

# WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION  
GENEVA

## WIPO GENERAL ASSEMBLY

### Thirty-First (15<sup>th</sup> Extraordinary) Session Geneva, September 27 to October 5, 2004

#### REPORT

*adopted by the Assembly*

1. The General Assembly was concerned with the following items of the Consolidated Agenda (document A/40/1): 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 18, 21 and 22.
2. The report on the said items, with the exception of items 5, 6, 7, 8, 9, 10, 11, 12 and 16, is contained in the General Report (document A/40/7).
3. The reports on items 5, 6, 7, 8, 9, 10, 11, 12 and 16, are contained in the present document.
4. Mr. Bernard Kessedjian (France), Chair of the General Assembly, presided over the meeting, and in the absence of the Chair and the Vice-Chairs, Ms. Ivana Milovanović (Serbia and Montenegro), presided over the meeting as Acting Chair of the General Assembly.

## ITEM 5 OF THE CONSOLIDATED AGENDA:

## REPORT ON THE POLICY ADVISORY COMMISSION (PAC)

5. Discussions were based on document WO/GA/31/1.
6. The Chair invited Mr. Henry Olsson, member of the WIPO Policy Advisory Commission (PAC), to present the Report of the Fourth Session of the PAC, which was held in Sinaia, Romania on November 14, 2003.
7. Mr. Olsson stated that he would give a personal view of what the Commission was, what its purposes were, and what it had achieved. The Commission was set up under the 1998-1999 Program and Budget. Its purpose was to advise the Director General on policy matters in relation to intellectual property. Mr. Olsson stressed that it had neither normative function nor any decision-making power. The Fourth session was hosted by His Excellency Mr. Ion Iliescu, President of Romania. His Excellency Mr. Guido de Marco, the then President of the Republic of Malta, chaired the meeting, and participants included a number of former Heads of State and Government and senior Ministers, including Their Excellencies Mr. Petar Stoyanov, former President of the Republic of Bulgaria, Mr. Petru Lucinschi, former President of the Republic of Moldova, Mr. Fidel Ramos, former President of the Republic of the Philippines, and Mr. Salim Salim, former Prime Minister of the United Republic of Tanzania. Also present were a number of Ambassadors and other high level officials, and the Director General of WIPO.
8. In his opening remarks as host, Mr. Iliescu had mentioned that in order to develop, countries needed strong systems of intellectual property, which would lead to both investment and the stimulation of creation. At the same time, however, patents and other forms of protection had to become more accessible and easier to use; a balance had to be found. The view was expressed that what was required was globalization without marginalization, and that poverty and ignorance were the most redoubtable enemies of humankind. IP was considered to have the potential to help ameliorate both. The agenda of the meeting contained two substantive topics: Managing Cultural Assets where the discussion was based on a paper "Copyright, Culture and Development: the Role of Intellectual Property and of WIPO in the Cultural Industries" by Mr. Bruce Lehman, the then President of the International Intellectual Property Institute and former Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, of the United States, and Intellectual Property Policies and the Japanese Economy, where the discussion was based on a paper "Strategic Program for the Creation, Protection and Exploitation of Intellectual Property" by Mr. Hisamitsu Arai, Secretary General of the Secretariat of the Intellectual Property Strategy Headquarters of the Japanese Cabinet Secretariat. Figures quoted during the first presentation and discussion had been striking, and showed that growth in the cultural industries in most parts of the world was substantial. For example, the film industry of India was said to be expanding at the remarkable rate of 15% per year with over 2,000 films produced in 2002, and music in Latin America was shown to be a multi-billion dollar business. Evidence was also given, however, that the piracy of cultural goods was having a sharply negative effect on such growth. Music sales were said to have suffered considerably in developed and developing countries alike, from both digital and analogue piracy. PAC members stressed two particular responses in the discussion that followed, first, the need to fight piracy on all fronts, and second, the need to ensure the establishment of properly working national infrastructures. Members of the PAC had also mentioned the importance of ensuring that the appropriate flexibilities be built into the intellectual property protection system so that the use of copyright in the management of

cultural assets was not seen by less developed countries and their peoples as a tool of the rich, which increased the burdens of the poor. It was acknowledged that a very important task in this context was demystification.

9. As far as the content of the second presentation and discussion were concerned, it was shown that Japan was placing development of its intellectual property system at the top of its agenda, with the Prime Minister heading the International Strategy Headquarters, and had thus evolved a cutting edge institution to develop policy thinking in this field, an endeavor that had resulted in the Strategic Program. The Program had five distinct chapters, namely Creation, Protection, Exploitation, Media Content Business and Human Resource Development. Two principle points had been made during the discussion. First, that as a country with very few natural resources, Japan was in some ways a test case of how a country could exploit IP to develop a successful knowledge economy. Second, that Japan had a high level of educational development, and therefore it would not be appropriate to assume that a developing country, simply by developing its IP institutions, could instantly make a huge difference to the quality of its economy. Many fundamental steps had first to be taken, including improving educational institutions, avoiding a brain drain, and acquiring financial resources. In general it was found that the Japanese Strategic Program was of great interest and broke new ground.

10. At the end of the Fourth Session, the Director General had noted that in some of the areas where members had expressed opposing views, much of the debate could perhaps be crystallized within a single straightforward query, namely “what is it that makes a developing country develop?” The Chair had closed the session, underlining his view that it was important to prevent an invisible curtain being drawn between North and South in the era of globalization and international terrorism, and that IP was indeed a tool of great potential for development. A principal question is therefore, where does the balance between the needs and rights of peoples of developing countries and the rights of creators find its ideal axis? The commonly articulated message of the fourth session of the Policy Advisory Commission had therefore been, as the Chair said, “let us move forward, but not leaving others by the roadside.”

11. The Chair thanked Mr. Olsson for providing an efficient summary of an interesting and important meeting, and opened the floor to comments.

12. The Delegation of Romania expressed satisfaction on behalf of the Romanian authorities at having had the honor to host the meeting, which had taken place at the invitation of the President, a member of the PAC. The conclusions of the eminent members of the PAC, which included personalities from politics, law, diplomacy and public administration, had endorsed the idea of the Director General to use IP as a tool for economic development. The Delegation looked forward to new strategic inputs from the Commission, and felt that such inputs could be a powerful tool for raising political awareness of IP issues and helping to create an IP culture. By hosting the PAC, the Romanian authorities had expressed their strong commitment to the use of IP to promote sustainable national economic, social and cultural development. It was not by chance that the Romanian Government had, as the Commission met, approved the national strategy and the plan of action for IP development for 2004 - 2007, aimed at strengthening the IP system in Romania so as to further enable it to reap the vast economic potential of its extensive cultural wealth, and advance the country's social and economic development. The Delegation thanked WIPO for providing support in this regard. The scope and objectives of the National Strategy were broadly in line with the conclusions and recommendations of the PAC's Fourth Session. In dealing with the

challenge of enhancing IP systems, Government, the private sector and civil society would have to develop new partnerships, with a view to exploring and implementing new mechanisms which would lead to better exploitation of the inexhaustible resources of innovation and creativity. Through a holistic and integrated approach, all the partners were requested to develop and promote a national IP culture, to revitalize and achieve long term economic growth, in order to establish a sustainable intellectual creation cycle which would allow everyone to enjoy the benefits of IP. Taking into account the new role of IP in the knowledge-based economy, WIPO was constantly being called upon to extend its contribution in a world facing increased complexity. With its program of work and current leadership, the Delegation stated that WIPO could provide a substantive contribution, and it encouraged the Director General to continue his endeavors and further improve WIPO's commitment and ability to assist countries with their social and economic development.

13. The Delegation of Iran (Islamic Republic of) thanked Mr. Olsson for his presentation and said that the work of the Commission was positive and well-founded. The Fourth Session had been constructive, and the Delegation asked whether the PAC could benefit from the development of a mechanism to utilize more available expertise. A possibility would be to bring in new members, possibly as consultants, to expand its field of enquiry. The Delegation stated that the information emanating from the session on IP and the Japanese economy had been well presented. The Japanese Strategic Program was relevant and reflected the concerns of all countries, but the level of development and special capabilities of individual States had to be taken into account. Two points were of particular interest: Japan, a highly developed country, had started work on the "IP nation" policy in 2002, and its Government hoped to submit the necessary legislation for the creation of an IP High Court in 2004. This, the Delegation stated, demonstrated that IP issues were highly technical and therefore the needs and priorities of IP programs in other countries with different levels of development would be different. The Delegation also made reference to paragraph 33 of the Report where the issue of the relationship between the IP development and the eradication of poverty was mentioned, stating that it was an interesting subject which required further study and attention. With regard to paragraph 34, which noted that a suggestion had been made that a future topic for consideration by the PAC could be IP and public health, the Delegation said that in consideration of the level of participation and the mandate of the Commission, it was advisable to avoid placing technical subjects on the agenda which required more detailed discussion. The Delegation echoed the dictum of the Chair of the Fourth Session, with a difference, saying "be patient moving forward together, not leaving others behind."

14. The Delegation of the Republic of South Africa noted the contents of the Report and expressed its appreciation, but stated that it found a difficulty in respect of the role of the PAC, in that it was unable to go beyond advising, and therefore implementation was problematic.

15. The Chair noted, in response to the previous intervention, that while he believed that the Commission was a very useful tool, it was to be emphasized that it was indeed specifically an advisory Commission, and that the General Assembly was called upon only to take note of its proceedings, not to endorse its conclusions.

16. The Delegation of Switzerland noted the Report and thanked Mr. Olsson. It had also taken note of the observations relating to the establishment of a world patent, as had been mentioned in the Report. The Delegation stated that future discussions on this matter would be of interest, but expressed the belief that it was not yet the right time for WIPO to begin discussions. Certain prerequisites would have to be fulfilled first, and a decentralized

structure with co-ordination by WIPO would not offer an adequate solution to the current problems of the patent system. Further harmonization of patent law was essential, and the work on that needed to be completed before moving on to discussion of the possibility of a world patent. For the time being, it was preferable to focus on the PCT, which had potential for development, rather than opening up a new debate.

17. The Delegation of India considered that some members of the Commission had clearly felt that the PCT should be expanded into a global patent examining system. This was liable to cause alarm in developing countries, as the objections to harmonization between essentially heterogeneous countries at very different levels of development was well known. While recognizing the diversity of the membership of the PAC, the Delegation was of the view that it might be expedient to add further members to the Commission without links to either industry or Government who could usefully complement the existing expertise and perhaps add a counterview to the one just mentioned. It further stated that a recent meeting of the TACD in Geneva had enjoyed the presence of a number of eminent experts, and as such was an example of a source of a wider range of expertise.

18. The Chair noted that the Commission's current membership included a diverse and geographically disparate membership, and confirmed that the points mentioned in the course of dealing with this agenda item would be transmitted to the Director General.

19. The WIPO General Assembly noted the contents of document WO/GA/31/1 and the contents of the annex to that document.

#### ITEM 6 OF THE CONSOLIDATED AGENDA:

##### PROTECTION OF AUDIOVISUAL PERFORMANCES

20. Discussions were based on document WO/GA/31/4.

21. The Secretariat, upon introducing document WO/GA/31/4 on the protection of audiovisual performances noted that a Diplomatic Conference on the Protection of Audiovisual Performances held in December 2000 was unable to reach agreement on all articles of a proposed treaty aimed at strengthening the rights of performers in their audiovisual performances. At its session in September 2003, the WIPO General Assembly decided that the issue of protection of audiovisual performances would remain on the Agenda of the Assembly for its session in September 2004. Document WO/GA/31/4 reported on developments on the issue of protection of audiovisual performances that have taken place since the Assembly session of September 2003.

22. Following informal consultations with the Member States undertaken by the Director General, an *ad hoc* Informal Meeting on the Protection of Audiovisual Performances was held at WIPO on November 6 and 7, 2003. The meeting was chaired by the Chair of the WIPO General Assembly, and included an information session where four speakers presented their personal experiences in performing, creating, and producing audiovisual works. The Secretariat also prepared a series of studies to facilitate discussions. Following the *ad hoc* Informal Meeting, the Director General conducted informal consultations among key stakeholders in the private sector, to identify ways and means to make progress on

outstanding issues. In order for consultations to continue and for further progress to be made, the Secretariat recommended that the issue of audiovisual performances remain on the Agenda of the WIPO General Assembly for its 2005 sessions.

23. The Chair of the General Assembly commended the Secretariat for the document on the issue of the protection of audiovisual performances (WO/GA/31/4) and recalled the interventions and studies presented at the *ad hoc* Informal Meeting on the Protection of Audiovisual Performances. He noted, however, that no progress had been reported on the areas where differences remained, and therefore it would not be advisable to convene a new Diplomatic Conference for the time being.

24. The Delegation of the Netherlands, speaking on behalf of the European Community and its member States, remained committed to updating the 1961 Rome Convention of the protection of audiovisual performances. It welcomed and supported the informal consultations conducted by the WIPO Director General and suggested that those consultations continue. The European Community and its member States remained prepared to contribute actively to the search for appropriate solutions, as they continued to attach great value to the adequate protection of audiovisual performances. The European Community and its member States, therefore, agreed that the issue of protection of audiovisual performances should remain on the Agenda of the WIPO General Assembly Sessions in 2005.

25. The Delegation of Brazil considered that the documents provided by the Secretariat on the protection of audiovisual performances were valuable in assisting States to develop positions on the issue. The Delegation requested a report on the results of the informal consultations with Member States and stakeholders, which, according to document WO/GA/31/4, were taking place in a "positive and constructive spirit". The Delegation expressed its concern that an imbalance could be created as a result of providing additional protection for broadcasting organizations through a new treaty, without also providing updated protection to audiovisual performers, as broadcasters were the main users of audiovisual works.

26. The Delegation of Japan stated that the presentations given at the *ad hoc* Informal Meeting on the protection of audiovisual performances were beneficial to all interested parties. The consultations that the WIPO Director General had conducted since that Meeting took place were appreciated as an effort to coordinate the various viewpoints. Dramatic developments in digital and networking technologies made it extremely important to review the current framework of protection of audiovisual performances. Moreover, since progress was expected on the issue of the protection of broadcasting organizations, it was also necessary to give consideration to granting protection to holders of related rights, in order to maintain the balance which had existed since adoption of the Rome Convention. From that perspective, it was desirable to adopt a treaty on audiovisual performances. It was important to maintain the momentum towards the conclusion of a treaty and to make progress on the issue among interested stakeholders.

27. The Delegation of China expressed its appreciation for the importance attached by WIPO to the international protection of audiovisual performances. It also expressed concern at the different positions held by States on that issue. A proper solution on the issue of protection of audiovisual performers was an important condition for achieving international protection of broadcasting organizations. The Delegation agreed that the issue of the protection of audiovisual performances should remain on the agenda of the General Assembly Session in 2005.

28. The Delegation of Mexico recognized the laudable efforts made by the WIPO Secretariat which, to date, had supplied Member States with various studies that had contributed to a more detailed evaluation of the international protection of audiovisual performances. The Delegation considered that the discussions that had been held in the Standing Committee on Copyright and Related Rights, and in particular the *ad hoc* informal meeting held on November 6 and 7, 2003, at the Organization's headquarters had made a number of delegations more aware of the importance of updating the protection that should be given to performances, specifically in the audiovisual sphere. The Delegation stated that it wished to manifest its concern at the lack of the final consensus required to produce an international treaty on that issue and launched an appeal to delegations to overcome the negative experience of the Diplomatic Conference of December 2000. The protection of audiovisual performances required all the attention and efforts of participants necessary to reach a consensus and a possible new Diplomatic Conference. In that regard, Mexico expressed firm support for the retention of the subject of protection for audiovisual performances on the agenda of the series of meetings of the Assemblies in September 2005.

29. The Delegation of the United States of America expressed its support and appreciation for the efforts of the International Bureau, and in particular those of Deputy Director General Mrs. Rita Hayes. It also appreciated the efforts of the Chair of the General Assembly with regard to the *ad hoc* Informal Meeting on the Protection of Audiovisual Performances. The Delegation stated that the issue of the protection of audiovisual performances should remain on the agenda of the General Assembly Session in 2005.

30. The Delegation of Egypt, speaking on behalf of the African Group, reaffirmed the importance attached to the conclusion of unfinished work on the issue of the protection of audiovisual performances. It hoped that the discussions during the *ad hoc* Informal Meeting on the Protection of Audiovisual Performances and the subsequent studies would enable delegations to overcome their differences of view. Taking into account the great expectations held by African artists, the Delegation encouraged the Director General to intensify consultations with all concerned parties to reach a successful conclusion on this issue. Therefore the issue of the protection of audiovisual performances should remain on the agenda of the General Assembly Sessions in 2005.

31. The Delegation of Iran (Islamic Republic of) recalled that the *ad hoc* Informal Meeting on the Protection of Audiovisual Performances had concluded without resulting in a treaty. Reaching a successful conclusion on that issue required a greater balance of interests and more flexibility from all parties concerned. Therefore the issue of the protection of audiovisual performances should remain on the agenda of the General Assembly Sessions in 2005.

32. The Delegation of Colombia stated that it was important for all delegations to receive a report, even in draft form, of the informal consultations that took place on the protection of audiovisual performances. Given the level of progress achieved, the issue should remain on the agenda of the General Assembly Sessions in 2005.

33. The Delegation of Jamaica echoed the appeal of other delegations seeking an expeditious resolution of the differences of view as regards the protection of audiovisual performances. It expressed its satisfaction regarding the informal consultations conducted by the Director General and encouraged further consultations in this vein. The issue should remain on the agenda of the General Assembly Sessions in 2005.

34. The Delegation of Zambia stated that the issue of the protection of audiovisual performances should remain on the agenda of the General Assembly Sessions in 2005.

35. The Delegation of El Salvador said that GRULAC attached particular importance to the protection of audiovisual performances and therefore insisted, as in previous years, that the subject be retained on the agenda for the 2005 Assemblies, in order to make known the progress made in future discussions on the matter. GRULAC expressed satisfaction at the positive steps taken toward providing protection for audiovisual performances during the unofficial *ad hoc* meeting held in November 2003, which could make it easier to reach an agreement between the parties that still held differing opinions. In that regard, GRULAC requested the Organization's Secretariat to provide a report on the progress made in the negotiations and also on the results of the consultations held to date, not only with the Member States but also with organizations or associations concerned with the subject. WIPO Member States were very close to reaching a consensus on the matter, although the debt owed to performers was still outstanding. The daily performances which they provided with such great talent had not received the reward and recognition they deserved. As indicated on previous occasions, GRULAC considered that the time had come to accelerate the processes in order to provide performers with satisfactory responses and reward them for what they had given over the years.

36. The Representative of the *Asociación Nacional de Intérpretes* (ANDI), commended the Chair of the WIPO General Assembly and the Director General of WIPO for their continued interest in the protection of audiovisual performances. The struggle to establish international protection on audiovisual performances went further than the Diplomatic Conference on the Protection of Audiovisual Performances held in 2000. Every year, artists from all over the world trusted their diplomatic missions and their associations, such as ANDI in Mexico, to work towards reconvening of the Diplomatic Conference. The only answer they had received was that something might be achieved in future. However, audiovisual artists needed a treaty now. It was not fair to offer them only hope because of a lack of determination and will to recognize their rights in a treaty, particularly when the rights of music performers and phonogram producers had already been recognized. The *ad hoc* Informal Meeting on the Protection of Audiovisual Performances provided valuable insights, such as those given by the Mexican producer, Mr. Jorge Sanchez, and the President of the US Screen Actors Guild, Mrs. Melissa Gilbert. Performers requested that WIPO Member States launch a Diplomatic Conference leading to the adoption of a treaty on the protection of audiovisual performances. In order to fulfill that historical commitment it was necessary to overcome the remaining differences.

37. The Chair of the General Assembly expressed his appreciation for the work done on the issue of the protection of audiovisual performances, and notably to Deputy Director General, Mrs. Rita Hayes. He noted the previous intervention by the Egyptian Delegation on the expectations of African performers, and recalled the presentation by the performer, Mr. Gerard Essomba, at the *ad hoc* Informal Meeting on the Protection of Audiovisual Performances. On that occasion, Mr. Essomba strongly appealed to States to pursue their efforts to achieve international protection for audiovisual performers. It was interesting to note that, during the discussion by the General Assembly, not a single delegation had requested that the issue of the protection of audiovisual performers be removed from the agenda of the General Assembly. However, convening of a Diplomatic Conference would be premature, as such a course could extinguish future possibilities for resolution of outstanding questions. Neither was it possible to accept only the articles that were agreed and exclude the



issues where differences remain. The only solution at present was to continue the existing efforts, seeking new means to implement international protection by reconciling different concepts and views. It was therefore necessary that delegates as well as stakeholders from the private sector avail themselves of every occasion for exchange and dialogue so that, at the next General Assembly, a decision could be taken on the matter.

38. On the basis of the discussion above, the General Assembly noted the information contained in document WO/GA/31/4, and decided that the issue of the protection of audiovisual performances should remain on the agenda of the General Assembly for its sessions in 2005.

#### ITEM 7 OF THE CONSOLIDATED AGENDA:

##### PROTECTION OF THE RIGHTS OF BROADCASTING ORGANIZATIONS

39. Discussions were based on document WO/GA/31/7.

40. At the invitation of the Chair, the Secretariat introduced Document WO/GA/31/7 and recalled that the eleventh session of the Standing Committee on Copyright and Related Rights (SCCR), which had taken place from June 7 to 9, 2004, had recommended that the present session of the General Assembly consider the possibility of convening, at an appropriate time, a diplomatic conference on the protection of broadcasting organizations. At its next session (Twelfth Session), the discussions of the Standing Committee would be based on a revised consolidated text, prepared by the Chair of the SCCR, and the Committee would assess the progress of its work. In the light of those discussions and that assessment, the Committee would recommend the dates, and the necessary preparatory steps for a possible diplomatic conference, including the possibility that the Chair would prepare a basic proposal. The WIPO General Assembly was invited to consider approving the convening of a diplomatic conference on the protection of broadcasting organizations to be organized at an appropriate time.

41. The Delegation of India noted that Article 14 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) provided protection for broadcasting organizations. Many Member States, including India, had modified their legislation to extend protection to broadcasting organizations as mandated under the TRIPS Agreement. The proposed new treaty would provide for a TRIPS-plus level of protection, at a moment where most developing countries were still in the process of understanding and complying with that Agreement. At the same time, the obligation mandated under Article 7 of the TRIPS regarding promotion of technological innovations and dissemination of technological innovations and transfer of technology to the mutual advantage of producers and users of technological knowledge remained a thought. No consensus existed on the broad parameters for developing a new treaty, and further discussions were needed in the SCCR, on the basis of a new consolidated text. It was necessary to fully take into account the interests of developing nations, the implications of technologies, the interests of content creators and of society at large before moving towards a diplomatic conference. The Delegation had taken due note of the information contained in document WO/GA/31/7, but it was unclear what it was that the Assembly was asked to approve. The decision should be amended in line with what had been proposed for audiovisual performers in document

WO/GA/31/4. The item would have to remain on the agenda of the next WIPO General Assembly in 2005. Such decision would preserve the functioning of the General Assembly. Issues should be brought to the General Assembly only when ripe enough, and that stage had not yet been reached.

42. The Delegation of Egypt, speaking on behalf of the African Group, supported the principle of updating the 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention). A balanced protection was needed that would take into account all interests at stake, and in particular the priorities of developing and least developed countries. One of these was the promotion of access to knowledge and of its dissemination in the digital world. Progress had been accomplished in the last sessions of the SCCR, but differences remained on issues such as the scope of protection of the new treaty and the nature of the rights to be granted. The African Group was of the view that any decision on the convening of a diplomatic conference should be based on a thorough assessment of the progress of the work in the SCCR and on the precise wording contained in the recommendation adopted by the last session of the SCCR in June 2004.

43. The Delegation of Japan stated that broadcasting had developed drastically in recent years, and its structure had diversified in various forms. The protection of the rights of broadcasting organizations had been extensively discussed in the SCCR since 1998. A new treaty was a core element in the revision of the international copyright framework. Due attention had to be paid to the balance among neighboring rightholders, phonogram producers, performers and broadcasting organizations, which had been maintained since the establishment of the Rome Convention. From that standpoint, it was important to adopt the proposed treaty to supplement the WCT and the WPPT. The Delegation was confident that the momentum for the conclusion of a treaty would be maintained and recommended that the decision on a diplomatic conference be adopted at the present General Assembly.

44. The Delegation of Mexico noted that with the adoption of the WCT and the WPPT the protection for authors, and holders of related rights in the information society had been significantly updated. As a party to both treaties, Mexico agreed with the need that had been expressed in the debates that had taken place in the Standing Committee on Copyright and Related Rights, in particular in relation to the existing proposal on the protection of Internet broadcasting organizations, which Mexico considered should be the subject of a subsequent debate. It was fair to recognize that the consolidated text contained various proposals from States and constituted significant progress in the negotiations. In that regard, Mexico reiterated the importance of updating the protection that should be provided for broadcasting organizations by producing a new treaty and called for a diplomatic conference to be held, once an appropriate consensus existed.

45. The Delegation of the Netherlands, speaking on behalf of the European Community and its member States, noted that substantial progress had been made towards a new treaty on the protection of broadcasting organizations. There was a wide-ranging consensus that a timely and adequate update of the 1961 Rome Convention concerning the protection of broadcasting organizations was necessary and feasible. The Delegation supported a decision by the General Assembly that would enable the convening of a diplomatic conference on the protection of broadcasting organizations at an appropriate time. However, the final decision about the timing, place, preparatory steps and other modalities of such a diplomatic conference had to be taken by the General Assembly, based on an assessment by the SCCR of a revised version of the Consolidated Text.

46. The Delegation of China noted that substantial progress had been achieved in the SCCR in the area of the protection of broadcasting organizations. It supported the principle of holding a diplomatic conference at an appropriate time. However, that time was difficult to assess since many differences had to be narrowed. It was necessary to balance the rights of the different parties at stake. The formulation of the new treaty had to follow the principle of balanced interests. Performers' claim to protection should not be neglected at the international level and satisfactory results for the protection of audiovisual performances had to be reached before issues relating to the protection of broadcasting organizations could be solved.

47. The Delegation of South Africa supported the statements of the African Group and the Delegation of India. The item had to be maintained on the agenda of the 2005 session of the General Assembly. The preparation of a diplomatic conference should only take place when sufficient information would be available, and there would not be enough time to get the relevant information by November 2004.

48. The Delegation of Brazil recognized that the SCCR had made significant progress, but several provisions of the proposed new treaty were proving to be controversial, such as whether webcasting should be included in the scope of the new treaty, as well as proposed provisions on technological measures of protection. Several other proposed provisions should also be looked at carefully, such as: the term of protection of the exclusive rights; how to address cablecasting; and as regards the nature of exclusive rights. The Delegation supported the objective of combating signal piracy, but also affirmed the importance of safeguarding the interests of the general public. The existing exceptions and limitations to rights should not be undermined. Broadcasting organizations should not be granted stronger protection than what was granted to authors and audiovisual performers, and free and open access to material in the public domain should not be jeopardized. New international norms that would diminish the public's access to knowledge would run contrary to the Millennium Development Goals of the United Nations and the Declaration of Principles and Plan of Action of the first phase of the World Summit on the Information Society. Member States had to be given sufficient time before making any decision on a diplomatic conference. The unfinished business of international protection for audiovisual performers also had to be addressed. The item therefore had to be kept on the agenda of the 2005 sessions of the WIPO General Assembly.

49. The Delegation of Canada supported the SCCR's proposal to convene a diplomatic conference at an appropriate time. However, it felt that a wide range of issues deserved further consideration. A decision should not be taken before the SCCR would have discussed the revised version of the Consolidated Text prepared by the Chair of the SCCR. The item had to remain on the agenda of the 2005 sessions of the WIPO General Assembly.

50. The Delegation of the United States of America urged the General Assembly to authorize the scheduling of a diplomatic conference according to the recommendations adopted at the eleventh session of the SCCR.

51. The Chair noted that no delegation opposed the convening of a diplomatic conference on the rights of broadcasting organizations. However, discussions had shown that it was not possible to decide the dates when it should take place at the present stage. The work on some substantive issues should continue in the SCCR. The General Assembly could decide to recommend a diplomatic conference without deciding on the dates, which would have to be set by the 2005 General Assembly. If the decision on a diplomatic conference would be

postponed to the next General Assembly, that would impede the holding of the conference in 2005, because it would have to be convened at least six months in advance. The Assembly could also recommend to the SCCR to accelerate its work, and if the twelfth session of the Committee would advance its work to such a point that a diplomatic conference could be held, an extraordinary General Assembly could then be convened to formally approve it. The SCCR was not the appropriate body to make such a decision.

52. The Delegation of India emphasized that lack of agreement on one article of the draft Audiovisual Treaty had prevented the Member States from deciding on the convening of a diplomatic conference. Substantial differences still existed between Member States on the Broadcasters' Treaty, and a diplomatic conference could only be convened when such differences were narrowed. It was not the practice to approve, in an open-ended fashion, the convening of an extraordinary session of the General Assembly which was hugely expensive.

53. The Delegation of Germany agreed that their recollection was the same as that of the distinguished Delegation of India, and seconded the proposal.

54. The Delegation of Zambia said that they did not wish to cause any controversy, but did not disagree with indicating the date and place of the Diplomatic Conference.

55. During the adoption of this item, further discussion ensued concerning the precise phrasing of the decision paragraph. The following wording accurately reflects the spirit of the discussion and the decision taken.

56. The General Assembly noted the contents of document WO/GA/31/7 and requested the SCCR to accelerate its work on the protection of broadcasting organizations with a view to approving the convening of a diplomatic conference by the WIPO General Assembly in 2005.

#### ITEM 8 OF THE CONSOLIDATED AGENDA:

##### DIPLOMATIC CONFERENCE FOR THE ADOPTION OF A REVISED TRADEMARK LAW TREATY (TLT)

57. Discussions were based on document WO/GA/31/6.

58. The Delegation of Morocco expressed satisfaction with the work accomplished by the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), and supported the proposal to convene a Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty (TLT).

59. The Delegation of Egypt highlighted the importance of the Trademark Sector for WIPO, indicating that it was a promising area in the work of the organization as shown by recent developments within the Madrid System for the international registration of marks. The Delegation commended the Secretariat for its work in the context of discussions in the SCT on the revision of the TLT, particularly given the technical and complex nature of these discussions. The Delegation emphasized that, despite the fact that there were still pending matters to be resolved, the SCT's deliberations on the revision of the TLT showed that

progress could be achieved when attention was given to the concerns of all Member States and efforts were made to accommodate these concerns. The Delegation felt that Geneva was the most appropriate venue for the Diplomatic Conference, as most countries, and particularly developing countries, had permanent representations in Geneva, with an expertise in the field of intellectual property.

60. The Delegation of Uruguay declared that Uruguay had actively participated in the work of the Standing Committee on the revision of the TLT, including in the function of the Vice-Chair of that Committee. It found the progress so far achieved very encouraging and expressed support for the convening of a Diplomatic Conference. This review process will represent an important development in international trademark law.

61. The Delegation of Japan expressed support for the proposal to convene a Diplomatic Conference in the first half of 2006. The Delegation stressed the importance of increased harmonization of trademark laws and observed that although the current provisions on trademark licenses in the draft revised TLT were not compatible with the law of Japan, a consensus on this matter could be reached during the upcoming sessions of the SCT.

62. The Delegation of Austria thanked the Secretariat for the status report on the progress of the preparatory work of the SCT for the revision of the TLT, and noted with appreciation that considerable progress had been made. It supported the proposal to convene a Diplomatic Conference in Geneva, in the first half of 2006.

63. The Delegation of Germany said that it supported the proposal to convene a Diplomatic Conference for the revision of the TLT. The member of the Delegation currently chairing the SCT encouraged all participants to conclude the preparatory work with a view to meeting the set timeframe for this work and the Diplomatic Conference.

64. The Delegation of China noted that it had actively participated in the discussions of the SCT and commended the Secretariat for the progress achieved. The Delegation supported the proposal to convene a Diplomatic Conference.

65. The Delegation of the Netherlands, speaking on behalf of the European Community and its Member States, said that it was pleased to inform the Assembly that it approved the convening of a Diplomatic Conference on the Adoption of a revised Trademark Law Treaty. The foreseen revision of the Trademark Law Treaty would enable an important simplification and streamlining of registrations of trademarks. The Diplomatic Conference could be convened in the first half of 2006. The EC and its Member States were confident that this date could be achieved, depending on the progress made in the work prior to the Conference.

66. The Delegation of Switzerland noted that the SCT had made good progress on the revision of the TLT. However, two additional meetings of the Standing Committee were necessary to complete the remaining work. The Delegation supported the proposal to hold the Diplomatic Conference in Geneva, during the first three months of 2006.

67. The Delegation of Algeria declared that it had followed the work of the SCT on the revision of the TLT and was in favor of holding a Diplomatic Conference in Geneva in early 2006.

68. The Delegation of Zambia agreed with the position expressed by the Delegation of Egypt that sufficient work had been achieved towards the holding of a Diplomatic Conference on the revision of the TLT.

69. The Delegations of Canada, Chile, Colombia, the Republic of Korea and the United States of America commended the International Bureau of WIPO for the state of progress of the preparatory work on the revision of the TLT. They expressed their support for the holding of a Diplomatic Conference in Geneva, in the first half of 2006 and said they were confident that this goal could be reached.

70. The Delegation of Cuba supported the holding of the Diplomatic Conference at the suggested time and venue. However, the Delegation noted that, at previous sessions of the SCT, it had expressed concern as to particular aspects of the provisions on trademark licenses and hoped that those issues could be addressed in the remaining meetings of the SCT.

71. The Delegation of Iran (Islamic Republic of) expressed that the SCT had achieved a considerable amount of work. However, some technical time-consuming issues remained. The Delegation supported the holding of a Diplomatic Conference in Geneva, in the first half of 2006.

72. The Chair, having taken note of the interventions made by the Delegations on this agenda item, concluded that consensus had been reached on the following points: (i) on the principle of convening a Diplomatic Conference; (ii) on the need to hold two additional sessions of the SCT and a preparatory meeting for the diplomatic conference in order to conclude the preparatory work; (iii) on the venue of the Conference (Geneva), and (iv) on the timing of the Conference (the first half of 2006). The Chair then proposed the period March 13 to 31, 2006, as precise dates for the Diplomatic Conference.

73. The General Assembly decided to approve the convening of a Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty (TLT), in Geneva, from March 13 to 31, 2006, and to hold two additional sessions of the SCT and a preparatory meeting in order to conclude the preparatory work for that Diplomatic Conference.

#### ITEM 9 OF THE CONSOLIDATED AGENDA:

##### MATTERS CONCERNING THE ADVISORY COMMITTEE ON ENFORCEMENT

74. Discussions were based on document WO/GA/31/3.

75. Mr. Henry Olsson (Sweden), Chair of the Advisory Committee on Enforcement (ACE), was invited to introduce the agenda item.

76. In summarizing the Conclusions by the Chair, Mr. Olsson recalled that the WIPO General Assembly had decided, in September 2002, to set up a single committee for enforcement issues, the mandate of which was limited to technical assistance and coordination and excluded norm setting. More than 60 Member States and a number of interested international organizations had participated in the second session of the ACE in June 2004.

As agreed in its first session, the ACE had examined the role of the judiciary, quasi-judicial authorities and prosecution in the field of intellectual property rights enforcement. For this purpose, the ACE had heard seven presentations by supreme court judges and high government officials from different regions and, based on these presentations, had held very interesting and comprehensive discussions on a number of concrete issues. These issues had included, among others, the calculation of damages in intellectual property cases and the costs of litigation, which often constituted a problem, and questions related to the specialization of the judiciary and the need for continued training. The ACE had noted, with particular satisfaction, the continually increasing number of activities on enforcement matters, such as workshops and expert missions. Concerning its future work, the ACE had considered a number of proposals and decided, in its next session, to focus on the issue of education and awareness building, including training in all aspects of enforcement, especially to Member States requesting assistance.

77. The Delegation of the Republic of Moldova, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European countries, stated that the report was excellent and the Group supported the activities of the ACE. The countries of this region attached considerable importance to awareness building and to the teaching of enforcement. The information given in the Advisory Committee was valuable to them. The Group was very keen to have all the documents translated into Russian. At the June session of the ACE, a decision had been taken to translate the documents into Arabic, which did not put all languages on an equal footing. Therefore, the Group invited the Secretariat to have all the documents of this Committee translated into Russian.

78. The Delegation of Egypt, speaking on behalf of the African Group, thanked Mr. Olsson for the presentation and Mrs. Rita Hayes for the work accomplished. The meeting had been constructive and the African Group was happy to see that the choice of subjects for next year's meeting would deal with issues of education, awareness building and training because it believed that this was indeed the take-off point that could contribute to greater understanding and awareness-building of enforcement. The Delegation emphasized that the theme was very useful and constructive, and that the Group was very interested to see how it would be dealt with within the framework of the next session of this Committee.

79. The Delegation of Algeria stated that enforcement was of great importance to its country. Its Government had already embarked on awareness building and training of judicial authorities a few years ago and had followed the recommendations to embody recently adopted judicial decisions. However, training in institutions and universities also needed to be supplemented along these lines. Therefore, the issues mentioned in this report were very important, and the Delegation wished to encourage the Committee to continue its endeavors.

80. The Delegation of China thanked Mrs. Rita Hayes for her contributions to the work of the ACE. It was delighted to see that the Committee had endeavored to accomplish the goals agreed upon by the Member States and that it had set visible objectives for the future. Offering technical assistance in the framework of cooperation was crucial for the Member States to improve their enforcement mechanisms. China was determined to play an active role in the Committee's work with regard to intellectual property rights enforcement.

81. The Delegation of Iran (Islamic Republic of) thanked Mr. Olsson for his work and stated that the discussions at the last meeting had been very constructive. It supported the choice of the subject for the next session of the ACE and looked forward to the contributions

and assistance by the Secretariat. Concerning the summary of the Chair in the second session of the ACE, on paragraph 6(ii) of document WIPO/ACE/2/2, it was necessary that the matter be clarified by the Secretariat in the next session in order to help Member States to decide correctly.

82. The Delegation of Morocco thanked Mr. Olsson and Mrs. Rita Hayes, as well as her team, for the very good paper including, in particular, the Conclusions by the Chair. The second session of the ACE had emphasized the importance of awareness building and education, in particular as regards the aspect of enforcement as such. The Delegation supported therefore the inclusion of this theme in the agenda for next year's meeting.

83. The Delegation of the Russian Federation underlined that the Government was paying extraordinary attention to the protection of I.P. right holders, and attached great importance to their enforcement. The Committee had worked very well and the Delegation had participated very actively in its sessions. Once again, the Delegation also emphasized the need for getting the documents in Russian, as this was very important for both the judicial authorities and the courts.

84. The General Assembly noted the Conclusions by the Chair of the ACE, and encouraged the Advisory Committee on Enforcement to continue its work.

#### ITEM 10 OF THE CONSOLIDATED AGENDA:

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

85. The Chair first invited comments on document WO/GA/31/5, to be followed by comments on WO/GA/31/8.

#### Progress report on the work of the Intergovernmental Committee

86. Discussions were based upon document WO/GA/31/5.

87. The Delegation of Canada expressed appreciation for the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) and commended the Secretariat for its efforts.

88. The Delegation of Sri Lanka, on behalf of the Asian Group, noted the increasing importance of genetic resources, traditional knowledge (TK) and folklore to developing countries. It noted the progress made by the Committee, but stressed the need for the IGC to achieve concrete results, including, in particular the emergence of a legally binding international instrument. The issues relating to genetic resources, traditional knowledge and folklore were crosscutting and were being addressed in a number of different fora, both inside and outside WIPO. Therefore, there was a need to maintain effective modes of information sharing and active collaboration with these bodies in order to avoid duplication as well as to further shared objectives. Such cooperation, including the transfer of technical information



should be harmonized in conjunction with the progress made in the subjects under discussion and should be done at the appropriate time.

89. The Delegation of Serbia and Montenegro, speaking on behalf of the Group of Central European and Baltic States, commended the IGC on its work, and noted that on-going discussions were very useful in achieving common understanding on the future development of these issues within WIPO. The participation in the IGC of a broad range of intergovernmental organizations, NGOs and other stakeholders had a positive impact on the importance of the issues being addressed by the IGC, and the involvement of a broad range of interests in its work.

90. The Delegation of Egypt, on behalf of the African Group emphasized the importance of protection of genetic resources, TK and folklore. The African Group welcomed the acceleration of the work of the IGC and hoped that discussions would progress to norm setting and the development of international binding instruments. The African Group also emphasized the need to keep the issues of the genetic resources, TK and folklore in the mainstream of other WIPO activities, and they should be fully incorporated into activities for cooperation for development.

91. The Delegation of Mexico expressed its support for the work and progress reported in document WO/GA/31/5, in particular the preparation of two drafts on the objectives and principles of protection. It emphasized the importance of participation by representatives of indigenous peoples and encouraged the creation of a voluntary fund to support their participation. Mexico believed that the creation of a *sui generis* system for folklore was important, particularly for collective works where individual authors could not be identified. Mexico was characterized by vast cultural diversity, and this entailed the recognition of indigenous peoples in the dissemination and protection of TK. The Delegation emphasized that access and benefit-sharing strategies should be focused on regional and national strategies. This would require establishment of a registry system, which should be placed under the authority of indigenous peoples. Studies should also be carried out by the IGC on standard setting for access to TK and benefit-sharing.

92. The Delegation of Kyrgyzstan expressed its eagerness for the Committee to complete its work and formulate an internationally binding instrument. Problems with protecting genetic resources were noted as being particularly difficult and in need of work at the international level, as were folklore and TK. In Kyrgyzstan, at the initiative of the IP Office a draft Law on the Protection of Traditional Knowledge and Genetic Resources Relating to Traditional Knowledge had been produced and was now awaiting the agreement of the relevant State and public bodies in the country. In the drafting of that legislation the recommendations made by WIPO experts and the results of the discussions within the framework of the corresponding WIPO Intergovernmental Committee had been fully taken into account.

93. The Delegation of Indonesia expressed great interest in the work of the IGC and support for continuation of that work. The Delegation also expressed interest in the continuing exchange of national experiences and case studies, and stressed the need for technical assistance and capacity building.

94. The Delegation of Sudan commended the steps taken by the IGC. As a large state which held both genetic resources and TK, it had a strong interest in international developments. It noted that Sudan had developed a draft bill on the protection of TK and expressed continuing interest in international measures to prevent biopiracy, particularly of

TK and folklore. The representative also expressed support for the statement made on behalf of the African Group.

95. The Delegation of Kenya associated itself with the statement of the African Group. The representative recalled that Kenya had, since the outset of the IGC process, long questioned the validity of forms of intellectual property protection, noting that it was incomplete and inadequate, with limitations due to its rigidity and incompatibility with the nature of TK. The Delegation had joined other developing countries to support the idea of establishing the IGC as a norm-setting body similar to other bodies within WIPO. This would add dynamism to the IGC, and lead to the implementation of an international framework for protection. The Delegation had also encouraged WIPO to cooperate with other processes such as the CBD, the FAO, and UNESCO. It stressed the need for an agreed approach based on principles of justice and equity to promote cooperation between rights holders and users on the basis of clearly established rules that established equitable benefit sharing. It stated that definitions of the subject matter that would be protected were not required as a prerequisite to progress on an international instrument. The Delegation reaffirmed Kenya's prior position that the IGC should not be a forum for sharing national experiences and should move towards developing an international instrument. Differences should be put aside and genetic resources, TK and folklore should be protected for the sake of ancestral and future generations.

96. The Delegation of Venezuela welcomed the high quality of the material under consideration. It recalled that Venezuela's constitution guaranteed and protected the collective intellectual property rights relating to indigenous peoples' knowledge, technology and innovations. All activities related to genetic resources and associated knowledge would aim to produce collective benefits. The Delegation added that the constitution also prohibits patent applications on such resources and ancestral knowledge. The work that is being done within WIPO has been carried out in open consultation with indigenous people of Venezuela who had the opportunity to participate directly in the whole process. The Delegation of Venezuela has followed very closely the work that has been done within the IGC, and considers that one of the objectives of this Committee should be to find appropriate means of avoiding misappropriation of genetic resources and TK, whether associated or not, through unauthorized commercial use as well as the application of IP rights concerning TK. The Delegation stated that, in such a context, the need to incorporate the disclosure requirement in the patent system is particularly important. The Delegation added that it supported the statements made by Kenya and Brazil.

97. The Delegation of Morocco supported the statement of the African Group. It suggested that the General Assembly should decide that the IGC continue its work during the biennium and launch new activities, focusing on the international dimension of this issue and on the development of one or more international instruments. It recalled that the sixth session of the IGC had shown a positive response to the new mandate given to it by the General Assembly, and had made considerable progress especially in the area of TK and folklore, moving towards fundamental objectives of protection. It urged that WIPO Member States should support the objectives of the African proposal, which had been submitted to the IGC. In closing, it urged that concrete and dynamic multilateral work should now start in the IGC for the protection of intellectual property relating to genetic resources, TK and folklore at the international level.

98. The Delegation of South Africa endorsed the statement of the African Group. It reported that South Africa had formulated an indigenous knowledge policy on TK, folklore and genetic resources and noted that the work of the IGC would be directly relevant to the

development of that policy. The Delegation also encouraged other countries to undertake similar policy development to protect genetic resources, TK and folklore at a national level.

99. The Delegation of Chile highlighted the importance of TK issues in its country. It stated that Chile was modifying its industrial property law to protect its biological heritage and TK. This law would ensure that the acquisition of industrial property rights over inventions obtained from genetic resources would be based on compliance with the laws that regulate access to those resources. It also reported that Chile had set up an inter-ministerial team to draft a bill on TK.

#### Invitation from the Conference of Parties of the Convention on Biological Diversity

100. Discussions were based on document WO/GA/31/8.

101. The Chair noted that discussion on this issue was based on document WO/GA/31/8 and that cooperation between WIPO and the Convention on Biological Diversity (CBD) had been very active and constructive. The question to be addressed was how this cooperation could continue.

102. The Delegation of Canada, speaking on behalf of Group B, noted that as paragraph 12 of WO/GA/31/8 indicated, a draft report responding to the request from the Conference of the Parties (COP) to the CBD should be drafted for the next General Assembly. The Delegation added that the issues raised in the CBD COP invitation fell within the agreed mandate of the IGC. In Group B's view, the CBD's request should be addressed exclusively in the IGC.

103. The Delegation of Switzerland made clear its support for the work of the IGC, which was important for WIPO and other international bodies. The Delegation agreed with the statement made by Group B. It recalled that Switzerland had made a proposal to the Working Group on Reform of the PCT concerning the declaration of the sources of the genetic resources and traditional knowledge in patent applications, whereby the PCT should be amended so as to provide explicit authorization for the national legislator to request the declaration of the source of the genetic resources and traditional knowledge in patent applications, if those applications were directly based on such a resource or such knowledge. Switzerland would soon submit a third document to WIPO containing additional observations, as a complement to documents PCT/R/WG/5/11 and PCT/R/WG/6/11. Finally, the Delegation expressed support for paragraph 12 of document WO/GA/31/8 and stated that WIPO should provide a rapid response to the CBD COP at its eighth meeting.

104. The Delegation of the Netherlands, speaking on behalf of the European Community and its Member States, welcomed the invitation from the COP and supported a positive response to the invitation. The Delegation recalled that the European Community and its Member States had always supported contributions to the achievement of the objectives of the CBD, including the development of an international regulatory system on the disclosure of origin of genetic resources in patent applications. The Delegation recalled its commitment to a concrete, balanced and effective proposal to allow at a global level the tracking of patent applications relating to genetic resources. The Delegation described a proposal the European Community would present at the next session of the IGC characterized first in requiring mandatory disclosure requirement, not an optional one, and second, in applying to all national, regional and international patent applications. The Delegation further stated that the IGC should deal with the CBD invitation, since that committee could deal with the entire

range of issues relating to disclosure of origin in a comprehensive way. The Delegation urged the IGC to accelerate its work on this issue.

105. The Delegation of Sri Lanka, speaking on behalf of the Asian Group, was of the view that a comprehensive study of the issue of disclosure requirements by all bodies of WIPO would contribute to the understanding of the issue and would enhance the legal framework. The Asian Group would support any reasonable initiative on this issue which would enable consideration of this issue in all relevant subsidiary bodies of WIPO.

106. The Delegation of Serbia and Montenegro, speaking on behalf of the Group of Central European and Baltic States, welcomed the CBD invitation and considered it to be a confirmation of the importance of the work done by the IGC. It emphasized that furtherance of the IGC work would be beneficial to both organizations. The Group recommended that the invitation be referred to, and discussed in, the IGC.

107. The Delegation of Brazil stated that it had taken note of the invitation of the CBD. It noted that as a megadiverse, Amazonian country, Brazil attached immense importance to the question of disclosure of origin and PIC, which it considered an effective measure to combat biopiracy. Therefore it had proposed in different fora the establishment of mandatory disclosure and prior informed consent requirements in patent applications. Brazil believed that the Assembly should accept the invitation by the CBD. Even though the invitation had been submitted under the agenda item concerning the work of the IGC, in its view, the issues addressed were relevant to the work of other bodies of WIPO and it therefore suggested that all three fora should address the invitation and that WIPO Member States should decide the content of the response to the CBD.

108. The Delegation of South Africa supported the statement of the Delegation of Brazil, and reminded the Assembly that various committees were also dealing with this issue. The IGC was not the only WIPO body that should address the issue of disclosure requirements. It suggested that the IGC should work with other Committees within WIPO, and these Committees should also respond to the CBD invitation. A concerted response should be formulated. If this was not possible, it suggested that any issue regarding patent law reform should stop and the IGC should take over the issue.

109. The Delegation of China welcomed the report on the IGC and stated that requirements for disclosure of origin was a major issue, which was not only an issue of protection of genetic resources and traditional knowledge related thereto, but also of the full implementation of the Convention of Biological Diversity (CBD). In ensuring achievement of the sustainable development objectives set out in the CBD and implementation of the principle of national sovereignty over natural resources and the principle of prior informed consent and benefit sharing, intellectual property can play its respective role and can provide necessary conditions and guarantees. It suggested that WIPO should accept the invitation of the CBD and conduct substantive exploration and research as soon as possible. The Delegation suggested that on the basis of the preliminary results achieved so far by the IGC, in-depth research work should be carried out on the legislative practices and proposals of related countries, so as to develop optional and operational solutions that could be used as a guide and be reflected in relevant international conventions in an appropriate manner.

110. The Delegation of Venezuela noted the request made to WIPO by the Convention on Biological Diversity (CBD) to examine and take decisions on the requirements of disclosure and the application of intellectual property rights. The Delegation drew the attention of the

Assembly to the multidisciplinary nature of that subject which involved not only the agencies of the International Bureau but a wide range of international fora and, consequently, should be dealt with in accordance with the aims and technical experience of each of those fora. As such, the Delegation recalled that developing countries had constantly asked for the request made by the CBD to be discussed not only in the Working Group on Reform of the PCT and the PCT system, but also in the context of TRIPS/WTO.

111. The Delegation of India expressed appreciation for complete and far-reaching materials stated that mandatory disclosure were a necessity. It fully supported mandatory disclosure requirement, which were part of India's own patent laws. The Delegation found itself in full agreement with Brazil, China, and South Africa concerning disclosure. It noted that disclosure requirements were relevant not only to the IGC but also to other committees of WIPO and suggested that the issue should also be considered in those Committees, in particular those concerning PCT reform and substantive patent law. It felt that the issue was far too important to be left solely to the IGC.

112. The Delegation of Kenya stated that the last session of the IGC had held an extensive debate on the appropriate forum to address the CBD request. It underscored that the CBD COP had at its seventh session reaffirmed that one of the CBD's principal objectives was the equitable sharing of benefits from the use of genetic resources. The COB had mandated the elaboration of an international regime to this end. It was of the view that work of WIPO and in the CBD and the TRIPS Council should be mutually shared and supported. The same should apply to ongoing work in similar fora and the Delegation urged that the international community should move forward with discussions of appropriate fora. It stated that each forum had an autonomous mandate to address the issues from its own perspective. It was therefore concerned that there should be no link that limited the work of the CBD Working Group on Access and Benefit-Sharing or the TRIPS Council. In closing, it expressed serious reservations on the development of any proposals that would limit parameters for negotiating positions of developing countries in other fora.

113. The Delegation of Egypt, speaking on behalf of the African Group, noted the increasing cooperation between WIPO and the CBD and highlighted the importance that this cooperation be supportive of the principles and objectives of the CBD. It recalled that the invitation of the seventh meeting of the COP of the CBD had been directed to WIPO in general and not to any particular body of WIPO. Apart from the IGC, the invitation was also relevant to the work of other WIPO bodies such as the SCP and the Working Group on PCT Reform, where important proposals had been made regarding the protection of genetic resources and traditional knowledge. The Delegation underlined that disclosure of origin of genetic resources was eminently a patent law issue and it expected it to be addressed in patent law bodies of WIPO. In the Delegate's opinion, the careful wording of the CBD invitation, and the inclusion of the words 'where appropriate', left to the members of WIPO the discretion to decide which parts of the CBD invitation to respond to and in which way. The Delegation indicated that the African Group was of the opinion that the CBD invitation should be forwarded to all relevant WIPO bodies where they should be thoroughly discussed in order to reach an agreement on which specific part of it can be dealt with and in which manner. Discussions on genetic resources and traditional knowledge in the SCP and the Working Group on PCT Reform should be taken into account if WIPO is to report back to the CBD on developments related to these matters within WIPO.

114. The Delegation of Bolivia supported that the position that the invitation should be dealt with by all relevant WIPO Committees and not only the IGC.

115. The Delegation of Iran (Islamic Republic of) considered that the IGC was faced with enough broad work and requested that the invitation should be referred to other relevant WIPO bodies.

116. The Delegation of the United States of America welcomed the opportunity to discuss the invitation of the COP, and supported the work of Group B. It noted that the CBD request posed important procedural questions, because it was not addressed to any specific WIPO body. Therefore the General Assembly would have to decide on an appropriate mode of dealing with the request. It recalled that the IGC had been created to address the issue of access to genetic resources and disclosure requirements, and that at the last session the IGC transmitted a technical study to the CBD as a technical reference document. It further noted that important work related to genetic resources and disclosure requirements was ongoing in the IGC. This work included the exchange of national experiences with disclosure requirements and it requested that all Member States should contribute their experiences to this exercise by responding to the questionnaire on disclosure requirements. In its view, of all WIPO bodies only the IGC was competent to appreciate the complex interdisciplinary nature of the issue. It was an issue involving interrelationships between various fields that were vital for indigenous and traditional communities, and that other forums may not fully take account of these concerns. It therefore urged that any consideration of the request should be done in the IGC and that the General Assembly should refer this issue to the IGC and not to any other WIPO body.

117. The Delegation of the Dominican Republic stated that the Assembly should find a global, horizontal response to the invitation in order to create mutual support between the patent system and the objectives of the CBD. In its view, the invitation did not fall exclusively under competence of the IGC. Therefore, it considered that if WIPO were to respond to the invitation it would have to consult not only the IGC but also other WIPO bodies, such as the Standing Committee on Patent Law. It was necessary to recall the origin of the original technical study, which was related to the various treaties of WIPO. It was clear to the Delegation that not a single Committee could address this request, but rather WIPO as whole would have to respond to this.

118. The Chair concluded that all delegations taking part in the debate had supported cooperation with the CBD, and no objection had been expressed to the proposition of replying to the invitation from the CBD COP. The question was how to develop the basis for a useful reply. He noted that the key questions were what kind of reply should be sent, and how should it be approved.

119. In view of the discussions and consultations undertaken during the meeting, the General Assembly adopted the following:

“Noting that Decision VII/19 of the Conference of the Parties of the Convention on Biological Diversity, *inter alia*,

“invited WIPO to examine, and where appropriate address, taking into account the need to ensure that this work is supportive of and does not run counter to the objectives of the CBD, issues regarding the interrelation of access to genetic resources and disclosure requirements in intellectual property rights applications, including, *inter alia*:

- (a) Options for model provisions on proposed disclosure requirements;
- (b) Practical options for intellectual property rights application procedures with regard to the triggers of disclosure requirements;
- (c) Options for incentive measures for applicants;
- (d) Identification of the implications for the functioning of disclosure requirements in various WIPO-administered treaties;
- (e) Intellectual property-related issues raised by a proposed international certificate of origin/source/legal provenance;

and regularly provide reports to the CBD on its work, in particular on actions or steps proposed to address the above issues, in order for the CBD to provide additional information to WIPO for its consideration in the spirit of mutual supportiveness.”,

the WIPO General Assembly decided that WIPO should respond positively and that, for this purpose, the following timetable and modalities would be adopted:

- (i) the Director General will invite all Member States of WIPO to submit proposals and suggestions before December 15, 2004;
- (ii) a first draft of the examination (the draft) will be prepared by the International Bureau and published on the WIPO website and circulated by the end of January 2005 to all Member States of WIPO and observers accredited to the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), Standing Committee on the Law of Patents (SCP) and Working Group on PCT Reform (PCT Reform WG) for observations and comments;
- (iii) all Member States and these accredited observers may submit observations and comments on the draft by the end of March 2005;
- (iv) all comments and observations received will be published on the WIPO website as and when received and in a consolidated document following the expiration of the time period for the submission of such comments and observations;
- (v) a one-day ad hoc intergovernmental meeting will be held in May 2005 to consider and discuss a revised version of the draft. The revised version of the draft will be made available at least 15 days before the Meeting. All Member States of WIPO and the accredited observers will be invited to attend the Meeting, which shall elect its chair and will be held under the General Rules of Procedure of WIPO. With respect to the scheduling of this meeting, the meeting shall be scheduled to occur on a date that will permit the participation of the maximum number of observer organizations of indigenous and aboriginal peoples;
- (vi) the International Bureau, shall prepare a further revised draft following the Meeting which shall be presented to the WIPO General Assembly at its ordinary session in September 2005 for consideration and decision.

ITEM 11 OF THE CONSOLIDATED AGENDA:

MATTERS CONCERNING THE ESTABLISHMENT OF A NEW WORK PLAN FOR THE  
STANDING COMMITTEE ON THE LAW OF PATENTS IN RESPECT OF THE DRAFT  
SUBSTANTIVE PATENT LAW TREATY

120. Discussions were based on documents WO/GA/31/9 and WO/GA/31/10.

121. The Chair noted that a proposal for establishing a new work plan for the Standing Committee on the Law of Patents (SCP) had been submitted by the Delegations of Japan and the United States of America in document WO/GA/31/10, and invited the Delegation of Japan to introduce the proposal.

122. The Delegation of Japan recalled that, although the SCP had held several meetings pursuing substantive harmonization on patent law endeavoring to conclude the draft Substantive Patent Law Treaty (SPLT), it was still on its way towards that goal. There had been some agreements on certain items, but on other items there had been no progress. The Delegations of Japan and the United States of America had made the proposal because those Delegations believed that the delay in reaching agreement was due to the fact that too many items were contained in the draft SPLT. The Delegation proposed that the SCP give priority to a first package of provisions and concentrate its discussions, as a first step, on certain items relating to prior art. It explained that those items were: (i) definition of prior art; (ii) grace period; (iii) novelty; and (iv) non-obviousness or inventive step. The Delegation stated that those items, on which harmonization would be significant and beneficial to all Patent Offices, were fundamental to the patent system. The Delegation further stated that users of the patent system also hoped to achieve harmonization on those four items, since they were related to the basic process for obtaining patents. The Delegation invited the Member States to adopt the proposal so as to achieve progress on shared objectives of substantive patent law harmonization.

123. The Delegation of Canada, speaking on behalf of Group B, expressed the view that WIPO Member States had an important opportunity, after too many years of delay, to help moving the WIPO patent agenda forward. The Delegation stated that the common aims were to improve patent quality, to reduce duplication of work by Patent Offices, and to establish more consistent examination standards amongst Member States. It further noted that an internationally recognized definition of prior art should also address some concerns regarding the protection of traditional knowledge. In that light, Group B strongly urged the General Assembly to set patent discussions back on track by approving the proposal by the Delegations of Japan and the United States of America, so as to establish a more manageable yet sufficiently comprehensive new work plan for the SCP.

124. The Delegation of the United States of America, as co-sponsor of the proposal, fully supported the statement of the Delegation of Japan, and also that of the Delegation of Canada speaking on behalf of Group B, and requested the General Assembly to adopt a new work plan for the SCP. The Delegation of the United States of America shared the concerns expressed by the Delegation of Japan as to the lack of progress in the SCP as well as the desire to move the discussions in a positive direction. The Delegation noted that the lack of consensus for moving forward in the SCP, coupled with the importance of harmonization for all stakeholders of the patent system, highlighted the urgent and imminent need for the



General Assembly to adopt a sensible work plan for the SCP. The Delegation firmly believed that continuing with the current model of discussing the entire draft Treaty at each SCP session was unmanageable, inefficient and unworkable, and was therefore no longer a viable manner in which to proceed. The Delegation further stated that reducing the SPLT discussions to a more manageable first package of prior art related items represented the most promising way forward and the best opportunity for reaching agreement in the near term and for achieving meaningful results, for a number of reasons. Firstly, agreement on prior art related issues would result in great benefits to all WIPO Members, including the establishment of more consistent examination standards throughout the world, improved patent quality and reduction of the work performed by Patent Offices. The Delegation considered that those were goals shared by all stakeholders of the patent system, including patent applicants, Patent Offices and the general public. Such agreement would also ensure consistent treatment of prior art, still allowing countries to proceed on other issues at an appropriate pace. The Delegation noted that reducing the scope of the SPLT to a more manageable package would avoid problems arising from the current mode of discussions, including the far too complex nature of the current draft SPLT documents. Secondly, recalling the negotiations prior to the conclusion of the Patent Law Treaty (PLT) where it was ultimately decided to separate procedure from substance as a way to move harmonization on certain aspects of patent law forward, the Delegation noted that there were precedents in WIPO for reducing a complex draft treaty to smaller and less complex parts in order to achieve more rapid progress. Anticipating the likely entry into force of the PLT in the near future with its promise of improving harmonization in that area, the Delegation stated that the decision to break an overly complex negotiation into smaller yet critical components was essential in order to side-step the more controversial issues that had led to the failure of the 1991 Diplomatic Conference, and set up a precedent for increased cooperation among WIPO Member States. Thirdly, noting that the delegations that had opposed the limited package proposal at the SCP in May had suggested that the limited approach did not take into consideration issues of importance to them, the Delegation explained that the proposal simply gave priority to certain prior art related provisions while initially setting aside certain sensitive political issues, thereby facilitating establishment of common ground among WIPO Member States as to what was achievable. The Delegation further stated that, while it believed that the prior art related provisions of the SPLT would provide the best opportunity for near term agreement and a meaningful result, the proposal did not suggest that other issues could not, or would not, be discussed. Thus, the Delegation expected that, once the key prior art related issues were resolved, the SCP would then turn to other matters similar to what had been done after the conclusion of the PLT in November 2000 when the SCP decided to take up matters of substantive patent law harmonization. The Delegation believed that twenty years was far too long a time to have dwelled on a subject so important to the global economy, to the patent system and to Patent Offices worldwide. For those reasons, the Delegation considered that it was imperative that the General Assembly direct the SCP to take up the topics that had been identified for discussion at the next SCP with a view to reaching near term agreement. The Delegation expressed its sincere hope that progress would be achieved on the shared objectives of substantive patent law harmonization and strongly urged the General Assembly to adopt the proposal for a new work plan for the SCP.

125. The Delegation of the Netherlands, speaking on behalf of the European Community and its Member States, welcomed the proposal laid down in document WO/GA/31/10. The Delegation stated that the proposal could contribute to re-launching the ongoing negotiations which should lead to the adoption of a treaty regulating aspects of substantive patent law. The European Community and its Member States supported the view that the SCP should initially concentrate its work on the four topics mentioned in the proposal, that is, the definition of

prior art, grace period, novelty and inventive step. The Delegation stated that, once agreement was reached on those four topics, discussions in the SCP could focus on other related issues, such as claim drafting and unity of invention. The objective should be to make recommendations to the General Assembly in 2005. In the opinion of the European Community, that new focus for the work to be undertaken in the SCP was not detrimental to the exploration of work on other issues, such as disclosure of origin requirements, in other relevant WIPO fora. It considered that parallel work on those issues was essential to reach an agreement acceptable to all. The Delegation re-affirmed its commitment to present a proposal in that respect to the IGC in order to take that work forward.

126. The Delegation of Egypt, speaking on behalf of the African Group, emphasized the importance of placing the draft SPLT in a wider context, while it recognized the significance of the negotiations for a number of delegations. The Delegation considered that patent regimes were an important policy tool for technological development and for the dissemination and transfer of technology, and thus, as a growing body of evidence showed, countries had carefully implemented them in accordance with their different stages of development and of technological evolution as well as with the prevailing socio-economic conditions. The Delegation noted that African countries were particularly attentive to the fact that any substantive patent law standards had a profound impact on pursuing public policy objectives, such as the protection of public health, biodiversity and nutrition. Taking note of the proposal that had been made to establish a new work plan for the SCP by focusing the SPLT negotiations on a reduced number of issues of particular importance to a limited number of delegations, such as harmonization of novelty and inventive step, the Delegation recalled that a proposal to that effect had not been accepted at the last session of the SCP held in May. In this connection, the African Group was of the opinion that it was important to have comprehensive negotiations having regard to the priorities of all countries, particularly since many areas of patent law could not be examined in isolation. Important proposals had been made by developing countries during the SPLT negotiations concerning, in particular, general exceptions, patentability criteria, the protection of public health, genetic resources and traditional knowledge. The Delegation noted that, since many of those proposals had already been raised during the PLT Diplomatic Conference, and that developing countries were told at that time that those were issues of substantive patent law that should be addressed in that context, it seemed appropriate to address those issues in the context of the current SPLT negotiations. The Delegation further stated that it was imperative that the SPLT negotiations paid careful attention to the interests not only of users and a number of interested parties and rightholders, but also of consumers and society at large. As the African Group was a group composed of developing countries and least developed countries, the Delegation stated that it attached great importance to the preservation of the public interest flexibilities and of the policy space of its Member States at the international level. The Delegation further stated that intellectual property norms which were not balanced did not strengthen intellectual property protection, but rather weakened it by undermining public confidence in the ability of the current intellectual property system to be responsive to public policy concerns and to integrate the development dimension and aspirations of society at large. The Delegation concluded that the SPLT negotiations should be based on the mutual respect of the interests and priorities of all countries which was, in the multilateral setting, the best way of ensuring that outcomes would enjoy the necessary legitimacy to command wide support and adherence.

127. The Delegation of El Salvador, speaking on behalf of GRULAC, expressed its interest in following up the work of the SCP with a view to adoption of the SPLT on the basis of the elements which had been under discussion since the beginning of those activities and which reflected the interests of all Member States. The Delegation stated that discussions on all the

elements included in the present draft SPLT would promote the chances of reaching a balance in the results to be achieved.

128. The Delegation of Serbia and Montenegro, speaking on behalf of the Central European and Baltic States, believed that the new approach of limiting the work of the SCP to an initial package of priority items would contribute to speeding up the work on those issues, and would thus enable the SCP to concentrate on other important issues at a later stage. The Delegation stated that the achievement of effective results had to be based on a broad consensus and mutual understanding of common interests. The Delegation expressed its interest in seeing progress in that area being made in the near future, and underlined its commitment to participate actively in the process.

129. The Delegation of Switzerland endorsed without reservation the statement made by the Delegation of Canada on behalf of Group B. The Delegation considered that the harmonization of substantive patent law was an important objective which should be pursued for the benefit of national offices as well as users of the system, and that such harmonization must take place within the framework of WIPO. That was why the Delegation hoped that everything would be done to ensure that efforts in that direction would be intensified and lead to results in the nearest possible future. Recalling that substantive harmonization work had started some twenty years previously, the Delegation noted that it was a complex and broad task, and that the progress made in the last four years in the Standing Committee on the Law of Patents (SCP) left much to be desired. The Delegation therefore supported the proposal, made by the United States of America and Japan and supported by the European Patent Office (EPO), to limit the work of the SCP to a first list of priority issues which were likely to be agreed in the short term. The Delegation further stated that it was vital that the work of the SCP begin bearing fruit and that there was no time to be wasted.

130. The Delegation of Norway welcomed the initiative from the Delegations of Japan and the United States of America with the goal of achieving progress in the important work on the SPLT. The Delegation agreed with the view that the recent developments had shown that it would be necessary to split the current SPLT proposal into two packages to break the current deadlock in the SCP. However, the Delegation believed that the success of any such new work plan depended upon the Member States' commitment to discuss a second package at a later stage. The Delegation considered it important to include in the work plan a clear statement that nothing in the future SPLT should be construed as implying that a party was not free to introduce legislation requiring applicants to furnish information concerning the geographical origin of biological material in an application, provided that the consequences of non-fulfillment lay outside the context of patent law and were not unreasonable. The Delegation further stressed the importance of keeping the issue open, noting that relevant work was currently being undertaken within WIPO by the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) and the Working Group on Reform of the PCT, and of keeping a close eye on the work done in other intergovernmental organizations such as World Trade Organization (WTO), Convention on Biological Diversity (CBD) and Food and Agriculture Organization (FAO). With regard to the first package, the Delegation stated that focusing on prior art related issues, as proposed by the Delegations of Japan and the United States of America, seemed to be a good starting point. The Delegation believed that achieving agreement on those issues would be an important first step towards consistent examination standards throughout the world. The Delegation also considered it important that an internationally recognized definition of prior art address concerns regarding the protection of traditional knowledge as discussed in the

IGC. Finally, the Delegation stressed the importance of continuing the discussions on the SPLT in the SCP.

131. The Delegation of Argentina endorsed the statement made by the Delegation of El Salvador on behalf of GRULAC and, recalled that the proposal presented to the Assembly had been discussed during the latest session of the SCP but that no consensus had been reached on the subject. The Delegation had had the opportunity to express itself on that occasion, but nevertheless wished now to put forward some considerations on document WO/GA/31/10. It noted that in the background information and in the conclusions, the sponsors of the proposal pointed out some reasons in order to justify the new work plan which they proposed. However, unlike what was said in the proposal, the Delegation did not think that lack of progress in the negotiations could be attributed only to the way in which the debates were currently held, because such a conclusion would be too simplistic. The basic problem lay in the substance of the negotiations itself, that is, the substantive harmonization of patent law. The lack of agreement up to now was not merely due to the fact that some discussions were controversial and sensitive from a political point of view, but because the initiative itself was so. While the sponsors of the proposal thought that twenty years had elapsed without the issue being sufficiently considered in WIPO, the Delegation reminded Member States that the same parties which had made this proposal, together with other developed countries, were those which had preferred to leave the negotiating table in the nineties to take the subject to the Uruguay Round of negotiations in search of an agreement on intellectual property and patents which would correspond to their interests, which could only be reached in a broader negotiating forum. The transfer of the issue of patents to the WTO meant an unprecedented success for enterprises of the industrialized countries which were the major users of the patent system. The conclusion of the TRIPS agreement, supplemented by the dispute settlement procedure of the WTO, made it possible to establish developed country patent standards in all the developing countries. For the developing countries, this meant a significant restriction of their freedom to move in the direction of development. It was significant that the TRIPS Agreement did not include aspects which would have made harmonization of the patent law of the developed countries mandatory. The negotiation process of the SPLT was launched practically at the same time as that at which the developing countries were obliged to implement the TRIPS Agreement. Up to now, that agreement had not been fully implemented in all the WTO members. The Delegation of Argentina, nevertheless, shared the doubts of other delegations regarding the need and opportunity for negotiating an international agreement in WIPO which would govern substantive aspects of patent law. The Delegation had actively participated throughout the negotiating process which took place in the SCP but, like other developing countries, it did not think that the SPLT should lead to a loss of flexibility, which they still had on this subject in terms of broader goals of national policy. The Delegation was of the opinion that the alleged benefits which could be derived from the SPLT in respect of work reduction for Patent Offices, which initially originated these negotiations, in no way justified the imposition of major restrictions of national sovereignty on developing countries and least developed countries. That was why the Delegation felt that the negotiation of a treaty as important as the SPLT should not leave aside aspects which were fundamental for developing countries. It was essential for the SPLT to contain provisions concerning, *inter alia*, the protection of public interest, exceptions to rights given, provisions concerning the transfer of technology and anti-competitive practices, and this meant that the negotiations should continue on the basis of the present draft SPLT. Only on the basis of a sufficiently broad negotiating process would the developing countries be able to obtain minimum guarantees to ensure that their interests were taken into account in a possible future agreement.

132. The Delegation of Cuba, expressed its gratitude for the proposal contained in document WO/GA/31/10 but considered that, as had been stated by a number of delegations at the tenth session of the Standing Committee on the Law of Patents (SCP), the harmonization of substantive patent law should in no way become an exclusive exercise. The Delegation added that the draft Substantive Patent Law Treaty (SPLT) formed part of a joint effort by all the Member States, for which reason it should consider the needs of all in a balanced and comprehensive manner. The postponement of the debate on certain matters could lead to actual abandonment of the draft SPLT and priority being given to other matters which had been demonstrated not to be in the interests of many WIPO Member States. Furthermore, the Delegation expressed the view that it was for the SCP to clarify the direction of its future work, taking account of the highly technical nature of the issues which had to be addressed. Cuba considered that the possible direction which the General Assembly might give to the SCP was to urge members to move forward in a coherent manner within the agreed framework, i.e. the draft SPLT, taking into consideration the rich discussions and the various positions that had been expressed on more than one occasion in the SCP.

133. The Delegation of Brazil stated that it had taken note of the proposal contained in document WO/GA/31/10, and that it fully supported the statements delivered on this item of the agenda by GRULAC, the African Group, Argentina and other delegations. The Delegation stated that, in considering this proposal, it was important to bear in mind the fundamental principle underpinning substantive negotiations in all multilateral fora, namely, that such negotiations should take place in an environment in which all Members were allowed to contribute to the discussions by tabling proposals and amendments, thus ensuring that multilateral agreements were the outcome of dialogue, open member-driven discussions and mutual accommodation. This principle had to apply in WIPO as it did in any other international forum, and could certainly not be overlooked in a field as sensitive as that of patent law. In the course of deliberations on the draft SPLT in the SCP, the Delegation of Brazil and other developing countries had been sharing their ideas on how to improve the draft SPLT by making constructive contributions for its amendment. The Delegation noted in this regard that the proposal contained in document WO/GA/31/10 would limit the negotiations on the SPLT to a reduced set of provisions which had been identified as priority items by the countries tabling the said proposal. While the Delegation could respect the positions of the delegations which had supported that proposal, it was of the view that the draft SPLT, in order to be balanced, could not be limited exclusively to the provisions set out in document WO/GA/31/10. Referring to other delegations that had spoken earlier, the Delegation recalled that that proposal had already been considered by the Member States of WIPO at the last session of the SCP in May of this year, where it had been opposed by a large number of Member States. The Delegation concluded that discussions on the draft SPLT in the SCP should continue on the basis of the draft treaty as a whole, including all amendments that had been tabled by Member States, thus leading to a balanced treaty on the substantive harmonization of patent law that should address the concerns of all parties to the negotiations. The treaty should include, among other issues, provisions on the safeguarding of public interest flexibilities, objectives and principles, the transfer of technology, the prevention of anti-competitive practices and the disclosure of origin and prior informed consent as a mandatory requirement.

134. The Delegation of Venezuela thanked the co-sponsors for submitting their proposal which it noted. The Delegation also supported the statements made by GRULAC, Argentina and Brazil. It recalled the meeting of the Standing Committee on the Law of Patents (SCP) in May 2004 and the debates on the proposal which was submitted to that Committee, and emphasized that the positions adopted were obvious, as was the absence of consensus.

Furthermore, the Delegation said that it would be fair that if developed countries made known the priority areas where they wished to focus their work, developing countries should also propose the aspects of interest which they wished to discuss; those subjects should not be discriminated against, although it was very difficult to determine what constituted a priority in a list of aspects and, if such priorities were established, it should be done in the SCP which had a mandate to draw up the new Agreement and not the Assemblies which did not have such a mandate. The Delegation emphasized that that proposal had generated great concerns among the other members and, in particular, among the developing countries which made clear their lack of interest in harmonizing the patent system subject to that methodology, in which only certain aspects were considered, provided that a system would thus be established that would reduce considerably the flexibilities currently available to developing countries as regards their intellectual property policies. Moreover, the Delegation recalled that in previous discussions in the SCP, a series of risks and dangers had been identified that might arise if the Substantive Patent Law Treaty (SPLT) were amended in line with the suggestions made by developed countries; in that connection, the Delegation highlighted that if harmonized standards were achieved, developing countries would have little room to adapt their patent rules to their specific conditions and needs; secondly, harmonization would help to raise levels of protection considerably, by means of an attempt to bring the new standards closer to those which the developed countries currently had, thereby losing the flexibilities currently available in the TRIPS Agreement and other WIPO agreements in force; thirdly, the raising of standards would have a negative effect in relation to innovation in developing countries; finally, the draft which was on the negotiating table focused the Delegation's attention on those standards aimed mainly at providing benefits for multinational companies and not for individual inventors or small and medium-sized enterprises. In that regard, the Delegation suggested that the Committee's working methods should not be changed and the proposals of both developing and developed countries alike should therefore be taken into account.

135. The Delegation of China noted that, during the discussions at the tenth session of the SCP, the proposal contained in document WO/GA/31/10 had already been discussed and that there had been no consensus among SCP members to include it on the agenda of the WIPO Assemblies. The Delegation stated that its country had always paid particular attention to the establishment of an equitable and reasonable international patent system that struck a balance between different interests. During the more than twenty years of international discussions on substantive patent law harmonization, the international environment had undergone important and significant changes, and with the development of new technologies and economic globalization, no country could develop its economy in isolation from the world economy. Since intellectual property protection was playing a more and more important role in encouraging foreign investment and in creating a favorable business environment, the Delegation was of the view that it was indispensable to ensure a wide participation of all members on all crucial issues relating to international harmonization. The starting point for such harmonization should give full consideration to the interests of both applicants and the public, as well as the objectives of Article 7 of the TRIPS Agreement as an important principle on which the future SPLT should be based. The Delegation further shared the concerns of developing countries and supported their views that the draft SPLT should be more responsive to their concerns and that due attention should be given to the protection of genetic resources and traditional knowledge. The Delegation, while recognizing that narrowing the subject of discussion would have some merit, expressed its opposition to the possibility that issues of common concern for the developing countries would be filtered out and indefinitely postponed. It expressed the hope that, by enhancing international consultations and cooperation and by gathering the wisdom of all Member States and international non-governmental organizations, WIPO would be able to make a link between

the achievement of the goals of the United Nations Millennium Declaration, such as eradicating poverty, hunger and diseases, and the improvement of the international intellectual property system by producing a feasible, workable work plan as soon as possible, thereby contributing to the sustainable development of its Member States.

136. The Delegation of India referred to the previous speakers from developing countries who had already articulated the major concerns that it had. The Delegation recalled that much had been achieved during the past twenty years, for example, the coming into effect of a functioning TRIPS Agreement, but that, if there had been some delay recently, the question arose of who was responsible for that delay. While the present proposal contained in document WO/GA/31/10 was, in the opinion of the Delegation, an interesting exercise, it would not become sustainable unless the concerns of the developing world were adequately addressed, which was not the case as of today. The Delegation stated that a major omission was the question of disclosure of the origin of genetic resources and associated traditional knowledge. Any formulation which excluded this issue would be incomplete. Many developing countries were in favor of harmonization, but of one that would be achieved in a consensual manner and in a spirit of cooperation.

137. The Delegation of South Africa expressed support for the Delegation of Egypt speaking on behalf of the African Group, and for other delegations. It recalled that the disclosure of genetic resources and traditional knowledge at present was a prerogative of national governments and that it would like to encourage other governments to express their views on this issue and to legislate accordingly. The Delegation referred to work in the context of the CBD, which was very informative in this regard and could inspire the draft SPLT and the PCT Reform to reflect the approach applied in that context. In any event, a restrictive approach should neither be imposed on developing countries, nor contradict or preempt the work of the IGC. In addition, the Delegation raised concern about the imposition of treaties administered by WIPO on developing countries through bilateral negotiations. The Delegation further questioned the absence of impact studies on the benefits of international treaties, in particular of WIPO treaties, on developing countries, and that pending such studies, no treaties should be imposed on developing nations.

138. The Delegation of Iran (Islamic Republic of), while noting the history of the discussions and the importance of the draft SPLT, stated that the proposals in document WO/GA/31/9 were technical ones and needed to be submitted to the SCP for discussion. According to the Delegation, the work of the SCP was still not completed and the SCP should inform the General Assembly of its assessment of the required future work. The Delegation noted that the sheer volume of the subjects is not a fair reason to stop the work of the SCP. We are facing the same question in IGC. The Delegation felt that to approach the evaluation of the work of the SCP in such a way would create an unusual precedent and would make progress more complex. The Delegation considered that much valuable work had been carried out by the Trilateral Offices and the International Association for the Protection of Industrial Property (AIPPI), the American Intellectual Property Law Association (AIPLA) and the Chartered Institute of Patent Agents (CIPA), but that the selective approach which was suggested for the harmonization of patent law was of serious concern to developing countries. There remained some articles of the draft treaty under discussion in the SCP which had not yet been reviewed. The Delegation considered that the proposal in document WO/GA/31/9 would place a great economic, legal and social burden on developing countries. The Delegation was of the opinion that the work in the SCP should carry on and that the concerns of developing countries should be seriously taken into account in order to reach a fair compromise.

139. The Delegation of Morocco endorsed the statement made by the coordinator of the African Group and observed that, since the Diplomatic Conference in 1991, the importance of substantive patent law had continued to grow. The matter had been referred to the SCP in order to work towards concluding a Substantive Patent Law Treaty. With that in mind, a number of meetings had been held to consider the scope and content of the Treaty. The objective was to harmonize matters relating to the grant of patents in order to improve the quality of patents and to promote use of the patent system for all users on the fairest and most appropriate basis. The Delegation considered that the importance of real harmonization in that respect for all stakeholders should not be overlooked. Member States should not lose sight of the goal, which was transparency and a uniform approach allowing all Members to enjoy the same opportunities for economic and social development. The Delegation thanked the sponsors of the proposal in document WO/GA/31/9, because it considered this to be a useful way of exploring one avenue for discussion of a work program within the SCP. The Delegation believed that the Member States should now look at those matters which were sufficiently mature and which enjoyed a sufficient level of consensus for them to be handed over to the Secretariat, in order to allow the Secretariat to draft definitive provisions on those matters. That would mean that Member States would not waste time on matters upon which there was virtual consensus, and that the progress which had been made so far would be consolidated. Furthermore, it would allow the Member States to look in more detail at other issues on which there was a difference of opinion, without, however, prejudging the outcome of the technical discussion to be held on those items. The Delegation considered that the harmonization of patent law should promote the social and economic development of all countries in order to ensure that all people in the world enjoyed better living conditions. If those aims were kept in mind, all obstacles could be overcome. The Delegation considered that the Member States should continue to work tirelessly to find responses which were balanced and which represented a compromise acceptable to all.

140. The Delegation of Chile supported the statement made by the Delegation of El Salvador on behalf of GRULAC and endorsed the statements of the Delegations of Argentina, Cuba, South Africa and Venezuela. The Delegation believed that the only way to achieve a balanced result was to take an approach based on negotiation of all aspects of the Treaty and drew particular attention to the statement by the Delegation of Argentina in that regard, which referred to the implementation of the TRIPS Agreement and pointed out that that Agreement had not been able to be implemented in its entirety. The Delegation considered that this showed how difficult it would be to implement the SPLT. Consequently, the only way for achieving the desired result would involve taking due account of all aspects which were covered in the Treaty at present.

141. The Delegation of Sudan supported the statement made by the Delegation of Egypt on behalf of the African Group. As far as the PCT was concerned, its reform was not an easy task. It was necessary to take into consideration the needs of the developing countries, and the Delegation hoped that an acceptable solution would be reached which was in line with the economic and social conditions in all countries, allowing the system to be applied in a balanced manner.

142. Following this discussion, the Chair read out the following statement for consideration by the General Assembly:

“1. The General Assembly considered the proposal submitted by the Delegations of Japan and the United States of America. No consensus has been reached thereon.



2. It was decided that the dates of the next Standing Committee on the Law of Patents (SCP) should be determined by the Director General following informal consultations that he may undertake.”

143. The Delegation of Egypt proposed that a reference to document WO/GA/31/10 be added in parentheses at the end of the first sentence in the first paragraph of that statement.

144. The Delegation of Japan regretted that the proposal contained in document WO/GA/31/10 had not reached a consensus. The Delegation stated, however, that, during formal and informal discussions, it had gained assurance that all Member States of WIPO had understood that discussions on harmonization should continue in the interest of all Patent Offices and users. The Delegation expressed its commitment to make every effort to be engaged in the harmonization process.

145. The Delegation of South Africa stated that it was serious about the issue of patent harmonization and waited for the Director General to convene a meeting on this issue. The Delegation expressed its willingness to fully participate in the discussions which should include all the elements that were beneficial to all Member States.

146. The Delegation of Morocco stated that it supported the harmonization of patent law and that the convening of the next SCP meeting should be determined by the Director General. The Delegation stated that it wished to give further emphasis to the harmonization of patents with due consideration of the situation of developing countries.

147. The General Assembly adopted the following statement:

(i) The General Assembly considered the proposal submitted by the Delegations of Japan and the United States of America (document WO/GA/31/10). No consensus has been reached thereon.

(ii) It was decided that the dates of the next Standing Committee on the Law of Patents (SCP) should be determined by the Director General following informal consultations that he may undertake.

#### ITEM 12 OF THE CONSOLIDATED AGENDA:

##### PROPOSAL FOR ESTABLISHING A DEVELOPMENT AGENDA FOR WIPO

148. Referring to documents WO/GA/31/11, WO/GA/31/11 Add., 12, 13 and 14 under this agenda item, the Chair of the General Assembly invited the Delegation of Brazil to present the proposal contained in document WO/GA/31/11.

149. The Delegation of Brazil, speaking on behalf of the Delegations of Argentina, Bolivia, Brazil, Cuba, the Dominican Republic, Ecuador, Iran (Islamic Republic of), Kenya, Sierra Leone, South Africa, Republic of Tanzania and Venezuela, all co-sponsors of the proposal made by Argentina and Brazil, said that it wanted to delve on, in particular, the objectives and the content of the proposal, as well as the related draft decision on this matter.

At the dawn of a new millennium, development undoubtedly remained one of the most daunting challenges faced by the international community, as widely acknowledged at the highest level in various international fora. Finding solutions to the concerns and problems faced by developing countries, and LDCs in particular, was an overriding concern of the international community as clearly attested by the adoption of the United Nations Millennium Development Goals. It further stated that, as a specialized agency of the United Nations system, WIPO should be guided in all its activities by the broader development-related commitments and resolutions of the United Nations system. Intellectual property was not an end in itself and it certainly should not be seen as such within an institution such as WIPO, a member of the United Nations family. If development was an overriding concern and goal of the United Nations system, then the intellectual property system, of which WIPO was the central part, should effectively operate in a manner supportive of that goal. Integration of the development dimension into all WIPO activities was therefore essential. The Delegation stressed that, in other international fora addressing intellectual property matters, the development dimension of intellectual property had already received increased recognition.

150. It recalled, on one hand, the landmark adoption of the Doha Declaration on the TRIPS Agreement and Public Health at the Fourth Ministerial Conference of the World Trade Organization (WTO), and on the other hand, in fora such as the World Health Organization (WHO) and the United Nations Human Rights Commission. It was underlined that the Sao Paulo Consensus, adopted by UNCTAD XI, enshrined the important concept of “policy space”, which was particularly relevant to the intellectual property sphere, where the very distinct stages of industrial and technological development of different countries called for distinct strategies and approaches. It expressed that the time had now come for WIPO, as a specialized United Nations agency, to make a systematic contribution to that broad discussion, and to begin a process of fully integrating the development dimension into all of its work. The proposed Development Agenda was intended to be a positive, not negative proposal. It was intended to be broad and horizontal, and address WIPO’s work in all its dimensions and not be limited to any of its specific subsidiary bodies but be wholly integrated into all WIPO Bodies and activities. The Delegation said that the proposal also suggested that WIPO should pay more heed to other issues, such as the transfer of technology and the curbing of anti-competitive practices. It was not the intention of the proposal to reverse WIPO’s work or introduce divisive issues for the Member States. It recognized that intellectual property issues were difficult because they were complex, but they were also of relevance to all countries, rich and poor, and that development represented a shared objective of the international community at large. It further stated that there was no intention to criticize WIPO’s work on technical cooperation, which was of great importance to developing countries, particularly the LDCs. It fully supported these activities and hoped to see them expanded in accordance with the specific requirements and needs of each country, in line with the principles and objectives set forth in section VII of document WO/GA/31/11.

151. The main purpose in tabling this proposal had been to re-establish WIPO’s central mission and goal as a United Nations specialized agency, which, in accordance with the terms of its agreement with the United Nations, was “to promote creative intellectual activity” and the “transfer of technology to developing countries”. By proposing to readjust WIPO’s course, the co-sponsors wished to ensure the effective and proper realization of that central mission. He underscored that the development agenda was not only in the interest of developing countries, but it was most importantly a global interest which reflected positively on all other agendas. An adequate and balanced system of intellectual property for our time, that promoted innovation, creativity and the wide dissemination of knowledge, one that was inclusive of all peoples and fully serviced the public interest, was of crucial importance to

peoples, both in the developed and the developing worlds. The Delegation said that it would be erroneous to regard the establishment of the development agenda for WIPO as an attempt to polarize debate in the Organization.

152. It recalled the recently launched Geneva Declaration, led by civil society organizations, on the future of WIPO, which had been signed by a broad cross-section of over 500 individuals affiliated with public interest non-governmental organizations, well-known academics including Nobel Prize laureates, inventors and authors, and public libraries, the majority of which were from developed countries. That inspiring Declaration, which had brought to the diplomatic halls of Geneva, the powerful voice of civil society and its concerns and aspirations in respect of the evolution of the intellectual property system and of WIPO, spoke eloquently about the broad relevance of the development agenda. The Delegation quoting from that Declaration said that “The proposal for a development agenda has created the first real opportunity to debate the future of WIPO. It was not only an agenda for developing countries. It is an agenda for everyone, North and South. It must move forward. All nations and peoples must join and expand the debate on the future of WIPO”.

153. The Delegation pointed out that on September 29, 2004, a group of 26 public interest non-governmental organizations issued a statement supporting the proposal for a WIPO development agenda. The Delegation considered this as the proposal of everyone, as it was, in effect, in the public domain. It was meant to address the concerns of everyone, whose voices had not been properly heard. It said that in taking the initiative of tabling this Proposal, its intention was to launch a process of debate which it hoped that all WIPO Member States would wish to contribute to. Although the proposal contained many ideas it offered no definitive solutions. Because development was a shared commitment of the international community, incorporating the “development dimension” in all WIPO activities should be a major concern for the international community. It was therefore the collective responsibility of WIPO Member States to ensure that the development agenda moved forward. Such a debate was necessary for the sake of WIPO, for its legitimacy and credibility as an institution. The Delegation wished to assist WIPO to cater to the interests and concerns of all Member States and all relevant stakeholders, including in particular civil society. Given the breadth of the conceptual discussion desired, the Delegation’s work could also be enriched by drawing on the input from other relevant international organizations that had worked on the “development dimension” of intellectual property. The Delegation finished by adding that they looked forward to the discussion in the General Assembly on the Proposal to establish a development agenda for WIPO, which they were honored to have tabled.

154. The Delegation of Argentina associated itself with the statement made by the Delegation of Brazil on behalf of the co-sponsoring countries of document WO/GA/31/11. It shared all the concepts contained in that document and expressed its appreciation that the proposal was included as an item in the agenda of the General Assembly. The Delegation said that the proposal touched upon fundamental issues, that it was focused on the very essence of WIPO, and that it was being submitted to give the Assembly a timely opportunity to express its opinion on its content. The Delegation recognized that similar aspects had already been discussed in other multilateral fora and that in most of these fora, actions and specific agendas had been adopted. It also noted that favorable reactions and expressions of support had been received from diverse sectors and that those expressions contributed to confirming the spirit of convergence that inspired the proposal which promoted the development agenda as a joint enterprise by all members of WIPO. The Delegation underlined that development issues were today a core aspect of international agendas that could not be avoided by the United Nations and its specialized agencies and that the

Millennium Declaration adopted in September 2000 by the UN General Assembly consolidated the universal commitment to make development a reality for all. Heads of States and Governments recognized the central role to be played by the United Nations system in such a commitment and decided, among other things, in that Declaration to create a favorable environment, nationally and globally, which enhanced development to eliminate poverty and to examine the special needs of LDCs. The Delegation stressed that it was relevant for WIPO that, apart from concrete objectives of the Millennium Declaration, matters concerning availability of accessible medication in developing countries, availability of advantages of new technologies, free access to information on the sequencing of the human genome as well as matters regarding assistance to help African countries to be able to face up to HIV and other diseases, should be expressly included.

155. The Delegation said that WIPO had been a specialized agency of the United Nations for 30 years and that in Article 1 of the Convention between the United Nations and WIPO, it was recognized that the latter was responsible – within the United Nations system – for promoting creative intellectual activities and enhancing the transfer of technology relating to industrial property to developing countries with a view to speeding up the economic, social and cultural development. It underlined that the proposal was not a mere symbolical text deprived of any consequences and that the United Nation's flag flying over WIPO reminded that since 1974 its mission had been extended and adapted to the general objectives of the United Nations. It added that, despite the efforts which had been made up to now, Member States had the responsibility of leading WIPO in the direction of encouraging and enhancing development since there was no doubt that the results had not been sufficient. It underscored the need to complement what had been done until now and to strengthen the impact capacity of WIPO. The Delegation stressed that it had taken into account the concerns of developing Member States and vast sectors of the international community in a way in which the protection of intellectual property rights could have an influence on economic, cultural, technological and social development. It stated that in the understanding that intellectual property rights were a means rather than an end in itself, the work of WIPO should go beyond the setting of higher legal standards and the protection of economic interests. The Delegation pointed out that intellectual property rights should be more effective as a development instrument for all countries and should be adapted more closely to the objective of the very origin of their protection, namely to guarantee the dissemination of technological developments for the benefit of society as a whole.

156. The Delegation highlighted the fact that in LDCs and developing countries, the efforts made by governments to promote innovation, knowledge and creativity did not necessarily or exclusively go through the setting up of systems which were increasingly rigid. In this connection, the Delegation said that in order to ensure the appropriate protection of intellectual property, protection which had never been and would not be called into doubt by the co-sponsors of this proposal, the transfer of technology and necessary investments to bridge the ever growing gap between countries should be guaranteed at the international level. The models of protection and the national policies of intellectual property should remain consistent with the context of the technological, cultural, social needs or the public interest of developing countries, which must enjoy the necessary flexibility in that area. However, it should be understood that the system of intellectual property was not negative or beneficial *per se*, but that its contribution to development would depend on which rights were granted, and the way in which they were exercised and the role they had in public policies. In that context, the proposal aimed at giving WIPO the possibility to move towards fulfilling the objectives established at the multilateral level. The Delegation recognized that the proposal was not innovative and that it was limited to some of the many concerns expressed by

developing countries and LDCs over the past years, both in WIPO and in other international fora, as well as the concerns expressed by many respected sectors of the international community. The Delegation remarked that it was not surprising that the proposal had been presented but rather that it had only been introduced and included in WIPO's agenda in the year 2004. It said that, together with many other delegations, it believed that the proposal had been presented appropriately, in time and form, and that it would contribute to strengthening WIPO's role and decisions, and transform it in a forum which would be more receptive, more transparent and more inclusive of all its Member States and all sectors of civil society. The Delegation said that the Member States of WIPO had to shoulder their responsibilities, to face up to the criticism that came from the public and to take the necessary measures to allow this Organization to play its very important role. It added that the commitment of the Member States and the International Bureau was necessary for this task and that this would require a new conceptual dimension for the role that intellectual property should play in order to benefit development. A small but important first step would be the establishment by the General Assemblies of a specific forum to discuss those matters.

157. The Delegation of Venezuela welcomed the opportunity to discuss in an open and transparent way the development proposal, which had been presented by the Delegations of Argentina and Brazil, and was co-sponsored by a group of Member States from Latin America, Africa and Asia, including Venezuela. It said that it had high expectations of such a debate and sincerely wished that it would lead WIPO Member States to take decisions on the constructive spirit of that proposal. It further recognized the leadership and efforts carried out by Argentina and Brazil in presenting a sound document, that addressed the concerns expressed for some time by developing countries in WIPO, and which certainly added a cross-cutting strategic value to the work carried out in the area of development. The Delegation's vision was of WIPO becoming an organization totally committed to the needs, the potential and the capacity of developing countries and that it was fully convinced that the most important challenge of these times was sustainable human development which involved a solid expression of will if Member States were to make it possible for two thirds of the planet to conquer the right to live in dignity, respecting the creative wealth of diversity, the very essence of differentiated endogenous development. It referred to the Millennium Development Goals adopted by the United Nations which invited Member States to be co-responsible in achieving those goals. The Delegation cited an assertion made by the "Master of Relativity" in a very profound reflection following the Second World War, stating that "*...science and technology were thought out as great bonanzas to make humanity happy, but they had to be implemented with the common sense of men and women who are also common.*" Science, technology and innovation were components meant to improve the living standards of the majority, without any limitation and that intellectual property protection was not an end as such, but part of a public policy which could enable human creativity to become a national and international development input. It stressed that procedures had to become more democratic and opportunities larger, leading Member States to re-think the necessary balance which needed to be struck between costs and benefits, taking into account the real possibilities and the potential of each one of the Member States of WIPO.

158. The Delegation pointed out that the International Bureau was currently engaged in several norm-setting activities through its different technical committees and that some of those activities could lead developing countries and LDCs to agree upon intellectual property protection standards which go beyond their institutional capacities. It was for this reason that the Delegation considered the co-sponsored proposal very useful and timely. The Delegation stated that WIPO was committed to different activities aimed at setting standards through its different technical committees. Furthermore, in respect of the transfer of technology,

identified as an objective of intellectual property protection, developing countries and LDCs faced a situation where sometimes they lacked the necessary infrastructure and institutional capacity to absorb the transfer of technologies. Therefore, it was absolutely essential to identify the measures within the intellectual property system which could ensure the efficient transfer of necessary technology to developing countries in line with their own agendas. WTO and UNCTAD had already carried out specific activities to this end and the issue was also discussed in other multilateral fora. In the area of enforcement, the Delegation was satisfied that the new Advisory Committee on Enforcement was used as a forum where States could exchange information and experiences and focus their actions towards technical assistance and cooperation. The Delegation recalled that when the Advisory Committee on Enforcement was set up, all activities relating to standard setting were excluded from its mandate and the Delegation hoped that this would remain unchanged. This Committee, in the Delegation's view, should not discuss the issues of enforcement exclusively from the perspective of rightholders, and focus the discussions only on combating illegal activities within the area of intellectual property rights. The Delegation thanked WIPO for the efforts it had made in the area of technical cooperation with developing countries. In its view, it was necessary to ensure that the social costs of intellectual property protection would be as low as possible so as to enable filling the gap between developed and developing countries. It was necessary to remain humble in order to be able to benefit from diversity. The Delegation would welcome it if WIPO would make a distinction between organizations representing the interests of rightholders and those NGOs which represented collective interests. The participation of these type of NGOs had to be encouraged to ensure that in the drafting of standards on intellectual property rights the appropriate balance would be established between producers and users of technological knowledge in a way which would benefit the collective interest. The Delegation hoped that the debate would lead to taking decisions which would effectively respond to the concerns of Venezuela, Argentina, Brazil and other countries of Latin America, Asia and Africa which shared the concerns, included in the proposal. In the Delegation's view the development agenda should also include the concerns of other Member States. For this reason, it hoped that WIPO would create a space where crosscutting mainstream development issues, linked to intellectual property, would be discussed. This was considered useful for all Member States and was viewed as a guarantee for achieving concrete results in a timely fashion.

159. The Delegation of Ecuador underlined that it had co-sponsored the proposal presented by the Delegations of Argentina and Brazil and concurred with the interventions made by Brazil, Argentina and Venezuela. It pointed out that the issue of mainstreaming the development agenda in all activities of WIPO was of paramount importance. This was a crosscutting issue included in all the multilateral fora and mentioned in the UN Millennium Development Declaration. For these reasons, the Delegation believed that a detailed debate on this issue was needed, so that policies and clear guidelines would come out of the debate, allowing for the inclusion of a development dimension in the work of the Organization. This would represent a clear signal of WIPO's commitment to the needs and creative capacity of developing countries as well as to meeting their aspirations and concerns. The Delegation stated that it was essential to define the technological transfer policy to be applied in the decades to come since it was clear that countries would keep their inventions and creations. Noting that poor countries did not have access to this knowledge because of structural shortcomings in the area of scientific and technological knowledge, it observed that this would lead to a policy of confrontation in developing countries where the majority of the world population would continue to live and would remain in a state that could be called technological slavery and continued underdevelopment. A country with no technological development could not carry out the necessary technological expenditure and this would

increase asymmetry in the area of knowledge, the economy and in all areas where intellectual property would offer benefits. Patent registrations were very rare in developing countries and tended frequently to originate from developed countries. Furthermore, the necessary inclusion of the development agenda in the work of harmonization of the international patent system was a concern that Ecuador shared with other Member States. The Delegation said that it was not possible to establish a harmonization that maintained an imbalance or unfairness which had an impact on developing countries. In this regard, it was also important to preserve the policy space and flexibility so that each State be in a position to define its public policies. This issue was recognized in agreements such as the TRIPS Agreement. The designing of the patent system should bear in mind the particular conditions and interests and the level of development of developing countries. Ecuador had co-sponsored the proposal in a pro-active and positive spirit and hoped that the debate would lead to a decision of the General Assembly to include the development agenda in the work of the WIPO. This would represent a step forward, so that intellectual property could serve as an efficient tool for the benefit of all.

160. The Delegation of Egypt, on behalf of the African Group, thanked the countries which had put forward the proposal under discussion. The Delegation pointed out that the Group had carefully reflected on the proposal for the establishment of a development agenda for WIPO. It underlined that development was Africa's highest priority, particularly as the African continent was firmly embarking on a new strategy for development called the New Partnership for Africa's Development (NEPAD). It was therefore natural that the African Group welcomed this important proposal, as it would have welcomed any constructive proposal, which would contribute to further putting development at the forefront at international level, particularly in the context of the UN system. This happened in a year when the UN was to start preparing for the review of the implementation of the UN Millennium Development Goals. In recent years, WIPO had been highlighting the important role of intellectual property as a tool for development. Under the able leadership of its Director General, WIPO had made a valuable and most significant contribution to modernizing the IP infrastructure of developing countries. Issues of particular importance for developing countries, such as the protection of genetic resources, traditional knowledge and folklore, had been brought to the forefront of the work of this Organization. The Group expressed its full appreciation to WIPO and to its Director General for the important achievements in this regard. The Delegation added that it seemed natural and appropriate to further build on this process by integrating the development dimension in WIPO through a fully fledged institutional framework, with a bearing on all of WIPO's activities and by ensuring that development be addressed in a systematic and holistic way. This framework was to be based on the recognition that for intellectual property to effectively play its role as a tool for development, there was a need for balanced intellectual property norms, formulated and implemented on the basis of a clear understanding of their eventual benefits, and also possible costs, taking into consideration the differences in the levels of development between countries as well as their specific socio-economic conditions. The integration of the development dimension would contribute towards ensuring that intellectual property norms would be fully and unequivocally supportive of important public policy objectives, such as the protection of public health, bio-diversity, the dissemination of information and access to knowledge in particular, through the incorporation of public policy related flexibilities. This would also ensure that the concerns and interests of developing countries and civil society would be fully taken into account when formulating new global intellectual property rules or in any international discussions on intellectual property. The Delegation noted that the proposed development agenda would be entirely consistent with the efforts of the international community and of developing countries, in particular, African countries, towards

promoting a development friendly intellectual property system which would be more responsive to public interest concerns. Such had been the case in many international fora, such as in the WTO through the Doha development agenda and the Doha Declaration on TRIPS and Public Health. The African Group shared many of the opinions expressed in the document under discussion concerning intellectual property and development and the need to integrate the development dimension of intellectual property. The document envisaged many interesting measures which merited further discussion. The understanding of the Group was that the purpose of the initiative was more to represent a starting point for a wider debate and a platform of action rather than the final word on many of the matters raised. In this respect, from the perspective of the African Group, this document could have been further enriched, if it had elaborated more on how, for example, to address genetic resources, traditional knowledge and folklore, matters of great importance for African countries, taking into account the development dimension. The Delegation reiterated the support of the African Group for the main objectives and principles of the document and the wider process of discussion on the establishment of a development agenda for WIPO. It hoped that concrete actions would be taken on the basis of the proposal.

161. The Delegation of South Africa aligned itself with the statement that had been made by the Delegations of Brazil and Argentina, and restated its recognition and appreciation of the high quality of work done by the WIPO Secretariat. It stated that the Director General of WIPO had always had the interest of all the Member States, in particular those of developing countries at heart, and that the progress achieved by, many developing countries, in specifically focused technical areas, facilitated by, or under the auspices of, WIPO had to be commended. However, it raised concern that many undertakings which could be regarded as leaning towards development were implemented as stand-alone projects to help maximize the output and impact of initiatives that were aimed at discharging the mandate acquired by WIPO under its agreement with the United Nations. South Africa decided to co-sponsor the proposal submitted by Argentina and Brazil to achieve WIPO's agreement with the UN where the stated objective was promoting creative intellectual creativity and facilitating the transfer of technology related to industrial property in order to accelerate economic, social and cultural development. It added that it was essential that a development orientation be deeply entrenched in all the policies and programs of WIPO. It further recognized that the promotion, protection and enforcement of intellectual property rights would remain an important function of WIPO, but stressed that the achievement thereof needed to have a tangible benefit for both the rights holders and a broader society, particularly parties that were in most need of technological advancement and protection of indigenous resources. It emphasized that WIPO, being one of the UN agencies, should be seen to be guided by the UN's international instruments on development and that intellectual property rights should be used in order to perpetuate the development aspect. It recommended that WIPO treaties should address IP in relation to public health issues, with regard to fair dealings provisions in copyright and access to educational materials as well as research innovation linked to development. The Delegation observed that a development agenda might allow reconciliation of these aspects. It added that using the intellectual property system for the protection and commercialization of genetic resources, traditional knowledge and folklore had also to be looked at, considering the richness of least and developing countries in this area and the advantages that they could gain from the intellectual property system in this respect. The Delegation strongly recommended that WIPO follow the requirements of the UN to harmonize its activities with those of other UN development oriented agencies, such as UNCTAD, UNIDO, FAO and CBD. It noted that this harmonization should not be discretionary, but mandatory because all UN agencies must be governed by the same uniform rules. To the question of whether WIPO was not already carrying work related to



development, the Delegation replied positively but specified that such work was done at the behest of the Director General. This was why the co-sponsors were supporting that development must be part of WIPO's overall work and must be very firmly incorporated into the mandate of WIPO through amendments to the existing WIPO international instruments. No WIPO instruments should proceed without being informed by a development agenda. The Delegation concluded by encouraging both the Secretariat and WIPO Member States to carefully look at the proposal, considering the Member States' needs to have both rights and development rights protected, and strongly encouraged a positive consideration of the said proposal.

162. The Delegation of Bolivia recalled that the UN Millennium Development goals were adopted in 2000 and that since then countries had committed themselves to taking the necessary efforts so as to achieve such objectives. Recognizing the effort made by WIPO to take on board some of the interests of developing countries, it considered that WIPO could enormously benefit if it were to include in all its areas of work the development dimension. It observed that their interests could not be limited to some of the issues on the WIPO agenda, and that their concerns were crosscutting and went beyond the area of technical assistance. Issues such as the necessary flexibility in the existing and future international instruments, the effective transfer of technology, the policy areas leading to achieving objectives of general interest, such as health, education and free access to information and knowledge amongst others, were of interest for the majority of the countries. Since the protection of intellectual property could not and should not be seen as an end in itself, the possible benefits as well as the costs involved in its implementation had to be closely evaluated, depending on the level of development of the countries. Harmonization which did not take into account the interests of all Members or which increased the level of protection which was not reasonable *vis-à-vis* the level of development of the countries should also be avoided. These considerations, as well as those spelt out in document WO/GA/31/11 referring to the proposal to establish a WIPO program for development co-sponsored by the Delegation, should call upon the General Assembly to adopt precise decisions and mechanisms in a timely fashion in order to include in WIPO a vision and commitment to development. The Delegation declared itself very satisfied to take part in a very promising event and hoped that the development agenda could include new concerns, specific features and issues of interest to a number of countries, notably the aspects relating to biological resources, traditional knowledge and folklore which were very important for Bolivia and which had to be dealt with in a crosscutting way.

163. The Delegation of Cuba emphasized that the biggest challenge currently faced by WIPO, and which would still be topical in the future, was the full inclusion of the "development dimension" in all the Organization's activities and initiatives to promote intellectual property. Integration of the development dimension should be the strategic direction taken by WIPO in the coming years, in line with the Millennium Development Goals adopted by the United Nations. That was why Cuba, together with a group of developing countries, had co-sponsored the proposal aimed at establishing a WIPO development program. The Delegation observed that the aim of the proposal was essentially to incorporate the development dimension in all the Organization's activities so as to ensure in particular that its role was not merely limited to promoting intellectual property protection, but also that the Organization considered intellectual property to be a tool for promoting technological innovation and transfer technology, i.e. disseminating technology on an equal footing to all Member States of the Organization in general and promoting the effective transfer of technology to developing countries and LDCs in particular.

164. On the question of the development dimension and intellectual property, it stressed that the proposal reiterated the point mentioned by many developing countries, not only in WIPO, but also in other international fora, such as the United Nations General Assembly, WTO and UNCTAD. The proposal correctly indicated that the protection of intellectual property was considered to be a tool for the promotion of technological innovation and the transfer and dissemination of technology. However, neither intellectual property protection nor the harmonization of intellectual property law, the aim of which was to increase the protection standards in all countries irrespective of their level of development, could be seen as an end in itself. That idea had been widely accepted not only by developing countries but also by independent bodies and recognized experts from other countries. It should be taken into account that the Members of WTO, including most of the members of WIPO, had expressly accepted the development dimension as an integral part of any consideration of subjects related to intellectual property standards. Therefore, as an Organization which considered itself to be an institution for the future, WIPO should also move forward in its consideration of the means which the development dimension should be incorporated in the formulation of intellectual property policies. As a specialized agency of the United Nations responsible for taking the required action to promote intellectual activity and to facilitate the transfer of technology with a view to speeding up development, as reflected in the proposal WIPO should be guided in the development of its activities and the formulation of programs by the objectives of the United Nations, and its activities must contribute to achieving the United Nations Millennium Development Goals. The Delegation reiterated a number of elements which it had already expressed on many occasions, including in the Assemblies, that intellectual property should be a social, economic and cultural development tool, and should contribute to promoting not only technological innovation, but also the transfer of technology so that it was to the benefit all Member States. It added that it was essential to maintain a balance between the interest of rights' holders and the interests of society as a whole.

165. Consequently, it stated that all the activities and initiatives relating to intellectual property, including those undertaken by WIPO, should contribute to achieving that objective with no harm being caused. It also noted that developing countries should be granted the necessary flexibility to be able to fulfil their obligations and use the intellectual property system in a manner compatible with their level of development and their social, environmental, educational, scientific, and public health objectives. Finally, in accordance with the proposal the Delegation appealed to the General Assembly to take the necessary measures immediately to incorporate a "Program for Development" in the Organization's work program.

166. The Delegation of Dominica, speaking on behalf of the Caribbean Community, expressed the wish of the Community to encourage the expansion of the existing developmental work within WIPO. It hoped that the work would proceed with all necessary caution in order that any proposed process for a development agenda would be developed within WIPO's mandate for legal norm/setting and treaty formulation. The Delegation stated that WIPO had thus far carried out its developmental functions for the region within the constraints of time, resources and funding available to it.

167. The Delegation of the Dominican Republic spoke of development as a commitment which was shouldered and shared by all in a responsible fashion. It added that no agency in the United Nations system could remain on the margins of the challenge for achieving the development objective, even less so an organization such as WIPO which was called upon to put intellectual property at the service of development. It stressed that the proposal, of which the Dominican Republic was a co-sponsor, was driven by a positive and constructive spirit

and that the proposal would favor the building of a framework or of an area of reflection which would enable the definition of the most appropriate way of implementing the United Nations Millennium Development Goals in the work of WIPO. The Delegation highlighted that the proposal was not driven by a critical spirit of the excellent cooperation and technical assistance work which had been carried out by WIPO through its development cooperation program. It congratulated WIPO and encouraged it to continue its work, addressing in a qualitative way the different needs of developing countries. At the same time, it had become essential to include the development dimension in the policies relating to intellectual property protection, more particularly in the activities relating to standard setting. Finally, the Delegation encouraged other Member States to consider the proposal in the same constructive spirit and engage in a constructive debate.

168. The Delegation of Iran (Islamic Republic of), in referring to its co-sponsorship of the proposal on the establishment of a development agenda for WIPO, drew attention to the following points: first, development is the cornerstone of all activities related to the United Nations and its specialized agencies, including WIPO, and its activities in this regard were much appreciated by all Member States including developing countries. Among the activities discussed during the course of this week were the holding of seminars, training courses, cooperation with universities and equipping of national offices. The Delegation expressed its appreciation to the Director General and the Secretariat of WIPO, for their good work in this regard. Second, while appreciative of WIPO activities, it observed that there was a real imbalance between the interests of developed and developing countries on the one hand, and the rights holders and public rights on the other in the WIPO treaties under discussion. It indicated that its role was not to reproach and blame for any faults in the system but wanted to highlight that the increase in the commitments of developing countries was not compatible with their needs and capabilities. The Delegation warned that the current inequity relating to the incorporation of the repeated concerns of developing countries in the context of certain treaties may discourage developing countries from participating in the negotiation and conclusion of new treaties. This in turn might eventually distance WIPO and its Member States far from its declared goals, an eventuality which should be avoided. Development had very broad dimensions and it would not be possible to limit the discussions to certain United Nations bodies or to consider it as duplicative. Third, understandably, there is a remarkable space to be explored in WIPO for incorporating development, as one of the key working concepts and guiding principles. It believed that the proposal should not be considered simply as a developing country proposal, rather as a proposal ensuring the fulfillment of common goals of all Member States of WIPO, by integrating development needs into the thinking, culture, decision-making, procedures and activities of WIPO.

169. The Delegation of Kenya, in co-sponsoring the proposal, expressed the recognition by its Government of the role of intellectual property rights as an important tool for trade, as a cornerstone for the modern economic policy of any nation and as a catalyst for development. It welcomed inclusion of this item on the agenda of the Assembly, which offered a rare opportunity for both developed and developing countries to focus on and discuss the challenges of development and intellectual property in the 21<sup>st</sup> century. As a member of the United Nations family, WIPO should be guided by the broad development goals that the United Nations had set for itself, in particular, the Millennium Development Goals. The role of intellectual property and its impact on development should therefore be carefully examined. It indicated that intellectual property protection being a policy instrument, its operation might in actual practice produce benefits as well as costs for any country. It was therefore, important to ensure that the costs did not outweigh the benefits of protection. Apart from the United Nations, the need to integrate the development dimension into policy making

on intellectual property protection had received increased recognition in other international fora such as the World Trade Organization (WTO). It pointed out in particular the Doha Ministerial Declaration, which gave a mandate to the TRIPS Council in the context of the Doha Development Agenda, and referred to the need to take fully into account the development dimension. The Delegation expressed appreciation of the commendable work done by the International Bureau especially through the cooperation for development program which had immensely benefited developing countries. It emphasized that the proposal sought to achieve a conceptual environment to enable WIPO to achieve its objectives. The proposal should be looked at entirely in the context of development and the issues contained in the proposal should be critically considered in this context. It stressed that this was the underlying reason why the Delegation agreed to co-sponsor the proposal which could be improved and for which other delegations might have reservations. In this respect, it expressed its openness to constructive criticisms that might help the proposal to achieve its objectives. The Delegation recalled its earlier support for the statement of the Coordinator of the African Group, acknowledging that further development of intellectual property would not be sustainable if the intellectual property system did not fully integrate the development dimension and public policy concerns. It concluded that the proposal under discussion could be viewed as a steering wheel towards achieving that objective.

170. The Delegation of Benin noted that international cooperation had been a determining element in the efforts of LDC governments to create the appropriate institutional development framework. It said that development cooperation was an important way to create a political, social and economic environment so as to bring about structural change which enhanced the setting up of institutional frameworks in the different sectors of the economy, including in the intellectual property sector, which was a very important tool for economic development, social progress and wealth creation. In this respect, the LDCs as well as their development partners had approved the LDC Ministerial Global Program for Development at a Conference in Brussels in May 2001, with a view to bringing change in the social and economic conditions of their respective countries. Intellectual property and development as a tool for wealth was a very important theme of the interventions of various participants at the Conference which also highlighted that the acquisition of technology and the transfer of knowledge was at the very basis of development. A development program for WIPO was adopted there so that the program of LDCs would be implemented in a harmonious way. As a result, LDCs as a group, had a global development program where WIPO was one of the associates. Considerable progress had been made to implement at WIPO what was decided at that Conference. While taking note of the proposal and expressing a great deal of sympathy for it, the Delegation expressed its desire to have consultations with the two proponents so that the proposal could take into account the specific needs of the LDCs, a group whose development needs were the most important of all developing countries. The Delegation thanked the Director General for his efforts to provide a forum where careful consideration of the proposal could take place.

171. The Delegation of Morocco expressed its thanks to the Delegations of Argentina and Brazil for their proposal which was very important for development and for the efforts of the international community and the Member States in that field. The proposal provided many interesting ideas as to the role of intellectual property and its effect on innovation and transfer of technology. That was a positive contribution within the framework of the implementation of the United Nations Millennium Development Goals. The Delegation referred to the statement of Brazil according to which, intellectual property protection was not an end in itself but rather a means to attain development and welfare for all human beings through economic growth and prosperity. It noted however, that the history of nations had not been

sufficiently uniform to help them acquire, in an equal manner, the technical and legal instruments necessary for beneficial protection of intellectual property. The Delegation expressed the view that the Member States of WIPO had tried to alleviate this problem by acceding to the Convention which set up the Organization and according to which WIPO offered its cooperation to States in need of legal and technical assistance in the field of intellectual property. It congratulated WIPO on its achievements and stated that WIPO had not just carried out its regular work, but had devoted itself to ambitious programs of cooperation for development, ranging from legal assistance to the establishment of national laws in developing countries and LDCs. The Delegation further expressed the view that the WIPO General Assembly should look into the proposal in depth so as to draw up a true agenda for development and suggested that the Permanent Committee on Cooperation for Development Related to Intellectual Property (PCIPD) deal with the question. It recommended that the Director General take the necessary administrative measures to convene rapidly the PCIPD to review the matter as it was in the best possible position to set up a mechanism to facilitate the planning and implementation of WIPO's cooperation for development activities. Another option could be explored, such as to establish an appropriate working group. It indicated that the essential thing would be to move from the level of discussions to in-depth, practical and pragmatic work within the proper framework. It added that the proposal was relevant and ambitious and placed the question of cooperation for development at the top of WIPO's agenda and that of international fora in general. While expressing support for the proposal, the Delegation noted that it wished to raise certain questions including one concerning the Organization's very essence. It asked what WIPO's objective was and whether its Members wanted to change everything, to restructure the Organization or to place greater emphasis on a WIPO activity which had existed from the beginning. That point questioned the credibility of the Organization and justified the need to clarify its objectives taking into account that that was not a new proposal but a compilation of various proposals from developing countries. The Delegation expressed the need to look into the *modus operandi* of the proposal and the process.

172. It observed that some people wondered whether WIPO, since it became an organ of the United Nations, had or not contributed to development. A clear answer should be stated in the proposal. The Delegation noted that WIPO had always worked in favor of development and that intellectual property was a very essential element in the agenda for development. It also expressed the view that WTO problems should not be reflected in WIPO and that vigilance was required in this respect. Issues that were of interest to both Organizations had to be discussed so that the work could be directed towards more clear goals. Moreover, lessons from the past regarding what had taken place in WTO and overlapping should be avoided, notably because the Development Agenda of Doha in Article 19 defined the scope of the work of that Organization for development. The Delegation stressed the need for a broad objective, constructive and inventive discussion in order to convince all governments to adhere to the proposals to be drawn up. The agenda for development should not be a program or agenda that could not be implemented but it should be a partnership between the North and the South, between the Organization, the NGOs, the civil society and all sectors involved in innovation. Finally, the Delegation expressed the hope that an agreement would be reached on a body to carry out the necessary work, to look into the proposal carefully and in-depth and to produce a realistic consensus that would take care of all expectations.

173. The Delegation of Canada, speaking on behalf of Group B, welcomed the opportunity to discuss the proposal to establish a development agenda for WIPO and thanked the Delegations of Argentina and Brazil for introducing the proposal so eloquently. It expressed the belief of Group B members that WIPO's work should help to support the multilateral

development of intellectual property, not as an end in itself but as a means to help achieve the economic, social and cultural well being of individuals in societies across the planet. In that light, it referred to Paragraph 6 of the Secretariat's performance report which emphasized that "WIPO's strategic goals should also be viewed in the larger context of the United Nations Millennium Declaration adopted by the UN General Assembly in September 2000, placing the eight Millennium Goals at the heart of the global agenda". Clearly, this was consistent with the 1974 Agreement between WIPO and the United Nations which noted in Article 1 that WIPO was responsible for promoting creative, intellectual activity and for facilitating the transfer of technology related to industrial property to developing countries in order to accelerate economic, social and cultural development. While, expressing support for these objectives was easy, deciding how to achieve them was more difficult so we must ask ourselves what WIPO could do to achieve our collective goals.

174. In Group B's view, the over-riding strategies already set out by WIPO were the right ones. WIPO should continue to exploit its core competencies to build a better understanding of intellectual property, to develop the intellectual property system and to enhance the efficiency of the Secretariat and the services it provided. These were all areas in which WIPO must be successful if the Organization was to play a strong supporting role in the United Nations system toward achieving the internationally agreed development goals including those contained in the United Nations Millennium Declaration. Group B noted that WIPO continued to offer developing countries advice and tools for optimizing the impact of intellectual property on national economies, in particular, to integrate intellectual property into development policies and practices, to exploit intellectual property assets, to leverage comparative advantages regarding innovation and creativity and to address broader public policy objectives. Also, WIPO committees and bodies were making greater efforts to involve and consult non-governmental organizations including civil society groups and representatives of indigenous peoples and cited the example of the almost 100 NGOs accredited to the Intergovernmental Committee (IGC). The Delegation noted considerable efforts deployed by WIPO to support the overarching goals of the UN system, through coordinating its work closely with other relevant UN institutions, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Office of the High Commissioner for Human Rights (OHCHR), the UN Conference on Trade and Development (UNCTAD), the Food and Agricultural Organization (FAO), the International Telecommunications Union (ITU) and its work on the World Summit on the Information Society. It pointed out that each of these agencies had an important role to play in supporting the internationally agreed development goals, including those contained in the UN Millennium Declaration. The Delegation emphasized that considerable efforts deployed were to ensure that WIPO's work did not duplicate or contradict the work of other specialized UN agencies. In conclusion, the Delegation stated that Group B looked forward to hearing the views of other delegations on the proposal made by Brazil and Argentina and to engaging in a constructive consideration of that proposal.

175. The Delegation of the Netherlands, speaking on behalf of the European Community and its 25 Member States, welcomed the opportunity offered by the debate to reconfirm its commitment to the UN Millennium Declaration and the Millennium Development Goals, the Monterrey Consensus on financing for development, the Declaration of Principles and the Plan of Action of the World Summit on the Information Society, the Johannesburg Declaration on Sustainable Development as well as the Doha Development Agenda. It stated that it did not consider the protection of intellectual property rights as an end in itself but as a means of contributing to the progress and welfare of individuals and societies throughout the world. It emphasized that the efficient and equitable transfer of technology linked to

intellectual property lay at the heart of global economic development and added that a WIPO organization that successfully upheld intellectual property rights in a balanced manner was in the interest of all. The Delegation recalled that WIPO's role of promoting creative intellectual activity and facilitating the transfer of technology related to industrial property to the developing countries was enshrined in the 1974 Agreement between WIPO and United Nations. In this context, the Delegation acknowledged the important achievements of WIPO, namely the participation of developing countries in all areas covered by WIPO and in many WIPO administered treaties, the more recent extension of the scope of its development-related activities, the implementation of a significant number of cooperation programs and action plans for technical assistance and training, and new issues, such as the safeguarding of traditional knowledge, genetic resources and traditional cultural expressions, that were currently being addressed. The Delegation expressed its belief that WIPO should continue its good work. It took note of the proposal of Argentina and Brazil supported by a number of Member States for the establishment of a Development Agenda for WIPO to take this work forward. With regard to progress in strengthening the development dimension of WIPO's work, the Delegation observed that this could be achieved if the fundamentals, including rights and obligations of the international intellectual property system, were properly understood and accepted. The Delegation noted that it would be timely for WIPO to evaluate and assess the contribution of the Organization towards achieving the Millennium Development Goals, including its program on technical cooperation with developing countries and least-developed countries. On that basis, future work could be decided without duplicating work already undertaken by other multilateral fora, thereby contributing to strengthening the coherence of multilateral development work. The Delegation concluded by expressing the European Communities and its member States' wish to engage constructively on this issue within the competent bodies of WIPO. It then proposed that the General Assembly should invite the International Bureau to make an assessment of the current WIPO contribution to the achievement of the Millennium Development Goals and report to the appropriate body.

176. The Delegation of Brazil informed the Chair that, together with the co-sponsors of the proposal, it had formulated a draft decision that it would be pleased to see distributed for consideration by the Plenary and thanked him for giving them the opportunity to do so at such an appropriate time.

177. The Chair of the General Assembly requested the Secretariat to circulate that draft decision.

178. The Delegation of Portugal congratulated the Chair and the Director General, for the very constructive manner in which the work of the Assemblies of WIPO had started. It reaffirmed the importance of the Organization for the Portuguese Government and institutions, the private sector and for civil society, and emphasized its great interest in this topic. The Delegation supported fully the statements made by the Delegations of Netherlands on behalf of the European Union and of Canada on behalf of Group B. It stated that Portugal wanted to contribute to this collective effort of transforming intellectual property into a more universal and effective instrument of economic policy at the service of economic and social development. With regard to the Millennium Development Goals, the Delegation considered of interest adding a more relevant and concrete role for the civil society. It acknowledged that IP was one of the fundamental elements of a modern knowledge-based economy. This manifested itself through competitive factors, increasingly intangible and supported by the inventive, creative and organizational capacities of enterprises and countries. However, making the role of IP an instrument of economic policy at the service of development should

take into account the costs involved in and the investment required in skills, in technological means, information and communication as well as appropriate promotion of effective use. The Delegation added that the effective use of IP was a unique indicator determining the usefulness of institutional efforts, namely efficient offices, modern legislation and specialized advice and access to databases. Considering the importance of the above, inventors and creators, authors and enterprises especially the SMEs used it fully, in order to reach the goals set. The Delegation felt however that it was not sufficient to recognize the importance of IP in development strategies. There was also need to ensure the necessary conditions for these strategies to be implemented taking costs into account and defining adequate financing mechanisms. The Delegation stressed that this should be inserted into the organization of the economy where the civil society was represented by various entities in which the enterprises had an increasing role compared to Government intervention. The Delegation observed that, in the context of market economies, conceptualization relied on important strategic alliances and partnerships for cooperation as a means to rationalizing resources, increasing the speed of action, strengthening skills and sharing investment returns. There was no competitive society, it added, if cooperation did not match current collective challenges. Creating partnerships would only be possible through financial solutions including all existing entities with a more effective and broad implementation of IP at the global level. Therefore, in the context of that sharing of responsibilities between public institutions and civil society – and strengthening of the latter –, WIPO would find better solutions that would enable implementing cooperation mechanisms for a broader development of IP. In that regard, the Delegation of Portugal proposed to contribute steadily to a better implementation of these mechanisms through dialogue with interested parties. It noted with interest the agenda for development suggested in the proposal made by Argentina and Brazil. It reiterated its awareness of all the issues involved and it considered that the proper solutions would be found shortly.

179. The Delegation of Spain supported the statements of Group B, the European Communities and Portugal. It wished to support cooperation initiatives for development be they bilateral or multilateral. The Delegation indicated that the Spanish Patent and Trademark Office considered 2004 to be a particularly important year. A trust fund had been established in WIPO for funding joint cooperation projects in Latin America. It had given the traditional cooperation between the Spanish Office and WIPO a strategic dimension aimed at strengthening national industrial property offices in that region. The Delegation emphasized that apart from being the financial framework covering all cooperation activities developed with WIPO to date, the fund attempted to open up new areas of cooperation together with WIPO, which would add value to the world IP system. The Delegation gave, as an example of a project supported by the fund, the translation of the International Patent Classification (IPC) into Spanish, which represented an essential element supporting the development of the industrial property system for all Latin American countries. The Delegation pledged its support for that and for other similar activities.

180. The Delegation of Uruguay stated that the subject under discussion was of enormous importance not only for developing countries but for all the members of the Organization, since the repercussions of the development problem were not limited merely to countries suffering from those problems but to the whole of the international community. Questions were asked such as what was development, how was it dealt with on a multilateral level and with what instruments? Those were only some of the questions which for decades had been raised in the various international fora where such matters were examined, without being able to provide a convincing response to them and, less still, without having clarified the harsh realities remaining in the wake of the dramatic predicament of underdevelopment. For decades countries had been bogged down in long fruitless debates as to whether a uniform



development model existed, and whether the responses on a multilateral level should be channeled through special and differentiated treatment, assistance programs or funding for development. In each and every one of those cases the inadequacies of the approach were clear, as was the lack of essential political will required to achieve concrete solutions to those challenges which affected millions of people on the planet. The much-trumpeted end of the century and the beginning of the new millennium had made it possible to witness great political and economic changes in the world, to which development issues had not been unrelated. In numerous international fora a new awareness had begun to be forged concerning those subjects and especially some of the conceptual weaknesses in relation to how to transform development-oriented rhetoric into specific objectives had begun to be clarified. The Delegation continued by saying that there were many examples of that but that it did not wish to speak about the subject at great length. It recalled the discussions which had led to the approval of the Millennium Declaration at the United Nations, and the specific and plausible objectives that had been established there in order to understand fully what the sense was of that new awareness which in the final analysis was no more than what was now known as "the development dimension". The Delegation added that in many multilateral bodies the new undertaking was beginning to be reflected in their work programs. Proof of that was the Doha Program for Development on which the new round of trade negotiations currently under way at the WTO was being conducted. Those who had close knowledge of the nature and development of the international trading system would understand the great qualitative change which the Agenda introduced in relation to the treatment usually given to development issues in that Organization, enshrined in the frustrating Part IV of the GATT Agreement, and approved in the 1960s and in a series of other provisions of doubtful operability. The Delegation was of the opinion that the collective effort aimed to move development issues forward, making it possible for multilateral instruments to promote their aims and international cooperation to be developed according to a new paradigm that made it more effective and receptive to the needs of the most unprotected members of the system, should be endorsed by all the international organizations in their respective spheres of competence. The proposal initially submitted by two Latin American countries, Brazil and Argentina, with whom Uruguay shared a common history and destiny, had the enormous merit of opening up a constructive and fruitful discussion on the way in which WIPO as an Organization and all its Member States would henceforth deal with the systematic task of making the development dimension a reality in terms of the different components of the international intellectual property system. The Delegation said that Uruguay shared the aims, philosophy and purposes of the proposal put forward and that it should not be viewed in isolation but as part of a major effort which the international community as a whole was making in that direction in so many other spheres. Obviously, the development dimension in intellectual property did not have the same meaning as in relation to trade, the environment or any other area with its own specific features. The Delegation urged that on this occasion the challenges of development should not be expressed in terms of all-encompassing concepts, but that it would be necessary to meet, in a very detailed manner suited to each case, the changes or improvements that should be made in the different specific areas which intellectual property comprised. That would be the best way in which to achieve a fair balance between a system providing effective protection for the legitimate rights of creators and innovators, and the general interests of the society which granted such protection, especially where that related to countries where the conditions and needs had particular characteristics to be taken care of, as was the case in developing countries. The Delegation believed that the proposal being studied provided important elements for undertaking such a collective task. Fortunately, WIPO was an organization which, during the past few decades, had seriously tackled development issues and, in particular, those linked to cooperation. The development dimension aspired to was certainly not limited to aspects of technical assistance. It was, however, also clear that

cooperation was one of the conditions necessary for generating capacity, training resources and even for devising national intellectual property policies. For almost three decades, great efforts had been made and significant resources devoted to those tasks of particular interest to developing countries. The Delegation stated that there were many dynamic development requirements which required constant updating that was not limited to increasing the volume of the resources devoted to those aims, but fundamentally to improving the quality of cooperation. Initiatives such as the proposal put forward by Brazil and Argentina were welcome, since they aimed to develop a constructive dialog between the Member States of WIPO in relation to those measures shared by all concerned and to devise jointly the future of those programs. The Delegation reiterated that the development dimension was not confined to technical cooperation and assistance, and it was certainly a good thing to examine new ideas and new proposals which highlighted that the strategies for attracting direct investment and access to markets were not incompatible, since they were required by the developing world, together with the international protection of intellectual property and national strategies for promoting innovation and the requisite technological change. In conclusion, the Delegation said that the initiative being studied was both beneficial and auspicious. Beneficial, because it aimed to improve aspects that were undoubtedly important for all WIPO Members and that would result in better integration for its Members in the development of an enhanced system of protection for intellectual rights. And auspicious, because it was part of a noble and inspired effort on the part of the international community which now claimed to be providing a more appropriate and specific response to the needs of the countries with greater shortages, and supporting their national efforts to overcome underdevelopment and provide for their respective peoples better standards of living.

181. The Delegation of Mexico expressed interest in the discussion and analysis of an agenda that combined intellectual property subjects and the development of societies; however, it considered it necessary to determine the limits of the subject by analyzing the approach to and scope of the Agenda and, above all, to consider that the intellectual property system constituted a further element for the development of nations. It was important to emphasize that WIPO had been working on development-related subjects, as was noted in the records of the many events held by the Organization. Cooperation activities had been abundant in number and important for the countries which had benefited from them. Nevertheless, it was considered necessary to analyze and, where appropriate, establish a cooperation program that allowed specific activities to be carried out, considering the particular needs of each nation, which were important; however, the Delegation reiterated that it was necessary to recognize the work done in various areas by WIPO in relation to cooperation. An agenda for development should seek to strengthen and not to damage the intellectual property system. The conclusion of the work stemming from the Agenda must disseminate and utilize the current benefits of the system. By way of example, reference could be made to the large amount of technology contained in patents that were unprotected, as decided by the applicants, in developing countries, which constituted not only a very wide source of knowledge for but also modernization of SMEs. In terms of what had been said and considering the dimension of that subject, the Delegation suggested a better analysis and broad discussion of it through the setting-up of a working group. Moreover, the Delegation explained that for Mexico the protection of intellectual property rights had been a constant concern for the authorities, rights' holders and the inventors' community in general. As regards copyright, aspects such as the increase in Mexico in the period of protection for creators to 100 years, the administration of a register of works containing more than 1.5 million digitalized works and a cultural industry protected by copyright, which generated a very significant dividend for gross domestic product, forced Mexico to implement all the measures necessary to safeguard its intellectual production. The proposal put forward by

Brazil and Argentina for a “Development Agenda” also caused the Delegation to consider the need to strengthen the cooperation programs and the scope of the very important measures that had been taken. In conclusion, the Delegation said that Mexico would always support the international protection of intellectual property, for which reason it considered that it should strive to strengthen the Organization.

182. The Delegation of Senegal stated that it wished first of all to associate itself with the statement made by the Delegation of Egypt as Coordinator of the African Group, and also the statement made by the Delegation of Benin as Coordinator of the LDCs Group. The Delegation stated that on September 17, 1974, under resolution 34/46 of the General Assembly of the United Nations, the Economic and Social Council decided to grant WIPO the status of a specialized agency in accordance with Article 57 of the UN Charter. Under this agreement, between the UN and WIPO, WIPO had “the responsibility of taking appropriate measures to facilitate the technologies of developing countries with regard to intellectual property in order to speed up economic, social and cultural development”. The recalling of these provisions was to insist on the importance of the concept of a specialized agency and the responsibilities attached to such a status. The Delegation also stressed that the joint proposal by Argentina and Brazil, endorsed by a growing number of countries, was a perfect illustration of the joint will to revitalize WIPO as a specialized agency of the UN. The place given to development here demonstrated that right from the start WIPO had been aware of this operational part of the proposal by Argentina and Brazil. The Delegation considered that the eight areas of action outlined in the proposal were far from being exclusive and should be part of an overall action to achieve a development agenda. Some of them were related to treaties being negotiated and this could be implemented in the short term. Others such as the high-level declarations on intellectual property and development as well as the amendment to the Constitution, could only be envisaged in the medium to long term. Consequently, the Delegation believed that after this discussion, the General Assembly could adopt a decision giving a mandate to all the departments of WIPO to strengthen the development dimension in their work. In the same decision, the General Assembly would set up a working group to deal with all matters related to policy for future development. The Delegation would spare no efforts to contribute to the constructive dialogue on the proposal by Argentina and Brazil. The Delegation insisted on the need for particular attention to be paid to the LDCs because of the particular characteristics that were well known and recognized.

183. The Delegation of Colombia expressed its thanks to the Delegations of Brazil and Argentina for having presented this initiative, and considered that it enriched and broadened the debate on such a far-reaching issue as the relationship between the protection of intellectual property and the development of nations. The proposal tried to list a process that was required and which would strengthen the measures to be taken by the Organization in order to help intellectual property to contribute to the social and economic development of countries. The Delegation expressed its gratitude for the WIPO program of cooperation and technical assistance that had been developed over many years for developing countries and for the LDCs. Nonetheless, the Delegation believed that the proposal by Argentina and Brazil deserved a detailed analysis and discussion, because it included a large number of strategic components that might strengthen WIPO’s role, thereby contributing to the development of countries as part of the United Nations Millennium Goals. The Delegation supported the strengthening of the development dimension in the Organization’s programs. The Delegation believed that the initiative was made up of a number of components which obviously required, in the case of Colombia, detailed analysis through consultation among the country’s various institutions. The Delegation had already given its support to some parts of the initiative such as the urgent need to adopt measures to improve countries’ capacities to

develop, assimilate technology and have access to such technology. Important subjects with which the Delegation agreed included the need to study cooperation and assistance models which allowed for technological benefits in favor of developing countries and LDCs, as well as strengthening cooperation programs in financial terms. There was a real need to strengthen the WIPO cooperation program for developing countries, with the hope that there would be more development assistance granted by developed countries towards developing countries and LDCs which would result mainly in strengthening the national capacities thereby contributing to better use of the intellectual property system. The Delegation thus supported the initiative of setting up a working group on the development agenda, and that the working group would be a tool that would effectively facilitate the debate, ensuring that progress would be made on the many issues raised, with the hope that it would also contribute to the adoption of concrete decisions. The Delegation of Colombia expressed its wish to participate actively in the work of that group and to contribute to it. A seminar on intellectual property and development, as well as the inclusion of IP in the transfer of technology, should be included in the Organization's agenda.

184. Speaking on behalf of the Asian Group, the Delegation of Sri Lanka welcomed the proposal made by Brazil, Argentina and ten other countries, to include a development agenda into all activities of the Organization. It stated that the proposal had a number of elements that sought to strengthen the mandate of the Organization of promoting and protecting intellectual property in order to further the goals of economic, social and cultural development. The proposal also leveraged on the continuing focus in the United Nations and other fora on the need to achieve the Millennium Development Goals. The Delegation said that the Asian Group shared the view that promoting the protection of intellectual property should not be an end in itself but should be aimed at fulfilling the development goals of each country. The Delegation said that the eight elements of the proposal as contained in the Annex should be given due consideration. Conscious that the question regarding the proposed creation of the working group or committee for further debate and discussion might be decided after deliberations, the Delegation stated that it would support any realistic and rational suggestions aimed at achieving tangible results.

185. The Delegation of Sri Lanka, speaking on behalf of its country, welcomed the proposal led by Brazil and Argentina with the support of a number of countries for the inclusion of a development agenda into all activities of the Organization. It expressed its belief that the proposal would have the support of all Member States. The Delegation said the proposal was particularly timely in view of the continuing focus on the urgent need to achieve the Millennium Development Goals. It noted that the new proposal was fully in consonance with the UNCTAD XI Sao Paulo Consensus which agreed on the need for greater coherence in bridging the external environment and the national efforts of developing countries as well as the need for sufficient policy space to be afforded to these countries in order to further their national development priorities. The Delegation raised questions about the share of developing countries in the world intellectual property system, and the way to increase their participation in order to generate more benefits. In this context, it drew attention to whether IP at multilateral levels was equitable, balanced and pro-development. The Delegation referred to the statement it made during the general debate, which recognized the significant impact of the technical cooperation programs carried out by WIPO at the initiative of the Director General to enhance capacity building in the developing countries. The Delegation added that it agreed with the view expressed by several delegations that the proposal by Brazil and Argentina complemented the WIPO economic development program and made it more comprehensive by placing it under an overarching WIPO umbrella. The Delegation said there would also be need to reflect on how to prioritize and take forward the elements of the

proposal contained in the Annex to the proposal. It believed that some other proposals, as contained therein, were relatively straightforward and their operationalization could be decided upon while other proposals would need greater reflection and discussion. The Delegation trusted that with the cooperation of all delegations, the issue of a working group to take forward the proposal by Brazil and Argentina could be achieved.

186. The Delegation of the Philippines expressed its confidence that a successful conclusion would be reached under the guidance of the Chair. The Delegation of the Philippines thanked the co-sponsors, particularly Argentina and Brazil for their important initiative. It associated itself with the statement made by Sri Lanka on behalf of the Asian Group. The Delegation expressed its belief that the General Assembly should consider this initiative of Brazil and Argentina and others as a means of enhancing WIPO's contribution towards attaining the UN Millennium Development Goals and enhancing the contribution of intellectual property rights to the development process. In the Delegation's view, the proposals contained in the Appendix of document WO/GA/31/11 were not exhaustive but good starting points for a constructive and detailed dialogue. In this regard, the Delegation favored the establishment of a working group entrusted with the responsibility of considering the proposals, and others, as possible elements of a framework of a development agenda for WIPO, to be achieved and integrated into WIPO's program of activities. The Delegation stated that such a working group or any similar arrangement should be put on the agenda of the next session of the General Assembly and it was pleased to note that this idea was reflected in the draft decisions distributed by the co-sponsors. It was equally convinced that the draft decision was a good basis to work on for reaching a decision on the item during the current session. The Delegation of the Philippines recognized that WIPO was a generous source of technical assistance to the developing world. The development cooperation projects undertaken by WIPO in developing countries had undoubtedly contributed to the overall strengthened stability of international intellectual property regimes. However, public policy considerations reminded that the protection of intellectual property rights should not be an end in itself. The Delegation believed that a clearer development agenda in WIPO would be an effective way of ensuring that WIPO's technical assistance programs and activities fully took into account development needs. For this reason, and considering that intellectual property rights cut across many disciplines, the Delegation added that more and sustained commitments between WIPO and the civil society as well as other multilateral organizations would be useful.

187. The Delegation of Trinidad and Tobago associated itself with the statement made by the Commonwealth of Dominica on behalf of the members States of CARICOM present. It welcomed the proposals presented by Argentina and Brazil, and expressed its appreciation for that proposal. It took the opportunity to add its voice to the debate and in particular to place before the General Assembly the perspective of a very young and very tiny island-State, with a very small population of just over 1.2 million. Referring to its most pressing needs and its relationship with WIPO, the Delegation acknowledged the very active and very visionary development thrust of WIPO. It emphasized that, less than a decade ago, Trinidad and Tobago was a virtual intellectual property infant. With no systems in place, no legal framework, Trinidad and Tobago was a virtual IP free-for-all zone where the laws were not functioning and enforcement had no significant consideration. Not that there were no rights to be protected, since, as part of the larger Americas, the Caribbean was considered a seething cauldron of innovation and creativity, but the systems simply were not in place. Since the mid-1990s, that situation had changed, there was a much greater IP capability with collective societies in place, a live, well, fully-functional and comprehensive regime of IP laws in place. The IP office, the Delegation added, was seen as one of the flagship offices in the Caribbean Community and common market capable of providing technical support to sister offices

within the Caribbean Community and offering occasional attachments to various categories of technical staff from the subregion. The Delegation pointed out that the country was more than adequately prepared to fully cooperate with the global IP community and assist in advancing the global IP agenda. The Delegation acknowledged that those major gains, since 1997, had come largely as a result of very patient encouragement and unfailing support from WIPO, which was tangible proof of WIPO's ongoing commitment to a carefully constructed development agenda, that took into account the needs and aspirations of smaller developing countries. The Delegation recalled that seven years ago, WIPO assumed a new urgency and multi-focused thrust when the leadership of the Organization was entrusted to the very capable and supportive hands of its Director General, Dr. Kamil Idris. Concerning concepts of development, the Delegation recognized that they could never remain static but must change and must constantly reinvent themselves to match the carefully shifting demands of the global arena. The Delegation trusted that WIPO would continue to be flexible and sensitive to the shifting winds of change so that the core values of WIPO's development program would never cease to match the pressing needs and demands of the least-developed among the countries. The Delegation explained that the reason for this emphasis was to ensure that in embracing the proposals, no-one inadvertently suggested that WIPO was not, over the years, mindful of its role as a change agent and pioneer in development in the intellectual property rights arena. The Delegation reiterated its recognition of WIPO's significant development thrust as evidenced by the huge strides made in the attempts to increase IP capacities and capabilities. Likewise, the Delegation acknowledged with deep appreciation the attempt by Brazil, Argentina and the other sponsors of the proposal under discussion, to sharpen the focus of that development thrust, shaping it, in the process, to respond to the particularities of today and directing it towards the critical needs of developing countries. As such, the Delegation concluded, Trinidad and Tobago stood fully in support of the proposal and thanked the sponsors and the drafters.

188. The Delegation of Jamaica thanked the authors for their important initiative. It stated that it had taken full note of their views, those of the co-sponsors, and previous interventions. The Delegation supported the initiative before the General Assembly to strengthen the development dimension of WIPO's work. This initiative had the potential to deepen and enhance WIPO's already significant contribution to development. The proposal for a development agenda could achieve the objective of strengthening WIPO's already significant contributions to developments by focussing on issues such as flexibility in international norm-setting, preservation of policy space and transfer of technology. The Delegation said it was flexible with regard to the body that should examine the issue of integrating fully the development dimension into WIPO's work. It ended by saying it could support the establishment of an *ad hoc* inter-sessional working group or broadening of the mandate of the Permanent Committee for Development Cooperation for that purpose.

189. The Delegation of Thailand associated itself with the remarks made by Sri Lanka on behalf of the Asian Group, expressing agreement with most of the comments made by other delegations that supported the proposal made by Argentina and Brazil, and co-sponsored by other countries. It commended not only the document, but also fully supported, in principle, the idea that the development dimension should remain an integral part of the work of WIPO, as was the case in other international organizations. The Delegation emphasized that the International Bureau already had a number of very active cooperation programs and commended the Director General and his staff for their enthusiasm and willingness to engage in intellectual property development activities with developing countries. The Delegation, however, drew attention to a number of specific proposals expressed by other delegations concerning the role of intellectual property in relation to technology transfer, public health,

education and human resources development, highlighting the fact that intellectual property was indeed a cross-cutting issue affecting all areas, which WIPO could not avoid or ignore. It noted that WIPO had indeed a special role to play in development; for instance, in empowering local communities and local ingenuity, and in developing networks, promoting creativity and income from local ideas, as well as continuing to strengthen its existing work on asset valuation. With that proposal, WIPO would be able to signal to the world its support and solidarity on this issue, as well as its willingness to participate in the global effort to eradicate poverty.

190. The Delegation of the Libyan Arab Jamahiriya, thanked the President, the Director General and his staff for organizing the meeting and for the excellent quality of documents presented. It expressed its agreement with other delegations and joined them in expressing its condolences to the family of Dr. Arpad Bogsch. The Delegation fully supported the programs undertaken by WIPO especially those embarked on for developing countries aimed at establishing intellectual property technology in those countries as an instrument of development. The provision of advice and constant follow-up from WIPO had helped expand intellectual property in its country. The Delegation indicated that a special intellectual property office had been opened and that the elaboration of draft legislation had begun in its country, in addition to the creation of sub-branch offices to follow-up on registration of patents and copyright, and on information provided by WIPO to various sectors of industry. The Delegation stressed its further need for assistance and cooperation from WIPO. It highlighted its support of the joint proposal made by Argentina and Brazil, which linked the development agenda with WIPO's activities, as indicated in the statement made by the Delegation of Egypt as spokesman for the African Group. WIPO, since its establishment, had sought to encourage development, promote human resource development and provide assistance to those countries most in need. However, the needs of those countries were varied, with some requiring extensive aid. It called upon WIPO to provide continued support to the development of human resources in developing and Least Developed Countries. The Delegation underscored that this need should be granted priority in future activities. For that reason, the proposal of Argentina and Brazil would help establish a framework for such activities. It also hoped that WIPO would help draw up legislation and create a framework which would take into account the development needs of the various countries.

191. The Delegation of the Republic of Korea said that for mutual development and prosperity in the new millennium, it was necessary to consider development issues in relation to the intellectual property field, especially for developing countries and LDCs. To this end, the Delegation supported the initiative of the proposal made by Argentina and Brazil regarding the establishment of a new development agenda within WIPO. It hoped that a working group meeting could be convened to discuss, in detail, how to implement this important issue. The Delegation took the opportunity to introduce the Korean Fund-in-Trust, established in 2004 at WIPO. The activities under the Fund were primarily focused on providing assistance to developing countries and LDCs, with respect to increasing their capability of using intellectual property as a tool for economic and social development. The Delegation believed that this kind of activities might become one way to help broaden WIPO's cooperation with developing countries in relation to development issues.

192. The Delegation of Chile expressed its thanks for the proposal made by Argentina and Brazil to establish a WIPO development agenda which it considered a timely contribution with valuable elements that needed to be looked into further, and supported the central approach of that initiative. It highlighted, as an example, the proposal to adopt a declaration on intellectual property and development. It emphasized a need to further analyze the idea

that multilateral treaty negotiations should consider other aspects and not just the prevention of anti-competitive practices in the transfer of technology and along the same lines, suggested additional technical cooperation and organization of a joint WIPO-WTO seminar. The Delegation found the idea of establishing a working group on the development agenda to be positive. It proposed to study, *inter alia*, the possibility of starting work that would ensure users proper access, the ability to control content and develop knowledge through minimum limitations and restrictions on exclusive remuneration of intellectual property right-holders. It believed that the document originally presented by Argentina and Brazil correctly showed the two main aspects of the question. On the one hand, much importance was attached to the benefits of the protection of intellectual property; on the other hand, it should also analyze, with equal emphasis, the costs of taking on greater obligations, especially for developing countries. The Delegation underscored that various aspects of the proposal were aimed at achieving a more balanced system and over the long-run a more equitable system of intellectual property, which was consistent with the work that its Government was doing nationally and in multilateral fora. It believed that Member States should build a well-balanced intellectual property system that would promote research, creativity and innovation for the benefit of societies as a whole considering in particular the development dimension.

193. The Delegation of Switzerland thanked Argentina and Brazil for their proposal, which provided an opportunity to look at WIPO's development activities — a significant share of the Organization's work — and a way to make those activities more effective and more appropriate to current needs. It supported Group B's statement and welcomed the immense work that WIPO had done, which had to continue so that intellectual property could contribute to the development and the economic, social and cultural well-being of everyone. It considered that those activities were fully in line with the United Nations Development Goals. However, it stressed that such an aim was not easy to achieve and joint work by various players, including other international organizations was essential, but that it was vital that each of those players acted in their particular area of competence so as to avoid duplication of work and to maximize the efforts of all towards this common goal of development. As a specialized agency of the United Nations in intellectual property, WIPO should continue to make its valuable contribution. That concern with efficiency should be considered, especially as the Organization's resources were not unlimited. The Delegation thought that rather than starting a new process, which would involve the setting-up of new committees or organizing new international meetings, WIPO should use its existing resources, which had already achieved numerous successes and undoubtedly involved civil societies and accredited observers in moving that issue forward. The Permanent Committee on Cooperation for Development Related to Intellectual Property could have its role strengthened and could do an in-depth examination of WIPO's development activities and perhaps also develop its activities towards subjects requiring more specific discussion. The message that the Delegation wished to convey was therefore to adopt a more pragmatic approach by using the processes that already existed in the Organization, giving them new life and strengthening them, and adapting them to the new needs that were to be identified, so as to achieve as soon as possible lasting concrete results as regards WIPO's development activities.

194. The Delegation of Guatemala expressed its thanks for the proposal submitted by Argentina and Brazil, and co-sponsored by other delegations, and supported the goal of having a development agenda incorporated into WIPO's activities, with one of the initiatives being to adopt a high-level declaration to this effect. It found that it went hand in hand with a number of other initiatives aimed at ensuring that the benefits of intellectual property should be real and palpable for developing countries. The Delegation was pleased with the



constructive and realistic approach adopted in the proposal, and stressed that the majority of those measures were not only legitimate and feasible, but also necessary. Regarding training, the Delegation mentioned that WIPO was the leading authority in intellectual property technical assistance and the organization of programs and seminars in Latin America had been crucial in helping those countries to fulfill their intellectual property obligations. In its view, the proposal by Brazil and Argentina strengthened the valuable technical cooperation received from WIPO.

195. The Delegation of the United States of America thanked the sponsors of the proposal and agreed with them that development was not only one of the most important challenges facing the international community, but it was also one of the most daunting. However, it felt that the proposal submitted by Argentina and Brazil, and its co-sponsors appeared to be premised on the misconception that strong intellectual property protection might be detrimental to global development goals and that WIPO had disregarded development concerns. The Delegation could not agree with that premise. As noted by the Director General in his book entitled “Intellectual Property: A Power Tool for Economic Growth”, it recognized that intellectual property was an important tool in economic, social and cultural development, encouraging domestic innovation, investments and technology transfer. It appeared obvious to the Delegation, however, that WIPO and intellectual property systems could contribute only in part to the solution and that a look at other international bodies, whose core competence was development or trade, was needed in order to address core development issues. It agreed with the sponsors of the proposal that not all countries would achieve the same benefits from intellectual property, and that intellectual property alone could not bring about development, as it was simply one part of the necessary infrastructure needed to stimulate development. It considered the thought that weakening intellectual property with further developments was as flawed as the idea that an intellectual property system alone could bring about development. Furthermore, the notion that WIPO had disregarded the development dimension was likewise untenable. It stated that WIPO clearly had and continued to address the development dimension in its work. WIPO’s vision for the Millennium, as approved by its Member States, was to promote intellectual property strategies that facilitated the journey from a developing to a developed state. Indeed, WIPO devoted substantial resources to helping developing countries implement an intellectual property framework that would foster local innovation and economic growth, taking into consideration a country’s circumstances, needs and objectives. It recalled that WIPO treaties included flexibilities for developing countries and that began with the fact that those treaties were not mandatory, since no country was forced by WIPO to adhere to any of its treaties. WIPO had also admitted that non-governmental organizations were stakeholders, including public interest non-governmental organizations. Over the past decade WIPO’s financial success, driven largely by its registration systems, had enabled it to increase its biennium budgets and spending on technical assistance and cooperation for development. It was clear that WIPO had not ignored but indeed had expanded the inclusion of a development agenda in its work. Based on interventions from previous Assemblies, the Delegation had thought that there was general satisfaction with WIPO’s technical assistance efforts. If this was not the case, then it would welcome a review of the effectiveness of those programs to make them more relevant to developing countries’ needs. Indeed, it believed that WIPO’s existing resources and mechanisms could and should be harnessed to address the concerns raised in the proposal by Argentina and Brazil.

196. The Delegation of China extended its appreciation for the proposal submitted by Argentina and Brazil for establishing a WIPO development agenda. It believed that importance should be attached to the issue of development and improvement of the

international intellectual property system. With the rapid development of a knowledge-based economy, intellectual property had become one of the important strategic resources. The intellectual property system had been used by many countries to push forward their national economy and to increase the competitiveness of their core industries. It further believed that in improving intellectual property norm setting, specific country situations and their development level should not be ignored. There should be a match between intellectual property protection and the level of economic development of the Member States and their needs. There should be a balance struck between the interests of the rightholders and public interest, and there should be a harmonization between encouraging and protecting innovation and enhancing technological transfer. In short, the intellectual property norm setting should take into consideration the interests of the Member States, the country situation and interests and the development level of countries and developing countries in particular. In its view, this would be conducive to the dissemination of knowledge worldwide and to the sharing of benefits brought about by scientific progress. The Delegation believed that the proposal made by Argentina and Brazil provided a sound basis for consultation. The Delegation informed that it would actively participate in the consultations with a constructive approach on this proposal. It hoped that through consultations all parties would be able to reach an early consensus on the issue of intellectual property rights and development.

197. The Delegation of Pakistan thanked the Delegations of Argentina and Brazil for triggering an extremely useful discussion on a question of fundamental importance to its country and many others. It welcomed the opportunity for a comprehensive debate on the developmental dimension of intellectual property. Regarding the general debate on Agenda item 4, the Delegation had referred to three clusters of concerns that it considered to have an impact on development objectives. Firstly, those concerns focused on the impact of intellectual property on the price and the availability of essential products. Secondly, the misappropriation of traditional knowledge and biological resources and thirdly, the increasingly constraining effects of intellectual property on access to technology and the countries' ability to innovate. It believed that a meaningful development agenda for WIPO should systematically address those concerns. This would entail consideration of measures at multiple levels with a view to achieving clarity on WIPO's development mandate, ensuring balance and equity in norm setting, having more focused and relevant technical assistance programs, strengthening the relevant organizational units and ensuring allocation of enhanced resources for the development work of the Organization. The Delegation wished to share some initial views on those specific measures that should be considered in each of those areas, and which could, in its assessment, greatly contribute to strengthening the development aspects of WIPO's work.

198. With regard to the mandate of the Organization, it was quite clear that WIPO had an unambiguous responsibility for fully integrating the development dimension in its activities. It drew the attention of Member States to the WIPO-UN Agreement, which clearly assigned to WIPO the responsibility for taking appropriate action to promote creative intellectual activity and facilitate transfer of technology related to industrial property to developing countries, in order to accelerate their economic, social and cultural development. If this still did not clarify matters for any Member States, then the Delegation would support proposals to include an explicit provision in the WIPO Convention along the lines of the language used in this Agreement. With regard to norm setting, in the past few years, developing countries had had to comply with fairly onerous intellectual property standards, somewhat misleadingly termed as minimum standards. This had been accomplished by the setting up of elaborated institutional mechanisms to administer and enforce those standards. In the process, significant costs had been incurred. The long-term benefits might perhaps materialize, but

when that would happen, and on what scale, remained unclear. It further explained that while developing countries were still absorbing the costs of rapidly adjusting to higher standards of intellectual property, additional global norms were being proposed, such as on protection of databases and harmonization of patent laws. In addition, through the mechanism of bilateral trade agreements, countries were being asked to subscribe to higher standards of intellectual property protection. In its view, the socio-economic implications of those proposed norms were problematic and their supposed benefits were seriously contested. In this context, the pursuit of an ambitious norm setting agenda without adequate debate and analysis of the economic effects of those proposed norms might have great consequences for developing countries. An option increasingly being suggested by civil society groups and respected economists would be to put into effect a moratorium on new global intellectual property norms and obligations for developing countries, which might need to be seriously considered. At the very least, there was a need to ensure that the socio-economic consequences of all proposed international norms were analyzed in great detail and only then presented to members for approval. In this regard, it suggested that WIPO should undertake two specific measures: firstly, WIPO should present a development impact statement when any proposal for the strengthening and expansion of intellectual property norms would be tabled. This statement would identify the likely effects of such proposals on social, economic, technological and cultural spheres, and also assess the relative cost-benefit of any proposed expansion of rights. Secondly, a review should be undertaken of the developmental implications of the increasingly TRIPS plus provisions that were being included in free trade agreements between developed and developing countries. This would complement the examination that some other international organizations, including the World Bank, were undertaking to assess the effects of bilateral trade agreements. Furthermore, to introduce a greater balance in the existing global intellectual property regime, it was necessary to move expeditiously to provide effective protection to holders of traditional knowledge and biological resources, through the early conclusion of an international instrument.

199. Regarding technical assistance, the very useful work being done by WIPO needed to be further enriched. This could be achieved by relating it more consciously and systematically to the actual developmental concerns of the Member States. Firstly, it suggested that more substantive programs be formulated and implemented in the following areas: the legislative advice unit of WIPO should provide, on request, information on all options available to developing countries in the implementation of their international obligations. Developing countries should be made fully aware of the flexibilities and exceptions of which they could avail themselves. In cases where WIPO may not be in a position to offer a definitive opinion, it should at least provide information on how various countries may address the question of flexibilities, so that interested countries could factor this information while adopting new intellectual property legislation. Secondly, programs should be developed to comprehensively address the impact of intellectual property on availability and prices of pharmaceuticals, educational material and software. WIPO should be in a position to offer comprehensive information and clear advice at least on measures that countries could take to address the availability and pricing issues. Thirdly, economic analysis by WIPO should be strengthened and focused, (i) on providing inputs to the proposed development impact statement, (ii) on monitoring and analyzing the effect of intellectual property initiatives on the ability of countries to access technology and innovate, and (iii) on undertaking country-level sectoral studies on the role of intellectual property on specific sectors, such as music, publishing and licensing. And fourthly, stronger programs could be formulated to enable countries to harness intellectual property for accessing technology and having sustained innovation. This should include advice on formulation of national IP and innovation strategies, establishment of technology support centers and strengthening of mechanisms for

public-private sector partnerships in the area of research and development. In the Delegation's view the above proposals would require the allocation of adequate resources and strengthening of development units within the Organization.

200. With regard to financial resources, the Delegation underlined that development activities of WIPO should not be treated as an area where funding was the first to be decreased when there were any financial constraints. On the contrary, funds for development programs needed to be significantly augmented. For this reason the Delegation believed that a decision on the International Bureau's proposal to increase the PCT fee, had a direct bearing on the present deliberations on the development dimension. An early decision, on this matter, was absolutely necessary. Finally, the Delegation believed it was evident that a broad range of substantive issues needed to be considered in order to strengthen the development work of WIPO. The Delegation wanted to offer a suggestion on the procedure that could be adopted in order to arrive at concrete decisions on this agenda item. It proposed, that the matter be further considered in a dedicated session of WIPO's Permanent Committee on Cooperation for Development Related to Intellectual Property (PCIPD) to be held early next year. The PCIPD should be mandated to come up with tangible recommendations which the entire membership could expeditiously approve. The preparation of the session of PCIPD including its agenda and documentation should commence quickly in consultation with the regional groups. As part of the preparatory process the International Bureau could collate the specific suggestions that were being made by the Member States in the present Assembly, including, the very useful contribution from Argentina and Brazil. That paper could be presented as a discussion document at the PCIPD. The Delegation believed, that with due preparation and with a shared commitment of all members to strengthen WIPO's development work, it should be possible to evolve a comprehensive development agenda for WIPO.

201. The Delegation of India associated itself with the statement made by Sri Lanka on behalf of the Asian group. On a positive note, the Delegation started by asking whether it was possible to argue that there was a silver lining despite the damage that TRIPS had wrought on developing countries. It could be argued that TRIPS did bring intellectual property to the forefront of consciousness of people everywhere and over time, made them aware of the dangers inherent in a protective regime that took little account of either public policy or the state of development of a Member State. When India won independence in 1947, changes were considered in the IP laws of the country to reflect the social and economic needs of the country. After lengthy debate, the patent laws were finally revised through the Patent Act of 1970. The new law did not recognize patenting of substances that resulted from chemical reactions and they did not allow product patent protection for drugs. Only process patents were allowed for pharmaceuticals and agrochemicals. During the 1970 and 1980s, India's pharmaceutical industry grew rapidly as it focused on the manufacture of generic drugs and on learning from products that had been developed elsewhere. As developing countries moved to fulfil their obligations under TRIPS to provide product patent protection for pharmaceuticals and agricultural chemicals from January next year, the drug and bio-technology industries of the country could be faced with a major challenge. Given the skills and ingenuity that they had displayed it was believed that they would succeed in overcoming it. Developing countries were often quite well endowed in scientific skills, but they needed the same flexibilities that developed countries had when they themselves were at a comparable stage of development. For this reason any global regime needed to be flexible. That was where WIPO, as a specialized UN agency, could make a major impact by truly incorporating the development dimension into its mission in letter and in spirit, so that it would be appropriately reflected in all its instruments. In the Delegation's view it needed to be recognized that higher levels of IP protection, inherent in any harmonization exercise that

took no account of the circumstances of each country, were extremely detrimental to developing countries. Intellectual property rights had to be viewed not as a self-contained and distinct domain, but rather as an effective policy instrument for wide-ranging and socio-economic and technological development. The primary objective of this instrument was to maximize public welfare. The national policy space of each country had to be respected, especially when developing countries were asked to assume international obligations. Even the most advanced developed countries with their complex laws had to grapple with anti-competitive practices linked to patents. The absence of any comparable legal regime in developing countries meant that they were required to grant monopoly rights to IP holders without any meaningful or credible instruments to regulate the exercise of these rights. Given the huge disparities existing across the world, it could be questioned whether IP harmonization benefited developing countries. The developed countries continued to pay lip service to “development” in the context of intellectual property protection, but they did so rather self-servingly. The term “development” as used by these countries, including in WIPO, meant quite the opposite of what developing countries understood when they referred to the development dimension. According to developed countries, development meant increasing a developing country’s capacity to provide protection to the overwhelmingly developed country owners of IP rights. This was indeed a strange interpretation of the term “development dimension”. A WIPO development agenda would need to take into account any possible negative impact on the users of IP, on consumers at large, or on public policy in general, not just the promotion of the interest of intellectual property owners. It was vital to inject this balance and equity into the various WIPO bodies. In a developed country where monopoly profits of the domestic IP right holders were recycled through the economy, if we set aside the question of fairness to consumers, at least some benefits were derived by the earning of monopoly profits by the holders. Taxes on those profits contributed to the funding of transfer payments and social welfare schemes. Even so there was a continuing debate on the equity and fairness of such protection within developed countries, with some even questioning its claimed social benefits. Indeed, in the hypothetical case where IP rights were limited to only domestic holders, the question of the cost benefit calculus favoring strong protection was still very much open. Those benefits, however indirect, did not flow across national boundaries. Given the huge asymmetry between developed countries and developing countries, the total absence of any mandatory cross-border resource transfers or welfare payments and the absence of any significant domestic recycling of the monopoly profits earned in developing countries by foreign IP rights holders, the benefits were all on one side in the developed countries and the costs on the other, the developing countries. Harmonizing of IP laws across countries with asymmetric distribution of IP assets was clearly intended to serve the interests of rent seekers who were predominantly in developed countries rather than that of the public in developing countries. Not surprisingly, developed countries had always shied away from any discussion that invoked the primary rationale for intellectual property protection. They would rather not be reminded that IP protection was meant, first and foremost to promote societal development by encouraging technological innovation. The legal monopoly granted to IP owners was only incidental, a consequence of the need to provide an incentive for innovation. But such incentive needed to be carefully calibrated by each country in the light of its own circumstances, taking into account the overall costs and benefits of such protection. Policy flexibility was a *sine qua non* if societies were to ensure that the intended beneficiary, which was the public in each country, would not be worse off as a result of such protection. For developing countries to benefit from providing IP protection to western rights holders, there had to be some obligation on the part of developed countries to transfer and disseminate technologies to developing countries. Absent an obligation on technology transfer, asymmetric IP rent flows would become a permanent feature and the benefits of IP protection would forever elude consumers in developing countries. Technology transfer was an issue

that westerners balked at, even though a best endeavor obligation exists in TRIPS. The self-serving response usually was, that stronger IP protection in itself would ensure technology transfer. TRIPS was a tribute to the logic of power, not of economics and most certainly, not of fairness. It was sold on a false prospectus. A WIPO development agenda would help steer the organization away from a similar course. In the Delegation's view, developing countries were no longer willing to accept without question that a harmonized global patent system benefited all countries, or that it was needed to nurture innovativeness everywhere. On the contrary, most believed that it existed essentially to preserve the monopoly benefits accruing to patent owners, nearly all of whom were based in the developed world, often at the expense of public policy in developing countries. While the benefits of strong IP protection for developing countries were a matter of debate and nearly always in the distant future, such protection invariably entailed substantial real and immediate costs for those countries. In formulating its IP policy therefore, each country needed to have sufficient flexibility, so that the costs of IP protection did not outweigh the benefits. The Delegation supported the objective of the proposal put forward by Brazil and Argentina. It felt that the proposals submitted by them would contribute towards integrating the development dimension into all areas of WIPO's work and activities. Therefore it wished to see those proposals concretely translated to address the concerns of developing countries including the establishment of a working group on the development agenda.

202. The Delegation of Egypt mentioned that the statement it had made earlier on behalf of the African group naturally reflected its views. It considered that the discussion of the proposal showed the importance of promoting a diversity of opinions regarding intellectual property matters, as this diversity enriched the field of intellectual property and contributed to its vitality. At a time when IP protection is receiving increased attention, a one-sided view would impact negatively on the very credibility of the IP system. In this context, the Delegation expressed its support for the document proposed by a number of developing countries to establish a development agenda for WIPO, particularly given that it contained many of the opinions that the Delegation had itself expressed in recent years. The Delegation was also satisfied to see that the proposal was discussed in a constructive spirit and that it had generated a very fruitful debate on important issues. Under the leadership of Dr. Kamil Idris, WIPO had accomplished great strides in recent years. Technical cooperation activities in favor of the developing countries have been greatly expanded. Issues of particular concern for developing countries, such as traditional knowledge, have been brought for the first time to the forefront of the Organization's activities. WIPO has successfully faced up to the challenge of highlighting the importance of intellectual property in economic and development policies. It seemed therefore natural for it to face up to the next challenge, which was to integrate the development dimension in intellectual property policies and in WIPO's activities, particularly given that it was a part of the UN system which gives paramount importance to this dimension. As already indicated in its general statement, Egypt believed in the benefits of intellectual property protection and of it being an instrument of technological development and economic growth, as long as this protection was balanced and took into consideration the social and development dimension. The Delegation wished to emphasize this aspect. In the view of some, addressing development in the context of intellectual property meant providing technical assistance to developing countries with a view to having them adopt higher levels of intellectual protection that would necessarily result in economic growth and development. However, in the opinion of the Delegation addressing development in the context of intellectual property, meant that the matter was not confined to technical assistance and that intellectual property was merely about economic development. The merit of integrating the development dimension in intellectual property protection lies in its recognition that intellectual property protection must also be conducive to social welfare as

indicated in Article 7 of the TRIPS Agreement, and thus it should be supportive of important public policy objectives such as the protection of public health and the environment and to facilitate the transfer of technology, in particular by encouraging developing countries to avail themselves of the flexibilities under existing intellectual property agreements. The Delegation indicated it looked forward to further discussions, in the appropriate framework, to address the important proposals for action contained in the document WO/GA/31/11.

203. The Delegation of El Salvador said that the country was firmly committed to promoting development which must be sustainable in time, as a means of ensuring better permanent standards for its inhabitants. It added that the efforts made in the search for sustainable development had helped to generate opportunities. That context included intellectual property through which opportunities to generate the protection of innovation and creativity, or the ownership of industrial property rights, could be found. In putting those efforts into practice, the country had received the valuable support of various friendly countries and bodies, among which WIPO had played an outstanding role. In the Delegation's view, the proposal presented by Brazil and Argentina, and co-sponsored by other countries, on a WIPO program for development, demonstrated how at the dawn of the new millennium, development, beyond any doubt, was still one of the most complex challenges facing the international community. El Salvador considered that the international community was committed to the objective of achieving the development of all peoples. In that regard, many measures had been taken within the scope of the United Nations Millennium Development Goals, the Monterrey Consensus and the Sao Paulo Consensus during UNCTAD XI, as well as other efforts. In that sense, as part of WIPO, El Salvador considered that the Organization must make all possible efforts to ensure the full implementation of the development dimension in its activities and proposals to promote the protection of intellectual property, which incorporated an appropriate balance between intellectual property rights holders and the general public. In that context, El Salvador considered it very valuable for the country as well as for the international community in general, to give thought to the subject under consideration and to identify new concrete steps that must be taken in order to strengthen the development dimension within WIPO.

204. The Delegation of Ethiopia noted that international cooperation had been a critical element in the efforts of LDC governments to build up their development institutions. In that connection it wished to thank WIPO for the progressive implementation of commitments it had made to LDCs at several UN conferences for LDCs and urged WIPO to intensify its efforts. In that context it called upon the Member States of WIPO to help the organization in addressing its financial constraints. With regard to the proposal made by Brazil and Argentina for the establishment of a development agenda for WIPO, the Delegation wished to set the record clear that no single country was as anxious for development as LDCs, given their deeply entrenched socio-economic development problems. While it supported the general thrust of the paper, it wished to see up front how the proposal would address the interest, in particular, of LDCs. The Delegation recalled, that a great majority of speakers who had taken the floor on the agenda item were also co-sponsors. They had repeatedly stated that the ultimate aim was to help LDCs to benefit from the IP system. The Delegation wished to see that assurance captured upfront in whatever decision that that august body was going to make on the item, as well as in the final outcome of that decision.

205. The Sultanate of Oman considered development action as something very important. Many debates were witnessed in the world, ranging from Sao Paulo to Davos and elsewhere including WTO development program. The Delegation supported the new WIPO initiative on developing the economic dimension and its connection with the development dimension. The

Delegation wished to thank Argentina and Brazil and all the countries that had contributed to that proposal for their support and their interest in the subject of development. It supported the proposal under consideration and endorsed it. It would support any mechanism that aimed at strengthening these aspects, whether it was a working group or some other mechanism. Finally, it supported the statement made by Sri Lanka on behalf of the Asian Group.

206. The Delegation of Norway expressed appreciation to the Delegations of Brazil and Argentina for their proposal, which it believed to be of great importance. The development dimension and the United Nations Millennium Development Goals were certainly important factors in the preparation for Norway's participation in the international fora. Consequently, Norway would support the idea of highlighting those important goals on that occasion within WIPO. The Delegation noted that in order to ensure coherence between the efforts to promote a development agenda in WIPO and elsewhere, it was necessary to make sure that national policy makers and delegates were well acquainted with the United Nations Millennium Development Goals and the Doha Development Agenda of the WTO. It also observed that the needs and demands of developing countries with respect to training and technology transfer varied widely, and to provide solutions on a global scale in this regard could prove to be much more difficult than tailor-made solutions for each country. Any new measures in WIPO should reflect these perspectives.

207. The Delegation of Nicaragua congratulated the Chair on his skillful guidance of the General Assembly's work and thanked the Secretariat for the excellent preparations for the meeting. It also expressed appreciation to the authors of the proposal under consideration and to WIPO for the work it had done. It noted the proposal and indicated that it would continue to study that important and valuable document.

208. The Delegation of Peru expressed its appreciation to the Delegations of Argentina and Brazil and to the other delegations who had co-sponsored the proposal. It expressed the view that it was very important to include that item on the agenda of the WIPO Assemblies. It expressed support for the proposal because it would mean that the development dimension would be included in the debates within WIPO, involving this issue in many intellectual property-related deliberations. There were many subjects of importance to Peru such as the transfer of technology and technical cooperation. The Delegation expressed its thanks to WIPO for its cooperation with Peru, a cooperation which it hoped to be continued and strengthened, including in the areas of promotion of innovation, creativity and the transfer of technology, which all developing countries needed. While expressing the hope that the priorities of each Member State would not be forgotten, the Delegation stressed the importance that its country attached to the protection of their genetic resources and traditional knowledge. As the proposal stated, at the dawn of this new millennium, development was one of the most complex challenges facing the international community. From that point of view, the Delegation considered that starting discussions on the subject was a significant step for the Organization. The challenge was great and Peru was prepared to work constructively with all Member States of WIPO to meet it.

209. The Delegation of Serbia and Montenegro, speaking on behalf of the Group of Central European and Baltic States, concentrated on a few important elements. It referred to the statements focusing on and stressing the importance of integration of IP issues in national strategies aimed at initializing, speeding up and basically achieving the desired economic growth and broad social and cultural progress of countries, and the role of WIPO in this process. It noted that WIPO was already engaged in a wide-range of development-related activities through cooperation programs and nationally focused action plans for technical



assistance and training. Also, other UN bodies were actively working on integrating this aspect in their activities, as reflected in the UN Millennium Declaration and Johannesburg Declaration and Plan of Action and the Doha Development Agenda. The Delegation also noted that countries in transition constituted a significant part of that region, and were relying *inter alia* on using the IP system in the further development of their countries. It reiterated the great importance that it attached to the issue of development. Referring to the proposal under discussion, as well as the draft decision distributed by the co-sponsors, and having in mind a wide range of competent WIPO committees and working groups and the current financial situation of WIPO, the Delegation suggested looking into the continuation of discussion of the proposal in the framework of an already existing WIPO body. It expressed interest in engaging constructively in this process.

210. The Delegation of Sudan expressed support for the statement of the African Group as regards patent cooperation and in view of the events that were taking place at that moment in all the Arab States. It noted that WIPO had played and continued to play an important role in the development of countries and of many sectors that were related to intellectual property. It took note of the proposal by Argentina and Brazil, but in view of the importance of development and the consequences of the proposal, a suggestion was made for the establishment of a mechanism to study and to debate all aspects of the proposal. Finally, the Delegation expressed its thanks to WIPO for its efforts to assist the Arab States and for its assistance to Sudan which had resulted in the spread of the culture of intellectual property in the country, affecting all sectors of society.

211. The Delegation of Kyrgyzstan, speaking on behalf of his country and as Chairman of the Inter-State Council on the Protection of Intellectual Property of the CIS Countries, expressed interest in the proposal made by Argentina and Brazil, since the aims of development were a day-to-day matter. The country had recently become independent, and the statement about TRIPS and public health which was adopted in Doha, where Kyrgyzstan participated as a full Member of WTO, was of great interest. It expressed the view that the protection of intellectual property should be seen as an instrument to encourage technical innovation and development in technology, and expressed support for what had been said by many delegations regarding the need to include aspects of development in WIPO activities taking into account the United Nations Millennium Development Goals, the interests of the users of IP and the public in general, and models for access to innovations. The human genome project and the open source software were two subjects of particular interest. Regarding the proposal, while it was recognized that many questions mentioned in the document required in-depth study, particular attention should be given to the proposal about access to knowledge and technology. At the same time, the Delegation noted that WIPO was already involved in questions of development in connection with IP, many countries, particularly the developing countries, would support that. In concluding, the Delegation expressed support for the establishment of an *ad hoc* working group which would work on the agenda for development in accordance with the proposal and indicated its interest to make an active contribution to this body to achieve the complex but important tasks ahead.

212. The Representative of the World Association of Small and Medium Enterprises (WASME) explained that WASME was an international non-governmental organization (NGO) with members and associates in 112 developing, least developed and developed countries. It was an NGO representing the public interest and was the only international NGO of SMEs with consultative status in a number of UN agencies. It noted that the proposal by Argentina and Brazil was very broad-based and deserved very careful consideration as suggested by some delegations. It expressed appreciation that sponsors of the proposal

considered it essential to ensure wide participation of civil society, particularly NGOs representing the public interest in the development agenda. It supported the view that the proposal be discussed at a working group as suggested in the document or as some delegations had suggested, by the PCIPD to enable discussions at greater length and depth. It requested that NGOs representing the public interest, such as WASME should also be invited to participate in the meetings of the working group or the PCIPD that would study the proposal.

213. The Representative of the International Confederation of Societies of Authors and Composers (CISAC) pointed out that CISAC was a non-governmental organization representing some 200 societies in 100 countries around the world. Through their members, CISAC represented and protected the interests of over 2.5 million creators in all genres of repertoires, music, drama, literature and the others. The vast majority of its members were in the developing world and were dependent upon strong intellectual property protection in order to earn their living. CISAC prided itself on its long relationship with the WIPO. Not only did it value its status as an accredited observer at WIPO meetings, but it also considered of the utmost importance the successful partnership which had been forged over the years with the International Bureau. The representative of CISAC referred to the Memorandum of Understanding which CISAC had concluded with WIPO in 2002 and of which it was particularly proud. An essential part of this Memorandum of Understanding was cooperation between WIPO and CISAC on the enhancement of intellectual property laws in the developing world. This Memorandum led to practical, tangible and concrete results. The representative expressed the view that the proposal by Brazil and Argentina and other co-sponsors was effectively saying that intellectual property regimes were detrimental in some way to the overall development of a country. If this really was the underlying message, it was a message which CISAC would respectfully refute. It was an established fact that the implementation of a comprehensive intellectual property regime played an essential, a vital role, in fact, in the development of any country. This had been supported by numerous economic studies which had been carried out over the years including economic studies carried out by WIPO. One only had to look, in fact, at the economies of many developed countries to recognize the link which did exist between effective intellectual protection and strong economic development. Another underlying message from the proposal was that somehow, the right holders did not represent the public interest. This assertion, if indeed that was the assertion, CISAC found morally regrettable, since it ignored the fact that public interest was actually best served by effective intellectual property regimes. If the area with which CISAC was most concerned with, the area of copyright was looked at, one would see that the very rationale for its existence was to give the creative community the requisite economic incentive to create. After all, it was only through creations that the culture of the world would be enriched and, therefore, the public interest upheld. In concluding, the representative of CISAC expressed the view that WIPO should be proud of its achievements. Whilst there were other international organizations in place to represent the interest of development and the like, as the name of WIPO would suggest, it was an Organization which had been set up to promote the spread of intellectual property throughout the world. The representative of CISAC was of the opinion that WIPO had been discharging those functions with admirable success over the years. WIPO was therefore encouraged to continue its excellent work within its present remit and without the extension of that remit.

214. The Representative of Latin American Technical Information Network (RITLA) explained that RITLA was the organization involved with the transfer of technology in Latin America. As an observer at the meeting, the representative expressed satisfaction in being a participant and noted that many of the proposals made were to the benefit of all peoples.

RITLA had the mandate, among other things, of supporting development of infrastructures and technological development of its member countries and also the promotion of the full enjoyment of access to technology in the public and private sectors. It was also the task of RITLA to promote coordination and cooperation on an on-going basis in the exchange of technological information and to ensure that that was done in accordance with the needs of the member countries. Furthermore, its objectives were to strengthen national and regional capacities to generate technologies which were appropriate and suitable while at the same time supporting and improving the capacities of the member countries to seek, negotiate, assess, adapt and use imported technologies, to stimulate the training of human resources in the member countries, to promote an exchange of technological information which would enable them to strengthen the link between supply and demand of technology on a regional basis, to promote technological cooperation among the member countries through the dissemination of existing opportunities and of the actions to meet the challenges of regional cooperation, and to establish operative links with other systems of the network of international technological knowledge on an international, regional and sub-regional basis. The representative of RITLA expressed great sympathy with the proposal made by Argentina and Brazil, two of the RITLA members, and indicated that they would send out the proposal to the member States of RITLA, which included organizations responsible for science and technology in their countries. In concluding, the representative associated himself with all the statements made in memory of Dr. Arpad Bogsch, who was one of the greater sources of inspiration in the defense of intellectual property and its protection.

215. The Delegation of Egypt informed the Assembly that it had received instructions to co-sponsor the proposal submitted by Argentina and Brazil and a number of countries. The Delegation expressed its satisfaction to see that this proposal had been discussed in a very constructive spirit and had generated fruitful discussions. The Delegation believed that the initiative for a development agenda was a constructive and positive one, and that it was bound to enrich deliberations in the Organization, and assist it in facing up to the challenges ahead.

216. The Delegation of Canada took the view that the draft decision faithfully reflected what had been discussed and agreed *at referendum* in the informal discussions held on Saturday. It was pleased to announce that it had had an opportunity to speak to senior Canadian government officials and the Delegation was quite happy to support the adoption of the decision formally in that meeting.

217. The Delegation of Brazil said that it was one of the Delegations that had initially submitted the proposal on the basis of which the discussions had been held. It expressed its gratitude towards all the other Member States for the very positive and constructive environment in which the discussions were held. The Delegation also wanted to convey its gratitude for the constructive spirit of all participants in the open-ended drafting and informal discussions which took place last Friday and Saturday. The document initially submitted had a number of proposals for action. The Delegation would have liked to have had them adopted, but that proved impossible. However, it wished to put on record that it believed that the decision and agreement of all present was to hold a number of inter-governmental meetings to discuss the proposals in the document WO/GA/31/11. That might be a small but a positive step for WIPO.

218. In view of the discussion and consultations undertaken during the meeting, the General Assembly adopts the following:

“Recalling that the relationship between development and intellectual property has continuously been raised in several multilateral fora;

Taking into account the activities carried out by WIPO in the area of development;

Bearing in mind the internationally agreed development goals, including those in the United Nations Millennium Declaration, the Programme of Action for the Least Developed Countries for the Decade 2001-2010, the Monterrey Consensus, the Johannesburg Declaration on Sustainable Development, the Declaration of Principles and the Plan of Action of the first phase of the World Summit on the Information Society and the Sao Paulo Consensus adopted at UNCTAD XI;

- (1) The General Assembly welcomes the initiative for a development agenda and notes the proposals contained in document WO/GA/31/11.
- (2) The General Assembly decides to convene inter-sessional intergovernmental meetings to examine the proposals contained in document WO/GA/31/11, as well as additional proposals of Member States. To the extent possible, the meetings will be convened in conjunction with the 2005 session of the Permanent Committee on Cooperation for Development Related to Intellectual Property. The meetings, open to all Member States, will prepare a report by July 30, 2005, for the consideration of the next General Assembly. WIPO-accredited IGOs and NGOs are invited to participate as observers in the meetings.
- (3) The International Bureau shall undertake immediate arrangements in order to organize with other relevant multilateral organizations, including UNCTAD, WHO, UNIDO and WTO, a joint international seminar on Intellectual Property and Development, open to the participation of all stakeholders, including NGOs, civil society and academia.
- (4) The General Assembly decides to include this issue in its September 2005 session.

ITEM 16 OF THE CONSOLIDATED AGENDA:

MATTERS CONCERNING INTERNET DOMAIN NAMES

219. Discussions were based on documents WO/GA/31/2 and WO/GA/31/2 Add.

220. The Secretariat recalled that, at its meeting in September 2002, the WIPO General Assembly recommended that the Uniform Domain Name Dispute Resolution Policy (UDRP) be amended to provide protection for the names and acronyms of international intergovernmental organizations and country names against their abusive registration as domain names, and that these recommendations had been transmitted to the Board of the Internet Corporation for Assigned Names and Numbers (ICANN). The Secretariat reported that the ICANN working group established for the purpose of analyzing the practical and

technical aspects of implementing these recommendations had delivered its final report to the Board of ICANN at its meeting in Kuala Lumpur, Malaysia, in July 2004. This report has not been published. The Secretariat further informed delegates that the ICANN Board has requested the President of ICANN and its staff to analyze the situation and make a recommendation for a decision to be taken by the ICANN Board at its next meeting in Cape Town, South Africa, in December 2004.

221. The Delegation of the former Yugoslav Republic of Macedonia expressed its support for the protection of country names in the Domain Name System. The Delegation noted that, pursuant to the recommendation made by WIPO, this protection would apply to the official long and short names of countries as provided by the United Nations Terminology Bulletin. The Delegation stated that, as expressed on earlier occasions, it preferred using the ISO 3166 code of country names as a basis for such protection, because this would take due account of its constitutional name.

222. The General Assembly took note of the contents of documents WO/GA/31/2 and WO/GA/31/2 Add. and, in particular, of the status of the recommendations of the Member States of WIPO before ICANN.

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