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Preparatory Committee of the Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources

**Geneva, September 11 to 13, 2023, and
Geneva, December 13, 2023 (Reconvened Meeting)**

DRAFT REPORT

prepared by the Secretariat

INTRODUCTION

1. The meeting of the Preparatory Committee of the Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources (hereinafter referred to as “the Preparatory Committee”) was held in Geneva from September 11 to 13, 2023, and in a reconvened meeting on December 13, 2023.

2. The following States Members of WIPO were represented at the meeting:

Algeria, Angola, Argentina, Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Bhutan, Bolivia (Plurinational State of), Brazil, Bulgaria, Cambodia, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Czech Republic, Democratic People's Republic of Korea, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Ghana, Germany, Greece, Guatemala, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kyrgyzstan, Latvia, Lithuania, Malawi, Malaysia, Mexico, Morocco, Mozambique, Namibia, Nauru, Nepal, Netherlands (Kingdom of the), New Zealand, Niger, Nigeria, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Russian Federation, Samoa, Saudi Arabia, Senegal, Seychelles, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Türkiye, Ukraine, Uganda, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

3. The European Union participated in the meeting in an observer capacity.

4. The non-governmental organizations listed in GRATK/PM/INF/1 PROV also participated in the meeting in an observer capacity.

ITEM 1 OF THE AGENDA

OPENING OF THE MEETING

5. Opening the Preparatory Committee, the Director General of WIPO delivered the following remarks: "Excellencies, Distinguished Delegates, Ladies and Gentlemen,

"It is my pleasure to welcome you to this meeting of the Preparatory Committee of the Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources. At the outset, please allow me to convey our solidarity with the people and Government of Morocco following the devastating earthquake in the region of the Atlas Mountains on Friday night. Our hearts and hopes are with those affected, and our strength and prayers go to them and those involved in the rescue and recovery efforts.

"Dear colleagues,

"At last year's General Assembly, a landmark decision was taken to convene, no later than 2024, a Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources (Diplomatic Conference).

“This landmark decision was not only a breakthrough in the complex negotiations of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) that had been underway at WIPO for more than two decades, but a victory for multilateralism. We showed the world that, even in challenging times, consensus could be forged on matters of importance. It is this spirit of progress, collaboration, and energy that we must draw on this week, as we move as one community towards the Diplomatic Conference. Just last week, a Special Session of the IGC took place in this very room. That meeting addressed the substantive articles of the proposed new International Legal Instrument and was part of a long series of engagements in the course of the year involving regional meetings and an inter-regional meeting. I thank the Governments of Uruguay, Indonesia, Algeria, Poland, and China for hosting and co-organizing these critical meetings, which have allowed experts and policy makers within and across regions to engage, exchange and dig into the texts. I would be remiss not to mention that one unique quality of our discussions has been the active participation of civil society and NGOs, a point that has been picked up by some observers as a compliment to the way the negotiations are proceeding. As conversations on the draft text have only now begun in earnest, there are, as expected, divergences and disagreements. But at the same time, there was also agreement to improve certain elements of the substantive articles. I applaud the hard work and dedication of the negotiators and pledge the Secretariat’s continued close support for these discussions as well as any other regional meetings or sessions that may be needed to further our work.

“Last week’s work that focused on the substance of the text will complement this week’s work, which focuses on the necessary modalities of the Diplomatic Conference. In the next three days you, as members of the Preparatory Committee, will consider matters such as the Draft Rules of Procedure to be presented for adoption to the Diplomatic Conference, the list of invitees to participate in the Conference, the text of the draft letters of invitation, and other organizational questions relating to the Diplomatic Conference. The Preparatory Committee will also approve the Basic Proposal for the administrative and final provisions of the treaty. I would like to reassure our delegates that the Draft Rules of Procedure, the administrative and final provisions of the proposed international legal instrument, the list of invitees and the text of the invitation letters are drawn from precedent and well-established WIPO treaty practice, so that you feel encouraged to refer them to the Diplomatic Conference.

“One matter very much on your minds is the venue and dates of the Diplomatic Conference. As you are aware, this matter is still in discussion, and we have yet to receive a conclusive offer from a country to host the Conference in the first half of next year. A call for expressions of interest was issued last week and I am pleased to share that this has already triggered inquiries for more information from a few countries. I am confident that we will receive a formal offer to host the Diplomatic Conference in the next few weeks.

“In conclusion, the upcoming Diplomatic Conference will be a transformative opportunity for the global IP community and WIPO members to show that our international IP ecosystem is capable of meaningful change and thoughtful evolution. I call on Member States to embrace this historic opportunity and to commit to crossing the finishing line together – as one WIPO community.

“With these words, I declare the meeting open.”

ITEM 2 OF THE AGENDA

ELECTION OF A CHAIR AND TWO VICE-CHAIRS

6. The Legal Counsel thanked the Director General for his opening remarks and welcomed delegations. She then turned to Agenda Item 2, the election of a Chair and two Vice-Chairs. Following informal consultations among Group Coordinators, the Legal Counsel was pleased to share that Member States had reached consensus in respect of the officers to be elected. The Secretariat had received nominations for officers to be elected for the following positions: as the Chair, Mr. Jukka Liedes of Finland; as Vice-Chairs, Mr. Paul Kuruk of Ghana and Mr. Felipe F. Cariño III of the Philippines.

7. The Director General proposed that the Preparatory Committee elect the nominees, as indicated by the Legal Counsel, for the Chair and Vice-Chair positions, respectively, and recalled that the terms of office of the Chair and Vice-Chairs would begin upon their election, and they should remain in office until the end of the last meeting of the Preparatory Committee.

8. The Preparatory Committee elected Mr. Jukka Liedes (Finland) as Chair, and Mr. Paul Kuruk (Ghana), as well as Mr. Felipe F. Cariño III (Philippines), as Vice-Chairs.

ITEM 3 OF THE AGENDA

ADOPTION OF THE AGENDA

9. The Chair took the floor and began his opening statement by thanking the Director General and welcoming the delegates. He thanked Member States for their trust in electing him as the Chair of the Preparatory Committee and stated that he would do his very best to live up to expectations. He further congratulated the Vice-Chairs of the Preparatory Committee, Mr. Paul Kuruk and Mr. Felipe F. Cariño III, on their election, and said that he looked forward to a close, smooth and effective collaboration. He also expressed sincere appreciation for the excellent work done by the International Bureau in preparing this important meeting, which constituted a crucial step toward the Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources (hereinafter “the Diplomatic Conference”). He underlined that, after more than ten years of text-based negotiations, Member States were closer than ever to the conclusion of a ground-breaking international instrument that could make a difference for many people around the world. To bring this historic journey to a positive conclusion, he hoped to continue with a transparent, inclusive and consensus-driven decision-making process that would allow all stakeholders to join efforts in working toward a successful Diplomatic Conference in 2024. With this goal in mind, and with the constructive spirit shown during the

Special Session of the IGC the previous week, the Chair was certain that the Preparatory Committee would be able to establish the necessary modalities of the upcoming Diplomatic Conference. He counted on the goodwill of all delegations to move this agenda forward and looked forward to a productive meeting. He once again expressed his thanks for the honor of presiding over this meeting.

10. The Preparatory Committee adopted the draft Agenda, as contained in document GRATK/PM/1 Prov.

ITEM 4 OF THE AGENDA

DECISIONS OF THE INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE (IGC) SPECIAL SESSION

11. Discussions were based on document WIPO/GRTKF/IC/SS/GE/23/4.
12. Introducing Agenda Item 4, the Assistant Director General, Global Challenges and Partnerships Sector, drew the attention of delegations to document WIPO/GRTKF/IC/SS/GE/23/4, which referred to the decisions made by the Special Session of the IGC the previous week. He recognized the Chair of that Special Session, Ms. Lilyclaire Bellamy, and emphasized that the document was published on the WIPO website and hoped that the delegates had time to familiarize themselves with its contents, such that there was no need for a detailed introduction. He therefore presented document WIPO/GRTKF/IC/SS/GE/23/4 for the consideration of the Committee.
13. The Chair thanked the Assistant Director General and offered the floor to delegations.
14. The Delegation of Switzerland said that it wished to make an opening statement on behalf of Group B, and asked the Chair for a decision on the type of statements to be delivered at that point.
15. The Chair declared the floor open for Group Coordinators to make opening statements.
16. The Delegation of Venezuela thanked the Chair and, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), congratulated the Chair and the Vice-Chairs on their election. GRULAC welcomed the speech of the Director General that morning and was grateful for his remarks. It underlined the importance of that moment and the work done on the International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources (Instrument), and it was glad to be close to the end of a very long road. The Delegation expressed that its Group was prepared to discuss the provisions and final processes of the Instrument and to make decisions on the procedure. The Delegation reiterated the Group's trust in the Chair's leadership, as well as its commitment and willingness to work with the Chair and others. The Delegation also took the opportunity to express GRULAC's gratitude for the presentation made by the Assistant Director General.

17. The Delegation of Switzerland, speaking on behalf of Group B, congratulated the Chair on his election. Group B expressed willingness to actively participate during the work of the Committee. The Group also thanked the Director General for his opening remarks to the Committee. It was confident that the Committee would be able to establish the necessary modalities of the Diplomatic Conference and expressed gratitude to the Secretariat for organizing the session as well as preparing the documents for the work. Group B looked forward to continuing discussions on the Basic Proposal, as it resulted from the previous week's Special Session, at the Diplomatic Conference. The Delegation said that its Group supported working on the basis of the Draft Administration Provision and Final Clauses for the Instrument provided by the Secretariat in document GRATK/PM/2 adding that it had a comment on Agenda Item 5. It generally supported the Draft Rules of Procedure of the Diplomatic Conference suggested by the Secretariat in document GRATK/PM/3 and intended to make an intervention in this regard under Agenda Item 6. Group B looked forward to the active participation of indigenous peoples and local communities as well as other observers in the work that week, acknowledging their valuable and essential contribution to the work of the Committee. In this context, the Group expressed gratitude to the Governments of Australia, Germany, and Mexico for replenishing the WIPO Voluntary Fund for Accredited Indigenous and Local Communities (Voluntary Fund) to enable their effective participation in this Preparatory Committee. The Delegation underlined the importance of this Committee adding that Group B remained committed to contributing constructively to the finalization of the modalities necessary for the Diplomatic Conference.

18. The Delegation of Ghana, speaking on behalf of the African Group, congratulated the Chair and Vice-Chairs on their elections. It expressed gratitude to the Secretariat for its unwavering support over the previous two decades, which had engendered significant progress in achieving the mandate of the IGC, the highlight of which was the 2022 WIPO General Assembly's decision to hold the Diplomatic Conference. The Group welcomed the constructive spirit in which Member States had worked over the years, as well as the inclusive participation with which the whole ecosystem had evolved. The Group recognized the progress made at the Special Session and welcomed the constructive spirit that characterized the deliberations despite the divergent views that still needed to be reconciled at the Diplomatic Conference. Cognizant of the effort invested in the work led by reputable experts, negotiators, and participants, it emphasized that the constructive spirit should be maintained regarding the issues to be addressed at the Diplomatic Conference. It explained the role of Africa as home to a wealth of biological resources and systems that were nurtured and safeguarded for generations, and that these resources were not only of immense cultural significance, but held great potential for sustainable development, innovation, and the well-being of people. Given this, the Group wanted to strike a balance between the protection of intellectual property, and the sharing and preservation of genetic resources and traditional knowledge associated with genetic resources.

19. The Delegation stressed its Group's view that there was a misappropriation of genetic resources and traditional knowledge, often without fair and equitable sharing and expressed its commitment to formulating an intellectual property framework that would promote innovation, encourage research and development, and guarantee the protection of the rights of indigenous peoples and local communities. It called for political will on the part of all Member States to reach a mutually acceptable outcome at the Diplomatic Conference based on a balance of interests and with the view to adopting the treaty. It underlined its support for good faith, equity, and inclusivity at the upcoming Diplomatic Conference, for which it was preparing. The Delegation highlighted the need to forge a path that respected the rights of indigenous peoples

and local communities and that promoted innovation and ensured the benefits derived from genetic resources were shared to reflect our common humanity. The Group was committed to working collaboratively over the three days with all parties to establish the modalities of the Diplomatic Conference, as well as the Basic Proposal for the provisions of the treaty and concluded by asking delegations to pray for Morocco, given the devastation of the recent earthquake.

20. The Delegation of Poland, speaking on behalf of the Group of Central European and Baltic States (CEBS), congratulated the Chair on his election and expressed its confidence that his leadership and guidance for the work of the Preparatory Committee would be important for holding the Diplomatic Conferences in the following year. It noted that all relevant documents would be the subject of the Committee's work in the following days and took note of the decisions taken during the IGC Special Session that paved the way for the Diplomatic Conference. It expressed its readiness to discuss in depth, the draft final clauses for the instrument that were on the agenda in the following days. The Group also looked forward to discussing in detail the Draft Rules of Procedure for the Diplomatic Conference which defined modalities of work during that important meeting and hoped to achieve progress in matters related to the Diplomatic Conference, which was an important element in the context of planning the work ahead. It assured other delegations of the readiness of the Group to engage and looked forward to achieving a mutually acceptable outcome.

21. The Delegation of Iran (Islamic Republic of) delivered its statement on behalf of the Asia and the Pacific Group and congratulated the Chair and Vice-Chairs for being appointed to the Preparatory Committee of the Diplomatic Conference. It thanked the Secretariat and the Office of the Legal Counsel for all preparations leading to this important Committee. The Group believed that, after all the discussions that formed negotiations in the IGC Special Session, progress had been made in narrowing gaps and building a common understanding on issues relating to genetic resources and associated traditional knowledge. The Group believed in continuing the hard work to achieve an agreement to promote efficiency of the system and protection of genetic resources and associated traditional knowledge in a balanced and adequate manner. The Delegation highlighted that it was time to agree on the remaining administrative and procedural clauses of the international legal instrument in this Preparatory Committee of the Diplomatic Conference. The Group eagerly looked forward to the successful convening of the Diplomatic Conference and was committed to further engagement with regional groups and to bringing discussions forward while exercising flexibility and political will. It had inspected the list of observers to be invited and believed that the participation of indigenous peoples and relevant stakeholders in the Diplomatic Conference was essential to its work, and to ensuring its efficacy and efficiency to a sufficient level. The Delegation was hopeful that the work could be further expedited toward this goal. To this end, it would provide comments to be discussed in the Preparatory Committee and underlined its commitment to contribute to the work of the Committee.

22. The Delegation of China expressed its deepest condolences to the victims of floods in Brazil and of the earthquake that hit Marrakesh. It expressed solidarity with the families of those who lost their lives and with people living in affected areas and wished them a swift recovery. The Delegation congratulated the Chair and the two Vice-Chairs on their election. It also expressed its appreciation for the opening statements and thanked the Secretariat, especially the Office of the Legal Counsel and the Traditional Knowledge Division, for their extensive preparation. The Delegation noted that the Special Session of the IGC had engaged in intense

discussions and consultations on the text and that all parties demonstrated a certain level of flexibility, which advanced the negotiations to conclude the Instrument. It acknowledged that the meeting would discuss very important documents and emphasized the need to determine the host country, the dates and venue of the Conference. It stressed that, like the substantive articles of the Instrument, procedural and administrative items relating to the Diplomatic Conference would also determine the success of the Conference. The Delegation said that it would continue to engage in discussions in a constructive manner during the plenary and informal sessions and work together with all sides to push this Committee to a success.

23. The Representative of the European Union, speaking on behalf of its Member States, congratulated the Chair and Vice-Chairs on their election and thanked the Director General for his opening remarks, as well as the Secretariat for preparing this session. The European Union was positive that this Preparatory Committee would have a successful outcome in the preparation for the Diplomatic Conference. It noted that there had been an opportunity to discuss the substantive articles of the draft instrument and to make some advancement during the previous week. There was still work to do to finalize this treaty and the European Union was ready to engage in the process. The Representative said that the European Union generally supported the Draft Administrative Provisions and Final Clauses presented in document GRATK/PM/2, although some of them raised concerns and added that it would make its comments and remarks under Agenda Item 5. Furthermore, the European Union supported the Draft Rules of Procedure of the Diplomatic Conference proposed by the WIPO Secretariat and presented in document GRATK/PM/3. The Representative of the European Union underscored the European Union's commitment to engaging constructively during this Preparatory Committee.

24. The Representative of the Indigenous Caucus congratulated the Chair and Vice-Chairs on their election and thanked the Secretariat for organizing this meeting. The Representative highlighted the view that indigenous people required protections with respect to genetic resources and associated traditional knowledge, in line with their internationally recognized rights as expressed in the United Nations (UN) Declaration on the Rights of Indigenous Peoples. The Representative said that this draft Instrument represented progress in addressing gaps that currently existed in the patent regime regarding the interests of indigenous people and local communities. The Indigenous Caucus expressed its intention to continue to recommend constructive changes to the draft this week and looked forward to the support of Member States for its recommendations. It stressed that, on the eve of the Diplomatic Conference, Member States must respect the continued right of indigenous peoples and local communities to full and effective participation, and adequately address the concerns raised by indigenous peoples in this forum for decades. The Indigenous Caucus stated that the rules of procedure of the upcoming Diplomatic Conference should enable full and effective participation by indigenous peoples. Lastly, it thanked Australia, Mexico and Germany and the WIPO General Assembly for providing funding to enable indigenous peoples and local community representatives to participate in the upcoming Diplomatic Conference.

25. Observing that there were no further requests for the floor, the Chair gavelled the following decision paragraph:

26. The Preparatory Committee decided to incorporate in the Basic Proposal for the Diplomatic Conference, the agreements reached during the Special Session of the IGC as contained in document WIPO/GRTKF/IC/SS/GE/23/4.

ITEM 5 OF THE AGENDA

DRAFT FINAL CLAUSES FOR THE INSTRUMENT TO BE CONSIDERED BY THE DIPLOMATIC CONFERENCE

27. Discussions were based on document GRATK/PM/2.

28. Introducing Agenda Item 5, the Legal Counsel drew the attention of delegations to document GRATK/PM/2 entitled “Draft Administrative Provisions and Final Clauses for the Instrument to be Considered by the Diplomatic Conference.” The Legal Counsel recalled that when the WIPO General Assembly, at its Fifty-Fifth Session held from July 14 to 22, 2022, decided to convene the Diplomatic Conference, it further decided that this Preparatory Committee would approve the Basic Proposal for the administrative and final provisions of the treaty. She emphasized that the proposed administrative provisions and final clauses were modeled on the corresponding provisions of other WIPO-administered treaties, as the most relevant expression of the will and practice of WIPO Member States with respect to such provisions in international legal instruments. Moreover, the Legal Counsel explained that they took into account the relevant provisions, namely Articles 10 to 20, contained in the Annex to document WIPO/GRTKF/IC/43/5.

29. The Chair proposed to open the discussions on the specific articles by dealing with them one by one, starting with Article 10, which contained general principles on implementation, and recommended this Article for the consideration of delegations.

30. The Delegation of Switzerland, speaking on behalf of Group B, asked for clarification on whether it could make general observations about the Draft Administrative Provisions and Final Clauses at that time.

31. The Chair confirmed that the Delegation had the right to make general observations and encouraged other Groups to also take the floor at the beginning of the debate.

32. The Delegation of Switzerland, on behalf of Group B, clarified that it would make comments on the document GRATK/PM/2 and not on the Chair’s text, because it understood that the Draft Administrative Provisions and Final Clauses in document GRATK/PM/2 would replace those contained in document WIPO/GRTKF/IC/SS/GE/23/2. Group B generally supported many of the Draft Administrative Provisions and Final Clauses provided by the Secretariat, however, it believed that some changes were required in the Draft Administrative Provisions and Final Clauses to ensure that they were legally clear, inclusive, and internally consistent. First, in Article 11, the Group wanted to ensure that the Assembly created by this instrument was inclusive. In particular, the Delegation underlined that it was important that all Member States, whether party to the instrument or not at that time, could express their views. The Delegation acknowledged that, while Group B hoped that the future Assembly of Contracting Parties would take all decisions by consensus, it proposed that Article 11 require a majority of three-quarters for decision-making where consensus cannot be reached. The Group stressed that this proposal was consistent with previous precedents on this issue. It further requested the deletion of Article 11(2)(f), as this would mirror the revision process set out in Article 15 and noted that other parts of Article 11 may need further consideration and discussion. Second, the Group supported the specification in Article 18, of “30” as the number of eligible parties required for entry into force of the Instrument. Given the global impact of the

Instrument, the Group was of the view that it was imperative that applicants, other affected parties, as well as implementers, had appropriate time to prepare for the Instrument's requirements before its entry into force. As such, and in light of recent WIPO Instruments, the Group believed that a requirement for 30 eligible parties to ratify the Instrument before it would enter into force seemed more appropriate and stressed that this revised number should be carried forward into Article 19. Third, the Group disagreed with the introduction of Article 16 on amendment of Articles 11 and 12 in GRATK/PM/2, as it should not be possible to amend specific articles of the Instrument without following the revision process set out in Article 15. The Group stated that it was critical to ensure full and proper consideration of any proposed amendment at an appropriate level. Lastly, the Delegation stated that some of the members of Group B may make additional interventions on the Draft Administrative Provisions and Final Clauses.

33. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, stated that it was prepared to go through the text article by article, and wanted to know if it was possible to do so, as it had proposals on each of the articles. The Delegation said that it had no comment to make on Article 10, but it would have comments on Article 11 when it would be considered.

34. The Delegation of Ghana, speaking on behalf of the African Group, thanked the Secretariat for preparing document GRATK/PM/2. The African Group took note of some inconsistencies between the document and the Chair's text, which was the basis of the deliberations so far. The Delegation also informed that its Group would intervene on an article-by-article basis.

35. The Delegation of the Russian Federation was certain that, under the Chair's wise leadership, the delegations would be successful in sorting out the modalities of holding the Diplomatic Conference, which it called a historic decision. Furthermore, the Delegation of the Russian Federation expressed its deepest condolences to the Government of Morocco on the destructive earthquake. Turning to Agenda Item 5, the Delegation requested clarification from the Legal Counsel, in the context of the consideration of each article, as to which international treaties had been considered when specific provisions were developed.

36. The Legal Counsel explained that she would provide information as the debate proceeded article by article with respect to the origin of the language used. The Legal Counsel drew the attention of the delegations to the fact that all provisions were based either on the previous Chair's text or were modified based on the existing WIPO-administered treaties and treaty practice.

37. The Delegation of Nigeria had a procedural question that it wished to direct to the Legal Counsel, specifically. According to its understanding, the provenance of the text comes from the work of the Office of the Legal Counsel adding that that it was curious about procedures relating to how the main text replaced the Chair's text. The Delegation asked what the mechanism was for replacing the text from the Chair with the current document GRATK/PM/2, as delegations did not have an opportunity to consider it.

38. The Legal Counsel recalled that the mandate given to the Preparatory Committee by the WIPO General Assembly was to adopt the Basic Proposal for the Administrative Provisions and Final Clauses. For each Diplomatic Conference that WIPO organized, the Secretariat prepared a text for consideration by the Preparatory Committee. She emphasized that it was only a draft for consideration by Member States, and ultimately for negotiation and adoption by the Diplomatic Conference itself. The Legal Counsel drew the attention of delegations to the fact that the text replicated, or represented, an accumulated WIPO practice and well-established treaty law and principles of other WIPO-administered treaties.

39. The Delegation of Nigeria clarified its question by explaining that the Chair's text was the basis of the work of the Special Session of the IGC during the previous week, and that the Chair's text was replaced by the current document GRATK/PM/2. The Delegation stressed that it was done without consideration or discussion by delegations and its Delegation was curious to know if there was a formal mechanism by which the Secretariat's text became the basis for discussion. Otherwise, it seemed to the Delegation that there were two competing documents, that is, the Chair's text and this draft text and it therefore wished to know what the mechanism was for making the switch. It noted that some provisions in the current document GRATK/PM/2 were, in fact, materially different from the Chair's text and explained that, in its view, it was not just about accumulated practices in the house or general principles of international law. The Delegation was of the view that it would be helpful to make sure that there were no competing documents and to have a process by which delegations replaced one text with the other and were constitutionally delegated to begin discussions appropriately.

40. The Chair recalled that there was a certain established practice that the Basic Proposals on the Draft Administrative Provisions and Final Clauses were presented, under the authority of the Director General, to diplomatic conferences. He stated that if delegates verified the past practice, they would see that it had happened. He then referred the other question on the role and status of the Chair's text under the decision of the General Assembly to the Legal Counsel.

41. The Legal Counsel recalled a number of factors that were relevant to this question, including the fact that Administrative Provisions and Final Clauses were not reviewed in the context of the deliberations of the Special Session. The Legal Counsel drew the attention of delegations to document WIPO/GRATKF/IC/43/5, also called the Chair's text, in which a footnote after Article 10 stated, "Note from the Chair: I have adapted the final and administrative clauses (Articles 10 to 20) from other existing WIPO treaties. I recognize that they have not yet been discussed before by the IGC and that they would still need to be formally considered and reviewed by Member States and the WIPO Secretariat. Therefore, each of these articles is bracketed." That was the conclusion by the Chair in respect of those provisions. She then recalled Rule 6 of the General Rules of Procedure of WIPO whereby each item of the agenda would be accompanied by a working document presented by the Secretariat. It was stressed that the Secretariat was fulfilling its obligations under the rules and in full faith and practice with respect to what was and what was not was discussed within the IGC with respect to the Administrative Provisions and Final Clauses. The Legal Counsel stressed that these clauses were presented here for consideration by delegations, and they were not final, therefore they were subject and open to debate and discussion, prior to becoming the focus of the negotiations and adoption by the Diplomatic Conference.

42. The Delegation of Nigeria explained that in the interest of time it needed to move forward, however, it wanted to note for the record that the Legal Counsel's explanation was understood, and it saw the rationale behind it. The Delegation noted that the outcome was substitution of one text for another, without a process that would allow Member States to fully evaluate both the Chair's text and these material changes. For that reason, it understood that the delegates were dealing with one text and a shadow text and expressed the view that it would be helpful to know at what point the delegations could accept provisions in the Chair's text versus the current draft. The Delegation also asked what the working process would be for these two competing texts, adding that this was the challenge that its Delegation was facing. The Delegation further stated that Rule 6 certainly allowed the Secretariat to make a proposal, however, it noted that these were not just proposals, but an entire substituted text. The Delegation expressed the need for clarity in case of a conflict between the Chair's proposed text and what the Secretariat had proposed, in other words, which text took precedent for the purposes of deliberations among the delegations.

43. The Chair proposed that the Committee wait to see if there would be any instances where the comparison of the earlier version of the text and the current proposal would have some significant differences that should be considered.

44. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, noted that the form was as important as the substance, particularly when delegations were very close to achieving objectives. With that in mind, GRULAC wanted to make a couple of proposals regarding the methodology and to clarify one or two other issues related to it. First, it proposed that the text should be displayed on the screen; and second, it noted that there were two texts as was pointed out earlier. Its Group therefore proposed that each time delegations analyzed an article, they could be informed by the Secretariat what changes were made to the article compared with the original proposal in the Chair's document, and the logic behind the changes that would, in turn, help to make the analysis easier. Third, and this was a specific question, GRULAC wished to know how the delegations would deal with each proposal, pointing out that, during the previous week, any proposal that did not have consensus was deleted and asked if the same process would be followed during this meeting.

45. In relation to the last question by GRULAC, the Chair stated that it was possible that this procedure would be the simplest procedure for this meeting, however, he proposed to wait and see how the debate on articles would evolve. On the question of whether there could be text on the screen, the Chair said that he would consult with the Secretariat.

46. The Delegation of Switzerland thanked the Chair and GRULAC for asking important questions. On the last question regarding whether the same methodology as the previous week should be adopted, meaning that, without consensus, the suggested changes would not be adopted, the Delegation kindly requested that Group Coordinators be given the possibility to consult with their Groups before a decision is taken.

47. The Chair noted that it was a reasonable request that also concerned other groups that were interested in the procedural aspect of their deliberations, but he wanted to see whether there would be other issues for consultation among the Groups. The Chair then recognized a request for the floor from a non-governmental organization, the Mbororo Social and Cultural Development Association (MBOSCUA).

48. The Representative of MBOSCUDA thanked the Chair and expressed deep condolences and solidarity with the Government and the people of Morocco following the deadly earthquake that happened on the previous Friday night. MBOSCUDA congratulated the Chair for his election to conduct the affairs of this special preparatory session for the Diplomatic Conference. It acknowledged the long process of negotiation of this legally binding instrument and noted that this process was almost at its logical conclusion by adopting an all-inclusive, legally binding instrument that would leave no one behind. MBOSCUDA called for the effective participation of indigenous peoples during the upcoming Diplomatic Conference, and quoted the saying, “nothing for us without us.” It stated that it was humbly appealing to the WIPO General Assembly and Member Delegates to facilitate the participation of indigenous people during the upcoming Diplomatic Conference and added that it may comment on some articles, especially Article 11, at a later point.

49. The representative of ADJMOR was of the view that the international legal instrument should ensure an effective balance between innovation and the need to protect genetic resources and traditional knowledge associated with them. It was essential that the parties to this Instrument agree on a transparent and inclusive monitoring or evaluation mechanism that would enshrine the principle of accountability in its implementation. Inclusive and participatory mechanisms at the national, regional and WIPO levels could also be envisaged, as a means to highlight the strengths and weaknesses of the Instrument, making it possible to make adjustments as needed. The representative sincerely hoped that the International Legal Instrument would foster a sound cooperative spirit between the parties involved to promote strengthened protection of genetic resources and traditional knowledge associated with them, as well as fair arbitration.

50. The Chair reiterated that the Committee had commenced discussions on an article-by-article basis of the Draft Administrative Clauses and Final Provisions, and invited delegations to focus their attention on those articles. Recalling that the Committee had started considerations from Article 10 on General Principles on Implementation, he invited delegations to take the floor on that substantive item.

51. The Delegation of Ghana noted that its intervention went back to the issues discussed earlier regarding the status of the proposals in the Chair’s text vis-à-vis those that were before the delegates. It explained that the general summary mandated that it be used as the basis of the negotiations of the Chair’s text. The Delegation said that, during the deliberations the previous week, delegations were only invited to comment and agree on the first nine Articles, so procedurally and as a matter of law, its Delegation expected to start with the examination of the remaining articles in the Chair’s text. It considered that this approach would be consistent with the mandate given by the General Assembly. Having said that, the Delegation did not see any difficulty with working with the text proposed by the Secretariat, however, it believed that it had to be very clear to all parties what the key provisions of the Chair’s text were. The Delegation said that this information would allow them to contrast it with any additions and subtractions that may have been made to the Chair’s text in the context of the document presented by the WIPO Secretariat. It saw the merits of having two sets of proposals to work with, that is, proposal one would be the full text of the remaining Articles in the Chair’s text, and proposal two would be that developed by the WIPO Secretariat. The Delegation proposed to have, in the text prepared by the WIPO Secretariat, certain track changes to easily and quickly see where certain changes were made.

52. The Delegation of Samoa took the floor for the first time and congratulated the Chair and the Vice-Chairs on their appointment to preside over this very important meeting of the Preparatory Committee. It expressed confidence in the Chair's guidance, together with the able support of the Vice-Chairs, to effectively control the affairs of the following days and thanked the WIPO Secretariat for the preparations for this meeting. The Delegation explained that one of the difficult struggles in Samoa, as well as in other Pacific Island countries, was the need for appropriate resources for implementation, specifically once the international instrument was ratified or acceded to. The Delegation reiterated the need for capacity building to establish the required systems and noted that other international instruments had provisions concerning the issue of technical cooperation. Therefore, the Delegation asked whether it would be fitting to adopt such a provision as part of the administrative clauses, more specifically Article 10, given the lack of necessary expertise in the majority of Pacific Island nations, including Samoa.

53. The Delegation of Nigeria expressed support for the text of Article 10 adding that it had one comment about Article 10(2). Referring to the Chair's text, the Delegation suggested eliminating the plurality in the words, "systems and practices". It believed that doing so would enable a convergence between the Chair's text and the Secretariat's text. The Chair's text was in plural, and the Delegation of Nigeria proposed to consider it in singular form so that there could be some coherence.

54. The Representative of the European Union affirmed its support for the current drafting of Article 10, as well as of Article 10(2). The European Union considered the provision to be essential for the correct implementation of the Instrument.

55. Thanking the Representative of the European Union, the Chair noted that the working method of the Committee, consisting of an article-by-article approach, was established. The Chair took note of the suggestion by the Delegation of Nigeria and advised that, as it was a proposal, it should be considered by other delegations and if there was support for it, it should be considered properly.

56. The Delegation of India, speaking for the first time, congratulated the Chair and the Vice-Chairs for their election as officers of the Preparatory Committee. In respect of proposals regarding Article 10, the Delegation pointed out that it had proposed modifications and the insertion of a new Article 10, under its proposal in document WIPO/GRTKF/IC/SS/GE/23/3, which was part of discussions under the Special Session of the IGC during the previous week. The basis of Article 10, it noted, was to provide flexibility to Contracting Parties to determine appropriate methods of implementing the provisions of this Instrument within their own legal systems and practices. Additionally, in line with the principle of minimum standards under all major international IP instruments, the Delegation proposed a new Article 10(2), which would read as follows: "The Contracting Parties may provide for more extensive obligations than is required under the instrument, either prior to or subsequent to entry into force of the instrument." Given the divergences that currently exist under the substantive provisions of the draft Instrument under Articles 1 to 9, the Delegation was of the view that the Instrument, at best, would provide for minimum standards for implementation of transparency provisions, leading to disclosure obligations with respect to genetic resources and traditional knowledge. However, given that several countries already had disclosure regimes operating under their national law, it would be essential to allow Member States to retain a degree of policy space to implement the disclosure obligations subsequent to the entry into force of the Instrument. Therefore, its Delegation proposed a specific clause allowing for Contracting Parties to go beyond these

minimum standards without unduly impacting the benefits of harmonized international standards and asked for the advice of the Office of the Legal Counsel on the proper placement of the provision.

57. The Delegation of the United States of America started by congratulating the Chair on his election and expressed its Delegation's strong support for WIPO's mandate of promoting the protection of intellectual property throughout the world. Turning to the text, the Delegation noted that all of its comments on administrative articles were directed to document GRATK/PM/2. Following the methodology laid out by the Chair, the Delegation stated that Article 10, as currently drafted, was unremarkable. However, in the Delegation's view, the language proposed by the Delegation of India for a new provision in Article 10(2) would undermine a critical goal of the Instrument and of any treaty, that being the predictable and consistent implementation of operative text across the various intellectual property systems of contracting parties. The Delegation accentuated the need to aim for this goal and added that instead of supporting this goal, the proposed new text in Article 10(2) would take Members in the opposite direction. The Delegation further stated that Article 10 had open-ended language that promoted not one disclosure regime, but a patchwork of disclosure regimes with various rules and associated costs. In this regard, India's proposal departed from the balance struck in the Chair's text between enhanced transparency and the imposition of a clear disclosure burden. The Delegation proposed its own amendment to Article 10 by adding a new paragraph as Article 10(3) which would read as follows: "In relation to genetic resources, or associated traditional knowledge, no Contracting Party shall require a patent applicant, or rights holder, to comply with any requirement different from, or additional to, those which are provided for in this instrument." The Delegation affirmed that this approach would provide the legal certainty needed for an effective Instrument and explained that, moreover, similar language was used in previous WIPO treaties.

58. The Delegation of Japan congratulated the Chair and the Vice-Chairs on their election as officers for this important Committee. In addition, the Delegation thanked the Secretariat for its hard work in arranging this meeting and expressed its willingness to engage in constructive discussion during the session. Regarding Article 10, the Delegation supported the statement made by the United States of America and respectfully objected to the proposal made by the Delegation of India. Further, as its Delegation mentioned at the Special Session, it considered that Article 3 and Article 6, for example, set a ceiling on the disclosure requirement, sanctions and remedies. Lastly, the Delegation expressed Japan's heartfelt condolences to the victims of the earthquake in the Kingdom of Morocco and their families, noting that many people had been injured or killed by the earthquake that occurred in the central part of the country and expressed its sincere prayers for the quick recovery of those affected as well as for the prompt reconstruction of the affected areas.

59. The Delegation of Venezuela (Bolivarian Republic of) raised a point of order and stressed that it had instructions from GRULAC according to which the debate should not continue unless there was a clear methodology, and in its Group's view, it could not follow the methodology used during the morning session. The Group believed that the rigid methodology used during the previous week had brought success, and that the current meeting should follow a similar, rigid methodology so that it could also be successful. GRULAC considered it essential to have the text on the screen, even if delegates also had it in front of them, as had been the case during the previous week. The Group stressed the importance of delegations having the two texts before them so that delegations could know exactly what they discussed and reiterated

that this was why methodology was so important. GRULAC wanted to make the best possible use of time available to the delegations but did not wish to continue unless its Group was totally clear about the methodology to be followed and believed that any brief delay would help in the future. It noted that the meeting had several proposals already on the table, and wondered what would be done with them and asked if proposals would be put into brackets, or whether the Preparatory Committee would put forward the text full of brackets to the Diplomatic Conference while, during the previous meeting, many proposals ended up discarded. The Delegation stressed that its Group asked this question because methodology was so important.

60. The Chair noted that some very important points were made and that the request to clarify the methodology was justified. After consultation with the Secretariat, the Chair proposed a break for WIPO Groups to meet, which would be followed by a meeting between the Chair and the Group Coordinators to discuss the working methodology ahead. The Chair hoped that this would satisfy the need for clarification concerning the working methodology and announced that after the break, all requests for the floor would be recognized.

61. The Chair reopened the session after a break and thanked everyone for their patience. The Chair recalled that the main part of the day had been spent in informal consultations between the Secretariat and Group Coordinators, accompanied by one person. One of the first items, the Chair said, had been to clarify what was in fact the official basic text of this Committee. In this regard, the Chair reported that the conclusion was that document GRATK/PM/2 was the working document. According to the custom, the Administrative Provisions and Final Clauses were prepared by WIPO's Office of the Legal Counsel, which was the most competent unit to prepare such clauses.

62. He also recalled that there were at least two rounds of discussion on how divergences of opinion were to be reflected in the draft Basic Proposal that would be delivered to the Diplomatic Conference or carried forward for further consideration. In the methodology of the previous week, which the Chair called an "agreement methodology," the proposals made by delegations were displayed on the screen, and if there was no agreement, they were removed from the screen and from the documents. However, the Chair explained that, in this Committee, any proposals made would be reflected in a verbatim report of the plenary session that would contain everything that was said, including the proposals, and their exact wording. In summary, he explained that there would be very precise documentation regarding the deliberations of this Committee and, using the agreed methodology, nothing would be lost. He also took note of the discussion concerning how suggestions made would be tracked.

63. The Chair also recalled that there was a question regarding the difference, if any, between footnotes that would be integrated in the working document, and a document that would include information as to what was discussed in the context of each article. He noted that it would not make much difference for a Diplomatic Conference, whether footnotes would be in the Basic Proposal or text in a separate information document. The Chair reminded delegations that they would be free to make proposals at the Diplomatic Conference itself. He further explained that proposals could be prepared in advance, then consulted on and coordinated between delegations, or even between WIPO Groups, and be submitted, at the Diplomatic Conference. Turning to the discussion about whether proposals could be reflected in the Basic Proposal by using square brackets, the Chair's view was that sometimes such text containing square brackets was rather difficult to read.

64. The Chair suggested that the text under discussion would be put on the screen, and that the same “agreement methodology” be followed as during the previous week. He also reminded delegations that the proposals and suggestions been made in the course of discussions would be contained in the verbatim report.

65. The Delegation of Switzerland thanked the Chair for the very useful summary of discussions, which was much appreciated. Commenting on the issue of bracketed text, the Delegation’s understanding of the discussion that afternoon was not to include new options in brackets, but to only bracket those parts of the existing text of GRATK/PM/2 that did not enjoy consensus. The Delegation clarified that there would be brackets around the text without consensus, and the positions of delegations would be reflected in the verbatim report. This meant that the brackets would not increase the volume of text and would not lead to the bulky kind of document that the Chair was referring to earlier. In other words, the existing text would not be lengthened, it would only be bracketed. For informational purposes, delegations could refer to the verbatim report for the exact positions of delegations in relation to the bracketed text. This was the understanding of its Delegation, and it was of the view that it would merit further reflection.

66. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, thanked the Chair for his summary of the debate and added that the Delegation wanted to make clear the position of GRULAC. First, GRULAC recognized document GRATK/PM/2 as the basis for negotiations; second, it wanted to follow the methodology used during the previous week and pointed out that the Group did not agree to the use of brackets. It wanted the text that would result from this week to be balanced with the text of the previous week, while pointing out that the Group believed that delegations should arrive at the Diplomatic Conference with a coherent, unified text. The Group recalled that the language that delegations approved in the morning session, which was from the previous week, had only a single bracket that appeared twice. The Delegation explained that it could not submit the document full of brackets to its respective national authorities; however, it did agree that, during that week, there would only be plenary sessions, which meant that everything that was said would be recorded. The Delegation said that it had agreed to accept notes regarding proposals or suggestions on the text of the Draft Administrative Provisions and Final Clauses and that the notes should be in an information document, which should be the same as was done the previous week. It recalled that, during the previous week, it had been agreed that the notes to the Chair’s text – which was no longer the Chair’s text but rather the text that was being taken to the Diplomatic Conference and approved by all – would be removed from that document and placed in an information document. This meant that the first part of the substantive text was accompanied by an information document with notes. The Group did not see any impediment to having the same thing during the week, being an information document with notes, and believed that this would respond to the concerns expressed by Group B. It stated that it was not GRULAC that was holding up the work of this meeting and explained that the Group asked for a working methodology because that was only logical. Its Group did not want to start discussing other issues, however simple they may be, before such a working methodology had been established because the working methodology for the meeting had to be coherent for all items on the agenda. The Delegation stated that there was a single Group that still had difficulties with the methodology, and that it had offered the possibility of a solution with an information document with notes. It reiterated that all their positions would be seen at the Diplomatic Conference together with all those points made by the Group’s respective countries, which were not included in the document from the previous week, but which would need to be presented once

again. It further stated that all Member States going to the Diplomatic Conference had a sovereign right to present their position at the Diplomatic Conference and wondered why delegations should paralyze the process when there were only two days left for the Preparatory Committee meeting.

67. The Delegation of Brazil expressed its strong support for the statement made by the Delegation of Venezuela on behalf of GRULAC. The Delegation's recollection from the informal meetings was that delegations would discuss the methodology first and would then proceed with the business. It stressed that it was very important and key for the success of this negotiation to have a clean text to be analyzed during the Diplomatic Conference and recalled that this was the mandate given by the General Assembly and that it was a serious matter. The Delegation emphasized that coherence, consistency, and responsibility of the process were of essence. It stated that it was not preventing the process but was trying to unlock the process in this Preparatory Committee, and delegations had shared responsibility regarding the extent to which they were locking or unlocking the negotiation. The Delegation wanted to put on the record its position that it had already compromised on a series of provisions during the previous week, when a different methodology –a methodology that some Member States were not too fond of – was accepted as progress. It stressed that delegations had a responsibility to this process, and that brackets were never mentioned in that discussion, adding that the Committee had a mandate to narrow gaps, not to widen them or provide brackets to the text. The Delegation reiterated that this did not exclude the opportunity for every Member State in this plenary to take proposals to the Diplomatic Conference, because that was where the game would be played. It proposed to proceed to the Diplomatic Conference, sticking and abiding by the mandate that all Member States in the General Assembly approved. It suggested that, when the crunch comes, the Committee put forward the proposals to the Diplomatic Conference, which will then be negotiated in good faith therein. The Delegation stated that stalling or hijacking the process at the Preparatory Committee would not advance their objectives and asked delegations to be serious about the possibility of losing something, but reminded them that they had an opportunity to propose progress at the Diplomatic Conference. It pointed out that the Committee could not contradict the mandate generated by the General Assembly by loading the text with every single proposal. The Delegation considered that this was spoiling the process and that the Rules of Procedure were important to guarantee that the process would have the legitimacy needed to go forward. It stated that the Committee had a responsibility not only toward Member States and capitals, but also to observers, indigenous peoples, and local communities, and stressed that this was a very important Diplomatic Conference, and it did not want to lose this opportunity. It apologized for extending its intervention, because it considered the Committee was prevented from dealing with important intellectual property matters, but also had a lot to do with multilateralism, the ability to compromise, sustainable development and human rights. The Delegation reiterated that the meeting had a clear mandate, that the responsibility of conducting this process was in the hands of the Chair, and that the meeting needed to keep that in mind in order to reach the Diplomatic Conference as mandated by the General Assembly. The Delegation thanked GRULAC and the Groups, that were the majority in informal consultations, that wanted to see progress in the negotiation.

68. The Delegation of Switzerland thanked the Chair and, in response to the last intervention, insisted that Group B had no intention to delay or stall the process, but it had legitimate concerns that it felt should be reflected. It pointed out that Group B had worked with other delegations and Groups seriously for the whole day and that it was willing to continue doing so. It considered that any allegation of Group B wanting to stall or delay the process was misplaced.

and asked colleagues to kindly refrain from using such language in the future and affirmed that the Chair could rely on the Group's serious engagement in that matter.

69. The Chair thanked the Delegation of Switzerland for the assurance of the goodwill of its Group, and expressed the belief that all delegations were acting on the basis of goodwill. The Chair invited GRULAC to consider whether the different subject matter under different items could use a different methodology. The Chair observed that producing, approving, and deciding on a text was one part of the business, while approving standard letters of invitation and lists of invitees, as well as deciding on the place and date of a Diplomatic Conference, was methodologically different.

70. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, pointed out that it did not want to leave the impression in the room that it was GRULAC that should take a decision on methodology, while noting that this was a question of principle for GRULAC. The Group would be happy to convene its Member States to see whether it could, as a matter of courtesy, take on board the Chair's suggestion, however, it believed that this would not solve the problem. The Delegation imagined that the Committee could deal with the two items within half an hour on the next morning; however, without a methodology, or on the basis of the logic that the only methodology is consensus or no consensus, the text would be approved or not approved. In the Group's view, this would bring the Committee back to the same position in which it was now, and it reiterated its request that delegations avoid the impression that this was GRULAC's decision to take, because it was not.

71. The Delegation of Algeria expressed its concern about the lack of progress on that day. The Delegation was surprised by the turn taken by the discussions, because it expected that these were standard provisions that would be constructively and easily discussed and approved as they exist in each and any known treaty. It felt that it was important to act in good faith in these negotiations and that deadlock would not be in the interest of any party. The Delegation also observed that the Secretariat had made very important efforts to come up with balanced, relevant, impartial, and neutral provisions according to the mandate given by the General Assembly and that it was the delegations' duty to trust the expertise of the Secretariat in coming up with these provisions. It said that delegations could not put the work of the Secretariat into question and bring in new perspectives while they were supposed to reach a compromise and to achieve a good outcome based on the mandate given to the Committee. The Delegation called on all Member States to show flexibility and leave this rigid stance behind because it would only impact the delegations' deliberations and it was not a good sign for going forward. The Delegation was sure that the Committee could work based on compromise and consensus. It noted that some ideas had been shared, and it welcomed the proposal by Switzerland to try to find a way forward based on the bracketed paragraphs that delegations could not agree on, while leaving the text intact and preserving it as it was. There were some issues that delegations could perhaps come back to at the Diplomatic Conference but, in the Delegation's view, the Committee's utmost priority should be to sort out as many provisions as possible to make the task easy at the Diplomatic Conference. The Delegation hoped that delegations would go back to their respective Groups and try to work together to find a mutually acceptable solution for the benefit of all the parties and to take on board all the concerns that were tabled that day.

72. The Delegation of Morocco congratulated the Chair and the Vice-Chairs on their election and thanked the Secretariat for the documents. The Delegation stated that it was not intervening on the subject matter of the discussions. However, the Delegation did not want to end the day without taking the floor in light of the fact that Morocco had been mentioned several times during the day, mainly with people expressing condolences for the appalling earthquake that hit the country the Friday before. The Delegation expressed its thanks to the Director General and all those delegations and organizations who expressed their solidarity with Morocco and with the victims, as well as all the delegates and colleagues who expressed their sorrow and sympathy.

73. The Chair stated that, on behalf of all participants, their hearts were with Morocco. He announced the conclusion of that day's deliberations, adding that delegations would engage in Group consultations on the following day. The Chair noted that without the Groups working together, the meeting would not be able to achieve any results. He stressed that the Groups were doing something very important, and he encouraged them to consider where they could show some flexibility on the following day. With this invitation, the Chair closed the day's work.

74. Opening the second day of the Preparatory Committee, the Chair thanked the delegations that had participated in the intensive consultations as well as those that had patiently waited for deliberations on the Draft Rules of Procedure to begin. Noting that the previous day had offered important clarifications, he stated that the Committee could now turn to the substance of its work, particularly in light of its time constraints.

75. The Delegation of Switzerland, speaking on behalf of Group B, thanked the Chair and fellow Group Coordinators for their cooperation. The Delegation announced that Group B was prepared to adopt the working methodology from the previous week's IGC Special Session, whereby texts reviewed by the Committee would only be forwarded to the Diplomatic Conference if approved by consensus. The Group also wished to have an information document prepared by the Secretariat to reflect the views expressed by the delegations on each article of the Draft Administrative Provisions and Final Clauses and on each rule of the Draft Rules of Procedure. As such, for each article and rule, the information document would contain references to certain delegations that expressed concrete views about amendments. This method would highlight the articles and rules deserving further deliberation and make the views expressed with respect to those provisions more easily accessible than in the verbatim report. The Group suggested that the Secretariat be responsible for creating that information document and making it available to the delegations so that they could verify whether the positions reflected in that document were accurate.

76. The Delegations of Ghana, speaking on behalf of the African Group, and Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, expressed their agreement with Group B's proposed working methodology.

77. The Delegation of Iran (Islamic Republic of), speaking on behalf of the Asia and the Pacific Group, stated that the Group was open to Group B's proposal but that it had not been consulted about the proposal or provided with a copy either before or after the plenary meeting. The Delegation thus announced that it had to convene two meetings to convince its Group to move forward with the proposal. Aside from this inconvenience, the Delegation affirmed that its Group was open to the proposed working methodology but had to consult to move forward with the proposal.

78. The Delegation of China thanked Group B for its statement and expressed agreement with the proposed working methodology.

79. The Delegation of Poland, speaking on behalf of CEBS, extended its thanks to all Group Coordinators and announced its agreement with the proposed working methodology.

80. Seeing no objections, the Chair observed that the method for proposing the text to the Diplomatic Conference would resemble the approach of the previous week's IGC Special Session. The consensus text would be delivered to the Diplomatic Conference, and proposals that were made but not approved would be contained in an information document that would enable delegations to recall instances of disagreement to prepare themselves for further deliberation at the Diplomatic Conference. The Chair then reaffirmed that the delegations would continue to have the opportunity to make proposals at the Diplomatic Conference.

81. The Delegation of Algeria associated itself with the statement delivered by the Delegation of Ghana, on behalf of the African Group, and asked the Coordinator of Group B to clarify whether the information document would be a stand-alone document or an annex to the verbatim report, adding that it preferred to include the document as an annex to the verbatim report.

82. In response, the Delegation of Switzerland said that, in its understanding, Group B could be flexible on how the document would be published.

83. Noting that the Delegation of Algeria and all members of the African Group expressed a preference, the Chair stated that the information document could take the form of a stand-alone document if nothing else was agreed upon. He asked if the meeting could accept this and reminded the delegations that the issue could also be decided later.

84. The Delegation of Algeria reaffirmed that its preference was to have the document published as an annex to the verbatim report, not as a stand-alone document.

85. The Chair thanked the Delegation of Algeria for this reminder of its position which was well understood by all.

86. Having established the working methodology for the Preparatory Committee, the Chair then invited delegations to come back to the substantive discussions on Agenda Item 5, which were based on document GRATK/PM/2.

87. The Chair invited delegations to take the floor to indicate whether they agreed with the five or six articles that were seemingly straightforward and referred specifically to Article 17 "Signature", Article 20 "Denunciation", Article 21 "Reservations", Article 22 "Languages", and Article 23 "Depository".

88. The Delegation of the United States of America said that its Delegation had comments on Article 20 and pointed out that it had significant concerns about implementing Article 20 as it was currently drafted. In particular, the Delegation referred to the last sentence of the Article, which the Delegation believed would require IP offices to comply with the instrument for many years after a denunciation took effect. The Delegation explained that this was because patent filings could have lengthy pendency, continuations, and other continued prosecutions, and thus,

applying the obligations of this treaty to these applications following denunciation could be very burdensome. It further noted that this concern was particularly acute for small patent offices, and for this reason the Delegation proposed the deletion of the last sentence of Article 20, which read "It shall not affect the application of this Instrument to any patent application pending and any international registration in force in respect of the denouncing Contracting Party at the time of the coming into effect of the denunciation."

89. The Delegation of Canada congratulated the Chair on his election and thanked him for his work thus far and expressed support for the intervention made by the Delegation of the United States of America.

90. The Delegation of the United Kingdom congratulated the Chair and his Vice-Chairs on their election and thanked the Director General and the Assistant Director General for their opening remarks, as well as the Secretariat for its work leading up to the Preparatory Committee. Its Delegation looked forward to constructively engaging with Member States during the week's discussions and remained committed to finding a balanced, consensual, and workable solution as they neared the Diplomatic Conference. In relation to Article 20, the Delegation supported the intervention made by the United States of America.

91. The Delegation of Japan stated that it supported the statement made by the United States of America and asked the Secretariat to clarify the meaning of "international registration" in the final sentence of Article 20.

92. In response, the Chair said that if that sentence was eliminated, then of course the explanation for its deletion would be found in the verbatim report.

93. The Delegation of China noted that no reservations were permitted under Article 21, whereas that was not the case under the Patent Cooperation Treaty (PCT) and the Patent Law Treaty (PLT).

94. The Chair clarified that the meeting was not currently dealing with Article 21 on reservations but with Article 20 on denunciation on which the United States of America had made a proposal that was supported by Canada, the United Kingdom, and Japan. He suggested that the meeting consider Article 20 before turning to Article 21 on reservations.

95. The Delegation of Ghana stated that it simply wished to request a clarification from the Legal Counsel. The Delegation noted that the interventions made regarding Article 20 seemed to be dealt with specifically under Article 70 of the Vienna Convention on the Law of Treaties (VCLT). The Delegation noted that Article 70 of the VCLT states that if a party denounces a treaty, the VCLT "[...] does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination." The Delegation stated that it viewed the second sentence of Article 20 to simply restate that well established legal principle. The Delegation sought clarification from the Legal Counsel as to whether that interpretation was valid and added that if its analogy to Article 70 of the VCLT was valid, there was no need to delete the second sentence of Article 20.

96. The Legal Counsel responded that, as a point of reference, the language in the second sentence of Article 20 was also found in other WIPO treaties, including the PLT, Trademark Law Treaty (TLT), the PCT, the Singapore Treaty on the Law of Trademarks (Singapore Treaty), and the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (Geneva Act of the Lisbon Agreement). The Legal Counsel then confirmed that under Article 43 of the VCLT, “[t]he invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation as a result of the application of the Vienna Convention or of the provisions of the treaty, shall not in any way impair the duty of any state to fulfill any obligation embodied in the treaty to which it would be subject under international law, independently of the treaty.”

97. The Delegation of Venezuela (Bolivarian Republic of) commenting on Article 20, on behalf of GRULAC, expressed that while deleting the reference to “international registrations” would be logical, it would not be for pending applications. GRULAC therefore could not accept the deletion of the sentence.

98. The Delegation of the Republic of Korea congratulated the Chair and his Vice-Chairs on their election and thanked the Secretariat for the preparation of the working document. While pledging to participate in the Committee in a constructive and inclusive manner, the Delegation wished to align itself with the proposal made by the Delegations of the United States of America, Japan, and other delegations regarding Article 20,

99. The Delegation of Nigeria wished to ask the Legal Counsel for clarification regarding her reference to Article 43 of the VCLT. In the Delegation’s view, that rule was not the rule raised by the Delegation of Ghana nor the rule of international law. It pointed out that the question that required clarification was whether an applicant who was bound by a treaty could then avoid obligations of that treaty following denunciation. The Delegation noted that this question required clarification from the Legal Counsel because its understanding of the intervention by the Delegate of the United States of America was that the elimination of that last sentence would mean that someone who is under an obligation to disclose may avoid disclosure simply by the act of denunciation even though the patent was already in the prosecution phase.

100. In response, the Legal Counsel stated that the text of Article 20 was self-evident. She reminded the delegations that any denunciation shall not affect the application of the Instrument to any patent application pending and any international registration in force in respect of the denouncing party at the time of the coming into effect of the denunciation. The Legal Counsel pointed out that without restating the provision itself, she believed it was relatively clear in terms of the inability to avoid the scenario mentioned by Nigeria if the second sentence were to be removed.

101. The Delegation of Uganda expressed its appreciation for the work of the Chair and the Secretariat. Noting that the Legal Counsel must have had a useful reason to include the second sentence of Article 20 in GRATK/PM/2, the Delegation requested the Legal Counsel to clarify why that sentence was included and what would happen if the sentence were deleted.

102. The Legal Counsel reaffirmed that the provision was added in respect of the substance of the treaty, modeling it on other related treaties, for example the PLT and added that it was up to delegations to negotiate the inclusion or lack thereof.

103. The Delegation of Nigeria stated that it agreed with the Legal Counsel that the appropriate interpretation of Article 20 was self-evident. In light of the VCLT which, in the Delegation's view, had a well-established history with respect to denunciations and their effect, the denunciations take effect but do not retroactively cancel the legal obligation of the treaty. The Delegation doubted that a WIPO instrument could contravene the Vienna Convention on the Law of Treaties and thus expressed that it could not legally support the proposal by the United States of America. It added that while Contracting Parties could terminate or denounce the treaty within their national borders, international treaties themselves must be consistent with international law. Therefore, its Delegation could not support the deletion of a provision that was consistent with international law, required by international law, and consistent with the customs of the house and other intellectual property treaties passed in the house.

104. The Chair thanked the Delegation of Nigeria, noted that its statements strengthened the objection to deleting the clause, and observed that there was support for the deletion but clear objection as well.

105. The Delegation of Switzerland, while noting that the second sentence had been drawn from existing agreements such as the PLT, asked why the term "international registration" had been included and whether, in the specific context of this instrument, it should instead simply refer to "any registration".

106. After a brief pause, the Chair announced that there had been consultation on how the Committee would record its decisions concerning consideration of the Articles. He summarized that he had submitted the five articles for approval and noted that there had been a proposal to delete the second sentence of Article 20. He stated that if there were no other objections, the Preparatory Committee would adopt the five Articles as they stood in the working document. Meanwhile, the information document would record the proposal to delete the second sentence of Article 20. The Chair asked if the delegations could approve the five articles in document GRATK/PM/2 and, seeing no objection, the Chair gaveled that the Preparatory Committee considered and approved Articles 17, 20, 21, 22 and 23 of the Draft Administrative Provisions and Final Clauses as set forth in document GRATK/PM/2.

107. The Delegation of China requested the Chair to repeat which articles had just been gaveled, as its Delegation was not sure it heard clearly.

108. The Chair explained that these were the articles considered to pose the least disagreement among delegations and read them out again as Article 23 on Depositary, Article 22 on Languages, Article 20 on Denunciation (with special information added to the information document), and Article 17 on Signature. He reaffirmed that these five Articles would be sent to the Diplomatic Conference with a note in the information document that there was a proposal to delete the second sentence of Article 20.

109. The Delegation of the European Union also sought clarification on the Articles that were under consideration.

110. The Delegation of China took the floor again and observed that the Chair had mentioned only four articles and not five and inquired whether the Secretariat could display a document on the screen listing all the articles just discussed.

111. The Chair pointed out that, going forward, the Committee would deal with articles on a one-by-one basis, except for some cases where they would refer to another article or two other articles. However, in this initial special case, they were deciding on a series of articles that he had just read out and gavelled.

112. In response to the Chair's intervention, the Delegation of China stated that it needed more time to discuss Article 21 on reservations.

113. The Chair responded that if the Delegation of China wished to make comments on Article 21, that would require the Committee to return to Article 20 first, which would involve a change in the Committee's procedure. The Chair mentioned that he may have misunderstood earlier and asked the Delegation of China to confirm whether it wished to revisit Article 21.

114. The Delegation of China replied by expressing its interest in making comments regarding Article 21 and asked whether it would be permitted to make its intervention on the Article.

115. The Chair then invited the Delegation of China to take the floor and state its concern.

116. The Delegation of China thanked the Chair and stated that its Delegation had noted that Article 21 did not permit reservations to the instrument. However, observing that reservations were allowed for the PLT and the Beijing Treaty on Audiovisual Performances (Beijing Treaty), the Delegation therefore sought clarification from the Secretariat on why Article 21 in document GRATK/PM/2 did not permit reservations.

117. The Legal Counsel responded that the text was replicated without modifications from the previous text by the Chair and that there were a number of treaties with the same provision, such as the Geneva Act of the Lisbon Agreement or the WIPO Copyright Treaty (WCT). She pointed out that there was also another group of WIPO treaties that expressly provided for reservations subject to certain provisions of those treaties, as Member States so desired.

118. The Chair thanked the Legal Counsel and added that if reservations were to be allowed, the clearest way to accomplish this would be through a clause in connection to the substantive clause, to which Member States could potentially make reservations. He noted that the discussion of the Instrument's substantive provisions during the IGC Special Session, which took place the week prior to this meeting, did not raise any potential reservations on substantive clauses, and so it would be normal practice to insert an article in the Instrument expressing that no reservations were permitted.

119. The Delegation of Egypt wished to congratulate the Chair and his two Vice-Chairs and thanked them and the Secretariat for all their efforts to facilitate the work of Member States to achieve their future goals. The Delegation assured the Committee that it had no comments concerning the Articles mentioned by the Chair, except in relation to Article 20 on denunciation. In that regard, its Delegation could not accept the proposal of the United States of America to remove the mentioned phrase in the proposal. The Delegation accepted the formulation of Article 20, considering the whole Article as an integral part of the text.

120. Thanking the Chair for his indulgence, the Delegation of the United Kingdom stated that its Delegation wished to come back to Article 20 again, and asked the Legal Counsel for a clarification, and added that this was without prejudice to its support of the proposal made by the Delegation of the United States of America before the lunch break. The Delegation sought clarification on the origin of the term “international registration in force” in Article 20, as raised earlier by the Delegation of Switzerland and Japan before the lunch break, and which the Legal Counsel had described as stemming from the PLT. The Delegation reported that it had carefully searched that Instrument and could not find the reference to the term “registration”, since patents were not registered, but were applied for and granted. It suggested that the use of the term, “patent in force”, as was used in the PLT, would be more appropriate, adding that its Delegation would wait to have the clarification from the Legal Counsel on the comments made during the morning session.

121. The Legal Counsel cited Article 32 of the Geneva Act of the Lisbon Agreement, which referred to “international registrations in force”, adding that, given the subject matter of the draft instrument and subject to the preferences of Member States and negotiators, the term was up for discussion, and would therefore be noted in the information document as one of the provisions on which there was no agreement.

122. The Delegation of South Africa wished to congratulate the Chair and his Vice-Chairs on their election. The Delegation said that South Africa aligned itself with the statements made by the Delegations of Ghana, Nigeria, and Uganda, followed by the intervention from Egypt. Based on the clarification provided by the Legal Counsel, the Delegation did not see the merit and justification in deleting the last sentence of the Article and wished to register its objection to the deletion.

123. The Delegation of France congratulated the Chair and Vice-Chairs on their respective elections. In reference to Article 21, the French Delegation requested that the possibility of studying the Article in further detail be reserved for Member States.

124. The Chair pointed out that Article 21 belonged to the series of five articles that were agreed on and approved by the Committee, adding that Member States would have the opportunity to make any proposals they wished to make in the context of the Diplomatic Conference.

125. The Delegation of Switzerland, speaking on behalf Group B, said that it noted the Chair’s comment that the five Articles had been approved, and of course amendments could be proposed during the Diplomatic Conference. Its Group, nevertheless, wondered whether Member States could not agree, at least, in Article 20, to use the term “patent in force” in the second sentence instead of “international registration,” which would make it a meaningful sentence for the Instrument and was, of course, without prejudice as to whether the sentence would stay or disappear completely. Group B was of the view that would help in the deliberations on the Article in the Diplomatic Conference, and wondered whether there could be consensus on that.

126. The Chair thanked the Delegation of Switzerland and, after consultation with the Secretariat, announced that the need for recognition of the concerns of both the Delegations of France and of Switzerland, on behalf of Group B, would be reflected in the information document, and hoped that this was satisfactory for both Delegations. Moreover, their concerns would also be recorded in the verbatim report of the meeting.

127. The Delegation of Iran (Islamic Republic of) thanked the Chair for his tireless work, as well as the Vice-Chairs. The Delegation noted that, based on Article 19(b) of the Instrument, there was a requirement of a three-month period from the submission of the acceptance document to the Director General. In relation to denouncing the treaty, there was a one-year period required from the submission of the denunciation request, which was consistent with other similar treaties and which its Delegation believed was important. The Delegation therefore could not accept the deletion of the last part of Article 20.

128. In response, the Chair stated that, indeed, the last part of Article 20 was maintained in the clean text sent from the Committee to the Diplomatic Conference. On Article 19(b) the Chair pointed out that it would be dealt with in due course by the Committee and therefore Member States would have an opportunity to return to that provision should there be need to do so.

129. The Delegation of India said that, while its Delegation noted the Chair's comments that five articles that were discussed prior to breaking for lunch had been approved, it still wanted to come back to Article 21, given that the Delegation of China had raised the matter before lunch. However, the Delegation found that it was not the appropriate time for it to reflect on the discussions at that time and therefore wished to highlight that the article on reservations, in its view, was a particular article, also taking into account the reflections from the Delegation of France. The Delegation proposed that the text of the Article be put in square brackets for now, and cited Rule 29(1)(c) of the Draft Rules of Procedure, in which it was clearly provided that words contained within square brackets should not be regarded as accepted in the Basic Proposal. The Delegation did see the importance of the Article on reservations given that the substantive articles of the Instrument were yet to have a common understanding. That was something very important for delegations to reflect on internally. The possibility to make reservations was also something that was part of other international instruments and often helped Member States in acceding to those international instruments if certain reservations were permitted. Therefore, the Delegation proposed for consideration of the plenary that the text of Article 21 be put in square brackets and Member States could make amendments and provide subsequent proposals at a later time, including at the Diplomatic Conference.

130. The Chair reiterated that Article 21 was at present among those Articles that were already decided to be approved by the Committee and added that the intervention of the Delegation of India would receive the same treatment as the interventions by the Delegations of France and Switzerland. The Delegation's concern would be reflected in the information document, which would imply that a proposal concerning the article on reservations might be expected and he hoped that this would satisfy the Delegation. The Chair pointed out that the square bracket method would not be used, but the information document method had the same effect, as it was a memory device on things that had happened in the Committee.

131. The Chair noted that there was agreement among delegations to now proceed article by article in the order in which they appeared in document GRATK/PM/2, and declared discussion on Article 10 open.

132. The Delegation of Peru thanked the Chair and recalled that the Delegation of India had intervened on that Article on the previous day, and the countries of the Andean Community felt that it was necessary to indicate clearly that Member States that had standards beyond the minimum standards contained in the Instrument should have enough room to harmonize with their national legislation and be able to apply those standards. The proposed inclusion, whose spirit was recognized in other instruments like the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), would ensure that Member States had a principle that required disclosure while recognizing that some parties may have higher standards.

133. The Delegation of India said that it was taking the floor to seek clarification on its proposal and the possibility of it being reflected. The Delegation said that it had taken the floor the previous day and provided detailed comments on Article 10 and a detailed written proposal was also contained in document WIPO/GRTKF/IC/SS/GE/23/3 which was part of the IGC discussions in the previous week. The Delegation therefore wished to know whether its proposal would be reflected in the information document as the Chair had previously stated.

134. The Chair pointed out that it was up to the Delegation as to whether it wished to reintroduce its proposal, or whether it assumed that the Secretariat would take that element of the proposal from the verbatim report of the previous day's deliberations to the information document. The Chair assured the Delegation that, in either case, its proposal would be correctly reflected.

135. The Delegation of India said it wished to refresh everyone's memory and restated its proposal in respect of Article 10. The Delegation recalled that it had proposed the insertion of a new article in document WIPO/GRTKF/IC/SS/GE/23/3. The basis of Article 10, in the view of the Delegation, was to provide flexibility to Contracting Parties in determining the appropriate methods of implementing the provisions of the Instrument within their own legal systems and practices. Therefore, in line with the objective of the Instrument and the principle of minimum standards set out in all major intellectual property instruments, the Delegation proposed the following language for Article 10(2), which would read as follows: "the Contracting Parties may provide for more extensive obligations than is required under the instrument, either prior to or subsequent to entry into force of the instrument." Given the significant divergences that existed on the substantive provisions of the draft instrument under Articles 1 to 9, the Delegation was of the view that the instrument would, at best, provide minimum standards for the implementation of transparency provisions for disclosure obligations in respect of genetic resources and associated traditional knowledge. However, given that more than 30 countries already had disclosure regimes operating under their national laws, it would be essential to allow Member States to maintain a degree of policy space for implementing the disclosure obligations subsequent to the entry into force of the Instrument. Hence, the Delegation had proposed the insertion of the specific clause for Contracting Parties to go beyond those minimum standards, which was the standard practice already accepted under the TRIPS Agreement and other multilateral frameworks that had been adopted under the auspices of WIPO.

136. The Legal Counsel requested that the Delegation of India submit its proposal in writing to ensure that it would be accurately reflected in the information document. The Legal Counsel asked other delegations to also do the same, if that accorded with everyone's acceptance, by sending their written proposals to the email address legalcounsel@wipo.int, which would greatly

facilitate the work of the Secretariat and enable it to turn that information document around as quickly as possible.

137. The Delegation of the United Kingdom submitted that it respectfully disagreed with the Delegation of India's proposal. The Delegation was of the view that to ensure legal certainty and develop a shared international standard that allowed compliance globally, any ceiling provided by the Instrument must be definite. It should not be possible for Contracting Parties to go beyond any ceiling specified in the substantive Articles of the Instrument. Accordingly, its Delegation supported the addition of a new Article 10(3), as proposed by the Delegation of the United States of America, as it supported legal certainty and consistent implementation. The Delegation also echoed the comments made by the Delegations of the United States of America and of Japan during the plenary on the previous day.

138. The Delegation of Bolivia (Plurinational State of) congratulated the Chair and thanked the Secretariat for the preparation of the documents. Furthermore, as the Delegation of Peru said on behalf of the Andean Community, its Delegation wished to stress the importance of the rights of indigenous peoples and local communities who were part of the day-to-day realities. The Delegation stated that its country recognized collective rights to knowledge, the use and the development of traditional knowledge and genetic resources.

139. The Delegation of Brazil supported the proposal by the Delegation of India on Article 10, since it was in line with major intellectual property instruments such as the TRIPS Agreement.

140. The Delegation of the European Union supported the current drafting of Article 10, in particular, Article 10(2), as the Delegation considered the provision to be essential for the correct implementation of the Instrument.

141. The Delegation of Iran (Islamic Republic of), said that, with regard to Article 10, as some countries, especially developing countries, had some concerns in executing this Instrument effectively, its Group wished to make the following proposals for addition to Article 10: (i) adding a new Article 10(3), which would read "Each contracting party shall promote technical and scientific cooperation with other Contracting Parties, in particular developing countries, in implementing this international instrument, inter alia, through the developmental implementation of national policies. In promoting such cooperation special attention should be given to the development and strengthening of national capabilities by means of human resource development, and institution building"; and (ii) adding a new Article 10(4) "The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development, and use of technologies in pursuance of the objectives of this instrument."

142. The Chair thanked the Delegation of Iran (the Islamic Republic of) and invited it to deliver its proposals in writing to the Secretariat.

143. The Delegation of the United States of America expressed its support for the statement of the Delegation of the United Kingdom. The Delegation recalled that, as had been noted the day before, the language proposed by the Delegation of India, offered as a new Article 10(2), undermined a critical goal of the Instrument. The goal was the predictable and consistent implementation of operative text across the various intellectual property systems of Contracting Parties, which Member States should aim at. Instead of supporting that goal, the proposed text

for Article 10(2) took the Member States in the opposite direction. Its open-ended language proposed not one disclosure regime, but a patchwork of disclosure regimes with various rules and associated costs. In this regard, the Delegation of India's proposal departed from the balance struck in the Chair's text to enhance transparency in the imposition of clear disclosure burdens. The Delegation therefore wished to propose its own amendment to Article 10 and suggested adding a new paragraph to Article 10(3) which would read as follows: "In relation to genetic resources, or associated traditional knowledge, no Contracting Party shall require a patent applicant, or rights holder, to comply with any requirement different from, or additional to, those which are provided for in this instrument". The Delegation stated that this approach would provide the legal certainty needed for an effective instrument and pointed out that similar language was used in previous WIPO treaties.

144. The Delegation of Japan echoed the statement made by the Delegations of the United States of America and the United Kingdom, adding that Japan respectfully objected to the proposal made by the Delegations of India and Iran (Islamic Republic of).

145. The Delegation of the Republic of Korea said that, regarding Article 10, its Delegation aligned itself with the statements made by the Delegations of the United States of America and the United Kingdom, adding that the Republic of Korea was of the view that the language in that provision needed to be clear. The Delegation noted that India's proposal could make a patent applicant or patent right holder struggle with compliance with the Instrument by creating an excessive burden of obligation, which they did not welcome, and which could make it difficult for non-parties to join the Instrument in the future. The Delegation believed that the situation would surely undermine the innovation industry and reiterated its support for the proposal made by the United States of America and its disagreement with India's proposal.

146. The Chair was of the view that the Committee had exhausted the need to deliberate further on Article 10. Seeing no objection, the Chair gavelled that the Preparatory Committee considered and approved Article 10 of the Draft Administrative Provisions and Final Clauses as set forth in document GRATK/PM/2.

147. The Chair opened deliberations on Article 11 on the Assembly and submitted the whole Article for the delegations' consideration, that is, all of the five paragraphs.

148. The Representative of the European Union said that it strongly supported consensus-based decision-making, however, in line with the statement delivered by Group B on the previous day, the European Union considered that, in Article 11, a provision should be added to establish that decisions would have to be taken with three-fourths majority in cases in which consensus could not be reached. The respective provision in Article 16(3) could then be deleted. Further, in the European Unions' opinion, a provision regarding quorum should be included, according to the established practice in other WIPO-administered treaties. The European Union therefore sought to add the following paragraph: "One-half of the Contracting States shall constitute a quorum". It was also the European Union's understanding that Article 11(2)(f), together with the corresponding provisions in Articles 16(1), 16(2) and 16(4), should be deleted, the reason being that the Assembly should not be competent to make changes to Articles 11 and 12. Rather, the Diplomatic Conference should have this competence, as referred to in Article 15, because the latter set up that provision. Regarding Article 11(3), the European Union said that it needed to analyze and discuss further the implications of the provision at the European Union level, and it was therefore not in a position

to support the current drafting at that time. It indicated that it would state its position, at the latest, during the Diplomatic Conference.

149. Speaking on behalf of Group B, the Delegation of Switzerland reiterated its Group's position on the Articles. First, as the Delegation stated the previous day, it proposed that Article 11 require a majority of three-fourths for Assembly decision-making where consensus could not be reached, as the Group considered that to be consistent with previous precedents on the issue. Group B also sought the deletion of Article 11(2)(f) as it mirrored the instrument revision process set out in Article 15.

150. The Delegation of the United States of America said that it wished to propose modest edits to Article 11. In Article 11(2)(d), the Delegation proposed the deletion of "including as a result of the review referred to in Article [9]", as it considered the language to be duplicative and unnecessary. For the same reason, in Article 11(2)(e), the Delegation proposed the deletion of the words "to advise it on the matters referred to in Article [7] and [9] and on any other matter". It also proposed the deletion of Article 11(2)(f), which allowed the Assembly to amend Articles 11 and 12 on its own without calling for a Diplomatic Conference. The edit mirrored the Delegation's proposal to delete Article 16, which also gave the Assembly the power to revise Articles 11 and 12 outside of the Diplomatic Conference. Importantly, Article 11(2)(f) and Article 16 were currently inconsistent with Article 15, which required a Diplomatic Conference to revise the Instrument. The Delegation reiterated that it supported the retention of Article 15 and the deletion of Articles 11(2)(f) and 16 because, in its view, a Diplomatic Conference should be required for any amendments to the Instrument, noting that recent WIPO treaties had taken the same approach. Any future revisions to the Instrument should result from an inclusive, high-level process that considered the views of all Member States. Furthermore, the Delegation said it would appreciate further clarity on the scope of Article 11(2)(g) since, as it was currently drafted, the Article was very broad and subject to various interpretations. Such broad language was not present in the Chair's text or in the recent WIPO treaties. The Delegation added that it was open to discussions with other Member States over whether to delete the paragraph altogether or to edit it for clarification. Finally, regarding Article 11(5), its Delegation proposed the deletion of "and subject to the provisions of this Instrument, the required majority for various kinds of decisions". It further proposed replacing that language with a new paragraph 11(3)(c) that would read: "If a vote is called, a three-fourths majority is required to take a decision". While its Delegation continued to hope that the Assembly of the Contracting Parties would decide all matters by consensus, it wanted Article 11 to require a majority of three-fourths for the Assembly's decision-making work where consensus could not be reached. The approach would reinforce the inclusive nature of decision-making at WIPO.

151. The Delegation of Poland, speaking on behalf of CEBS, stated that the Group's position on Article 11 was in line with the position presented by the Representative of the European Union. The Group supported the addition of a provision requiring a three-fourths majority for decision-making in the absence of consensus. The Group also supported the provision regarding quorum that was included in the Article, that is, "one-half of the Contracting States should constitute the quorum". The CEBS Group also supported the deletion of Article 11(2)(f), together with the corresponding provisions of Articles 16(1), 16(2) and 16(4), which should resolve the inconsistency with Article 15 as it currently stood.

152. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, stated that it had three suggestions and a question on Article 11. First, the Delegation wished to add, at the end of the last sentence of Article 11(1)(a) and after the word “experts”, the following: “including representatives of indigenous peoples and local communities.” The Second suggestion was to add to the last line of Article 11(2)(d) and after the words “any such Diplomatic Conference,” the words, “of the Contracting Parties.” Third, on Article 11(2), it wished to add a new subparagraph 11(2)(h) that would read: “Recognize the importance of the full and effective participation of Indigenous Peoples and local communities in the work of the Assembly and invite the Contracting Parties to consider financing arrangements to ensure the participation of Indigenous Peoples and local communities.” The Delegation requested clarification from the Legal Counsel on Article 11(3), in relation to what would be done if a decision could be not reached by consensus and what was done in other agreements in respect of such a situation, as that would enable the delegations to consider the most appropriate decision in relation to the proposals currently on the table.

153. In response to the query by the Delegation of Venezuela (Bolivarian Republic of), the Legal Counsel pointed out that the same provision with respect to the absence of consensus, and resorting to a vote, appeared in the Singapore Treaty under Article 23(4)(a) and (b), and in the Geneva Act of the Lisbon Agreement under Article 22(4)(a) and (b).

154. The Delegation of Ghana, speaking on behalf of the African Group, said that its Group had some reservations and questions about Article 11, mainly because of the apparent prescriptiveness of the Article, and added that its Member States would intervene accordingly.

155. The Delegation of Iran (Islamic Republic of) observed that, by examining the text of the treaties and conventions administered by WIPO, the Article was prepared in the standard form. Therefore, its Delegation was against the deletion of the clauses proposed by some countries.

156. The Delegation of Nigeria made a few observations on Article 11, adding that its Delegation identified with the intervention made by the Delegation of Venezuela (Bolivarian Republic of). Specifically, the Delegation sought clarification from the Legal Counsel on whether the title of Article 11, which was “Assembly,” was a reference to the Assembly of the Contracting Parties. The reference to Diplomatic Conference in the text was not specific in referring to the Diplomatic Conference of Contracting Parties, and the same was also true in Article 15. Looking at Article 26 of the Geneva Act of the Lisbon Agreement, it was specific in referring to the Diplomatic Conference of the Contracting Parties. The Delegation also identified itself with an earlier intervention regarding Article 11(2)(e), and pointed out that there was a proposed text consistent with its proposal, which was to say, “may establish technical working groups as it deems appropriate to advise it on any matter”. The Delegation also observed that all the cross-references in Article 11, which was probably the most cross-referenced provision in the working document, were all in square brackets. The Delegation requested advice from the Legal Counsel on the reason for those square brackets which it was not, by any means, opposing.

157. Responding to the request for clarification by the Delegation of Nigeria, the Legal Counsel confirmed that the title of Article 11 was “Assembly”, and this Assembly had to be understood as an Assembly of the Contracting Parties to an eventual Instrument. With respect to the Diplomatic Conference, it had not been specified who would be there, and so that was left open. Further, the Legal Counsel explained that the only reason there were brackets around the

numbering was because the cross-references may change in a final version, to the extent that there were any additions or deletions. The brackets were merely to signal that Member States would need to check the numbers.

158. The Delegation of the Russian Federation raised three questions on Article 11. First, the Delegation asked why the words after “developing countries” had been excluded from 11(1)(b), namely “in conformity with the established practice of the United Nations General Assembly”. The Delegation remarked that the wording was widespread in WIPO treaties, including the Beijing Treaty, the Marrakesh Treaty, and the WCT. It had not found a treaty in which that wording was absent and, furthermore, the wording was also in the Chair’s text. The Delegation’s second question concerned Article 11(2)(e) and it wished to know why there was a reference here to Article 9, bearing in mind that in the Article itself, there was not any reference to automatic establishment of working groups. Its third question was on Article 11(2)(f). In the Delegation’s view, the norm in accordance with which the Assembly could independently make amendments to an international treaty provided in Article 11(2)(f) was not typical, model, or normal. The Delegation therefore requested an example of an international treaty or treaties that contained such a norm.

159. The Legal Counsel said that she would provide responses to the extent that she had correctly understood the questions. Indeed, in Article 11(1)(b), the reference to an “established practice of the United Nations General Assembly (UNGA)” was not included, because the Secretariat was not able, considering that these questions had come up recently, to find a consistent practice or official list across the United Nations (UN). In fact, the WIPO approach in practice had been different and so the Secretariat did not want to be in a position where it would have to define what was consistent with the UN practice. With regard to the question on Article 11(2)(f), the Legal Counsel understood the question to be with respect to where similar provisions may be found. She cited Article 13(2)(x) of the Paris Convention for the Protection of Industrial Property (Paris Convention); Article 22(2)(a)(x) of the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention); Article 22(2)(ix) of the Geneva Act of the Lisbon Agreement. The Legal Counsel noted that, in those treaties that foresaw the possibility for the Assembly to amend certain provisions, provisions on amendment of the provisions by the Assembly were also included, which was not the case in the proposed Draft Articles. Concerning the question on the reference to working groups in Article 9, the Legal Counsel was of the view that, to the extent that there was a review conducted, there may be working groups that the Assembly wished to establish to help facilitate the review.

160. The Delegation of Namibia congratulated the Chair and the Vice-Chairs on their appointment, adding that the Delegation was happy to see him chairing the Committee as Finland had a very special place in the hearts of Namibians. With respect to Article 11, the Delegation wished to speak specifically on Article 11(2)(d), as its Delegation was of the view that the proposed Articles should be specific, in terms of the reference to the Diplomatic Conference, which, in its view, must be specific to the Contracting Parties and should not be left to interpretation. It was the Delegation’s opinion that all privileges of decision-making should be given to the Contracting Parties and not to all WIPO Member States. With respect to Article 11(2)(e), it was the view of the Delegation that the august Committee should not define or confine the powers of the Assembly but should leave it to the Assembly itself, adding that the Committee should not prescribe the terms of reference for the technical committee. Therefore, its Delegation wished to support the proposal made earlier by the Delegation of Nigeria, to rather have the text as follows: “the Assembly may establish the technical working group or any

committee, for that matter, as it deems appropriate” without having to confine it to any particular article.

161. The Delegation of China said that it also had some questions concerning Article 11 and sought clarification from the Legal Counsel on Article 11(1)(b). The Delegation noted that, in the current text, there was no mention from the Chair's text of “in conformity with the practices of the UNGA”. Therefore, it wished to know how the Committee would decide which countries could benefit from financial support and on which criteria. The second question was related to Articles 11, 15, and 16 and the relationship among these articles. The Delegation listened to the comments of other delegations on the revision or amendment of the provisions of that Instrument and asked the Legal Counsel to clarify the difference between the terms “amendment and revision” of the provisions of that Instrument. For example, in Article 15, the word “revision” was used, while in Article 16, the word “amendment” was used. The Delegation's third question concerned the mandate of the Assembly. The current version of Article 16 concerned only Articles 11 and 12, which amendments would be conducted by the Assembly, whereas in Article 15 — if the Delegation understood correctly, all revisions except Articles 11 or 12 — necessitated the convocation of a Diplomatic Conference. On another point, the Delegation wished to add a proposal for consideration on Article 11(2)(d), as follows: “the result of the review referred to in Article 9 needs the convocation of a Diplomatic Conference”. The Delegation's understanding was that the convocation of a Diplomatic Conference needed the instruction of the Assembly. From the Chair's Text, the Delegation understood that the Assembly should examine matters related to Article 9. Therefore, if the idea was added in subparagraph (d), delegations may better understand that the result of the review referred to in Article 9 would require the approval of the Assembly. Revision of the text would be done according to Article 15, which was the Delegation's understanding of the relationship among those Articles and, if its understanding was correct, its suggestion was that the review of the Assembly on Article 9 could be separated from the consideration of the revision of the provisions. The revision of the provisions could be done through technical working groups that reported to the Assembly and, in that way, maybe the structure would be more clear or better structured.

162. Seeking to address all the questions and sub-questions, the Legal Counsel stated that with respect to the question on Article 11(1)(b), which was similar to the question asked by the Delegation of the Russian Federation earlier regarding the reason for the omission of the “practice of the UNGA,” the Legal Counsel reiterated that the Secretariat was not able to locate and establish a practice that was recorded in writing. She pointed out that the idea of implementing a provision absent an official list or practice would be difficult and, considering that WIPO was an independent international organization, it did finance the participation of delegations that were regarded as developing countries or countries in transition to a market economy in WIPO. Given the WIPO practice, the idea was to root Article 11(1)(b) in the practice of the Organization and its established approach in that respect. With respect to Article 11(2)(e) in terms of the relationship, and the distinction, between revisions by a Diplomatic Conference and amendments under Article 16, the Legal Counsel noted that this distinction was also present in other WIPO treaties, such as the Geneva Act of the Lisbon Agreement, PLT, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol), the Berne Convention, the Madrid Agreement Concerning the International Registration of Marks (Madrid Agreement), the Paris Convention, PCT, and the Budapest Treaty, which provided that there were certain provisions that were capable of amendment by the Assembly. It gave the Assembly the ability to amend certain

individual articles, and those were identified, whereas a revision was a revision of the instrument as such. That language was also similar, if not identical, to the language that was found in other treaties that had this distinction, such as the Singapore Treaty and the Geneva Act of the Lisbon Agreement. Therefore, the distinction between amendment and revision limited which revisions could be conducted by the Assembly and which revisions, including the implementation of results of any review subject to Article 9, that would be conducted by a Diplomatic Conference. The Legal Counsel pointed out that this was without prejudice to the ultimate result of Article 9, but the idea was that a full revision of the Instrument, as such, would go to a Diplomatic Conference.

163. The Delegation of the United Kingdom supported the statement made by the Delegation of Switzerland made on behalf of Group B proposing, in Article 11(3), inclusion of a clause as subparagraph (c) stating, "The decision of the Assembly shall require three-fourths of the votes cast". Consistent with this proposal, Article 11(5) should be amended to delete the final clause that stated, "Subject to the provisions of that instrument, the required majority for various kinds of decisions...". The Delegation also supported the deletion of Article 11(2)(f), to mirror what was set out in Article 15. In the Delegation's view, it was imperative that there would be full and proper consideration of any proposed amendments to the Instrument at an appropriate level. The Delegation observed that it had heard a number of other detailed proposals from the floor that day, and there may be others to follow. In its view, the Committee had not had enough time to consider those proposals in detail. Therefore, the Delegation was not in a position to support them at that time, but it very much looked forward to studying them, understanding them, and discussing them in detail at the Diplomatic Conference.

164. The Delegation of the Assembly of First Nations, speaking on behalf of the Indigenous Caucus, thanked the Delegation of Venezuela (Bolivarian Republic of) for the inclusion of Indigenous Peoples and for promoting the full participation of indigenous peoples and local communities in this text. The adoption of this Instrument and its ongoing implementation and operation would be of concern to indigenous peoples around the world. As such, it was imperative that indigenous peoples' representative organizations have a continued role in the future discussion on these articles. The Indigenous Caucus supported the substance of the proposal made by the Delegation of Venezuela (Bolivarian Republic of) for the inclusion of indigenous peoples and their full and effective participation in Article 11. As an alternative text for consideration by the parties, the Indigenous Caucus proposed the inclusion of the following, which would essentially involve the creation of a new Article 11(1)(c), and would read: "The Assembly shall include representation from Indigenous Peoples and local communities. They shall have observer status as defined in the WIPO General Rules of Procedure. This participation at the Assembly will include: (i) Each meeting of the Assembly shall include on the agenda a standing item for presentations by Indigenous Peoples' representatives; (ii) The Assembly may ask the International Bureau of WIPO to grant financial assistance to facilitate Indigenous Peoples' participation; and (iii) The WIPO Indigenous fellow serve as a focal point for Indigenous Peoples' and local communities' participation".

165. The Delegation of South Africa, speaking remotely, said that its intervention was in relation to the clarification request made by the Delegation of Nigeria as to the brackets in Article 11(2). Following the clarification given by the Legal Counsel, its Delegation questioned what the implication would be, should those numbers change. The Delegation wondered whether an article that was not relevant would be removed or whether reference would be made to another article instead.

166. The Legal Counsel recalled that the numbers related to the cross-references were important in respect of the corresponding provisions as they were numbered at that time. If those provisions changed, the Secretariat would make sure the cross-references made sense. The Legal Counsel added that if a provision disappeared in its entirety and the obligation in that provision was no longer there, the cross-reference would likewise disappear and therefore the Secretariat would track the fate of the provision to which it was attached.

167. The Delegation of Canada said that it aligned itself with the interventions made by the Representative of the European Union and a number of other delegates supporting the deletion of Article 11(2)(f) and the corresponding deletion of Article 16, as well as the proposed amendments to Article 11(5), specifying that if consensus could not be reached, decisions would require a three-fourths majority. Additionally, its Delegation said that it could also support the proposal made by Namibia and several other delegations to strike from 11(2)(e) specific references to Articles 7 and 9. Finally, the Delegation supported the intervention made by the Indigenous Caucus with regards to a new Article 11(1)(c).

168. The Delegation of Samoa said its intervention was in relation to Article 11 with reference to some Articles dealing with maintenance, development and review, and Article 15 in relation to revision, as well as Article 16 regarding amendments of the current Instrument upon entry into force. Given that it had taken Member States more than 20 years to agree on the Instrument, the last thing the Delegation wanted was to adopt a process that would take the same number of years to review, revise, and make appropriate improvements to effectively implement the Instrument. Therefore, it required due process that was certain and based on some reviews likely undertaken pursuant to Article 9 and vetted by the Assembly. The Delegation also believed that it was unnecessary to call for a majority of three-fourths for Assembly decision-making, which could make improvements difficult to adopt. It was also of the view that the review of the Instrument, upon entry into force, should be done by its parties that were affected and bound by it. It was therefore unfair for a WIPO member not to be part of the Instrument and at the same time to have a say on how it should bind its parties and should be amended to bind the Member States, adding that if such a precedent existed, then it needed to be changed. Hence, the Delegation suggested that the Diplomatic Conference be limited to Contracting Parties of the Treaty as one had to be in it to change it. Its Delegation therefore wished to align itself with the sentiments of the Delegations of Venezuela (Bolivarian Republic of), Nigeria, and echoed by the Delegation of Namibia.

169. The Delegation of Niger thanked the Chair and his Vice-Chairs for their tireless efforts in enabling the Committee to bridge gaps, and to make headway, and noted a glimmer of optimism in comparison with the previous day. The Delegation expressed its support for what had been said by the Delegation of Namibia. It did not seem either fair or equitable to allow States that were not party to a treaty to participate in the process of revising that treaty as the treaty conferred rights only upon those States that were party to it. That being the case, its Delegation wished to support the fact that participation in the revision process should not be extended to all the Member States of WIPO. That should be the prerogative of those States that were party to the Instrument once it had been adopted by the forthcoming Diplomatic Conference.

170. The Delegation of China announced that it wished to speak in English, as an exception, and thanked the Legal Counsel for her detailed explanations to its questions. Regarding its first question, if the Delegation understood correctly, the Legal Counsel said that there was no

standard practice in the UN system, but according to the Delegation's understanding, the UN Economic and Social Council published a country classification every year in relation to the standard, adding that it would share the document if needed. Second, the Delegation recalled that a member of its Delegation had raised a question earlier that, in the Delegation's view, was critical and which the Legal Counsel may not have received. The member had asked the Legal Counsel whether there were, besides Articles 11 and 12, any other revision of any other Articles belonging to the revision content provided by Article 15, which would require the convening of the Diplomatic Conference. The Delegation added that it also wished to remind everyone that the official name of its Delegation was the People's Republic of China, not any other.

171. The Legal Counsel recalled that what she was trying to explain in reference to Article 11(1)(b) was that, while everyone was aware of the economic statistical report documents, whether they corresponded to a well-established or consistent practice of the UNGA of which the Secretariat could be assured, was a different matter. So, the premise was to rely on WIPO's practice in terms of funding, which was something that has been done consistently and successfully, in her opinion, on the participation of delegates in the Assembly. With respect to the Delegation's second question, there were by the terms of the provision as such, no limitations on what amendments may be contained or subject to a revision through a Diplomatic Conference. The Legal Counsel pointed out that the Diplomatic Conference may revise the treaty, including those limited provisions that were permissible for amendment by the Assembly of the eventual Instrument.

172. The Delegation of the Republic of Korea said that it aligned itself with the proposal made by the United States of America. Considering the global impact of this Instrument that one delegation mentioned the previous day, the Delegation supported the proposal of the United States of America to delete and add some wording in Article 11 and delete the corresponding Article 16. Regarding Article 11(2)(d), to reflect the various views of different stakeholders, the Delegation disagreed with that Delegation's proposal to restrict the participant to the Diplomatic Conference by adding the words "Contracting Parties".

173. The Delegation of Japan supported the proposal of the Delegations of the United States of the America, the United Kingdom, and the Republic of Korea as they were presented without further amendments.

174. The Delegation of Australia said that it wished to lend its support to the proposal made by the Indigenous Caucus to add a new Article 11(1)(c), noting the importance of indigenous peoples' participation in any future Instrument. Additionally, the Delegation said that it would support the deletion of Article 11(2)(f), Article 16, and of the cross references in Article 11(2)(e).

175. The Delegation of Switzerland, speaking in its national capacity, said that its Delegation first wished to support the statement made by Group B. Second, the Delegation also shared the optimism expressed by the Delegation of Nigeria earlier according to which, in its view, the Committee was moving in a good direction. The Delegation saw room for further consensus specifically on Article 11(2)(e) because it had heard from the Delegation of Namibia and from other delegations that the specific reference to Articles 7 and 9 would not be needed there. The Delegation therefore suggested that there could be a very straightforward provision just stating "may establish technical working group as it deemed appropriate" which, in its opinion, was a low hanging fruit to harvest at present. Second, its Delegation saw value in the language put forward by the Indigenous Caucus, which it was ready to look into, adding that simplifying the

provision may be needed. Second, the Delegation wished to highlight that its preference would be to refer each time clearly to “indigenous peoples and local communities”.

176. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, said it wished to share its Group’s views on the proposals on Article 11. On Article 11(3), the Delegation indicated that GRULAC could not support the majority of three-fourths for any vote as that should be defined later by the Assembly of the Contracting Parties when they have defined their own regulations. Consequently, GRULAC would agree with the current drafting of Article 11(3), recalling that, as the Legal Counsel had explained, it was language that was found in other WIPO treaties. Therefore, it would have to be defined in the Assembly of the Contracting Parties in accordance with Article 11(5) as the Diplomatic Conference was to be determined by the Contracting Parties alone. The Delegation pointed out that GRULAC did not agree with the deletion of Articles 11(2)(f) and 16.

177. The Delegation of Israel congratulated the Chair and his Vice-Chairs on their election, adding that its Delegation appreciated the sensitive manner in which the Chair was conducting the sessions. It expressed support for the proposal made by the Delegation of the United States of America in relation to the deletion of Articles 11(2)(f) and 16. Since it was not possible to refer to specific changes as they were not open to review, and as it might need more time to review them, more detailed comments will be submitted by its Delegation to the Secretariat later. The Delegation said that, with the Chair’s permission, it wished to refer to Article 10 and expressed its support for the proposition of the Delegation of the United States of America to add Article 10(3). It was important, in the Delegation’s view, to be as inclusive as possible by providing certainty to stakeholders due to the effect that the Instrument may have on them.

178. The Delegation of the Russian Federation started by thanking the Delegation of China for their clarifications on Article 11(1)(b). The Delegation drew attention to the fact that after “developing countries” in Article 11(1)(b) the words “in conformity with the established practice of the General Assembly of the United Nations” should be added, which the Delegation introduced as an official proposal, and which it wished to be formally reflected in the information note. In reference to Article 11(2)(d) on the convocation of a Diplomatic Conference, the Delegation wished to draw attention to Article 39 of the VCLT, which contained general rules relating to the amendment to treaties, which said that a treaty could be amended by agreement between the parties, which was a general rule. The Delegation pointed out that there was no third party involved in a Diplomatic Conference for the review of an international treaty.

179. The Delegation of New Zealand thanked the Chair and the Secretariat for their efforts to steer the meeting towards consensus. The Delegation wished to support the addition made by the Indigenous Caucus to Article 11(1) to include the representation of indigenous peoples as observers to the Assembly. Its Delegation considered this important to ensure the ongoing representation of indigenous views in the implementation of the Instrument. The Delegation also supported the proposal in relation to Article 11(2)(e) to strike out the specific references to Articles 7 and 9 as it agreed with the principle that the Assembly could decide the issues on which it would need to appoint technical working groups.

180. The Delegation of Ghana, speaking on behalf of the African Group, supported the proposal to include a reference to participation and funding of indigenous peoples and local communities.

181. The Delegation of the United States of America said that it supported the statement of the United Kingdom regarding consensus. Its Delegation appreciated the proposals that had been submitted or may be submitted during the discussion of the Administrative Provisions and Final Clauses during the week. While the Delegation had not had an opportunity to fully consider those proposals and thus would not be able to support them at present, it looked forward to considering them, if and when, they would be submitted at the Diplomatic Conference. The Delegation looked forward to engaging with delegations further in advance of the Diplomatic Conference.

182. The Chair announced that the Committee had come to the end of its deliberations on Article 11 on the tasks of the Assembly. The Chair stated that he and the Secretariat had been following carefully to deduce any agreements from the discussion. There was one element that was proposed to be singled out by the Delegation of Switzerland, and that was the element of Article 11(2)(e). He observed that there seemed to be consensus among delegations concerning a partial deletion of the provision, leaving only "may establish technical working groups as it deems appropriate" as the text. The Chair asked whether there was indeed consensus among delegations or if there was any objection. If not, the Committee had one change to make in the basic text, allowing the possibility for the Assembly to establish technical working groups also for other purposes than those referred to in Articles 7 and 9.

183. Seeing no objection, the Chair gavelled that the Preparatory Committee considered and approved Article 11 of the Draft Administrative Provisions and Final Clauses as set forth in document GRATK/PM/2, with the following change to Article 11(2)(e): "The Assembly: [...] (e) May establish technical working groups as it deems appropriate;".

184. The Chair suggested that the Committee tackle the next item, that is, Article 12 on the International Bureau, and opened the floor for proposals, additions, deletions, comments, and questions for clarification.

185. The Delegation of Venezuela (Bolivarian Republic of) announced that its Delegation had some proposals under Article 12 but wanted to make the statement that it was going to join the emerging consensus in the room regarding the inclusion of indigenous peoples and hoped that would be reflected in the verbatim report of the meeting.

186. The Chair said that he wished to state for the record that delegations were working for the indigenous peoples of this world and that was a fact that would also be understood when this Instrument would be concluded. He recalled that the floor was open for deliberations concerning Article 12 which, in his view, was even more technical and probably simpler than the previous Articles the Committee had approved.

187. The Delegation of Iran (Islamic Republic of), speaking in its national capacity, stated that its Delegation wished to add a subparagraph as 12(4), as follows: "The International Bureau shall carry out any other tasks assigned to it."

188. The Representative of the European Union observed that Article 12 was in line with other WIPO treaties and included provisions for the International Bureau of WIPO to perform its tasks appropriately. The European Union therefore supported the provision; however, it requested the Delegation of Iran (Islamic Republic of) to clarify its proposal as to whom should be assigned the task other than the International Bureau.

189. The Delegation of Iran (the Islamic Republic of) pointed out that it believed that it was important that some tasks could be assigned to the International Bureau, following, for example, a decision of the Assembly of the Contracting Parties.

190. The Delegation of the United Kingdom supported Article 12 in its current formulation and, was not in a position to endorse the proposal made by the Delegation of Iran (the Islamic Republic of) at that moment. The Delegation said it might be helpful to understand whether the language proposed came from an existing WIPO treaty and what sort of tasks were envisaged as being assigned to the International Bureau. It was a broad provision, so its Delegation was trying to understand the kind of obligations for the International Bureau through the inclusion of such an additional subparagraph to the Article.

191. The Chair noted that since there was a proposal and an objection to it, there was no need for any big discussion as the proposal would be reflected in the information document and then the Delegation of Iran (Islamic Republic of) would have a possibility to elaborate further on its proposal.

192. The Delegation of Iran (Islamic Republic of) cited Article 10(4) of the Lisbon Agreement as an example in response to the question by the Delegation of the United Kingdom.

193. The Chair observed that the Committee had come to a possibility of concluding deliberations on Article 12 on the tasks of the International Bureau.

194. Seeing no objection, the Chair gavelled that the Preparatory Committee considered and approved Article 12 of the Draft Administrative Provisions and Final Clauses as set forth in document GRATK/PM/2.

195. The Chair then opened the floor for deliberations on Article 13 on the Eligibility to Become a Party.

196. The Representative of the European Union requested the opinion of the Legal Counsel as regards Article 13(2) and the eligibility of the European Union and/or its Member States to become parties to the Instrument. Due to the European Union internal competencies, there were situations where both the European Union and its Member States became party to an international instrument and for some WIPO instruments, such as the Berne Convention, only the European Union Member States and not the European Union as such, were contracting parties. Other WIPO instruments, for example, Article 15(3) of the Marrakesh Treaty, contained provisions under which the European Union had been able to become a member already at the Diplomatic Conference following certain formalities such as a special *ad hoc* declaration. In the absence, at this stage, of a similar and explicit indication in the present Instrument, the European Union wished to know the opinion from the Legal Counsel on the following:

- (i) Without prejudice to aspects related to the European Union internal competencies, would there be any legal impediment to apply the same treatment in this instrument as in the Marrakesh Treaty, that is to say, that the European Union could eventually become a party already at the Diplomatic Conference; and (ii) could a specific provision to that end, similar to Article 15(3) of the Marrakesh Treaty, be included in the present Instrument.

197. The Chair thanked the Representative of the European Union for its most relevant question on behalf of a large group of countries represented and pointed out that this was something that had been resolved in other instruments with specific clauses.

198. The Legal Counsel responded that there was no prohibition on applying the same principle and, indeed, including the same provision as the one cited by the Representative of the European Union in the Marrakesh Treaty. The provision did not appear in the present text because the Secretariat was not competent to determine whether a particular intergovernmental organization (IGO) would or would not have the competence to fulfill the binding legal obligations under the treaty subject to the final conclusion of the treaty itself and what it provided for. Having said that, if a provision was added at a later time that replicated those consistent with the Marrakesh Treaty, that would allow such a declaration to be made at the Diplomatic Conference. The Legal Counsel pointed out that there was nothing preventing Member States and negotiators from adding that provision and therefore nothing preventing a particular IGO, such as the European Union, from making that required declaration and thereby being eligible to become party to the Treaty.

199. Seeing no objection, the Chair gavelled that the Preparatory Committee considered and approved Article 13 of the Draft Administrative Provisions and Final Clauses as set forth in document GRATK/PM/2.

200. The Chair opened the floor for discussions on Article 14 on Ratification and Accession.

201. The Delegation of the Russian Federation was of the view that it would be wise to remove paragraph 2 of Article 14 because it did not have any added value and, was self-evident. Moreover, the Delegation said that it had not found any corresponding treaty practice in WIPO.

202. The Delegation of Nigeria stated that it was for the deletion of subparagraph 2 of Article 14.

203. The Delegation of South Africa supported the intervention by Nigeria.

204. The Delegation of the United States of America said that it preferred to maintain the Article in the text to further consider the effects of its deletion.

205. The Chair pointed out that the text would remain in the basic proposal, and the proposal for deletion would be reflected in the information document.

206. The Delegation of Uganda requested clarification from the Legal Counsel on the deletion of Article 14(2) and on how it would influence or be influenced by Article 18.

207. The Legal Counsel noted that this was in fact the established WIPO depository practice and noted that a similar provision could be found in the Geneva Act of the Lisbon Agreement. She explained that one of the reasons behind the provision was that some WIPO treaties made a distinction between the date of the notification of the Director General in his capacity as depository and the date of the deposit. The Legal Counsel pointed out that it was clear that the effective date of deposit was the date on which the instrument was received, which was the rationale behind it.

208. Seeing no objection, the Chair gavelled that the Preparatory Committee considered and approved Article 14 of the Draft Administrative Provisions and Final Clauses as set forth in document GRATK/PM/2.

209. The Chair pointed out that when dealing with Article 11 earlier, there had already been interventions on Articles 15 and 16, which are not necessary to repeat. The delegations would have the possibility, especially on Article 16, to deliver to the Secretariat in writing their texts of proposals. On Article 18, the Chair mentioned that there was probably only one small, but for some delegations important, aspect that is the number of eligible parties in Article 19, which should follow the number that had been used in Article 18. He observed that it was not expected that there would be a need for textual changes to Article 19, which was in a standard form, and therefore asked delegations if they would be willing to deal with Articles 18 and 19 so as to leave the next day for discussions on the Articles on revision.

210. The Delegation of the Russian Federation wished to discuss Article 14 and apologized for returning to something the Committee had already discussed. Nevertheless, the Delegation pointed out that what it was referring to, were the comments by the Legal Counsel and the reference to the Geneva Act of the Lisbon Agreement, as an example. The Delegation noted that it did not consider the example relevant in the present situation. It pointed out that Article 28(3) was talking about a completely different situation so there was a general rule and then there was an exception, in which case, the Article had significance. However, the Delegation observed that in the current situation, the paragraph had no added value. The Delegation noted that its comments did not mean that it objected to discussing the Article but wished to point out the explanation offered by the Legal Counsel was not relevant.

211. The Chair thanked the Delegation of the Russian Delegation for the additional reasoning around its proposal and stated that it would be reflected in the verbatim report.

212. The Delegation of Venezuela (Bolivarian Republic of) requested the Chair to repeat the exact decision that was made regarding Article 14.

213. The Chair recalled that there was a proposal to delete Article 14(2) as it was self-evident and there was an objection against its deletion. The Chair noted that the decision was clear, the text would be maintained and carried forward to the Diplomatic Conference in the basic proposal, and the proposal that the Article be deleted would be reflected in the information document.

214. Recalling his proposal to leave Articles 15 and 16 for the following day as the Committee required more time, the Chair asked delegations whether they could discuss Articles 18 and 19, which could be dealt with in a short time. Noting no objection, the Chair opened the floor for deliberations on Article 18 on Entry into Force and Article 19 on the Effective Date to Become Party, respectively.

215. The Delegation of Switzerland, speaking on behalf of Group B, supported specifying 30 as the number of eligible parties in Article 18, which would be required for the entry into force of this Instrument. Given the global impact of the Instrument, it was imperative that applicants and other affected parties, as well as implementers have appropriate time to prepare for requirements under the Instrument before its entry into force. As such, and considering recent WIPO instruments, 30 eligible parties to ratify before the Instrument entered into force seemed

more appropriate and therefore the revised number should accordingly be carried forward into Article 19.

216. The Representative of the European Union said that in relation to Article 18, it supported, as mentioned by Group B, that the entry into force of the Instrument should require, at least, 30 eligible parties to ratify it or accede to it to allow sufficient time for preparation. In the European Union's opinion, since many parties would need to make legislative amendments to comply with the Instrument, it would therefore be advisable to allow them sufficient time for such purposes, including providing timely information to patent applicants and other stakeholders. The European Union pointed out that this majority was what was required in other WIPO treaties such as the Beijing Treaty adopted in 2012. Consistent with the European Union's proposal to modify Article 18, its Representative proposed to also reflect the same number in Article 19, that is, the 30 eligible parties referred to in Article 18.

217. The Delegation of Poland, speaking on behalf of CEBS, said that the Group wished to support the position taken by the European Union and Group B, adding that it was also in support of changing the number of required eligible parties to 30 for entry into force both in Articles 18 and 19, which would allow for sufficient time for the preparation.

218. The Delegation of Ghana, speaking on behalf of the African Group, said the Group wished to keep Article 18 as it was.

219. The Chair observed that as the discussion stood at present, there seemed to have been a proposal to raise the number of eligible parties for entry into force of the instrument to 30 and an objection to it, that is, to keep the number at 15.

220. The Delegation of Venezuela (Bolivarian Republic of) stated that along the lines of the statement made by the Delegation of Ghana, on behalf of the African Group, its Delegation also wished to keep the Article as it was.

221. The Delegation of Namibia supported the statements made by the Delegations of Ghana, on behalf of the African Group, and Venezuela (Bolivarian Republic of), on behalf of GRULAC, and other countries calling to maintain the provision. Given that several countries already had this disclosure requirement in their law and implemented them, it would not be such a burden and was indeed an expectation of the applicants. In that regard, the Delegation agreed with the proposal to maintain the number as it was.

222. The Delegation of Niger supported the statement made by the Delegation of Ghana, on behalf of the African Group, and recalled that as the ratification process took time, its Delegation supported 15 as the required number.

223. The Delegation of Uganda also supported the retention of the current formulation, bearing in mind that genetic resources and associated traditional knowledge have been exploited by a number of individuals and pharmaceutical companies without benefitting the owners, and its Delegation was of the view that the earlier the Instrument entered into force, the better it would be.

224. The Delegation of South Africa said that it supported the Article in its current formulation.

225. The Delegation of Japan echoed the statement made by Group B and the European Union. It also asked for clarification from the Secretariat on the reason why the number of parties provided in the Article had been changed to 15 from 20, which appeared in the original Chair's Text in document WIPO/GRTKF/IC/43/5.

226. The Delegation of China stated that its Delegation supported the current formulation of the Article, which was, 15 eligible parties.

227. Responding to the query by the Delegation of Japan, the Legal Counsel said that, with respect to WIPO treaty practice, a vast majority of WIPO-administered treaties foresaw a much lower number of accessions necessary for the entry into force. The Legal Counsel cited the examples of the Paris Convention that required 10 parties, six parties for the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Agreement), eight parties for the PCT, five parties for the Madrid Agreement and the Berne Convention, four for the Madrid Protocol, five for the TLT, 10 for the PLT, five for the Geneva Act of the Lisbon Agreement, and 10 parties for the Singapore Treaty. So, the most recent WIPO-administered treaties that had been mentioned were somewhat unusual in terms of the application of WIPO treaty practice and the rationale behind the provision was to find a number that was slightly more faithful to the majority of WIPO treaties.

228. The Delegation of Nigeria supported the statement and the position of the African Group, adding that its Delegation preferred the retention of the provision as it was with respect to Article 18. The Delegation pointed out that it had also done some research and it was of the view that the position was faithful to what the current landscape of numbers in WIPO treaties mentioned and therefore its Delegation was happy to support the proposal.

229. The Delegation of the Republic of Korea stated that its Delegation aligned itself with the statements made by Group B and the Delegation of Japan. Taking into account that the Nagoya Protocol required 50 parties to enter into force, and this Instrument being an important tool to implement the Nagoya protocol, the Delegation proposed to increase the number of parties in Articles 18 and 19 to 30.

230. The Delegation of Switzerland, speaking in its national capacity, said that its Delegation also looked into the different treaties and stated that, just to be comprehensive, the Beijing Treaty, the WCT and WIPO Performances and Phonograms Treaty (WPPT) referred to 30 parties for their entry into force.

231. Seeing no objection, the Chair gavelled that the Preparatory Committee considered and approved Article 18 and 19 of the Draft Administrative Provisions and Final Clauses as set forth in document GRATK/PM/2.

232. The Chair thanked all the delegations. He pointed out that some work remained for the following day and was of the view that there would be an important debate on the question of revisions. He then declared the meeting adjourned for the day.

233. The Chair welcomed participants back and opened the third day of the meeting of the Preparatory Committee for the Diplomatic Conference. He thanked the delegates for their work during the previous two days, noting that delegates had been working and consulting a lot yielding the good result by which the Committee was able to advance the agenda considerably

the day before. The Chair announced that the Committee would revert to consider Agenda Item 5 on the Draft Administrative Provisions and Final Clauses for the Instrument to be considered by the Diplomatic Conference. He recalled that the Committee had already covered, all Articles except Articles 15 and 16. Therefore, the current task was to deal with these two remaining articles. He proposed to deal with them in conjunction as they referred to a similar subject matter, namely, the general revision of the Instrument and then the specific clause to amend Articles 11 and 12 of the Instrument found in Article 16. He noted that, according to the text that was on the table, the Assembly of Contracting Parties would have the competence and powers to make amendments. The Chair then submitted these two Articles for the delegates' consideration and opened the floor.

234. The Delegation of Ghana, speaking on behalf of the African Group, addressed Article 15, and proposed to amend the first sentence of Article 15, which should read: "This Instrument may only be revised by a Diplomatic Conference of the Contracting Parties." Its Group believed that every review of the Instrument, or any other for that matter, should be carried out by the Member States who were Contracting Parties to the treaty. In its view, that provision for amendment was consistent with other Instruments, such as the Geneva Act of the Lisbon Agreement, to which several Member States present across all the regional groups were party, and therefore the Group expected a common understanding of this issue. It saw no reason why Member States that had no stake or interest in a treaty, should be allowed to have undue influence in the processes concerning it.

235. The Representative of the European Union said that Article 15 required further analysis and therefore the European Union was not in a position to support the current drafting. In agreement with the Group B statement delivered two days before, the European Union was of the opinion that Article 16 should be deleted, the reason being that there should not be any exception to Article 15, as the Representative had already stated in relation to Article 11. The European Union proposed that the provision in Article 16(3), requiring three-fourths of the votes cast, be reflected in Article 11.

236. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, believed it was important to make clear that GRULAC preferred to keep Article 16.

237. The Delegation of Switzerland, speaking on behalf of Group B, stated that Group B queried the recent introduction of Article 16 on amendment of Articles 11 and 12 in document GRATK/PM/2. Group B believed that it should not be possible to amend specific Articles of the Instrument without following the revision process set out in Article 15. The Group reiterated that it was critical to ensure that there was full and proper consideration of any proposed amendments at an appropriate level.

238. The Delegation of Niger echoed the statement of the Delegation of Ghana, delivered on behalf of the African Group. The Delegation said that it was neither fair nor just that non-Contracting Parties participate in the revision of this treaty.

239. The Delegation of Poland, speaking on behalf of CEBS, restated its position in relation to Article 16 and Article 11. It aligned its statement with the position of the European Union on the deletion of Article 16 and on reflecting the provision for a three-quarters majority for decision-making in Article 11.

240. The Delegation of Iran (Islamic Republic of) aligned itself with the position of the African Group.

241. The Delegation of Kenya supported the statement made by the Delegation of Ghana on behalf of the African Group on the inclusion of the words “of Contracting Parties” after “Diplomatic Conference.”

242. The Delegation of the United States of America supported the current formulation of Article 15, adding that its Delegation did not support the proposal made by the Delegation of Ghana as it would need further time to consider its implications. Turning to Article 16, the Delegation said that, as it noted earlier during the discussion of Article 11(2)(f), it proposed the deletion of Article 16. It recalled that Article 16 was not in the Chair's Text, and it also made the instrument internally inconsistent. According to the Delegation, Article 16 conflicted with Article 15, which required that a Diplomatic Conference be called to revise the Instrument. It supported the retention of Article 15 and the deletion of Article 16. It recalled that recent WIPO treaties took the same approach in that a Diplomatic Conference was required for any amendments to the Instrument. The Delegation reiterated that any future revisions to the Instrument should result from an inclusive, high-level process that would consider the views of all Member States.

243. The Delegate of Morocco echoed the statement of Ghana on behalf of the African Group. In the interest of consistency and coherence, it stressed its preference that only Contracting Parties could participate in a Diplomatic Conference for revision of the Instrument. The Delegation provided the example of the Lisbon System, where this process was applied.

244. The Delegation of Uganda supported the statement made by the Delegation of Ghana on behalf of the African Group on Article 15 and added that Article 16 should remain the way it was drafted.

245. The Delegation of Samoa said that when it joined international agreements, it was signing off a part of its sovereignty. It observed that this was done with the understanding that other countries, joining the same agreement, would be signing off their sovereignties as well, to be bound by obligations in the agreement. The Delegation expressed its view that, for a non-party to sit in and tell parties what they want and to change the features of the Instrument through the review process while continuing to not be a party to the agreement, would be daylight robbery of the sovereignties of those who were bound by that Instrument. For this reason, its Delegation supported the position of the African Group.

246. The Delegation of Switzerland expressed support for the statement made by Group B regarding the deletion of Article 16. On Article 15, echoing the position of the European Union, the Delegation reserved its position for the Diplomatic Conference, as the issue was still under consideration. The Delegation noted that, in considering these issues, it was also necessary to look at Article 9, as there was no agreement so far on the Article 9 review clause, which made it very difficult for the Delegation to position itself regarding Article 15 at this stage.

247. The Delegation of Namibia added its voice to, as it described it, the consensus that was forming in the room on Article 15. The Delegation expressed its view that the Diplomatic Conference was meant to be for the contracting parties. It echoed the reasons provided by the Delegations of Ghana, Niger, Kenya, Morocco, Venezuela (Bolivarian Republic of), Samoa and

others, and was of the view that the responsibilities carried by Contracting Parties gave them the right and privilege to decide on any revision. Therefore, members or states that did not carry the responsibility, should not have the privilege of deciding on the revision.

248. The Delegation of Japan supported the wording of Article 15 and the deletion of Article 16, as proposed by Group B and the United States of America and other delegations. In view of the unusual impact of this international Instrument on patent applicants who file patent applications all over the world, including thousands of Japanese applicants, the Delegation believed that this Instrument should only be revised by a Diplomatic Conference in an inclusive and transparent manner, as provided for in Article 15.

249. The Delegation of the United Kingdom supported the statement made by Group B on Article 16 and reiterated that any amendments to the text should have full and proper consideration, given the global impact of the Instrument. It stated that the Assembly should not have powers that may allow it to award itself greater powers or to expand the powers of the International Bureau. Therefore, its Delegation did not support Article 16 in document GRATK/PM/2 and was of the view that it should be deleted. The Delegation reserved its position on Article 15 for the same reasons as set out by the Delegation of Switzerland and did not consider that consensus on this Article had emerged in the room.

250. The Delegation of the Republic of Korea, commenting on Articles 15 and 16, stated that it aligned its position with the statement made by the Delegation of the United States of America and other delegations on the deletion of Article 16 and on maintaining Article 15 as it is.

251. The Delegation of Nigeria thanked the Chair and the Secretariat, who were working hard on the Preparatory Committee, and expressed its appreciation for their efforts. First, the Delegation acknowledged and supported the statement made by the Delegation of Ghana on behalf of the African Group. It also supported the addition “of the Contracting Parties” to Article 15 and added that it did not support the deletion of Article 16. The Delegation considered it important to note that, since 1883, the international patent system has had an impact on indigenous people. It believed that the idea that this Instrument would impact a global system that, for more than a century, had been a difficult place of extraction for indigenous peoples, required some reflection on the part of delegations. The Delegation reiterated that it was the IP system that impacted indigenous peoples and had a global impact. The Delegation observed that, for many years, indigenous peoples and citizens of former colonies could not even file for a patent, even under the system that was imposed. Therefore, the Delegation asked for sensitivity and some reflection about what delegations were doing in the meeting because its Delegation considered that this was an inclusive process and one that reflected internal consistency. It was one thing in Article 16 to deal with the internal self-governance of an Assembly of Contracting States and completely a different thing to open the revision of an instrument to the broader membership of WIPO. The Delegation did not see any inconsistency between Article 16 and Article 9 nor did it see any reason for there to be an open process involving non-contracting states in relation to both the internal governance of the Assembly as well as any amendment to the proposed Instrument. For that reason, the Delegation continued to maintain strongly that adding “Contracting Parties” would clarify Article 15, and added that Article 16, which confers powers to the internal governance of this Instrument, should remain as it was.

252. The Delegation of the Russian Federation, addressing Article 15 on revision, pointed out that Article 39 of the VCLT, on general rules concerning amendments to treaties, provided that a treaty can be amended upon agreement between the parties. The agreement between the parties was, according to the Delegation, one of the fundamental provisions of the law of international treaties and it was therefore of the view that no third State should be allowed to participate. If a number of delegations had doubts regarding the wording of Article 15, then it would be right to have the wording "Diplomatic Conference of Contracting Parties" added. It stated that, in any case, this version would be in line with the VCLT. The Delegation asked the Legal Counsel to confirm this understanding, to address the concerns of a number of delegations that had been heard in the meeting.

253. The Legal Counsel drew the attention of delegations to a further provision that followed the provision read by the Delegate, namely Article 39 of the VCLT, which provided that a treaty may be amended by the agreement between the parties, and which conferred the authority to do so. However, it did not specify that it was limited to those parties adding that the Article said that the rules regarding amendment apply, except insofar as the treaty may otherwise provide. The Legal Counsel advised that the negotiators were free to provide otherwise in the treaty, and to allow for an open, inclusive Diplomatic Conference, if that was the wish of the negotiators.

254. The Delegation of Egypt, indicating that it was focusing only on Article 15 at that stage, expressed its support for the stance of the African Group.

255. The Chair stated that, following the discussion one could not deduce any agreement to change Articles 15 and 16. He then proposed the following decision paragraph for agenda item 5:

256. The Preparatory Committee:

- (i) considered and approved the Draft Administrative Provisions and Final Clauses as set forth in document GRATK/PM/2 for further consideration by the Diplomatic Conference with the following change: "Article 11.2 – The Assembly: [...] (e) May establish technical working groups as it deems appropriate";
- (ii) requested the Secretariat to prepare an information document reflecting the textual proposals submitted by delegations in respect of the Draft Administrative Provisions and Final Clauses, to be annexed to the verbatim report.

257. The Chair, seeing no objection, gaveled the decision.

ITEM 6 OF THE AGENDA

DRAFT RULES OF PROCEDURE OF THE DIPLOMATIC CONFERENCE

258. Discussions were based on document GRATK/PM/3.

259. Introducing Agenda Item 6, the Legal Counsel drew the attention of the delegations to document GRATK/PM/3, entitled "Draft Rules of Procedure of the Diplomatic Conference." The Legal Counsel reminded the Committee that in deciding to convene the Diplomatic Conference

to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources, and Traditional Knowledge associated with Genetic Resources, the WIPO General Assembly further decided at its July 2022 session that the Preparatory Committee would consider the Draft Rules of Procedure to be presented for adoption to the Diplomatic Conference. As the WIPO General Rules of Procedure, by their very terms, did not apply to Diplomatic Conferences, the Secretariat had prepared, as had been the case for other Diplomatic Conferences held under the auspices of WIPO, bespoke Rules of Procedure for the Diplomatic Conference, which were based on the WIPO General Rules of Procedure and their long-standing application, as well as the practice of the IGC, in particular.

260. The Chair thanked the Legal Counsel and asked the delegations if they were in a position to consider the approval of the Rules of Procedure as a whole.

261. The Delegation of Switzerland, speaking on behalf of Group B, expressed its Group's appreciation that the drafting of the proposed Rules of Procedure was generally guided by the well-established practice used in previous Diplomatic Conferences. The Delegation also thanked the Secretariat for applying the measures that applied to observers in the context of the work of the IGC to the work of the relevant committee or any working group. Group B therefore affirmed its support for Draft Rule 46 and especially paragraph 4 as a reflection of the long-standing practice at the IGC and mentioned that Group B members might make additional interventions on the Draft Rules of Procedure.

262. Speaking on behalf of the CEBS Group, the Delegation of Poland also thanked the Secretariat for preparing the Draft Rules of Procedure for the Diplomatic Conference as contained in document GRATK/PM/3. The Delegation observed that the document defined, in a transparent and user-friendly manner, matters related to objectives, competencies, representation, conduct of business, and voting procedures at the Diplomatic Conference. CEBS was thankful that the document incorporated the lessons and experience of previous diplomatic conferences, reflected on the legal heritage and procedures of WIPO, and was based on the principle of a Member-driven process. The Delegation emphasized that CEBS welcomed the presented provisions of the Draft Rules of Procedure, and in its opinion, they were a good basis for the Member States' work during the Diplomatic Conference. CEBS urged the other delegations that the Draft Rules of Procedure would create a favorable climate for an open, concrete dialog that should help Member States to reach good results at the Diplomatic Conference. The Delegation added that its Group valued the possibility for observers to participate in the Diplomatic Conference, especially representatives of indigenous peoples and local communities who could engage with the relevant committees and working groups during the Conference, based on the provisions of subparagraph 4 in Draft Rule 46. The Delegation stated that CEBS looked forward to further discussions on specific provisions of the Draft Rules of Procedure during the Diplomatic Conference.

263. The Chair observed that the Diplomatic Conference would also have the task of adopting its own rules of procedure and reiterated that the delegations would have the opportunity to seek clarification or propose amendments at that time, as well.

264. The Delegation of Ghana, speaking on behalf of the African Group, thanked the Secretariat for preparing document GRATK/PM/3 and recognized that it had been modeled on the standard procedure for the Diplomatic Conferences and WIPO General Rules of Procedure.

The Delegation concluded that its Group therefore welcomed the Draft Rules of Procedure but noted that Member States may, at some point, seek clarification on some rules.

265. The Representative of the European Union stated that the European Union and its Member States supported the Draft Rules of Procedure as proposed by the Secretariat in document GRATK/PM/3, as these rules were based on consolidated international practice that had been used in previous conferences. The European Union recognized the addition made in the Draft Rule 46 on the status of observers and welcomed it for the purpose of this Diplomatic Conference.

266. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, thanked the Secretariat for the Draft Rules of Procedure as contained in document GRATK/PM/3 and announced that its Group accepted the rules in their entirety, as it understood the rules were based on the usual practice.

267. The Delegation of China expressed its appreciation for document GRATK/PM/3.

268. The Delegation of Iran (Islamic Republic of), on behalf of the Asia and the Pacific Group, announced the Group's acceptance of the Draft Rules of Procedure.

269. Based on the collective support of the delegations that had spoken on the item thus far, the Chair proposed and gavelled the following decision paragraph:

270. The Preparatory Committee considered and approved the Draft Rules of Procedure as set forth in document GRATK/PM/3 for adoption by the Diplomatic Conference.

ITEM 7 OF THE AGENDA

LIST OF STATES AND OBSERVERS TO BE INVITED TO THE DIPLOMATIC CONFERENCE AND THE TEXTS OF THE DRAFT LETTERS OF INVITATION

271. Discussions were based on document GRATK/PM/4.

272. Introducing Agenda Item 7, on the List of States and Observers to be invited to the Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources, and Traditional Knowledge Associated with Genetic Resources, as well as the Texts of the Draft Letters of Invitation, the Legal Counsel drew the attention of the delegates to document GRATK/PM/4. In the context of the decision by the WIPO General Assembly, to convene a Diplomatic Conference to conclude the Instrument, the Legal Counsel reminded the delegations that the General Assembly further decided that the Preparatory Committee would "establish the necessary modalities of the Diplomatic Conference", which included the consideration of "[...] the list of invitees to participate in the conference, and the text of the draft letters of invitation [...]". Consistent with long-standing WIPO practice, the list of invitees before the delegations included organizations accredited as observers to WIPO, as well as observers of the IGC itself.

273. The Chair thanked the Legal Counsel and pointed out that the letters of invitation were modeled on those from previous conferences and that the invitee list was generated based on WIPO's prior practices to include observers of WIPO in general and the list of *ad hoc* observers for the IGC. Seeing no objection, the Chair gavelled the following decision paragraph:

274. The Preparatory Committee considered and approved the list of invitees and the texts of the draft invitations and other proposals as contained in paragraphs 1 to 4 of document GRATK/PM/4.

AGENDA ITEM 8

AGENDA, DATES AND VENUE OF THE DIPLOMATIC CONFERENCE

275. The Chair thanked the Group coordinators who attended the short informal consultation on Item 8 of the Agenda. The Chair reported that the consultation made it possible to continue immediately with the meeting and went on to open Agenda Item 8 on Agenda, Dates and Venue of the Diplomatic Conference.

276. Introducing Agenda Item 8, the Legal Counsel recalled that, in its decision to convene the Diplomatic Conference, the WIPO General Assembly further decided that the Preparatory Committee would "establish the necessary modalities of the Diplomatic Conference," which included the "Agenda, Dates and Venue of the Diplomatic Conference." However, as there were no conclusive offers from Member States to host the Diplomatic Conference, the Secretariat was not in a position to finalize a working document that would recommend a decision to be taken by the Preparatory Committee under this Agenda Item. The Legal Counsel recalled that, on September 5, 2023, the Director General sent a Circular Note to all Member States inviting them to indicate their interest in hosting the Diplomatic Conference, to be held in the first half of 2024, by submitting an official invitation to the Secretariat at their earliest convenience. The Legal Counsel stated that the International Bureau looked forward to receiving an indication from Member States that wished to host the Diplomatic Conference and would appreciate being advised accordingly as soon as possible.

277. The Delegation of Poland, speaking in its national capacity, sought clarity on the standing of the negotiations and the next steps. The Delegation asked the Secretariat to share information on what had happened in the time since the previous year as well as information on the next steps.

278. The Delegation of Ghana, speaking on behalf of the African Group, requested additional information, especially on the estimated number of participants in the planned Diplomatic Conference, as well as the coverage of all related costs and what was requested or required from Member States who expressed interest in hosting the Diplomatic Conference.

279. The Delegation of the United Kingdom thanked the Secretariat for the update provided. The United Kingdom welcomed more information from the Secretariat on prospective timing, beyond the first half of 2024, to help with scheduling.

280. The Legal Counsel thanked the delegations for the questions and indicated that she would provide as much information as she could while explaining that it was in the delegations' hands to propose a potential offer. With respect to what had transpired during the previous year, the Legal Counsel recalled that, as the delegations were aware, a Note was issued after the Assemblies of the previous year, inviting offers to host the Diplomatic Conference. As the Director General made clear, there was no conclusive offer to host this particular Diplomatic Conference and therefore the Secretariat was not in a position to identify a host country or city for the purposes of a working document. The Legal Counsel emphasized that the invitation to submit an offer to host was open and that the Secretariat was looking forward to receiving them. With respect to some of the logistical and costing implications, the Legal Counsel reported that the practice was that it was a cost-shared endeavor, between WIPO and the host Member State. She stressed that, without any information as to the host, it was impossible to provide a figure because that would depend on everything from the cost of flights to the country and DSA rates in the hotels in the host city. The Legal Counsel explained that there were a number of factors that were involved in the hosting of such an event, therefore, it was impossible to speak hypothetically at that point. With respect to the question on timing, the Legal Counsel recalled that the General Assembly decided that the Diplomatic Conference would take place no later than 2024 and, because of the timing of this Preparatory Committee, and the subsequent Preparatory Committee for the Design Law Treaty, the intention was for this Diplomatic Conference to take place in the first half of 2024, leaving the remaining time to organize a second Diplomatic Conference. The Legal Counsel clarified that this was as much information as the Secretariat had, but that it looked forward to hearing back from delegations on new developments in this area.

281. The Chair thanked the Legal Counsel for this information and opened the floor for interventions. As there were none, the Chair proposed to keep that Agenda Item open for consideration by the Preparatory Committee at a later stage and announced that deliberations on this agenda item were adjourned.

AGENDA ITEM 9

ADOPTION OF THE SUMMARY REPORT

282. The Chair indicated that, as is usual WIPO practice, a summary report was prepared by the Secretariat containing the decisions taken during the Preparatory Committee. He announced that the draft summary report would be shown on the screen and would be published on the WIPO website after its adoption. The Chair proceeded to read the full draft report to the delegations and asked whether it was satisfactory; observing that it seemed to be so, the Chair gavelled the adoption of the summary report.

283. The Delegation of Colombia apologized for taking the floor and requested advice from the Legal Counsel regarding the implication of the change of language, in the provisions that are substantive, and the administrative ones, in the report, that was just approved. The Delegation noted that the report involved substantive matters that would be included in the Basic Proposal.

284. The Legal Counsel sought to confirm her correct understanding of the question. She recalled that the Preparatory Committee, under Agenda Item 4, decided to incorporate into the Basic Proposal any of the agreements reached at the Special Session of the IGC last week, as

was the decision of the General Assembly for this Committee to do. The Legal Counsel explained that it would all then be forwarded to the Diplomatic Conference. Additionally, the provisions of the Draft Administrative Provisions and Final Clauses would likewise be sent to the Diplomatic Conference for further consideration.

285. Delegation of Colombia confirmed that it had received the clarity sought.

AGENDA ITEM 10

CLOSING OF THE SESSION

286. In closing the session, the Chair noted that the decision of the WIPO General Assembly to convene a Diplomatic Conference to conclude an International Legal Instrument relating to Intellectual Property and Genetic Resources and Traditional Knowledge Associated with Genetic Resources, taken at its 55th session, held from July 14 to 22, 2022 last year, mandated the Preparatory Committee to establish the necessary modalities of the Diplomatic Conference. He continued by saying that these modalities included the agenda, dates and venue of the Diplomatic Conference which, as the delegates were well aware, had been supposed to be considered and decided under Agenda Item 8. He further explained that earlier in the proceedings the Legal Counsel clarified that there were currently no offers from Member States to host the Diplomatic Conference. Consequently, this Preparatory Committee meeting had not been able to engage in substantive deliberations on that issue, on the agenda of the Diplomatic Conference, its dates and venue. Therefore, the Chair proposed the meeting of the Preparatory Committee not to be closed. Rather, in accordance with Rule 13(4) of the WIPO General Rules of Procedure, the Chair proposed that the meeting of the Preparatory Committee be adjourned and reconvened at a later date to be communicated by the International Bureau, once a conclusive offer had been received, and when the International Bureau was able to make a recommendation regarding the dates and venue of the Diplomatic Conference and to prepare the relevant working documents for consideration by the Preparatory Committee under Agenda Item 8.

287. As there were no more requests for the floor, the Chair explained that, while this Preparatory Committee adopted its summary report, a verbatim report, which is usually prepared following the conclusion of the meeting, will also be prepared and circulated after the Preparatory Committee concludes its deliberations at its reconvened session. The Chair declared this meeting of the Preparatory Committee of the Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources, adjourned.

ITEM 8 OF THE AGENDA

AGENDA, DATES AND VENUE OF THE DIPLOMATIC CONFERENCE

288. Reopening the adjourned meeting, the Chair welcomed delegations to the reconvened meeting of the Preparatory Committee. He reminded them that the September meeting of the Preparatory Committee took important decisions on the list of invitees to the Diplomatic Conference, the Draft Rules and Procedure, and the Draft Administrative Provisions and Final

Clauses for the instrument to be considered by the Diplomatic Conference. He recalled that Item 8 on the Agenda, Dates, and Venue of the Diplomatic Conference, remained open as no decision was taken, in the absence of a conclusive offer to host the Diplomatic Conference. He stated that the current meeting was reconvened for the purpose of discussing Agenda Item 8. The Chair opened the discussion on the Agenda Item 8 and announced that one document GRATK/PM/6 was under consideration and invited the Legal Counsel to introduce the document.

289. Introducing Agenda Item 8 on the Agenda, Dates and Venue of the Diplomatic Conference, the Legal Counsel recalled that in its decision to convene a Diplomatic Conference, the WIPO General Assembly decided that the Preparatory Committee would “establish the necessary modalities of the Diplomatic Conference,” which included the “Agenda, Dates and Venue of the Diplomatic Conference.” The proposed draft agenda was contained in the annex to document GRATK/PM/6. The document further proposed that, given the absence of any conclusive expression of interest received from a WIPO Member State to host the Diplomatic Conference and with due regard to the operational, logistical, and legal preparations required for its convocation, the Diplomatic Conference would take place at WIPO Headquarters in Geneva, Switzerland, from May 13 to 24, 2024.

290. Speaking on behalf of CEBS, the Delegation of Poland thanked the Secretariat for its efforts to facilitate consultations with WIPO Members on agenda, venue, and dates of the Diplomatic Conference to be held no later than in 2024. Since no WIPO Member State expressed a conclusive interest to host the Diplomatic Conference, CEBS welcomed the Secretariat’s proposal to hold it at WIPO Headquarters in May 2024. The Delegation confirmed the readiness of the CEBS Group to further engage in discussions with a view to ensure concrete outcomes during the Diplomatic Conference.

291. The Delegation of the Kingdom of the Netherlands, speaking on behalf of Group B, thanked the Secretariat for preparing document GRATK/PM/6 and for the reconvening of the Preparatory Committee. Group B was pleased that the location and date were proposed, however, it regretted that there had been no host country for the Diplomatic Conference. The Delegation thanked the WIPO Secretariat for its willingness to host the Diplomatic Conference on its premises from May 13 to 24, 2024.

292. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, thanked the Secretariat for organizing the meeting of a historical importance for the decision on the date and venue for the Diplomatic Conference. GRULAC had a preference for a venue outside of Geneva, however, it recognized the advantages of organizing the Diplomatic Conference at WIPO premises. It acknowledged the ease with which WIPO could host a significant number of representatives as well as the opportunity for Geneva-based diplomats to attend the Diplomatic Conference. Its Group was grateful for WIPO’s offer to provide its Headquarters as the venue. Moreover, it highlighted that the city of Geneva was well-known by all delegations for its facilities that were able to host important delegations. The Delegation reconfirmed that GRULAC was completely committed to this Diplomatic Conference and would do everything possible to ensure its success.

293. The Delegation of Iran (Islamic Republic of), speaking on behalf of the Asia and the Pacific Group, thanked the Chair and the Secretariat for all the preparations leading up to the final day of the Preparatory Committee. The Group took note of the information provided in document GRATK/PM/6 and had no reservations with regard to convening the Diplomatic Conference at WIPO Headquarters in Geneva from May 13 to 24, 2024. It eagerly looked forward to the successful convening of the Diplomatic Conference in 2024. The Group believed that all parties should continue their hard work in order to achieve an agreement and promote efficiency of the patent system and protection of genetic resources and associated traditional knowledge in a balanced and adequate manner. The Delegation affirmed that its Group remained committed to further engagement with other regional groups and moving the discussions forward at the Diplomatic Conference by exercising utmost flexibility and political will.

294. The Delegation of Ghana, speaking on behalf of the African Group, thanked the Secretariat for preparing document GRATK/PM/6 and for reconvening the Preparatory Committee. Its Group regretted the lack of a host country for the Diplomatic Conference adding that it had no objections to the venue and date proposed by the Secretariat. Lastly, the Group affirmed its dedication to the success of the Diplomatic Conference and hoped that all delegations would approach the Diplomatic Conference with the same enthusiasm.

295. The Delegation of China thanked the Chair and the Secretariat for preparing the working document GRATK/PM/6. The Delegation expressed gratitude to the Legal Counsel for introducing the content of the document and thanked the Director General as well as the Secretariat for their extensive work in deciding on the date and venue of the Diplomatic Conference. The Delegation agreed to the date and venue proposed in the document, that is, from May 13 to 24, 2024, in Geneva, Switzerland. It noted that it was the second diplomatic conference to be held at WIPO's Headquarters after the 2015 Diplomatic Conference on the Lisbon System and highlighted that the international legal instrument in question was very important to global intellectual property governance. To promote the convening of the Diplomatic Conference and textual negotiations, it commended Member States and the Secretariat for their work that year, including meetings within its Group and interregional Groups, as well as in the IGC Special Session meetings and the Preparatory Committee for the Diplomatic Conference held in September. The Delegation highlighted the positive results already achieved and noting the six months left before the Diplomatic Conference it stated that China was willing to exchange with interested parties on the text and to continue to work together to formulate a binding international legal instrument.

296. The Delegation of Bangladesh announced that it aligned itself with statement made by Iran (Islamic Republic of) on behalf of the Asia and the Pacific Group and thanked the Chair as well as the Secretariat for all the preparations leading up to the final day of the Preparatory Committee. It took note of the information contained in document GRATK/PM/6 regarding the Agenda, Dates, and Venue of the upcoming Diplomatic Conference. The Delegation said that it had no reservations regarding convening the Diplomatic Conference at WIPO Headquarters in Geneva from May 13 to 24, 2024, and it looked forward to a successful Diplomatic Conference in 2024.

297. The Chair observed that the tone of all interventions was positive and that delegations had positive expectations for the Diplomatic Conference but also highlighted that the success of the Diplomatic Conference was still subject to hard work from the delegations. Noting that there were no further requests for the floor, the Chair thanked everyone for the deliberations. Seeing no objection, the Chair gavelled the following decision paragraph:

298. The Preparatory Committee
- (i) approved the draft agenda of the Diplomatic Conference; and
 - (ii) approved that the Diplomatic Conference will take place at WIPO headquarters in Geneva, Switzerland, from May 13 to 24, 2024.

ITEM 9 OF THE AGENDA

ADOPTION OF THE REPORT

299. The Chair announced that for the sake of good order, the Preparatory Committee would exceptionally revert to Agenda Item 9 on the Adoption of the Report, to include the decisions taken by the Preparatory Committee on Agenda Item 8 so that it would reflect all the decisions taken by the Preparatory Committee in its meeting from September 11 to 13, 2023, and its reconvened meeting. He announced that a revised summary report was prepared with the agreed decisions and explained that the changes concerned the inclusion of the date of the reconvened Preparatory Committee, the decision taken on Agenda Item 8 on the Dates and Venue of the Diplomatic Conference and the closing of the session. He announced that the revised Summary Report would be published on the WIPO website after its adoption by the Preparatory Committee. Noting that there were no further comments on this Agenda Item, the Chair announced that he would proceed with the adoption of the revised Summary Report and, seeing no objection, he gavelled the following decision paragraph:

300. The Preparatory Committee adopted the revised Summary Report (document GRATK/PM/5 Rev.).

AGENDA ITEM 10

CLOSING OF THE SESSION

301. Speaking on behalf of Group B, the Delegation of the Kingdom of the Netherlands thanked the Chair and his Vice-Chairs for the able guidance during the Preparatory Committee. The Delegation also thanked the Secretariat for its hard work prior to and during the session and expressed gratitude to the interpreters. Its Group appreciated that the Preparatory Committee was able to establish the modalities for that important Diplomatic Conference. The Group also thanked other delegations and looked forward to working together in Geneva the following year at the Diplomatic Conference, and affirmed that delegations could count on the support and constructive spirits of Group B.

302. The Delegation of Poland delivered the closing statement on behalf of CEBS. The Group thanked the Chair for his leadership and skillful guidance of the Preparatory Committee that day and in September. CEBS also thanked the Vice-Chairs and all experts for their dedication and energy in moving forward the work of the Preparatory Committee. Equally, its Group extended its thanks to the whole team of WIPO Secretariat, the interpreters, and the Conference services for their contribution and for ensuring the excellent working conditions for delegations. The Group also thanked the Group Coordinators and all WIPO Member States for cooperation in the spirit of mutual understanding and respect. It stated that the outcomes of the Preparatory Committee brought them closer to the Diplomatic Conference and assured the Chair that its Group would be prepared to constructively engage in the work to achieve success during the Diplomatic Conference. The Delegation reconfirmed the CEBS commitment to constructive dialog within the IGC process. Finally, the Delegation expressed its wholehearted appreciation and gratitude for a very professional, effective, kind, and friendly cooperation that year and, wished everyone well-deserved, restful holidays and all the success in the New Year 2024.

303. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, thanked the Chair for his leadership in the Preparatory Committee and welcomed the fact that they gave a finishing touch to the work of the Committee, by adopting the summary report which incorporated central elements for holding the Diplomatic Conference including venue and date. The Delegation commended the presence of the Director General and recognized that his presence demonstrated the importance of this historical moment. It highlighted that delegations in the room and those connected online wished to have an agreement. It reassured delegations of the unceasing support of the Group and thanked the Secretariat for the dedicated and constant work which was essential to bring them to where they were that day. The Group thanked the interpreters, all the people in the room and those behind the scenes. It reiterated their commitment to this topic and highlighted the dedication of the Group while hoping to achieve promising results.

304. The Delegation of Ghana, speaking on behalf of the African Group, stated that it was glad to see the Director General in the room and thanked the Chair and Vice-Chairs for successfully concluding the Preparatory Committee. The Delegation expressed gratitude to the Secretariat, interpreters and all relevant WIPO staff for their hard work and looked forward to meeting with regional groups and Member States at the Diplomatic Conference the following year.

305. Noting that no other delegation wished to take the floor, the Chair offered the floor to the Director General for his closing remarks.

306. In closing, the Director General delivered the following remarks:

“This is another historic milestone in our long journey in advancing the issues of genetic resources and traditional knowledge, as well as finalizing the venue, location and timing for the Diplomatic Conference. The decision today and the directions given by the General Assembly last year for WIPO to host two Diplomatic Conferences, have now moved on to the next chapter, and I am pleased to see this was the result of collaboration, cooperation, support, and as many coordinators mentioned, a lot of goodwill across many regional groups. I would like to take this moment to acknowledge that this latest development would not be possible without all the hard work that has been done over the past two decades by many of our predecessors working very hard and trying many different ways to advance these topics. I am happy to see that both of these topics will

form a key part of the WIPO work in 2024 and it is a key part of our normative calendar. I would like to highlight that this is a Member State-driven process, but the Secretariat will continue to extend full support to establish the best possible environment to discuss this important issue. We pledge our support to provide the best logistical, administrative, and other arrangements so that delegations have the best working environment to conduct deliberations. The Secretariat will continue to support you in all the subject matter, substantive policy and technical deliberations to achieve the best possible decision for the WIPO community. Please count on the Secretariat to support and join you in this journey. Hopefully we can move as one WIPO family to a common decision on this topic. More broadly, I would say with both Diplomatic Conferences planned for discussions next year, I think that despite challenging times for multilateralism, we can come together in the spirit of consensus, goodwill and flexibility. I would like to thank group coordinators for your constructive approach to this issue in the last few months of deliberations. I would be remiss if I did not take the opportunity to thank the Chair, Mr. Jukka Liedes, one of the pillars of WIPO, for his skillful chairmanship. I would also be remiss if I did not thank my colleagues from the Secretariat, first for this particular Preparatory Committee, the Office of the Legal Counsel and many other colleagues from conference services that help us put together procedural, logistical and administrative arrangements, interpreters, conference services, but not forgetting to mention the team at the TK Division whose work in this area is critical to the discussions. We pledge our joint collective efforts to support you as we move towards the Diplomatic Conference next year. With that, I pass the floor back to the Chair and I thank you for your skill, dedication, and commitment on bringing us to this important milestone.

"Thank you."

307. The Chair thanked the Director General for the encouraging and warm words and stated that before closing the Preparatory Committee, he wished to offer some final remarks. He began by extending his appreciation to the Member States for their hard work and constructive spirit shown during the meeting of the Preparatory Committee that allowed it to reconvene the current session and the positive conclusion of all relevant Agenda Items. He wished to take the opportunity to thank the Secretariat for its professionalism and excellent preparation of the meeting and the interpreters for the skillful support of the meeting. He noted that after many years of negotiations, the adoption of the modalities for the Diplomatic Conference constituted a crucial step forward to the conclusion of a new International Legal instrument Relating to International Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources. He was confident that with the goodwill shown by the delegations during the Preparatory Committee, that journey could be brought to a positive conclusion in the following May in Geneva at the WIPO Headquarters and stated that it was a pleasure to preside over the meeting and thanked everyone for their trust.

308. The Chair, having adjourned the meeting of the Preparatory Committee on September 13, 2023, declared closed the Preparatory Committee for the Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources on December 13, 2023.

[Annex follows]

INFORMATION DOCUMENT REFLECTING TEXTUAL PROPOSALS SUBMITTED BY
DELEGATIONS IN RESPECT OF THE DRAFT ADMINISTRATIVE PROVISIONS AND FINAL
CLAUSES AS CONTAINED IN GRATK/PM/2

INTRODUCTION

1. The Preparatory Committee of the Diplomatic Conference to conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources (hereinafter referred to as “the Preparatory Committee”) at its Session held from September 11 to 13, 2023, requested the Secretariat to “prepare an information document reflecting the textual proposals submitted by delegations in respect of the draft administrative provisions and final clauses to be annexed to the verbatim report” (see document GRATK/PM/5 paragraph 10).

2. Accordingly, the present document contains textual proposals made orally by delegations in the plenary meetings of the September session of the Preparatory Committee. The textual proposals are listed by Article in ascending order (Articles 10 to 23) and reflect the chronological order in which they were made during the plenary. If a specific proposal was made or supported by several delegations, only the first mention is captured to avoid repetitions and increase the readability of the document. Furthermore, this document only contains textual proposals, as such, i.e. proposals to amend or delete a provision or parts thereof.

3. Delegation statements of a general nature, or those expressing support for, or opposition to a proposal, as well as the amendment to Article 11.2(e) (as contained in GRATK/PM/2), which was adopted by consensus by the Preparatory Committee (see document GRATK/PM/5 paragraph 9), are reflected in the verbatim report.

TEXTUAL PROPOSALS

ARTICLE 10
GENERAL PRINCIPLES ON IMPLEMENTATION

10.1 Contracting Parties undertake to adopt the measures necessary to ensure the application of this Instrument.

10.2 Nothing shall prevent Contracting Parties from determining the appropriate method of implementing the provisions of this Instrument within their own legal systems and practices.

Delegation of Nigeria

In Article 10.2, replace the plural of “legal systems and practices” with the singular to read “legal system and practice”.

Delegation of India

Add a new Article 10.2: “The Contracting Parties, may provide, for more extensive obligations than is required under the instrument, either prior to or subsequent to entry into force of the instrument.”¹

Delegation of Iran (Islamic Republic of)

Add a new Article 10.3: “Each Contracting Party shall promote technical and scientific cooperation with other Contracting Parties, in particular developing countries, in implementing this international instrument, inter alia, through the development and implementation of national policies. In promoting such cooperation, special attention should be given to the development and strengthening of national capabilities by means of human resource development and institution building.”

Add a new Article 10.4: “The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies in pursuance of the objectives of this instrument.”

Delegation of the United States of America

Add a new Article 10.3: “In relation to genetic resources, or associated traditional knowledge, no Contracting Party shall require a patent applicant, or rights holder, to comply with any requirement different from, or additional to, those which are provided for in this instrument.”

ARTICLE 11 ASSEMBLY

11.1 The Contracting Parties shall have an Assembly:

(a) Each Contracting Party shall be represented in the Assembly by one delegate who may be assisted by alternate delegates, advisors and experts.

(b) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask the International Bureau of WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries or that are countries in transition to a market economy.

11.2 The Assembly:

(a) Shall deal with all matters concerning the maintenance and development of this Instrument as well as its application and operation;

(b) Shall perform the function allocated to it under Article [13.2] in respect of the admission of certain intergovernmental organizations to become party to this Instrument;

(c) Shall conduct the review referred to in Article [9];

¹ The current Article 10.2, as found in WIPO document GRATK/PM/2, would accordingly become Article 10.3.

- (d) Shall decide the convocation of a Diplomatic Conference for the revision of this Instrument as referred to in Article [15], including as a result of the review referred to in Article [9], and shall give the necessary instructions to the Director General of WIPO for the preparation of any such Diplomatic Conference;
- (e) May establish technical working groups as it deems appropriate to advise it on the matters referred to in Articles [7] and [9], and on any other matter;
- (f) May adopt amendments to the present Article and Article [12]; and
- (g) Shall perform such other functions as are appropriate to implementing the provisions of this Instrument.

11.3 The Assembly shall endeavor to take its decisions by consensus. Where a decision cannot be reached by consensus, the matter at issue shall be decided by vote. In such a case:

- (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name; and
- (b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States that are party to this Instrument. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and *vice versa*.

11.4 The Assembly shall meet upon convocation by the Director General of WIPO and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of WIPO.

11.5 The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Instrument, the required majority for various kinds of decisions.

Delegation of Switzerland on behalf of Group B

Delete Article 11.2(f).

Delegation of the European Union, on behalf of the European Union and its Member States

Add to Article 11: "One-half of the Contracting States shall constitute a quorum."

Delegation of the United States of America

Delete "including as a result of the review referred to in Article [9]" in Article 11.2(d).

Delete "and subject to the provisions of this Instrument, the required majority for various kinds of decisions." in Article 11.5.

Add to Article 11.5 the word "and" after the word "sessions".

Add a new Article 11.3(c): "If a vote is called, a three-fourth majority is required to take a decision."

Delegation of Venezuela (Bolivarian Republic of), on behalf of the Group of Latin American and Caribbean Countries (GRULAC)

Add at the end of Article 11.1(a), after the word “experts”, the words “including representatives of Indigenous Peoples and local communities.”

Add in the last line of Article 11.2(d) after “any such Diplomatic Conference” the words “of the Contracting Parties”.

Add a new subparagraph 11.2(h): “Recognize the importance of the full and effective participation of Indigenous Peoples and local communities in the work of the Assembly and invite the Contracting Parties to consider financing arrangements to ensure the participation of Indigenous Peoples and local communities.”

Delegation of the United Kingdom

Add a subparagraph (c) in Article 11.3: “The decision of the Assembly shall require three-fourth of the votes cast.”

Representative of the Assembly of First Nations, on behalf of the Indigenous Caucus, and supported by the Delegations of Australia, Canada and New Zealand

Add a new Article 11.1(c): “The Assembly shall include representation from Indigenous Peoples and local communities. They shall have observer status as defined in the WIPO General Rules of Procedure. This participation at the Assembly will include:

- i. Each meeting of the Assembly shall include on the agenda a standing item for presentations by Indigenous Peoples’ representatives.
- ii. The Assembly may ask the International Bureau of WIPO to grant financial assistance to facilitate Indigenous Peoples participation.
- iii. The WIPO Indigenous fellow serve as a focal point for Indigenous Peoples’ and local communities’ participation.”

Delegation of Switzerland

Refer to “Indigenous Peoples and local communities”, not just to “Indigenous Peoples”, each time the expression is used in the instrument.

Delegation of the Russian Federation

Add “in conformity with the established practice of the General Assembly of the United Nations” after “developing countries” in the second sentence of Article 11.1(b).

**ARTICLE 12
INTERNATIONAL BUREAU**

12.1 The International Bureau of WIPO shall perform the administrative tasks concerning this Instrument. In particular, the International Bureau shall prepare the meetings and provide the secretariat for the Assembly and for such technical working groups as may be established by the Assembly.

12.2 The Director General of WIPO and any staff member designated by the Director General shall participate, without the right to vote, in all meetings of the Assembly and any such technical working groups established by the Assembly. The Director General, or a staff member designated by the Director General, shall be *ex officio* Secretary of such a body.

12.3 The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any Diplomatic Conferences. The Director General of WIPO and persons designated by the Director General shall take part, without the right to vote, in the discussions at such Conferences.

Delegation of Iran (Islamic Republic of)

Add a new Article 12.4: "The International Bureau shall carry out any other tasks assigned to it."

ARTICLE 13 ELIGIBILITY TO BECOME A PARTY

13.1 Any Member State of WIPO may become party to this Instrument.

13.2 The Assembly may decide to admit any intergovernmental organization to become party to this Instrument which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Instrument and that it has been duly authorized, in accordance with its internal procedures, to become party to this Instrument.

No textual proposals were made with regard to Article 13.

ARTICLE 14 RATIFICATION AND ACCESSION

14.1 Any State or intergovernmental organization referred to in Article [13] may deposit with the Director General of WIPO:

- (a) an instrument of ratification if it has signed this Instrument; or
- (b) an instrument of accession, if it has not signed this Instrument.

14.2 The effective date of the deposit of an instrument of ratification or accession shall be the date on which that instrument is deposited.

Delegation of the Russian Federation

Delete Article 14.2.

ARTICLE 15 REVISION

This Instrument may only be revised by a Diplomatic Conference. The convocation of any Diplomatic Conference shall be decided by the Assembly.

Delegation of Ghana, on behalf of the African Group

Amend the first sentence of Article 15: "This Instrument may only be revised by a Diplomatic Conference of the Contracting Parties."

**ARTICLE 16
AMENDMENT OF ARTICLES [11] AND [12]**

16.1 Articles [11] and [12] of this Instrument may be amended by the Assembly.

16.2 Proposals for the amendment of the Articles referred to in Article [16.1] may be initiated by any of the Contracting Parties or by the Director General of WIPO. Such proposals shall be communicated by the Director General of WIPO to the Contracting Parties at least six months in advance of their consideration by the Assembly.

16.3 Adoption of any amendment to the Articles referred to in Article [16.1] shall require three-fourths of the votes cast.

16.4 Any such amendment shall enter into force one month after written notifications of acceptance by the Contracting Parties, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the Contracting Parties at the time the Assembly adopted the amendment. Any amendment thus accepted shall bind all of the Contracting Parties at the time the amendment enters into force, or which become Contracting Parties thereof at a subsequent date.

Delegation of Switzerland, on behalf of Group B

Delete Article 16.

**ARTICLE 17
SIGNATURE**

This Instrument shall be open for signature at the Diplomatic Conference in..... and thereafter at the headquarters of WIPO by any eligible party for one year after its adoption.

No textual proposals were made with regard to Article 17.

**ARTICLE 18
ENTRY INTO FORCE**

This Instrument shall enter into force three months after 15 eligible parties referred to in Article [13] have deposited their instruments of ratification or accession.

Delegation of Switzerland, on behalf of Group B

Specify "30" as the number of eligible parties required for entry into force of the instrument.

ARTICLE 19 EFFECTIVE DATE TO BECOME A PARTY

This Instrument shall bind:

- (a) The 15 eligible parties referred to in Article [18], from the date on which this Instrument entered into force; and
- (b) Each other eligible party referred to in Article [13], from the expiration of three months from the date on which it has deposited its instrument of ratification or accession with the Director General of WIPO.

Delegation of Switzerland, on behalf of Group B

Replace “15” with “30” as the number of eligible parties referred to in Article 19(a).

ARTICLE 20 DENUNCIATION

This Instrument may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification. It shall not affect the application of this Instrument to any patent application pending and any international registration in force in respect of the denouncing Contracting Party at the time of the coming into effect of the denunciation.

Delegation of the United States of America

Delete the last sentence of Article 20.

Delegation of the United Kingdom

Without prejudice to its support for the proposal made by the United States of America regarding the deletion of the last sentence of Article 20, substitute the expression “international registration” with the word “patent” in the last sentence of Article 20.

ARTICLE 21 RESERVATIONS

No reservations to this Instrument shall be permitted.

No textual proposals were made with regard to Article 21.

ARTICLE 22 LANGUAGES

22.1 This Instrument shall be signed in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, all texts being equally authentic.

22.2 An official text in any language other than those referred to in Article [22.1] shall be established by the Director General of WIPO, after consultation with all the interested parties, in such other languages as the Assembly may designate. For the purposes of this paragraph, “interested party” means any Contracting Party whose official language, or one of whose official languages, is concerned.

No textual proposals were made with regard to Article 22.

ARTICLE 23 DEPOSITARY

The Director General of WIPO is the depositary of this Instrument.

No textual proposals were made with regard to Article 23.

[End of Annex and document]