee still needed to agree on some issues. The previous session of the General Assembly had urged the Committee to accelerate its work and to present a progress report. The General Assembly had further requested the International Bureau to continue to assist the Committee by providing Member States with necessary expertise and documentation. In that respect, for the following session, July 2 to 10, 2007, seemed the most suitable time, if it was be a seven day meeting. However, if the Committee decided on a five-day meeting this could run from July 2 to 6, 2007. This may also link to the proposed idea to have an intersessional meeting before the next session.

234. The Delegation of the United States of America stated that it did not have an outright objection to the intersessional meeting. It did, however, have some concerns. It seemed that the Committee had agreed on a process at least on TK and TCEs. The Member States would be providing substantive comments pursuant to the newly agreed process. It would be very helpful and allow an initial exchange of views intersessionally that could then be built on and prepared for at the following meeting. In light of that, time would be better spent at either a five days' or seven days' session. In July, once views had been interchanged electronically, and Members States had had a chance to read and consider other delegations' initial arguments, they could then come prepared to the July meeting.

235. The Chair recalled the list of issues agreed to be taken into consideration.

236. The Delegation of Finland on behalf of the European Communities and their Member States and the Acceding States Bulgaria and Romania indicated that it would not oppose any intersessional meeting if the Committee considered it necessary. But, such a meeting would impose further difficulties for the European Union in terms of preparation, because of the

need to coordinate internally among 27 countries. There was already a very extensive work plan concerning TCEs and TK on the basis of the list of issues.

237. The Delegation of New Zealand stressed that it was open-minded about an intersessional meeting. But it was regrettable if an intersessional meeting meant that there was less opportunity for participation by indigenous communities. They had an important contribution to make and it was important that their voice was heard. New Zealand wanted to have the opportunity to undertake some domestic consultation on the list of issues. That could be difficult concerning the timing of an intersessional meeting. In addition, New Zealand was distant from Geneva and the logistics of travel was an issue.

238. The Delegation of Canada did not oppose having intersessional meeting, but had a preference for one meeting of five or seven days. It shared the concerns of New Zealand and valued the participation of the observers, especially because the Committee would be starting discussions on the list of issues.

239. The Delegation of Australia supported not to have an intersessional meeting for the same sorts of reasons that New Zealand and Canada had given. There was a fair bit of information that it needed to gather regarding the new list of issues. It preferred to have a meeting of five or seven days.

240. The Delegation of Nigeria recalled that it had initially proposed the intersessional meeting and reiterated its support for this proposal. Such a meeting would give the Committee the opportunity to discuss in-depth issues that were emerging from the Committee, especially in view of the call by delegations to look at issues exhaustively. The Committee should do so before the eleventh session, so that Member States would be able to have cleared a number of hurdles in the way in order to enable the Chair to make specific recommendations to the Assembly in 2007. An intersessional meeting of for instance four days would actually enable the Committee to cover lost ground and exhaustively look at issues. Before then, delegations would have been able to submit comments in writing to the Secretariat on various issues that had been discussed in this meeting. With the additional GR to the consideration, the Committee needed time before the actual 11th session to consider issues in-depth.

241. The Delegation of Switzerland sought clarification on the issues to be discussed at the intersessional meeting.

242. The Chair clarified that the intersessional meeting could, if it was agreed, primarily discuss the list of issues adopted.

243. The Delegation of Japan commented that it did not have particular views regarding an intersessional meeting. But it had concerns as to time scheduling. The comments would be distributed by the end of April and if such an intersessional meeting would be held around May, it could be difficult to prepare for.

244. The Delegation of Pakistan supported having an intersessional meeting before the eleventh session. It would help to focus more and to have more concrete results at the eleventh session. That meant that after having the initial comments by different countries in April, there should be an intersessional meeting.

245. The representative of the IPCB echoed the concerns of New Zealand and Canada about the Indigenous Peoples and traditional local communities' participation in such an intersessional meeting and sought clarification about the ability of the Voluntary Fund to facilitate their participation.

246. The Delegation of Brazil indicated that, as a developing country, it was an opportunity, but also an additional burden to have an intersessional meeting as it meant more preparation and consultation. The Member States had to provide the comments probably at an earlier date to make them more adapted to an additional meeting around the first or the middle of the first semester of 2007. However, if it was to make progress and to achieve an outcome beneficial to the indigenous and local communities whose interests Member States were trying to attend in the process, the Delegation was obviously supportive of an intersessional meeting. The Committee may make good progress on the basis of the agreement that had been reached to discuss the ten core issues on the table. It would be worth the efforts to try and accommodate for the intersessional meeting probably with some adaptation in the timetable in regard to the deadline for comments and distribution of documents.

247. The Delegation of Colombia supported Nigeria's proposal that an intersessional meeting be held because of the importance it gave to issues of TK and TCEs.

248. The Delegation of Japan requested clarification on the proposal by the Delegation of Brazil and whether this was a proposal to amend the schedule. It opposed an amendment of schedule because that had already been decided. The reason was that it wanted to have a very thorough discussion on the important issues that were listed. It needed at least until the end of March to have internal consultations with academics and all the groups in its country. Bringing these together until the middle of next semester would not be acceptable. The Delegation reiterated that it did not oppose having an intersessional meeting as long as the deadlines were in effect. It expressed concerns not to be able to prepare for full discussion if the intersessional meeting was held in May and Member States received all the comments by Internet at the end of April. It reserved the right in some cases to defer its responses to the comments on the Internet and wanted to ensure that no decisions were made at the intersessional meetings.

249. The Delegation of Finland on behalf of the European Communities and their Member States and the Acceding States Bulgaria and Romania reiterated that any intersessional meeting would cause extra difficulties in the European Union for preparing because of internal consultations and especially coordination between the 27 countries. If an intersessional meeting was agreed on, it also had to consider issues relating to GR. Prior to such a meeting, the document by the Secretariat should be made available, so that Member States would also be able to prepare on GR.

250. The Delegation of the Islamic Republic of Iran agreed with the Delegation of Nigeria and supported an intersessional meeting in April.

251. The Delegation of Switzerland supported the statement by the Delegation of Finland on behalf of the European Communities and their Member States and the Acceding States Bulgaria and Romania. If there was an intersessional meeting, this meeting should address all three issues. The document agreed upon with regard to GR should be available prior to that meeting so to allow preparation and to do substantial work on this issue at the intersessional meeting.

252. The Delegation of South Africa supported the position of the Delegation of Nigeria. The agreement that had been shared the day before included timelines. All delegations were subject to those timelines; there was no one with exceptional conditions in terms of those timelines. The timelines should not be shifted because that deal had been sealed the day before and every one should have done their work within those timelines in terms of submission to the Secretariat for distribution to other Member States. Considering the issues pertaining to GR, there had been no timeframe in the agreement reached. The Delegation suggested that the issue of time-framing GR should be separated from TK and TCEs, otherwise issues would be opened up which had already been concluded. It recommended standing behind the Nigerian proposal as supported by many delegations. After the submission and distribution of these documents, the delegations should look for a suitable time to discuss the substantive issues that the Secretariat had put down. Points one to 10 were subject to discussion.

253. After informal consultation, the Chair concluded that the understanding was reached, that instead of having an intersessional meeting, an eight-day session should be held, which would be divided into four days before the weekend and four days after the weekend. The Chair proposed the dates July 3 to July 12, 2007.

*Decision on agenda item 11: Future Work*

254. Regarding agenda items 8 (traditional cultural expressions/expressions of folklore) and 9 (traditional knowledge), the Chair proposed, following informal consultations, and the Committee decided that:

(i) Discussion will commence on the Issues (attached as Annex I) in numerical order, if possible, during the current session, and will continue on that basis at the next session.

(ii) The existing documents (WIPO/GRTKF/IC/10/4, WIPO/GRTKF/IC/10/5 and WIPO/GRTKF/IC/10/6) remain on the table in their existing form and existing positions in relation to them are noted.

(iii) The discussion on the issues is complementary to and without prejudice to existing positions in relation to the existing documents.

(iv) Delegations and observers are invited to submit comments on the Issues by end of March 2007. The Secretariat will collate the comments under each of the issues and distribute them by end of April. All comments will be posted on the Internet on receipt.

(v) In relation to existing comments on documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5, the Secretariat will produce two tables (one for traditional knowledge and one for traditional cultural expressions/expressions of folklore) each containing two columns. In the first column, the titles of provisions in documents WIPO/GRTKF/IC/9/4 or WIPO/GRTKF/IC/9/5, as the case may be, will be reproduced, together with titles “general”, under the heading “Issues”. In the second column, the comments made by delegations and observers in relation to the titles in question will appear under the name of each delegation or observer.

255. Regarding agenda item 10 (genetic resources), on the basis of its discussions, the proposals made by a number of delegations, document WIPO/GRTKF/IC/8/9, and within the specific mandate of the Committee established by the WIPO General Assembly, the

Committee requested the Secretariat to prepare for its consideration at its eleventh session: (i) a document listing options for continuing or further work, including work in the areas of the disclosure requirement and alternative proposals for dealing with the relationship between intellectual property and genetic resources; the interface between the patent system and genetic resources; and the intellectual property aspects of access and benefit-sharing contracts; and (ii) a factual update of international developments relevant to the genetic resources agenda item.

256. The Committee requested that its eleventh session be extended to eight working days, and that it be held on July 3 to 12, 2007. A suggested program of work will be circulated with the draft agenda.

## AGENDA ITEM 12: CLOSING OF THE SESSION

*Decision on Agenda Item 12: Closing of the Session*

257. The Committee adopted its decisions on agenda items 4, 5, 7, 8, 9, 10, 11 and 12 on December 8, 2006. It agreed that a draft written report, containing the agreed text of these decisions and all interventions made to the Committee, would be prepared and circulated by January 31, 2007. Committee participants should submit written corrections to their interventions as included in the draft report before March 30, 2007. A final version of the draft report will then be circulated to Committee participants for subsequent adoption.

258. A first draft report was accordingly circulated at the end of the month of January as document WIPO/GRTKF/IC/10/7 Prov. The present document, WIPO/GRTKF/IC/10/7 Prov 2., incorporates the comments and corrections received in accordance with the approved procedure, and is circulated for consideration and adoption by the Committee at its eleventh session.

259. The Chair expressed his appreciation and gratitude to the Committee. The full seven days deliberations had produced significant achievements that had been described in the press as ‘breaking a deadlock’ but had also worked through the full body of work on a full agenda. The Committee had listed to and learned from representatives of indigenous and local communities who had shared their valuable experience on how best to protect their invaluable heritage of TK, TCEs and GR. There had also been lively discussion on how to enhance the Committee’s work to achieve the necessary international instruments. At the end of the session, the Committee had reached agreement on many important matterrs, including agreement on the two lists of issues relating to the protection of TK and TCEs. The Chair invited delegations to study these issues and to submit their comments by the end of March 2007. These lists together with the comments received would assist future deliberations and advance the work of the Committee while keeping in mind that the existing working documents WIPO/GRTKF/IC/10/4, WIPO/GRTKF/IC/10/5 and WIPO/GRTKF/IC/10/6 remain on the table. The Secretariat would prepare documents relating to TK, TCEs and GR which would assist the work of the Committee and build general understanding. The Chair thanked Mr. Abdellah Ouadrhiri of Morocco, Deputy Chair of the Committee, and other members of the Advisory Board for their decision on the support for representatives of indigenous and local communities who would be financed to attend the eleventh session of the Committee. He hoped that the continuing participation of non-governmental organizations can further contribute to the work of the Committee and thanked them for their valuable participation. He recalled that there was considerable

amounts of work to do, and the road in front of the Committee was long. He urged participants to provide written comments on the two lists of issues before the end of March 2007. The Secretariat would then do its best to circulate the comments by the end of April 2007. He invited participants to start reflecting on how to submit recommendations to the General Assembly. The eleventh session would be the last of the current mandate and it was necessary to come up with recommendations to guide the future of the Committee. With the constructive attitude and flexibility shown in the debates, and the friendly ambience, the Committee participants should be able to marshal their ideas and work in the coming months so as to achieve productive results. A wise person had said that an optimist sees the opportunity in every difficulty and a pessimist sees a difficulty in every opportunity. It would not be an exaggeration to say that there was still a good opportunity to make a bigger leap in the next session of the Committee. This would certainly not be possible without the constructive cooperation of Committee participants. He expressed gratitude to the Vice Chairs for so ably assisting in the work of the session, and conveyed his heartfelt appreciation to all delegations, representatives of NGOs and members of indigenous and local communities for their hard work and cooperation. The members of the Secretariat deserved grateful thanks for their invaluable assistance and excellent preparation of the meeting and its documents. The Committee was indebted to the interpreters for their tireless assistance. He wished all visiting delegates a safe journey home.

260. The Chair closed the Tenth Session of the Committee on December 8, 2006.

[Annexes follow]

ANNEXE I/ANNEX I

ISSUES/ QUESTIONS/ CUESTIONES

## Traditional Cultural Expressions/Expressions of Folklore

### Issues

1. Definition of traditional cultural expressions (TCEs)/expressions of folklore (EoF) that should be protected.

2. Who should benefit from any such protection or who hold the rights to protectable TCEs/EoF?

3. What objective is sought to be achieved through according intellectual property protection (economic rights, moral rights)?

4. What forms of behavior in relation to the protectable TCEs/EoF should be considered unacceptable/illegal?

5. Should there be any exceptions or limitations to rights attaching to protectable TCEs/EoF?

6. For how long should protection be accorded?

7. To what extent do existing IPRs already afford protection? What gaps need to be filled?

8. What sanctions or penalties should apply to behavior or acts considered to unacceptable/illegal?

9. Which issues should be dealt with internationally and which nationally, or what division should be made between international regulation and national regulation?

10. How should foreign rights holders/beneficiaries be treated?

Traditional Knowledge

Issues

1. Definition of traditional knowledge that should be protected.

2. Who should benefit from any such protection or who hold the rights to protectable traditional knowledge?

3. What objective is sought to be achieved through according intellectual property protection (economic rights, moral rights)?

4. What forms of behavior in relation to the protectable traditional knowledge should be considered unacceptable/illegal?

5. Should there be any exceptions or limitations to rights attaching to protectable traditional knowledge?

6. For how long should protection be accorded?

7. To what extent do existing IPRs already afford protection? What gaps need to be filled?

8. What sanctions or penalties should apply to behavior or acts considered to unacceptable/illegal?

9. Which issues should be dealt with internationally and which nationally, or what division should be made between international regulation and national regulation?

10. How should foreign rights holders/beneficiaries be treated?

[Annex II follows]

ANNEXE II/ANNEX II

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Niyara GAFAROVA (Ms.), Indigenous Fellow, Simferopol

Evgenia SHUSTOVA (Ms.), Indigenous Fellow, Karelia

Eugenia PERVAKOVA (Ms.), Indigenous Fellow, Altyn-Shor

Sergey SIZONENKO, Indigenous Fellow, Taymyr

Yakov KANCHUGA, Indigenous Fellow, Primorskiy

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

Johan AMAND, Director, International Affairs, Munich

Pierre TREICHEL, Lawyer Patent Law, Munich

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

Jayashree WATAL (Mrs.), Counsellor, Intellectual Property Division, Geneva

Xiaoping WU (Mrs.), Counsellor, Geneva

ORGANISATION RÉGIONALE AFRICAINE DE LA PROPRIÉTÉ INDUSTRIELLE (ARIPO)/AFRICAN REGIONAL INDUSTRIAL PROPERTY ORGANIZATION (ARIPO)

Emmanuel Kofi-Agyir SACKEY, Head, Search and Examination Section, Harare

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

Makoto TABATA, Senior Counsellor, Geneva

SECRETARIAT OF THE CONVENTION ON BIOLOGICAL DIVERSITY (SCBD)

Valérie NORMAND (Ms.), Montreal

PACIFIC ISLANDS FORUM SECRETARIAT

Gail OLSSON (Ms.), Trade Policy Officer, Suva

## V. ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES/ INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

Alliance pour les droits des créateurs/Creators' Rights Alliance:
Greg YOUNG-ING (Chair, Indigenous Peoples Caucus, Vancouver)

American BioIndustry Alliance (ABIA):
JacquesGORLIN (President, Washington, D.C.)

American Folklore Society (AFS):
Elaine LAWLESS (Ms.) (Professor of English and Women Studies, University of Missouri, Columbia); Sandy RIKOON (Professor of Rural Sociology and Director, Community Food Systems and Sustainable Agriculture Program, University of Missouri-Columbia, Columbia)

Assembly of First Nations:
Stuart Victor Alfred WUTTKE (Assistant Director, Environmental Stewardship Program, Ottawa)

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

Association internationale pour la protection de la propriété intellectuelle (AIPPI)/International Association for the Protection of Intellectual Property (AIPPI):
Konrad BECKER (European Patent Attorney, Chairman, Q166: Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Zurich)

Association littéraire et artistique internationale (ALAI)/International Literary and Artistic Association (ALAI):
Silke VON LEWINSKI (Mme) (Munich); Victor NABHAN (président, Ferney-Voltaire)

Biotechnology Industry Organization (BIO):
Hans SAUER (Associate General Counsel, Washington, D.C.); Janna C. TOM (Ms.) (Assistant Director, Policy, Analysis and Campus Services, Office of Technology Transfer, University of California, Oakland)

Call of the Earth (COE):
Alejandro ARGUMEDO (Cusco)

Central and Eastern European Copyright Alliance (CEECA):
Mihály FICSOR (President, Budapest)

Centre d'études internationales de la propriété industrielle (CEIPI)/Centre for International Industrial Property Studies (CEIPI):
François CURCHOD (représentant permanent auprès de l'OMPI, Genolier)

Centre de recherche en droit international de l'environnement (IECRC)/International Environmental Law Research Centre (IELRC):
Philippe CULLET (Senior Researcher, Geneva); Eva-Maria MEIER (Mrs.) (Research Assistant, Geneva)

Centre for Documentation, Research and Information of Indigenous Peoples (doCip):
Stefan STEINER (assistant documentaire, Genève); Pierrette BIRRAUX (Mme) (directrice scientifique, Genève); Geneviève HEROLD (Mme) (responsable de publication, Genève); Patricia JIMENEZ (Mme) (coordinatrice, Secrétariats techniques, Genève)

Centre for Folklore/Indigenous Studies:
D.R. RAJAGOPALAN (Director, Kerala)

Centre international pour le commerce et le développement durable (ICTSD)/International Center for Trade and Sustainable Development (ICTSD):
Preeti RAMDASI (Miss) (Assistant, Intellectual Property, Geneva); Gina VEA (Ms.) (Programme Officer, Intellectual Property, Geneva)

Centre pour le droit international de l'environnement (CIEL)/Centre for International Environmental Law (CIEL):
Eva Viktoria SWOBODA (Ms.) (Law-fellow, Geneva); Dalindyebo SHABALALA (Geneva); Palesa TLHAPI GUYE (Ms.) (Geneva)

Chambre de commerce internationale (CCI)/International Chamber of Commerce (ICC):
Timothy ROBERTS (Principal, Roberts & Co., Bracknell)

Comité consultatif mondial des amis (CCMA)/Friends World Committee for Consultation (FWCC) (represented by the Quaker United Nations Office, Geneva):
Sandra WIENS (Ms.) (Programme Assistant, Quaker International Affairs Program, Ottawa); David Zafar AHMED (Programme Assistant, Quaker United Nations Office, Geneva)

Coordination des ONG africaines des droits de l'homme (CONGAF)/Coordination of African Human Rights NGOs (CONGAF):
Djely Karifa SAMOURA (président, Genève); Maurice KATALA (chargé des relations internationales, Genève); Biro DIAWARA (chargé de programme, Genève); Jean KOUROUMA (chargé de programme, Genève)

Federación Folklorica Departamental de La Paz:
Esther Jael NAVIA BLANCO (Sra.) (Secretaria de Vinculación Femenina, La Paz)

Fédération ibéro-latino-américaine des artistes interprètes ou exécutants (FILAIE)/Ibero-Latin-American Federation of Performers (FILAIE):
Luis COBOS (Presidente, Madrid); José Luis SEVILLANO (Director General, Madrid); Miguel PÉREZ SOLIS (Asesor, Asesoria Jurídica, Madrid)

Fédération européenne d'associations et d'industries pharmaceutique (EFPIA)/European Federation of Phamarceutical Industries and Associations (EFPIA):
Brendan BARNES (Manager, EU Enlargement/WTO, Brussels)

Fédération internationale de l'industrie du médicament (FIIM)/International Federation of Pharmaceutical Manufacturers and Associations (IFPMA):
Eric NOEHRENBERG (Geneva); Madeleine ERIKSSON (Ms.) (Geneva)

Fédération internationale de l'industrie phonographique (IFPI)/International Federation of the Phonographic Industry (IFPI):
Gadi ORON (Legal Adviser, Legal Policy and Regulatory Affairs, IFPI Secretariat, London)

Fédération internationale des conseils en propriété industrielle (FICPI)/International Federation of Industrial Property Attorneys (FICPI):
Bastiaan KOSTER (Director, Bowman Gilfillan, Cape Town)

Foundation for Research and Support of Indigenous Peoples of Crimea:
Gulnara ABBASOVA (Ms.) (International Communications Officer, Simferopol)

Groupe des jeunes agronomes actifs pour le développement intégré au Cameroun (JAADIC):
Jean Augustin TSAFACK DJIAGUE (délégué général, Dschang);
Patrick Arnaud NGUIMFACK NGUETSOP (chargé de la Coopération internationale, Dschang)

Hawai'i Institute for Human Rights (HIHR)
Joshua COOPER (Executive Director, Honolulu)

Hokotehi Moriori Trust:
Sacha McMEEKING (Ms.) (Representative, Christchurch)

Indian Council of South America (CISA):
Tomás CONDORI (Geneva)

Indian Movement "Tupaj Amaru":
Lazaro PARY (General Coordinator, Geneva)

Indigenous People (Bethechilokono) of Saint Lucia Governing Council (BGC):
Albert DETERVILLE (Executive Chairperson, Castries)

Indigenous People's Council on Biocolonialism (IPCB):
Debra HARRY (Ms.) (Executive Director, Nixon); Le'a Malia KANEHE (Ms.) (Nixon)

Indonesian Traditional Wisdom Network (ITWN):
Mohammad Rasdi WANGSA (Jember - Jawa Timur)

Institut du développement durable et des relations internationales (IDDRI)
Selim LOUAFI (Biodiversité, Paris)

Intellectual Property Owners Association (IPO):
Manisha DESAI (Mrs.) (Patent Counsel, Geneva)

International Trademark Association (INTA):
Bruno MACHADO (Geneva Representative, Rolle)

Inuit Circumpolar Conference (ICC):
Violet FORD (Ms.) (Vice President, Ottawa)

Maasai Cultural Heritage Foundation (MCHF):
Johnson M.N. OLE KAUNGA (Project Advisor, Nanyuki)

Max Planck Institute for Intellectual Property, Competition and Tax Law:
Silke VON LEWINSKI (Mrs.) (Head of Unit, Munich)

Métis National Council:
Andrea STILL (Ms.) (Special Initiatives Manager, Ottawa)

Music in Common:
Mathew CALLAHAN (Founder and Chair, Bern)

Pauktuutit Inuit Women of Canada:
Philip BIRD (Senior Advisor, Ottawa)

Société internationale d'ethnologie et de folklore (SIEF)/International Society for Ethnology and Folklore Studies (SIEF):
Regina BENDIX (Ms.) (Professor); Valdimar HAFSTEIN (Professor);
Saskia KLAASSEN (Ms.)

South Centre:
Sisule F. MUSUNGU (Programme Coordinator, Geneva); Viviana MUNOZ TELLEZ (Ms.) (Programme Officer, Geneva); Paul DHRUV BALAI (Intern, Innovation and Access to Knowledge and Technology, Geneva); Ermias BIADGIENG (Program Officer, Innovation and Access to Knowledge, Geneva)

Sustainable Development Policy Institute (SDPI):
AjmalMEHNAZ (Ms.) (Research Associate, Islamabad); Syed KAZMI (Consultant, Islamabad)

The Fridtjof Nansen Institute (NFI):
Morten Walloe TVEDT (Research Fellow, Lysaker)

Third World Network (TWN):
Elpidio PERIA (Associate, Geneva)

Traditions pour Demain/Traditions for Tomorrow:
Diego GRADIS (président, Rolle); Isabelle DELBOS PIOT (Mme) (assistante, Rolle)

Tsentsak Survival Foundation (Cultura Shuar del Ecuador):
Etsa Marco CHIRIAP KUKUSH (Erbree)

Tulalip Tribes of Washington Governmental Affairs Department:
Preston HARDISON (Policy Analyst, Tulalip); Terry WILLIAMS (Commissionner, Tulalip)

Union internationale des éditeurs (UIE)/International Publishers Association (IPA):
Jens BAMMEL (Secretary General, Geneva); Antje SÖRENSEN (Legal Counsel, Geneva)

Union mondiale pour la nature (UICN)/The World Conservation Union (IUCN):
Elizabeth REICHEL-DOLMATOFF (Ms.) (Co-Chair, TCC CEESP Commission, IUCN-CEESP, Geneva)

West Africa Coalition for Indigenous Peoples' Rights (WACIPR):
Joseph OGIERIAKHI (Programmes Director, Benin City)

World Trade Institute (WTI):
Xuan LI (Ms.) (Research Fellow, Berne)

## VI. RÉUNION DE REPRÉSENTANTS DE PEUPLES AUTOCHTONES/ INDIGENOUS PANEL

Rodrigo DE LA CRUZ, Consultor Regional Indígena Países Andinos, Regional Office for South America, The World Conservation Union (IUCN), Quito (Chair)

Nurul HUDA, Director, Bangla Academy, Dakha

Ikechi MGBEOJI, Associate Professor, Osgood Hall Law School, Toronto

Tarcila RIVERA-ZEA (Sra.), Presidente, Centro de Culturas Indigenas del Perú (CHIRAPAQ), Lima

Jacob SIMET, Executive Director, National Cultural Commission, Boroko

Greg YOUNG-ING, Chair, Indigenous Peoples Caucus, Creators' Rights Alliance, Vancouver

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

Francis GURRY, vice-directeur général/Deputy Director General

Antony TAUBMAN, directeur par interim et chef, Division des questions mondiales de propriété intellectuelle/Acting Director and Head, Global IP Issues Division

Wend WENDLAND, directeur adjoint, Division des questions mondiales de propriété intellectuelle, et chef, Section de la créativité, des expressions culturelles et du patrimoine culturel traditionnel/Deputy Director, Global IP Issues Division, and Head, Traditional Creativity, Cultural Expressions and Cultural Heritage Section

Shakeel BHATTI, chef, Section des ressources génétiques, des savoirs traditionnels et de la biotechnologie, Division des questions mondiales de propriété intellectuelle/Head, Genetic Resources, Traditional Knowledge and Biotechnology Section, Global IP Issues Division

Hans Georg BARTELS, chef, Section du programme des sciences de la vie et de la politique des pouvoirs publics, Division des questions mondiales de propriété intellectuelle/Head, Life Sciences and Public Policy Section, Global IP Issues Division

Simon LEGRAND, conseiller, Section de la créativité, des expressions culturelles et du patrimoine culturel traditionnel, Division des questions mondiales de propriété intellectuelle/Counsellor, Traditional Creativity, Cultural Expressions and Cultural Heritage Section, Global IP Issues Division

Valérie ETIM (Mlle/Ms.), administratrice de programme, Section des ressources génétiques, des savoirs traditionnels et de la biotechnologie, Division des questions mondiales de propriété intellectuelle/Program Officer, Genetic Resources, Traditional Knowledge and Biotechnology Section, Global IP Issues Division

Anja VON DER ROPP (Mlle/Ms.), administratrice adjointe, Section du programme des sciences de la vie et de la politique des pouvoirs publics, Division des questions mondiales de propriété intellectuelle/Associate Officer, Life Science and Public Policy Section, Global IP Issues Division

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