

## **WIPO General Assembly**

**Fortieth (20<sup>th</sup> Ordinary) Session  
Geneva, September 26 to October 5, 2011**

### **REPORT**

*adopted by the General Assembly*

1. The General Assembly was concerned with the following items of the Consolidated Agenda (document A/49/1): 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 38, 39, 44 and 45.
2. The reports on the said items, with the exception of items 8, 10, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43 are contained in the General Report (document A/49/18).
3. The reports on items 8, 10, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 38 and 39 are contained in the present document.
4. Ambassador Uglješa Ugi Zvekić (Serbia), Chair of the General Assembly, and in his absence the two Vice-Chairs Ambassador Alfredo Suescum (Panama) and Mr. Makiese Kinkela Augusto (Angola), presided over the meeting.

## ITEM 8 OF THE CONSOLIDATED AGENDA

### COMPOSITION OF THE PROGRAM AND BUDGET COMMITTEE

5. Discussions were based on document WO/GA/40/1.
6. The Chair invited the Legal Counsel to introduce document WO/GA/40/1.
7. The Legal Counsel brought Member States' attention to an additional, informal document distributed earlier regarding the proposed composition of the Program and Budget Committee (PBC) for the period from October 2011 to October 2013 as provided in paragraph 4 of document WO/GA/40/1.
  8. Following informal consultations among Group Coordinators, the following States were unanimously elected by the General Assembly as members of the PBC for the period October 2011 to October 2013: Algeria, Angola, Argentina, Bangladesh, Belarus, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Czech Republic, Ecuador, Egypt, El Salvador, France, Germany, Ghana, Greece, Guatemala, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kyrgyzstan, Mexico, Morocco, Oman, Pakistan, Peru, Poland, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Senegal, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Switzerland (*ex officio*), Tajikistan, Thailand, Turkey, Ukraine, United Kingdom, United States of America, Zimbabwe (53).

## ITEM 10 OF THE CONSOLIDATED AGENDA

### 2010 ANNUAL FINANCIAL STATEMENTS

9. Discussions were based on documents WO/GA/40/12, WO/GA/40/13, WO/GA/40/14, WO/GA/40/16 and A/49/16.
10. The Chair announced that, owing to the presence of the External Auditor, Agenda Items 10 and 26 would be discussed together. He indicated that there were four documents under this agenda item: 2010 Financial Statements (document WO/GA/40/12); Status of the Payment of Contributions as of June 30, 2011 (document WO/GA/40/13); Status of the Payment of Contributions as of September 2011 (document WO/GA/40/16); and Report by the External Auditor: Audit of 2010 Financial Statements (document WO/GA/40/14). The Chair proposed to consider the four documents together and announced that, following his summary of each of the documents, the Secretariat would make a short introduction, to be followed by the observations of the External Auditor. The Chair introduced the 2010 Financial Statements (document WO/GA/40/12) for the year ended December 31, 2010, and explained that they had been transmitted to the PBC in accordance with Regulation 8.11 of the Financial Regulations and Rules (FRR), which required that the PBC examine the financial statements and the audit reports thereon and forward them to the General Assembly with comments and recommendations, as appropriate. As recorded in the Summary of Decisions and Recommendations made by the 18<sup>th</sup> session of the PBC (document A/49/16), the PBC recommended to the General Assembly the approval of the 2010 Financial Statements as contained in document WO/PBC/18/3. The second document was the Status of the Payment of Contributions as of June 30, 2011 (document WO/GA/40/13), which contained information concerning the arrears in annual contributions and in payments towards the working capital funds as at June 30, 2011. As recorded in the Summary of Decisions and Recommendations made by the 18<sup>th</sup> session of the PBC (document A/49/16), the PBC had recommended to the General Assembly to take note of the contents of document WO/PBC/18/18. The third document was the Report by the External Auditor: Audit of 2010 Financial Statements (document WO/GA/40/14). The Chair

indicated that this document contained: (i) the summary of External Auditor's recommendations made with regard to the Organization's 2010 Financial Statements and the management's responses thereto; and (ii) the full Report by the External Auditor on the World Intellectual Property Organization's (WIPO) 2010 Financial Statements (consisting of: "Audit of 2010 financial statements" and "Audit of 2010 opening balance sheet following reprocessing according to IPSAS"). As recorded in the Summary of Decisions and Recommendations made by the 18<sup>th</sup> session of the PBC (document A/49/16), the PBC had recommended to the General Assembly to take note of the contents of document WO/PBC/18/4. The fourth document, Status of the Payment of Contributions as of September 2011 (document WO/GA/40/16), contained an update to information given in part 2 of document WO/PBC/18/18 concerning the arrears in annual contributions and in payments towards the working capital funds.

11. The Secretariat explained that the Financial Statements for 2010 covered a one year period and were presented according to the International Public Sector Accounting Standards (IPSAS), adding that significant work had been done by the Secretariat within a year to make the transition from United Nations System Accounting Standards (UNSAS) to IPSAS accounting standards. The Secretariat pointed out that IPSAS adjustments had led to a reduction of the reserves, in line with what had been expected and announced to the Member States during the previous year. The decrease was mainly due to an IPSAS adjustment to the Patent Cooperation Treaty (PCT) income which created a deferral and the actuarial valuation of After Service Employee benefits. The Secretariat assured the Member States that the reserves remained at a comfortable level of 195 million Swiss francs at the end of 2010.

12. The Chair invited the External Auditor, Mr. Kurt Grüter to present his report.

13. The External Auditor welcomed the opportunity to address the General Assembly and indicated that he would commence his report with observations on the audit of the Financial Statements for 2010 (document WO/GA/40/14). The External Auditor remarked that it would not be surprising to hear that the 2010 financial year for WIPO had been marked by the switch to IPSAS standards. He recalled his announcement of the previous year to the General Assembly that the Organization was on the right track with reference to IPSAS but that an immense amount of work remained to be accomplished in order to ensure that the 2010 Financial Statements would be certified as being fully in line with the new international accounting standards. The objective had been achieved. The External Auditor believed it worth repeating once again that the 2010 Financial Statements of WIPO were in all respects in line with IPSAS standards. He mentioned that the transition to IPSAS standards had been a real challenge both for WIPO and for the auditors. Indeed, it had involved a total paradigm shift which had required a lot of reprocessing of balance sheet items. The External Auditor emphasized that WIPO had now arrived at the end of the first financial period for which IPSAS-compliant statements had been prepared. Indeed, in the course of the previous year, Finance Services had been continually called upon to resolve technical problems and had come under a lot of time pressure in order to ensure that the 2010 Financial Statements would be ready on time. The External Auditor admitted that auditors sometimes underestimated the magnitude of the task facing them. In fact, the External Auditor's team had been obliged to increase the amount of time dedicated to the work from 180 days initially foreseen to nearly 250 days. The External Auditor thanked WIPO management for its support, with particular thanks going to the team of Finance Services and to the external consultant who had spared no effort in achieving their objective. With reference to the content of the Report, the External Auditor wished to emphasize three essential elements. First, the recruitment of a specialist who would be responsible for monitoring the implementation and the application of IPSAS. He noted that the mandate of the external consultant was coming to an end. The External Auditor considered it crucial for the Organization to quickly secure the skills of a relevant specialist in order for such a person to

be able to familiarize himself/herself sufficiently early with the accounting and financial practices which were particular to WIPO. This should be accomplished well before the closure of the 2011 Financial Statements. In this same context, the External Auditor added that the Organization had to ensure that the staff of Finance Services were able to continue their "on the job" training in order to guarantee a certain flexibility in the way they operated. The External Auditor indicated that he had already been informed by the Secretariat that the Organization was about to conclude the recruitment process of a new IPSAS specialist but that the person had a notice period to serve. It was hoped that a new person would be on board once the closure of 2011 Financial Statements had begun, at which time it would be possible to assess the staffing situation. Secondly, the External Auditor underlined the fact that the reconciliation of budget values with actual values on a comparable basis showed a surplus of 3.1 million Swiss francs prior to IPSAS adjustments. He added that, the application, for the first time, of IPSAS standards had required a fresh evaluation and reprocessing of balance sheet items. The final result of these adjustments was a deficit of 13.6 million Swiss francs at the end of 2010. Thirdly, the External Auditor noted that no accounting entries had been made by the Organization in respect of the actuarial debt of the United Nations Joint Staff Pension Fund (UNJSPF). Such entries would have had a significant impact on the Organization's Financial Statements. In addition, according to the External Auditor's information, the UNJSPF had not been able to provide a calculation of pension commitments in accordance with the relevant IPSAS standards (IPSAS 25). However, the application of this specific IPSAS standard did not relate to WIPO alone. The External Auditor added that his counterparts on the Panel of Auditors as well as other members of the IPSAS task force were of the opinion that such accounting was not necessary. However, the External Auditor, in his personal capacity, wished to remain more prudent in expressing himself on this matter because he believed that there had not been sufficient review of the subject to allow a definitive interpretation on the application of IPSAS 25. In conclusion, the External Auditor explained that, as this issue did not fall within the sole purview of WIPO, he only wished to draw the attention of Member States to the fact that there was a potentially significant risk. He considered that it was not necessary, at present, to express a reservation or to mention the issue specifically in the audit opinion of the 2010 Financial Statements. Referring to the main recommendations contained in the audit report, the External Auditor noted that he had already been assured by the Secretariat that the first recommendation, regarding an internal control system, was going to be implemented within the framework of the Strategic Realignment Program (SRP) and that the assistance of an external consultancy service was foreseen. Regarding the recommendation to limit to four, the number of currencies for fees for PCT services, the External Auditor had noted the arguments put forward by the Secretariat, emphasizing the disadvantages for WIPO that such a recommendation would imply. As far as the External Auditor was concerned, the Secretariat's arguments were entirely acceptable, particularly with regard to the cost-benefit ratio. The recommendation concerning the acquisition of knowledge which would allow colleagues to replace one another within Finance Services was linked to the recommendation regarding the recruitment of an IPSAS specialist. The External Auditor added that his final two recommendations were purely operational and would not pose any particular problems for Finance Services in terms of their implementation. The External Auditor concluded by saying that he was at the delegates' disposal for additional comments and to answer questions.

14. The Delegation of the United States of America welcomed the presentation of the 2010 Financial Statements by the External Auditor. The Delegation was pleased to see that the 2010 Financial Statements for WIPO had been prepared in accordance with IPSAS and very much appreciated the recommendations in the External Auditor's report. The Delegation also appreciated the fact that these recommendations referred to compliance with IPSAS standards in the future and to the necessary expertise that was needed within the Secretariat to maintain such compliance.

15. The Chair recalled that the General Assembly was invited to take action on each of the four documents under this agenda item. The Chair proceeded to read out decision paragraphs from each of the documents in question. The decisions taken by the General Assembly were as follows.
16. The WIPO General Assembly approved the 2010 Financial Statements contained in document WO/PBC/18/3.
17. The WIPO General Assembly took note of the Status of the Payment of Contributions as of June 30, 2011 (document WO/PBC/18/18).
18. The WIPO General Assembly took note of the status of the payment of contributions and of working capital funds on September 20 2011 (document WO/GA/40/16).
19. The WIPO General Assembly took note of the External Auditor's Report: Audit of 2010 Financial Statements (document WO/PBC/18/4).

#### ITEM 23 OF THE CONSOLIDATED AGENDA

##### REVISION OF THE TERMS OF REFERENCE OF THE WIPO INDEPENDENT ADVISORY OVERSIGHT COMMITTEE (IAOC)

20. Discussions were based on document WO/GA/40/2.
21. The Chair invited Mr. Douglas Griffiths, Chair of the Program and Budget Committee (PBC), to introduce the document.
22. The PBC Chair recalled that the Independent Advisory Oversight Committee (IAOC) had revised its Terms of Reference (ToR) to reflect the changes (including the rotation mechanism and the selection of IAOC members) that had previously been approved by the General Assembly in 2010, through the approval of the Report of the Working Group on Audit Committee Related Matters (document WO/GA/39/13). The revisions to the ToR of the IAOC had been considered at the 16<sup>th</sup> session of the PBC in January 2011. In accordance with the Financial Regulations and Rules of WIPO (FRR), the General Assembly approved the WIPO Audit Committee's ToR upon recommendation by the PBC. At its 16<sup>th</sup> session, the PBC had recommended to the General Assembly the approval of the revisions of the ToR of the WIPO IAOC as contained in the Annex of document WO/PBC/16/3 Rev. This had now been reproduced in document WO/GA/40/2.
23. The Delegation of the United States of America appreciated the efforts of the IOAC to strengthen oversight and accountability within WIPO. The IAOC reports provided insight to the issues that were critical for Member States to exercise in terms of their governance and oversight responsibilities. The Delegation very much welcomed the initiative to track IOAC recommendations separately from those issued by the internal and external auditors and was interested in knowing when Member States could expect to see enhanced monitoring of the IAOC recommendations. It noted that the IAOC reports raised some other issues that merited at least a brief mention. The Delegation said that it would be interested to hear about the latest efforts to share lessons learned with other United Nations organizations concerning the implementation of ERP systems. Secondly, while recognizing that the IAOC did not actually conduct audit, the Delegation expressed interest in hearing about any particular concerns that the IAOC might have regarding WIPO's new construction projects.

24. The WIPO General Assembly:

- (i) approved the revised ToR of the WIPO IAOC, as contained in the Annex to document WO/GA/40/2; and
- (ii) took note that the relevant sections of the FFR would be amended accordingly.

ITEM 24 OF THE CONSOLIDATED AGENDA

SELECTION OF EXTERNAL AUDITOR

25. Discussions were based on document WO/GA/40/3.

26. The Chair explained that the document contained the report of the Selection Panel which provided an overview of the selection process conducted by the Panel and the Recommendation of the Selection Panel for the appointment of the WIPO External Auditor.

27. The President of the Selection Panel for the Appointment of the WIPO External Auditor, Mr. José Ramón López de León Ibarra, from Mexico, recalled that, during the 43<sup>rd</sup> Assemblies held in September 2007, it had been decided to put a process in place to select and replace the External Auditor at the end of the current External Auditor's mandate. In accordance with that decision, the Secretariat had issued a Call for Proposals on March 31, 2010, requesting the submission of technical and financial proposals for the appointment of the External Auditor. A Selection Panel had been appointed, comprised of the coordinators of each of the seven groups of WIPO Member States at that time, namely Representatives of Angola, Bangladesh, China, Kyrgyzstan, Slovenia, Switzerland and Mexico. The Selection Panel had first met in July 2010, and then as necessary until January 2011 and had agreed on its own Rules of Procedure. The standard selection criteria proposed by the Secretariat to the Panel had been mentioned in the Call for Proposals. The Panel approved the evaluation matrix (which included the selection criteria and relevant weightings) to be used for the technical evaluation of the proposals, following which the proposals which had been received by the closing date (June 30, 2010) had been opened according to standard procurement procedure in the presence of the Panel Members who opened the bids. Seven proposals from candidate offices of the auditors general (or their equivalent) of India, Latvia, Malaysia, Norway, Spain, the United Kingdom and Zambia had been received by the Panel. Applying the evaluation matrix which had been previously agreed by the Panel, representatives of Finance Services and IAOD had carried out the preliminary technical evaluation and the evaluation of the financial proposals which were then reviewed by the WIPO Audit Committee. The results had been communicated to the Selection Panel. The new Chief Ethics Officer of WIPO had been appointed by the Director General to act as Secretary of the Panel. Panel members had had access to the original Proposals for their own review in addition. Following a review of the results of the technical and financial evaluations, a review of the written presentations of the seven candidates, consideration of the comments of the Audit Committee (the predecessor of the IAOC) and consultations of the Panel, the Selection Panel had decided on October 27, 2010, to make a shortlist of candidates to make oral presentations. These were: (a) the Office of the Comptroller and Auditor General of India; (b) the Office of the Auditor General of Norway; and (c) the National Audit Office of the United Kingdom. The three short-listed candidates had been invited to come to WIPO headquarters in January 2011 to make oral presentations to the Selection Panel which had been followed by questions from the Panel and answers from the short-listed candidates. In addition, the candidates had been presented with a number of standard questions in advance which had been prepared by the Selection Panel. Information from the oral presentations had been used as part of the evaluation process. On January 28, 2011, the Panel, acting in accordance with Article 9 of the Selection Panel

Rules, had taken its decision by voting, by secret ballot. As a result of this vote, it had been decided to recommend the highest evaluated candidate, namely the Comptroller and Auditor General of India to the General Assembly for appointment as WIPO's External Auditor, in accordance with the FFR of WIPO for a period of six years, to begin in January 2012. This would be following negotiation of an acceptable contract by the Secretariat with the candidate which, in accordance with the prevailing practice for this type of engagement, would take the form of a Letter of Understanding. The report and recommendations of the Panel were now being presented to the Assemblies for decision. The President of the Selection Panel thanked the Secretariat for its assistance to the Selection Panel and also his fellow Panel members who had demonstrated such professionalism and ability to compromise during the selection process.

28. In the absence of comments, the item was closed.

29. The WIPO General Assembly approved the recommendations of the Selection Panel for the appointment of the WIPO External Auditor, as recorded in paragraphs 13 and 14 of the Selection Panel's Report (document WO/GA/40/3).

30. The Delegation of India wished to convey the compliments of Mr. Vinod Rai, the Comptroller and Auditor General of India (CAGI). The Comptroller and Auditor General of India regretted his inability to be present personally owing to prior commitments and had requested the Delegation to convey his thanks to the Members of the Assemblies of WIPO for placing their trust in the Comptroller and Auditor General of India as demonstrated by the appointment as External Auditor for WIPO for the years 2012 to 2017. The CAGI reaffirmed his commitment to provide high quality, cost-effective, professional audit services which would include expressing an opinion on the financial statements of WIPO together with performance and management audits which would focus on the economy, efficiency and effectiveness of operations. Whilst, on the one hand, independent and objective appraisal would provide assurance to the Assemblies, on the other hand, recommendations to WIPO's management would facilitate further improvements to WIPO's operations. The CAGI acknowledged that the Assemblies and management of WIPO had a fundamental interest in streamlining financial systems and enhancing transparency in order to conform to the latest international standards. The CAGI had a pool of human resources, professionally qualified in diverse skills, thus enabling him to handle audit assignments in very specialized areas and he hoped to partner WIPO in furthering its governance agenda, especially in key areas such as the assimilation of IPSAS into business processes and the implementation of the ERP. The CAGI goal was to become a strategic and valued partner for WIPO in its objectives of optimizing the use of resources and achieving greater efficiency and effectiveness in its operations. The Delegation of India wished to associate itself with the sentiments expressed by the CAGI.

#### ITEM 25 OF THE CONSOLIDATED AGENDA

#### SUMMARY ANNUAL REPORT OF THE DIRECTOR OF THE INTERNAL AUDIT AND OVERSIGHT DIVISION

31. Discussions were based on document WO/GA/40/4 Rev.

32. At the invitation of the Chair, the Director of the Internal Audit and Oversight Division (IAOD) presented the IAOD Summary Annual Report for the period July 1, 2010 to June 30, 2011 (document WO/GA/40/4 Rev.). He noted that the annual report is required by paragraph 25 of the Internal Audit Charter.

33. The Director of IAOD hoped the report provided all the information needed concerning internal oversight at WIPO. He reported that during the period the Division had continued to provide to the Director General and the Internal Advisory and Oversight Committee with useful audits, evaluations and investigations. Progress was made in establishing the regular delivery of oversight activities and steadily getting WIPO more used to the benefits, importance and usefulness of all the separate oversight functions. He noted that the staffing issues that have prevented internal oversight developing as rapidly as desirable in the last few years had been more steadily resolved. Outstanding recruitments for posts and consultants were being finalized and the proposed Program and Budget provided for IAOD to have seven posts and four consultancies, confirming and financing the level of approved staffing that the Division presently has. He thanked the Director General for his commitment to more oversight resources and his considerable support for more urgency in the recruitment and appointment of oversight staff which has been most significant in establishing a much better functioning and independent IAOD fit for the purpose which Member States have set out for it in the Internal Oversight Charter. The Director of IAOD noted that many important and high risk-related findings have been made during the year from the 10 audits completed in the period. A summary of these findings was presented in Appendix I to the Summary Annual Report. Member States were welcome to come to the IAOD and read internal audit reports and ask any questions about audit findings if there was any specific interest in any of the topics covered.

34. In Appendix II of the Summary Annual Report some statistics and analysis of progress made by Program Managers in implementing the several different types of oversight recommendations which IAOD has conscientiously recorded and tracked for the information of the Director General and the IAOC have been provided. At the date of the report there were 163 oversight recommendations recorded by managers as not yet fully implemented. The large majority of these – 128 or some 80 per cent of the total – were related to IAOD recommendations. It was mentioned that the Director General has given clear directions and instructions to Program Managers responsible for implementing recommendations to promptly implement recommendations or provide very good justification why they were not complied. Implementation rates for IAOD recommendations still lagged behind those for the External Auditor and the IAOC.

35. The Director of IAOD informed that the investigation workload continued to be significant with some complex and difficult cases. Among the 13 live cases, six were active investigations; six were under preliminary review before going to the expense of the full investigation; and one was being reviewed pending closure. This is a significant work load for which an Investigation Section of three staff is needed. A Head for the Investigation Section had been appointed and recruitment for a consultant Investigator was to be concluded soon. Member States had requested information on lessons learnt from the investigation work. In Appendix III to the Summary Annual Report details of some of these lessons learned and related recommendations made to management to strengthen WIPO systems and procedures and, in particular, in order to help reduce the need for investigations in the future, could be found.

36. Evaluation work had been restricted due to lack of staff on the Section for some few years. The Director of IAOD stated that the Evaluation Section had now a permanent Head, that evaluation staff was in place and that a Member State was funding a Junior Professional Officer for 2012. Any other Member State interested in providing IAOD with a Junior Professional Officer may wish to contact IAOD. The long planned evaluation of WIPO country based actions has commenced with the pilot evaluation for Kenya. Field work has started and this evaluation should be completed before the year end. This was a very interesting and exciting development for the Evaluation Section. The final report will be made available to Member States in line with the Evaluation Policy for dissemination of evaluation materials and reports. In the first week of October 2011 an Evaluation Seminar in



WIPO, "Learning from Existing Evaluation Practices on the Impacts and Effects of Intellectual Property on Development" will take place. This was very much supported by the Director General, and will provide examples from many sources of evaluation work in the IP area with the aim of encouraging evaluations in this area and learning some lesson for future evaluation work in the IP discipline. The Seminar will be open to Member States attendance and information was available in the "Upcoming WIPO events" page on the WIPO web site. A report will be prepared after the Seminar to analyze any lessons learnt and to provide widest dissemination of the Seminar materials, presentations and papers.

37. The Director of IAOD noted that he was privileged to make this last presentation of the work of the IAOD to the General Assembly, as his term of office ended in January next year. He hoped that it was considered that some good progress has been achieved in establishing a good and appropriate level of oversight and assurance work for WIPO and on the development of the IAOD itself as an institution. IAOD was very important for the good governance and effective working and stewardship of WIPO. He was grateful for the opportunity to have worked for such an important international institution and with so many interesting people he has had the opportunity to meet during an exciting period of change and development for WIPO itself. He thought that the Director General was making beneficial changes to WIPO, making it better able to carry out its significant mandate and achieve its ambitious objectives. He hoped to have left for his successor a good base from which to further institutionalize IAOD and help support WIPO modernize further and function even better and more cost effectively. To help IAOD to be more effective, independent and therefore more fit for its important and difficult purpose he asked Member States to consider some proposals for changes to the Internal Oversight Charter. The changes proposed for consideration aimed at providing some further support for the requirement for operational independence for IAOD, the requirement for which had been set out in the Internal Oversight Charter in several places, and in particular paragraph 4. These suggestions for changes were set out in more detail in paragraph 30 of the Summary Annual Report and could easily be added to Section (g), Resources, and to Section (h), Appointment and Dismissal of the Director of IAOD in the Internal Oversight Charter. In summary, he considered that the proposed changes which could enable IAOD and his successor to function better were that IAOD budget proposals be submitted directly to the PBC by the Director of IAOD for the Committee's consideration; the Director of IAOD chairs the Recruitment and Selection Boards set up to advise the Director General for IAOD staff appointments and recruitments; the Director of IAOD be titled Inspector General and be graded more appropriately to establish better the importance and status of the internal oversight function within WIPO.

38. The Director of IAOD hoped that these proposals would be helpful and useful, and that changes to the Internal Oversight Charter could be made as soon as possible through the normal channels.

39. The Delegation of the United States of America expressed appreciation and gratitude to the Director of IAOD for his services, with which its Government had the utmost respect for during his tenure at WIPO and welcomed his contributions during his term of office. The Delegation added that it agreed with two of the four suggestions made but disagreed with the other two. The Delegation wished to consider the recommendations of the Director of IAOD, in the future.

40. The Chair invited the General Assembly to take note of the Summary Annual Report of the Director of IAOD and to consider the proposed recommendations by the Director of IAOD for the changes in the Internal Oversight Charter.

41. The Director General expressed his thanks to Mr. Treen, who was the first Director of IAOD for WIPO and who was subject to an extremely challenging task. He expressed his thanks for his excellent and very valuable work and wished him all the very best for the future.

42. The WIPO General Assembly took note of the Summary Annual Report of the Director of IAOD.

## ITEM 26 OF THE CONSOLIDATED AGENDA

### EXTERNAL AUDITOR'S REPORT

43. Discussions were based on documents WO/GA/40/15 and A/49/16.

44. The External Auditor recalled his role in carrying out traditional financial statement and financial supervision audits. The purpose of these audits was to provide Member States with an evaluation of the manner in which WIPO used the funds entrusted to it. The audits carried out by the External Auditor are based on the standards of the International Organization of Supreme Audit Institutions (INTOSAI). These standards cover not only financial aspects but also extend to matters related to savings, affordability and efficiency. Reference was made to the relationship between human resources and WIPO's Strategic Realignment Program (SRP). The introduction and implementation of the Performance Management and Staff Development System (PMSDS) was also mentioned. The External Auditor drew attention to the eight recommendations contained in the report. The first two recommendations were general in nature and concerned the importance of risk analysis and internal controls. The remaining six recommendations concerned human resource matters, such as, the policy on telecommunications devices and the management of annual leave entitlements and overtime. The External Auditor underscored the importance of transferring knowledge from departing employees and suggested that this could be facilitated by properly documenting work processes.

45. The Delegation of the United Kingdom thanked the External Auditor for his report. The Delegation took the opportunity to emphasize a point that it had made in the PBC, namely, that it would be highly advantageous for WIPO to prepare an annual statement on internal control. This statement would describe the effectiveness of WIPO's internal controls and would enable WIPO to be more publicly accountable. It would also bring WIPO in-line with practices in other United Nations organizations. The Delegation hoped that its proposal would be adopted by the audit bodies and Member States as it would ensure good governance, accountability and transparency at WIPO.

46. The Delegation of the United States of America welcomed the report of the External Auditor and the observations made by the Secretariat. The Delegation noted that the External Auditor had made helpful suggestions for strengthening the most important asset of the Organization, its staff. The Delegation noted that in future, such reports should contain a target date for implementation. Reference was made to risk analysis and in this respect, the Delegation noted its concern over the lack of an Enterprise Risk Management (ERM) strategy at WIPO. The Delegation said that this was a broader issue than human resources and would like to receive information from the Secretariat on the steps which are being taken to strengthen risk management and internal controls. Specific concerns were raised over the enforcement of annual leave carry-over limits and the policy on overtime payments.

47. The Secretariat took note of the suggestion made by the Delegation of the United States of America on target dates for implementation and said that it would endeavor to include this information in future reports. The Secretariat made reference to ERM and internal controls and stated that the risk management framework or approach was one that

was being adopted by the WIPO Independent Advisory Oversight Committee (IAOC). It also added that WIPO is striving toward an ERM system but underscored that the approach would initially be modest and conservative in scope. The Secretariat concluded by stating that the strengthening of risk management and internal controls was an integral part of the SRP.

48. The Director General confirmed that the Secretariat would prepare an annual statement on internal control and stated that this would be done as of next year.

49. The Director General thanked the External Auditor for the long-standing and excellent cooperation that existed between the Federal Control of Finances and the International Bureau. He recalled that the relationship between the Federal Government of Switzerland and the Organization was a very close one that had begun with the origins of the Organization in the Nineteenth Century. For over a century, the Swiss Federal Government had audited the accounts of the Organization. He also thanked the External Auditor for its particular assistance with the transition to IPSAS norms. The Director General singled out for personal thanks for their work over the past two years, Messrs. Kurt Grüter, Didier Monnot and Ariel Decrauzat.

50. The WIPO General Assembly approved the recommendations of the PBC made in respect of document WO/PBC/18/17 as recorded in document A/49/16.

#### ITEM 28 OF THE CONSOLIDATED AGENDA

#### REPORT OF THE COMMITTEE ON DEVELOPMENT AND INTELLECTUAL PROPERTY (CDIP)

#### ITEM 28(i) OF THE CONSOLIDATED AGENDA

#### REVIEW OF THE IMPLEMENTATION OF THE DEVELOPMENT AGENDA RECOMMENDATIONS

51. Discussions were based on documents WO/GA/40/5 Rev. and WO/GA/40/18.

52. The Secretariat introduced the Report of the Committee on Development and Intellectual Property (CDIP), contained in document WO/GA/40/5 Rev., and noted that the sixth and seventh sessions of the CDIP had taken place since the last session of the General Assembly, in November 2010 and May 2011, respectively. The Chairman of those two sessions was Ambassador Md. Abdul Hannan of Bangladesh. It was noted that the Committee had agreed at its sixth session that the Summary of the Chair would constitute the Committee's report to the General Assembly and that, as the seventh session was suspended, the Chair's summary was not concluded for that session. The Member States were invited to take note of document WO/GA/40/5 Rev. and its Annex.

53. The Chair of the CDIP, thanked the Member States for reposing their trust in him as Chair of a very important committee of WIPO. He informed the General Assembly that significant progress had been made since the last session of the Assembly. At its sixth session, the CDIP had received progress reports on some 14 Development Agenda (DA) projects. The Committee had also reviewed progress on the implementation of the 19 recommendations for immediate implementation. The Member States had approved the Project on Intellectual Property and Transfer of Technology: Common Challenges - Building Solutions, with respect to which discussions had continued since the third session of the CDIP. The Committee had also approved another important project on Open Collaborative Projects and Intellectual Property-based models. The Committee had further discussed and agreed upon the content for a proposed project on Intellectual Property and Brain Drain. With regard to the Future Work Program on Flexibilities in the Intellectual Property System,

the Committee had discussed a document prepared on the subject and requested the Secretariat to proceed with the implementation of certain activities and to present a revised document taking into account the comments of delegations at its next session. While the seventh session of the CDIP had been suspended at the request of the majority of the Members, the achievements of the seventh session were significant in spite of the suspension. At that session the Members considered the Director General's report for the implementation of the DA which was the second report presented to the Committee by the Director General in keeping with his promise to personally report to the Committee. The Director General's report was an exhaustive report that described different actions taken by the Director General and the Secretariat to implement the DA recommendations. The Committee also approved the project proposal entitled "Intellectual Property and Brain Drain" and requested the Secretariat to post online the agreed project proposal taking into account the comments of delegations. The Chair understood that the Secretariat would post the revised project proposal online shortly. The Committee had agreed upon the approach and content for the Project on Intellectual Property and the Informal Economy and requested that a project proposal be submitted for consideration at the next session. The Member States also considered a document on Patent-Related Flexibilities in the Multilateral Legal Framework and their Legislative Implementation at the National and Regional Levels, Part II of a Study on Patent-Related Flexibilities prepared by the Secretariat at the Committee's request. Consideration of that document would continue in the eighth session of the CDIP. The Committee continued discussions on the document on a Future Work Program on Flexibilities in the Intellectual Property System and requested that a revised document be submitted for its consideration taking into account further comments of delegations. The Committee further considered a proposal by the Development Agenda Group (DAG) for a new standing agenda item on intellectual property (IP) and development, and agreed to continue the discussions at its next session. After discussions, the Member States had agreed that the organization of an International Conference on Intellectual Property and Development should be postponed to 2012, and that the funds necessary to organize the conference should be allocated accordingly in the Program and Budget for 2012-2013. The preparations for the international conference would be further discussed at the eighth session of the Committee. In view of the fact that the seventh session of the Committee had been suspended for lack of agreement on the Project Proposal on Enhancing Cooperation on Intellectual Property and Development Among Developing Countries and Least Developed Countries (LDCs), the report of the CDIP to the General Assembly was comprised of the Chair's summary of the sixth session of the Committee. The Chair had held informal consultations principally with the Group Coordinators and had received some encouraging responses and useful cooperation. However, the process of informal consultation was ongoing. The Chair expressed confidence that the Member States would be constructively engaged so that the seventh session of the CDIP would be resumed and successfully complete the remaining work. The Chair looked forward to working with the Member States on a rewarding eighth session of the Committee.

54. The Delegation of the United States of America, speaking on behalf of Group B, stated that Group B was fully committed to the implementation of the 45 DA recommendations in a balanced and effective manner. The studies and projects already approved by the CDIP would contribute to the realization of that goal as well as activities in other WIPO bodies. The Delegation positively took note of the reports of the implementation of the DA recommendations made to the General Assembly by the relevant bodies, namely the Standing Committee on Copyright and Related Rights (SCCR), the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), the Standing Committee on the Law of Patents (SCP), the Standing Committee on the Law of Trademarks (SCT), Industrial Designs and Geographical Indications, the Advisory Committee on Enforcement (ACE) and the PCT Working Group. The Delegation noted that it was unfortunate that consensus had not been reached at the seventh session of the CDIP, particularly in light of the positive and cooperative experience in

WIPO's work over the previous biennium. Nonetheless, Group B remained committed to work with all delegations and looked forward to resuming the suspended seventh session of the CDIP in November, thereby providing a path to the eighth session and the continuation of its very important work. Finally, the Delegation expressed appreciation to the Secretariat for its hard work and dedication in preparing the CDIP meetings and shepherding the many projects that eventuated.

55. The Delegation of Pakistan, speaking on behalf of the Asian Group, expressed the Group's abiding interest in the WIPO DA. The Group sought development as the ultimate aim of the global IP system; a system which was balanced and flexible in meeting the needs of Members at different levels of development. It was considered that a calibrated country-specific IP system was essential. Importantly, the global IP system should evolve in a balanced way to support the developing countries and LDCs in achieving their relevant objectives. The evolution of the IP system should also encourage innovation and creativity and refer to the evolving global technological geo economics of the social and cultural environment. That would entail a development orientation in the policy and intellectual work of the Organization and ensure development outcomes of economic expressions. The DA should not be reduced to technical assistance activities, duplicating what was already being done but on a larger scale. The Delegation took note of the CDIP's work as expressed in document WO/GA/40/5 Rev., and the appreciable progress that had been made in mainstreaming the development dimension in all areas of WIPO's work. The Group attached great importance to the meaningful mainstreaming of the DA. The Asian Group supported the resumption of the CDIP following the suspension of the seventh session. It was important to highlight that, as a United Nations Organization, WIPO had the responsibility for promoting and implementing South-South cooperation as a complement to North-South cooperation, and in that context it reiterated the need for the international community to support the efforts of the developing countries to extend South-South cooperation. The Group was hopeful that the proposed Project on South-South Cooperation would be expeditiously adopted. The Asian Group welcomed document WO/GA/40/18, containing a description of the contribution of the relevant WIPO bodies to the implementation of the respective DA recommendations. The decision by the 2010 General Assembly to adopt the coordination mechanism and monitoring, assessing and reporting modalities had been implemented and the Group welcomed the first report and looked forward to a detailed discussion on it at the forthcoming CDIP session.

56. The Delegation of South Africa, speaking on behalf of the African Group, expressed appreciation to the Secretariat for its preparation of the CDIP sessions, and particularly for the assistance provided to the African Group on its Project Proposal on Enhancing South-South Cooperation on Intellectual Property Amongst Developing Countries and LDCs. The Delegation welcomed efforts made by the Director General to update the Committee on the implementation of the DA in WIPO, and welcomed the second report by the Director General on the implementation of the DA presented at the seventh session of the CDIP and looked forward to more reporting along those lines. The integration of the DA in the activities of WIPO led to positive developments such as the Results-Based Management Framework (RBM) and the adoption of the new budgetary process for the DA. The Delegation welcomed the mainstreaming of the DA in WIPO, as had been positively noted by many Member States in this Assembly, and welcomed a number of projects being undertaken in the Committee for the benefit of developing countries. In noting just a few, the African Group attached great importance to the project on Technology Transfer, the Study on Patents and the Public Domain, Intellectual Property and the Informal Economy, Intellectual Property and Brain Drain, and Flexibilities in the Intellectual Property System. Those projects resonated with the national priorities of the Member States as a whole to use the IP system to support their economic and social development. The African Group looked forward to the successful implementation of those projects. In conformity with the Member State-driven focus of the DA, the African Group had submitted a project proposal entitled "Enhancing South-South

Cooperation on Intellectual Property Amongst Developing Countries and LDCs” at the seventh session of the CDIP. The submission by the African Group was notable as the first project presented by developing countries in the CDIP. The project was designed to enhance cooperation among the countries of the South with a view to sharing experiences in the area of IP and development. Moreover, the African Group proposal aligned WIPO as a United Nations specialized agency with the current priorities, practices and recommendations of the United Nations System, as well as with the initiatives taken by other United Nations specialized agencies and programs toward strengthening South-South cooperation. The African Group had hoped for the adoption of that project at the seventh session, however regrettably the session had been suspended before the project was approved. All Member States were encouraged to engage constructively in the resumed session of the seventh session of the CDIP in November 2011, and adopt the Project on South-South Cooperation that was important to developing countries, as had been mentioned in a number of general statements made by developing countries in the Assembly. The Delegation further noted that the implementation of the coordination mechanism and monitoring assessing, and reporting modalities (coordination mechanism) was of great importance to developing countries. The 2010 WIPO General Assemblies had approved that mechanism to instruct relevant WIPO bodies to report on their contribution towards the implementation of the DA. In that regard, the Delegation welcomed the submission of those reports by the WIPO bodies to the General Assembly, and looked forward to discussing those reports at the next session of the CDIP. As had been mentioned in previous CDIP sessions, the African Group reiterated its position that the Committee should implement its third pillar on IP and development without further delay. There was a need for more discussion on the interface between IP and development in order to create broader understanding of the role that IP could play in fostering or enhancing development in developing countries. Finally, the African Group expressed appreciation to the Secretariat for its implementation of various DA projects in the African continent.

57. The Delegation of China congratulated the Organization on the progress achieved in the implementation of the DA. With respect to the coordination mechanisms and monitoring, assessing and reporting modalities adopted by the General Assembly at its last session, the Delegation was delighted to note that some committees had contributed to the DA in various areas. Regrettably, however, there had been no consensus on relevant issues between different parties resulting in the suspension of the seventh session of the CDIP. It was hoped that at the future session of the CDIP in November 2011, the parties concerned would show more flexibility and constructiveness, and demonstrate tolerance to reach consensus on relevant issues so that more countries could benefit in a tangible way from the implementation of the DA.

58. The Delegation of India, speaking on behalf of the DAG, noted the Secretariat’s Report on the sixth and seventh sessions of the CDIP (document WO/GA/40/5 Rev.) as well as the Review of the Implementation of the DA recommendations (document WO/GA/40/18). The DAG welcomed the progress being made in implementing the DA recommendations through relevant projects in the CDIP. The DA was an overarching framework that called for a conceptual paradigm shift by placing IP in the larger context of socio-economic development, instead of viewing IP as an end in itself. It replaced the one-sided, simplistic notion that “intellectual property was good; more intellectual property was even better” with a more nuanced and calibrated view that “intellectual property was good when it served as a tool to enhance economic growth and social development and was tailored to suit a country’s specific needs and situation”. Such a macro paradigm shift could not be narrowed down or limited to a few time-bound thematic projects. Therefore, while implementing certain aspects of the DA recommendations through concrete projects, it was important that Members did not lose sight of the forest for the trees and forget that the real essence of the DA lay in bringing about a conceptual transformation in how Members viewed IP and how they sought to use it for the betterment of mankind everywhere through appropriate norm-setting, protection,

enforcement and technical assistance. In that context, the DAG noted that one of the mandates of the CDIP was to serve as a forum for a broader discussion on the interface between “IP and Development”. While the close, inescapable link between IP and Development had been agreed to by all WIPO Member States while adopting the DA in 2007, the DAG expressed surprise at the resistance in some quarters to the inclusion of a standing agenda item titled “IP and Development” in the CDIP, in keeping with the Committee’s very mandate. The Delegation expressed hope that greater wisdom would prevail in that regard and that the CDIP would become a forum where the broader inter-linkages between IP and Development could be collectively discussed and explored. The Delegation further noted that one of the important vehicles for contributing to the important interface between IP and Development was through South-South cooperation. South-South cooperation was, and had been an established dimension and a strong pillar in all United Nations activities, programs, organs and specialized agencies. It complemented North-South cooperation and ensured supplementary resource generation and sharing of knowledge and expertise that were necessary to support economic, social and scientific development in developing countries. It was noted with regret that WIPO had few, if any, programs or activities in the area of South-South cooperation. As a United Nations specialized agency, WIPO did not have to be an exception in the United Nations family. That was why the Project on South-South Cooperation in Intellectual Property had been proposed by the African Group at the seventh session of the CDIP. The DAG regretted that the seventh session of the CDIP had been suspended owing to lack of agreement on the proposed Project on South-South Cooperation. It was unfortunate that South-South cooperation, a key mandate of the United Nations and its specialized agencies and an important facet of the United Nation’s work, had not been accepted by some Member States in WIPO. It was considered all the more unfortunate in light of the urgent need for enhancing South-South cooperation in the area of IP, given the important role that IP could play in enhancing socio-economic growth and development in countries that needed it the most, and the contribution they in turn, could make in reviving the global economy from the persisting global economic crisis. The Delegation hoped that greater wisdom would prevail and that the resumed seventh session of the CDIP would agree and adopt the Project without any further delay. In that regard, the Group welcomed the ongoing efforts by the Chair of CDIP in consultation with Member States to facilitate the resumption of the seventh session on the basis of a smooth adoption of the South-South Cooperation Project, which had been supported and endorsed by a majority of WIPO Member States. Regarding Agenda item 28(i), the Delegation also welcomed the progress made in the previous biennium in coordinating, monitoring and reporting on the mainstreaming of the DA in all areas of WIPO’s work. It was recalled that the 2010 General Assembly had approved the coordination mechanism and monitoring, assessing and reporting modalities as recommended by the fifth session of the CDIP, which reiterated the mandate of the CDIP to monitor, assess, discuss and report on the implementation of all the DA recommendations adopted and also coordinate with other relevant WIPO bodies. The General Assembly decision had also instructed all relevant WIPO bodies to include a description of their contribution to the implementation of the respective DA recommendations in their annual reports to the Assemblies. In accordance with that mandate, the current session was the first WIPO General Assembly to which WIPO committees and bodies had reported on how they were integrating the development dimension in their respective areas of work. The DAG welcomed the positive development and emphasized the need for all WIPO committees to comply with that requirement. In particular, given the fact that the DA recommendations represented an integral part of the PBC’s substantive work, with each and every program indicating its linkages with the DA, it was anomalous if the PBC was an exception to the established WIPO policy on mainstreaming development in all WIPO activities and organs and did not report to the General Assembly on the advances it was making in mainstreaming the DA. In fact, the eighteenth session of the PBC had contributed tangibly to the integration of the development dimension by recommending an increase from 19.4% in the previous biennium to 21.3% of the next biennium budget being allocated to development expenditure.

The Delegation therefore looked forward to the PBC and other WIPO bodies reporting on how they were integrating the development dimension in their work, to the General Assembly at its next session. According to the decision of the Assembly in 2010, the Assembly would forward the reports to the CDIP for discussion under the first substantive item of its agenda. The DAG looked forward to their detailed consideration in the upcoming November session of the CDIP. In that context, the DAG also recalled that the proposal submitted by India at the seventh CDIP session on the modalities of reporting to the General Assembly had enjoyed broad support, and expressed hope that it would also be adopted in the resumed CDIP seventh session.

59. The Delegation of Poland, speaking on behalf of the EU and its member States, remarked that development was one of the most important challenges faced by the international community, and IP played an important role in that context. The EU and its member States continued to be committed to further progress in that field in order to implement in an appropriate and consensus-driven manner the 45 recommendations of the DA. The Delegation expressed appreciation to the WIPO Secretariat for its valuable contribution to the work of the Committee. The constructive work carried out to date by the CDIP proved the ability to build common ground between countries also with regard to contentious issues. However, it was regrettable that the last CDIP session, and in consequence, the whole process of project implementation had been suspended due to the lack of consensus in respect of only a single issue. The Delegation expressed hope that in the course of the next session of the CDIP the Members would be able to solve the problem and to find a solution acceptable to all parties. The EU and its member States were ready to continue discussions on the outstanding issues on the understanding, however, that all Member States enjoyed the same rights to participate in individual projects. The Delegation suggested that it was feasible for Members to finally agree on modalities of the Coordination, Monitoring, Assessing and Reporting Mechanism for the DA and on the list of relevant WIPO bodies expected to report annually to the General Assembly about the manner in which the DA recommendations were being mainstreamed in their work and how they were contributing to the implementation of the respective DA recommendations. It was important that bodies which related to the internal functioning of the Organization and bodies which did not deliver IP-related functions were not distracted from delivering their work. Finally, the Delegation strongly maintained its commitment to cooperate further in the remaining important work to implement the DA recommendations, and expressed confidence that such work would continue to be carried out in a positive and constructive manner.

60. The Delegation of Brazil aligned itself with the statement made by the Delegation of India on behalf of the DAG and sought to add a few remarks of its own. Since its creation, the CDIP had made good progress in implementing the DA. Concrete results had been achieved with the adoption of more than 20 projects, and the approval and successful implementation of the coordination mechanisms and monitoring, assessing and reporting modalities. In addition to such concrete results, the CDIP's most important contribution to the implementation of the DA was the building of convergence amongst Member States. At the CDIP, WIPO Members were able to find common ground to facilitate the mainstreaming of the DA recommendations. Such common ground indicated a growing commitment to integrating developmental considerations into WIPO's work. The Delegation affirmed that, four years after their adoption, the DA recommendations were becoming an integral part of WIPO's activities, not only in terms of their content, but also with regard to related budgetary and administrative processes. Members recognized that the DA was not only a matter of the CDIP nor of technical assistance activities, but was a matter related to WIPO as a whole, including its normative activities. The Delegation noted, however, that in spite of the progress made, important challenges still remained. The implementation of the DA was a continuous process which depended not only on Member States' commitments, but also on a cultural change as to how WIPO worked. While the Delegation recognized that the process of cultural change had already begun, there was still more work to be done. It was



necessary to recapture the spirit that had accompanied the approval of the DA in order to further advance on its implementation. The Delegation highlighted that political thinking in IP systems should take note of the interests and demands of all countries, and consider the interface between IP and development. In that context, the Delegation recalled the proposal to establish a new standing agenda item for the CDIP dedicated to a discussion of the interface between IP and development. The proposal had been presented by the DAG at the sixth session of the CDIP, as outlined in document CDIP/6/12. It aimed to guarantee that the CDIP would have adequate time to discuss IP and development-related issues, as had been decided by the General Assembly and expressed in the decision that created the Committee. It was timely that the CDIP should further analyze the interface so as to give concrete orientation as to how the international regime could be improved to be more inclusive and to introduce an understanding of innovation and access to knowledge in different socio economic contexts. That debate was of interest to all WIPO Members, and not only developing countries. It was appropriate that WIPO should carry on the debate about the interface between IP and development, especially considering that only a few countries were fully integrated into the knowledge economy, even among the developed countries. As had been noted by the Delegation in previous sessions of the CDIP, the content and structure of the Progress Report on the Implementation of the DA recommendations and CDIP projects should be reviewed. Such reports should provide not only a quantitative but also a qualitative analysis of the results achieved. In addition, adequate information and evaluation should be available to Member States. The Delegation also expressed its concern with the suspension of the last session of the CDIP, and urged Members to find a solution to the impasse that had resulted in the suspension. Such impasse should not prejudice the work of the next CDIP meeting, when important issues such as the preparation of the conference on IP and development would be discussed.

61. The Delegation of Japan associated itself with the statement made by the United States of America on behalf of Group B. The Delegation expressed appreciation for the hard work undertaken by the Secretariat to manage the CDIP sessions, and the great efforts by Member States to engage in productive discussions through mutual understanding for each other. With great energy, the work program had been steadily implemented and newly undertaken and approved by consent. The Delegation stated, however, that it was highly regrettable that the seventh session of the CDIP had been suspended. The Delegation noted that it had received a letter of convocation of the resumed seventh session to be immediately followed by the eighth session in November 2011, and expressed its hope that all Member States and the Secretariat would cooperate so that their great efforts would be able to bear further fruit in the resumed seventh session and eighth session. Finally, the Delegation expressed its commitment to continue its constructive contribution to such important development issues.

62. The Delegation of Sri Lanka aligned itself with the statements made by Pakistan on behalf of the Asian Group and the Delegation of India on behalf of the DAG. The Delegation took note of document WO/GA/40/5 Rev. and welcomed document WO/GA/40/18. The Delegation noted that the WIPO DA remained firmly valid and important to Sri Lanka, and welcomed the progress made in mainstreaming the DA in all WIPO's activities. It was observed that the translation of all the DA recommendations into projects and activities, and their timely implementation, required continuous attention. It was also of the utmost importance that DA-related activities were demand-driven and based on and customized according to the needs of the respective Member States. The level of development of each country needed to be taken into account when country projects were formulated, as any activity or project which carried generalized elements may not always be productive in all the concerned Member States. Further, all activities should be result-oriented, systematically implemented and regularly monitored. The Delegation looked forward to the early resumption of the suspended seventh session of CDIP, and the continued work of the CDIP. It was vital for the Member States to work collectively to find solutions to the prevailing

development challenges that they all faced. The Delegation reiterated its appreciation to the Director General and the Secretariat for their commitment and excellent efforts.

63. The Delegation of El Salvador noted that the sixth session of the Committee had decided that the Chair's Summary would constitute the CDIP report to be presented to the General Assembly. The seventh session had been suspended upon the request of a delegation in line with Rule 19 of the Rules of Procedure, prior to adoption of the Chair's Summary. The Committee had taken note of and decided that the 40,000 Swiss francs left over should be directed towards development funding; the issues of copyright and related rights and IP and the public interest was the subject of studies that had been covered in the seventh session; a modified project had been discussed on the Public Domain and the Committee had decided that the project should be reconsidered in the next session and that the Secretariat should review it bearing in mind the comments made by different delegations. Similarly, the document on Intellectual Property and the Informal Economy was to be considered at the next session of the Committee. The Future Work Program on Flexibilities in the Intellectual Property System also remained to be discussed and, with respect to that document, the Committee had agreed on certain activities and that the document would be further discussed in the next session to cover the subjects that had not yet been agreed. The Delegation noted with appreciation the progress that had been made, and expressed hope that the work of the Committee would continue. All regional groups were encouraged to continue working jointly and to continue carrying out such progress so that Members could create a real DA for WIPO.

64. The Delegation of Egypt took note of the report on the sixth and seventh sessions of the CDIP and expressed appreciation to the Secretariat for the updated report. The Delegation aligned itself with the statement delivered by the Delegation of India on behalf of the DAG and expressed appreciation to the Chairman for steering the CDIP and advancing its work program, which emphasized development as a strategic priority for WIPO. The Delegation regretted the circumstances leading to the suspension of the seventh session of the CDIP, based on the request of several Member States and the decision of the Committee itself, as had been explained by the Chairman. It also expressed its support for the ongoing efforts of the Chair of the CDIP for conducting consultations with Member States to facilitate the resumption of the seventh session, and the smooth adoption of the African Group proposal. It was hoped that such preparations to assist in the sharing of knowledge and expertise amongst developing countries would allow the Members to commence the proceedings of the eighth session of the CDIP based on a clear understanding of the relevant rules and procedures. The Delegation also observed that other issues and all proposals discussed during the seventh session of the CDIP which had received broad support from Member States, such as the proposal on the modalities of reporting to the General Assembly, would equally be adopted in the resumed seventh session. The Delegation noted, with respect to the proposed Project on South-South Cooperation, and as indicated by many Member States, that it was an established dimension and a strong pillar in all United Nations activities, programs, organs and specialized agencies. The proposed project complemented North-South and triangular cooperation, and ensured the generation of resources and sharing of knowledge and expertise that were necessary to support economic, social and scientific development in developing countries. The Delegation observed that there were perhaps a few programs or activities in that area in WIPO, and it would be a positive development for WIPO to proceed along with that practice.

65. The Delegation of Chile reiterated its earlier statement that the CDIP was one of the most important WIPO committees for Chile. The Delegation observed that on the basis of a consensus the Member States had made great progress on the 45 recommendations that had been adopted for the DA. Progress was also made in specific projects that were of great interest in particular for developing countries, and for that reason the Delegation was rather troubled by what had occurred in the last meeting when there was a lack of agreement for

one project which led to the suspension of many other projects that had already been adopted. The Delegation stressed that such an outcome should not occur again. As had taken place in other committees during the year, the path to follow was to seek consensus and not try to force solutions through which, as evidenced in the past, led to nowhere. All delegations and all delegates participating in the CDIP were urged to be mindful of the effects of their actions, not only for their own countries, but for all developing countries that were participating and were very much the target of all the very valuable projects that the Committee covered. The Delegation expressed its willingness to continue working with the Chair of the Committee and the different delegations in any way possible so that the CDIP could move forward and take up the projects that were dropped at the last session. The Delegation expressed its hope that what had happened at the seventh session would soon be a distant memory and a reminder of what should not occur again.

66. The Delegation of Nepal welcomed the updated report of the CDIP, and commended the work the Committee had been able to achieve under the Chairmanship of Ambassador Abdul Hanna of Bangladesh. The Delegation observed that the Committee had served as the forum for discussing the crucial DA and how it could be better mainstreamed in WIPO's work. The Delegation eagerly looked forward to the resumed session of the Committee to complete the work it was mandated to do. The Group of the LDCs attached great importance to the work of CDIP and the efforts made by it in mainstreaming the development concerns of the wide spectrum of WIPO Member States. The realization of the DA was indispensable if Members were to create a clear and sustainable IP system. It was observed that that goal had become even more urgent as the world remained embroiled in multiple crises, and the development of IP had the potential to contribute in addressing the most challenging problems of generating jobs and economic growth.

67. The Delegation of Argentina noted the positive outcomes by virtue of the progress made to mainstream the DA into the Organization, to implement it in the Committee's work and to take up and coordinate the recommendations. The Delegation expressed appreciation and commended the work undertaken by the Development Agenda Coordination Division of WIPO in mainstreaming the DA at WIPO, such that it became an integral part of the Organization's work. The DA would help the Organization carry out its mission of developing an IP system that is balanced and accessible internationally, that will stimulate innovation and help economic development and maintain the public interest. The Delegation reiterated the great importance the CDIP held through its discussions on the development dimension of IP, so as to encourage the development of IP as a means and not as an end to foster economic growth and to help the cultural development of Members. It was important in the future work of the Committee, and of WIPO, that the specific needs and challenges facing developing countries should be taken into account, and this should be reflected in maintaining flexibilities so that Members would be able to implement national policies for IP that were consistent with their needs in terms of culture, technology and the public good. At the same time, it was important for Members to adopt positions that were not inflexible such as what had occurred in the seventh session of the CDIP, which hampered the progress of developing countries in WIPO. The Delegation encouraged the CDIP to continue to push forward the outstanding issues and to implement the 45 recommendations of the DA, and to make the necessary efforts so that the Coordination Mechanism would be able to function and such that the delegates would have concrete assistance in implementing the DA.

68. The Delegation of Thailand expressed appreciation for the brief and comprehensive overview of the report of the Committee and the review of the implementation of the DA. The Delegation aligned itself with the statement made by the Delegation of Pakistan on behalf of the Asian Group and was grateful for the progress made in mainstreaming the DA into WIPO's regular activities. The Delegation welcomed the fact that relevant WIPO bodies had included a description of their contribution to the implementation of the respective DA

recommendations in their annual reports. As development remained a priority in the period 2012-2013, the Delegation welcomed the increase in the overall share of development expenditure for the next biennium budget. While the Delegation was assured that the mainstreaming of the DA would be further pursued, it emphasized that the outcome of the DA implementation was most crucial. The Delegation sought greater definition of the coordination mechanism and monitoring, assessing and reporting modalities to ensure that the mainstreaming of the DA across the Organization was transparent, measurable and accountable to all Member States in the most efficient and result-oriented manner. The Delegation encouraged the CDIP to continue the project-based methodology. However, the Delegation stressed that in the last CDIP meeting, the Members were able to approve only one project, while the rest of the projects were held hostage. The Delegation regretted the gap of understanding that appeared to be widespread among different groups of countries regarding the Committee in which each project should be undertaken. Concluding with the disappointing news, the Delegation moved on to share Thailand's most positive experience in the branding project under the CDIP, in which Thailand had been selected as a pilot country. Over the previous nine months, the Delegation had witnessed the productive development of the project. WIPO had finished the bench-marking report to identify the strengths and weakness of the three Thai communities selected. WIPO had also conducted capacity-building workshops on IP and distinctive signs. The Delegation wished to highlight that with WIPO's significant assistance in the workshop, the two communities were able to identify critical areas for further development. Moreover, the WIPO team had intended to further facilitate a community to explore additional IP tools that could serve as complementary marketing tools in addition to the existing ones. While the Delegation was committed to the branding project throughout its three-year timeline, and stood ready to disseminate lessons learned from the project to other countries, it emphasized the importance of making the world realize the true benefit of IP both for the protection of innovation and the development of national economies. The Delegation hoped that such experimental projects would not only result in establishing a strong brand for the three products that were selected, but could also serve as the practice model for local product branding and sustained community development both in Thailand and beyond.

69. The Delegation of Cuba endorsed the statement made by the Delegation of India on behalf of the DAG, and emphasized that the development dimension should be considered an important subject throughout the Organization. The Delegation observed that this was a dynamic process where IP must be applied with the right balance in line with the policies of each country. The Delegation underscored that members should continue fine-tuning the coordination mechanism and monitoring, assessing and reporting modalities, and implement the DA for IP in all areas. The Delegation hoped that the CDIP would continue to move forward to achieve what was expected of the Organization.

70. The Delegation of Singapore associated itself with the statement delivered by the Delegation of Pakistan on behalf of the Asian Group and welcomed the ongoing process to mainstream development into all areas of WIPO's work. That was most evident in the mainstreaming of the DA recommendations and projects in the budgetary process and implementation of the coordination mechanism. It was observed that the suspension of the seventh session, however, had affected the Committee's progress in implementing the DA. In that regard, the Delegation strongly supported the resumption of the CDIP to expedite its implementation of the DA. As a United Nations agency, inclusiveness, transparency and multilateralism were fundamental tenets in WIPO. Meaningful mainstreaming of development across all areas of WIPO's work could only be achieved through the conscious cooperation of all Member States and the Secretariat, complemented by a consensual decision-making process that secured the buy-in of all. Therefore, in advancing the implementation of the DA, the Delegation urged all Members to engage in constructive dialogue and negotiations to arrive at decisions by consensus.

71. The Delegation of Trinidad and Tobago congratulated WIPO, the Chair and Vice-Chairs for the continuing work of the CDIP and for their commitment to support the DA and the implementation of its 45 recommendations, and the pursuance of technology transfer programs, information communication technologies and access to knowledge undertaken by WIPO. The Delegation was pleased to report that Trinidad and Tobago had benefitted from the successful hosting of a technology and licensing workshop and that, as a result of the success and allure of the workshop, some participants would soon appear before the Trinidad and Tobago Intellectual Property Office to file patent applications, and that consideration was also being given to join the PCT. The Delegation supported a number of projects, including the proposal put forward by the Delegation of South Africa on behalf of the African Group on South-South Cooperation on Intellectual Property and Development. In view of the great merit of that project, the Delegation urged participants to find an even deeper sense of resolution as they sought to resume those discussions, even beyond the remarkable movement towards consensus that had been demonstrated in the last session. The Delegation was convinced of the utility of those projects, as the Trinidad and Tobago Intellectual Property Office was also a National Intellectual Property Academy involved in the CDIP's work. The Delegation supported the continuation of the process as an investment in the future of IP.

72. The Delegation of Indonesia expressed appreciation to the Secretariat for the preparation of documents WO/GA/40/5 Rev. and WO/GA/40/18 for the Assemblies' consideration. The Delegation aligned itself with the statements made by the Delegation of India on behalf of the DAG and by the Delegation of Pakistan on behalf of the Asian Group. It was noted that the adoption of the 45 DA recommendations was an important milestone for the Organization, and provided a strong foundation and commitment for WIPO to focus more on the developmental aspect of IP. As such, the DA made WIPO, like other specialized agencies of the United Nations, serving the interests of all its Member States as well as the socio-economic needs of the public at large, especially in the developing countries. The Delegation paid tribute to the good progress that had been made in the CDIP. The Delegation also noted the mandate on the coordination mechanism and monitoring, assessing and reporting modalities, as had been agreed previously by the Assembly and stressed that the coordination mechanism was critical if Member States were committed to mainstreaming development in all WIPO activities. The Delegation noted that the last session of the CDIP had, however, been a setback, and the agreement among Member States that had led to the suspension of the session was a loss for all and had postponed the implementation of various DA recommendations. The Delegation strongly supported the resumption of the CDIP meeting with the hope that Member States and others would advance the discussions in a constructive spirit to ensure implementation of all recommendations, including the approval of the Project on South-South Cooperation.

73. The Delegation of Panama in its national capacity, together with the Delegations of the Dominican Republic and Costa Rica, wished to take the opportunity to refer to the DA program linked with national strategies for IP. The Delegation expressed great interest in that subject, and noted that many activities had been undertaken linking together all productive industries and creating synergies so as to optimize the use of IP as a development tool in such areas. The Delegation noted that experts had been consulted with WIPO's assistance, with the outcome that all the different ministries and institutions in the Government of Panama had become actively involved in the process to ensure that the results would be mainstreamed effectively in national development policies. As a result of that initiative, the Delegation stated that Panama would be able to strengthen its institutions so as to improve functioning and also help the country to strengthen the use of IP in the country as a tool to foster creativity, and monitor the use of protected goods. The Delegation anticipated a positive impact of the strategy for Panama and therefore wished to highlight that WIPO's support had been important in enabling Panama to complete the project, and would be of support for other countries that also may require assistance. The Delegation

therefore asked that the Organization continue its support with the technological and financial means to help Panama carry out its development activities linking up the different national industries.

74. The Delegation of South Africa, making a statement in its national capacity, aligned itself with its earlier statement made on behalf of the African Group and by the Delegation of India on behalf of the DAG. The Delegation welcomed the report presented by the Secretariat on the work undertaken in the CDIP on the DA in the previous year. The Delegation also acknowledged the mainstreaming of the DA, and expressed hope that it would be strengthened in the following financial year. It underscored that the mainstreaming of the DA should permeate all WIPO committees and bodies. The Delegation expressed appreciation to the Director General for allocating financial resources to the DA projects from the regular budget of WIPO. It stated that there should be regular feedback to the Committee on the successful outcomes of the DA projects already undertaken, and encouraged the Assembly to ensure that the development impact of the projects undertaken was monitored and evaluated through the coordination mechanism. It welcomed the report submitted by various relevant WIPO bodies on their contribution to the implementation of the DA. The Delegation appealed to Member States to find common ground in the forthcoming session of the CDIP and adopt the project on enhancing South-South cooperation among developing countries and LDCs.

75. The Delegation of Iran (Islamic Republic of) expressed its pleasure on the efforts of the Director General and the Secretariat for mainstreaming the DA in WIPO's work. The Delegation noted with satisfaction that the DA Coordination Division was working closely with all programs in the Organization to ensure that the DA was implemented and integrated in all areas of WIPO. The Delegation also expressed its satisfaction on the Director General's commitment to report to the CDIP on the implementation of the DA on an annual basis, as it provided a general overview of mainstreaming DA into WIPO's regular program of activities. The adoption of the coordination mechanisms and monitoring, assessing and reporting modalities was a significant achievement by the Organization the previous year. However, the actual implementation of that mechanism had encountered difficulties. The Delegation underlined that that mechanism was the only member-driven tool for the evaluation of the DA mainstreaming in WIPO and hoped that Member States would facilitate the smooth provision of reports from all WIPO committees to the General Assemblies for its consideration and submission to the CDIP. If that mechanism worked properly, it would help the Organization and Member States to benefit from and avoid duplication of work in different committees and achieve focused and result-based actions, the Delegation added. There was therefore a need to agree on a permanent and constant procedure for reporting from all WIPO relevant committees to the General Assemblies and CDIP. The Delegation further added that it should not be forgotten that the reporting process was just the beginning of a long term process, which should be dynamic and lead to concrete recommendations to WIPO committees, particularly the norm-setting committees. The Delegation felt that with the coordination mechanism, CDIP would be able to monitor the norm-setting process in all committees and in that context, CDIP could consider the norm-setting activities in light of the proper implementation of Recommendation 22 which stipulated that "WIPO's norm-setting activities should be supportive of the development goals agreed within the United Nations System, including those contained in the Millennium Declaration. Therefore the results of normative works in other committees should be reported to the CDIP to be examined respectively". While recognizing the importance of the project based approach, and emphasizing that the CDIP projects should be designed to assist developing countries in formulating their national IP policies in accordance with their needs and requirements, the Delegation believed that only a comprehensive approach could make development mainstreamed across the different areas and bodies of WIPO. Building upon the results of studies, it was time for the CDIP to enter the second phase, i.e., norm-setting and developing concrete solutions for the IP related challenges, through setting up relevant guidelines and

instruments. The mandate of CDIP approved by the General Assemblies covered a broad range of issues including discussing IP and development related issues, which had been ignored since the establishment of the Committee by selecting project based approach. That part of the mandate could complement the project implementation and technical assistance. The Delegation therefore considered the CDIP as an appropriate forum to discuss global challenges such as food security, climate change and health with a view to promoting development-friendly norms in the aforementioned areas which remained the main concerns of developing countries. The Delegation stated that in order to achieve all the aforementioned goals, it was important that the CDIP worked smoothly and with constructive cooperation with all Member States. Unfortunately the seventh session of the CDIP failed to approve a very important Project on South-South Cooperation and the meeting was suspended. The Delegation felt that the suspended session of the CDIP should resume as soon as possible and Member States should be able to adopt the proposed Project on South-South Cooperation.

76. The WIPO General Assembly took note of the content of document WO/GA/40/5 Rev.

77. The Chair of the WIPO General Assembly then invited Member States to consider Agenda Item 28(i), Review of the Implementation of the DA recommendations (document WO/GA/40/18). That document contained a description of the contribution of the relevant WIPO bodies to the implementation of the respective DA recommendations. In accordance with the coordination mechanisms and monitoring, assessing and reporting modalities adopted by the General Assembly of WIPO, the relevant bodies of WIPO were instructed to include in their annual report to the Assemblies a description of their contribution to the implementation of the respective DA recommendations. Accordingly, document WO/GA/40/18 provided reference to the paragraphs concerned with the implementation of the DA in their respective reports to the General Assembly. The Chair invited the Secretariat to present the document.

78. The Secretariat noted that a number of delegations in their interventions under the previous agenda item had anticipated and addressed Agenda Item 28(i). The Secretariat noted that document WO/GA/40/18 provided a review of the implementation of the DA recommendations. It was recalled that the WIPO General Assembly at its thirty-ninth session, held from September 20 to 29, 2010, had approved the coordination mechanisms and monitoring, assessing and reporting modalities, which, *inter alia*, instructed the relevant WIPO bodies to include in their annual reports to the Assemblies a description of their contribution to the implementation of the respective DA recommendations. Consequently, document WO/GA/40/18 contained references to the implementation of the DA in the reports to the General Assemblies of the SCCR, the IGC, the SCP, the SCT, the ACE and the PCT Working Group. Those reports to the Assemblies indicated what the respective committees had done to implement the recommendations of the DA in respect to their particular areas. The General Assembly was invited to take note of the relevant paragraphs in those reports and, in accordance with the above-mentioned coordination mechanism, to forward the reports to the CDIP. As had been recognized by some Member States, this was the first occasion that the agreed coordination mechanism had been given effect.

79. The WIPO General Assembly took note of the contents of document WO/GA/40/18, and forwarded the relevant paragraphs from the reports of the various WIPO bodies to the CDIP.

ITEM 29 OF THE CONSOLIDATED AGENDA

REPORT ON THE WORK OF THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)

80. Discussions were based on document WO/GA/40/6.

81. The Chair of the WIPO General Assembly introduced Agenda Item 29 which dealt with the Report on the Work of the Standing Committee on Copyright and Related Rights (SCCR), and gave the floor to the Secretariat.

82. The Secretariat informed the Member States that document WO/GA/40/6 referred to the work of the SCCR, namely SCCR/21 and SCCR/22, and highlighted the progress made towards creating an enabling environment for improved access to copyright-protected works for reading impaired persons. Following the discussion on a proposal documented by a group of Member States, the Committee had requested to the Chair of the SCCR, Mr. Manuel Guerra Zamarro, to prepare a text for an international instrument on limitations and exceptions for persons with print disabilities to be used as a basis for further text-based work in SCCR/23. The Secretariat reported that the work on exceptions and limitations for persons with other disabilities, for education and research institutions, and for libraries and archives, continued. It highlighted that the work on the protection of broadcasting organizations had made evident progress, particularly with regard to the work plan aimed at advancing negotiations on an international instrument. It stressed that efforts to update the rights of broadcasting organizations had been increased in light of the growing signal piracy problems around the world. Agenda Item 30 would deal separately with the discussions on and recommendation concerning the protection of audiovisual performances. The Secretariat drew the Assembly's attention to the Committee's contribution to the implementation of the DA recommendations in Section D of the report, and indicated that the next session of the SCCR was scheduled from November 21 to December 2, 2011.

83. The Delegation of the United States of America, speaking on behalf of Group B, stressed the significant progress made by the SCCR, notably on the issue of the protection of audiovisual performances. The common solution drafted by the Delegations of the United States of America, India and Mexico, on the transfer of economic rights to film producers had been particularly important in the process. The Delegation applauded the truly cooperative and positive spirit at the SCCR that allowed all WIPO Member States to agree on a new Article 12. It was also pleased for the joint work developed by Brazil, India, Mexico, Nigeria, the United States of America and the European Union (EU), in crafting solutions to the new concerns to be addressed in a package of proposed agreed statements and one addition clause to the preamble. The Delegation noted that compromise made it unnecessary to reopen the 19 Articles agreed upon in 2000. The Group looked forward to working with the other WIPO Member States in crafting the precise language for the agreed statements. It strongly urged the General Assembly to adopt the recommendations of SCCR/22 in their entirety. The Group stressed the importance of the tremendous progress that had been made on the question of copyright exceptions and limitations for the benefit of persons with print disabilities. In the past years, there had been substantial convergences among WIPO Member States on the need to establish new norms to improve access for persons with print disabilities, while safeguarding the integrity of the IP system. The Group believed that a properly calibrated international copyright system could protect authors and enable the full participation by the visually impaired in civic and cultural life. It reiterated the commitment of the Group to finding a meaningful solution to improve substantially the access that persons with print disabilities had to educational, cultural and informational material. It welcomed the renewed interest of the SCCR in the possible treaty for broadcasting organizations. The Group thanked the Secretariat for convening informal consultations in April, and the Chair of those consultations, Ms. Alexandra Grazioli (Switzerland), for her



leadership in facilitating the discussions. It hoped progress could be achieved towards the adoption of the treaty.

84. The Delegation of South Africa, on behalf of the African Group, welcomed the work developed by the SCCR on the issue of limitations and exceptions to copyright and related rights, the protection of broadcasting organizations and the protection of audiovisual performances. The previous session of the SCCR had achieved great success. The Group believed that all kinds of limitations and exceptions deserved equal treatment. In that connection, the revised WIPO treaty on exceptions and limitations for persons with disabilities, for educational and research institutions, and for libraries and archives had been presented by the Group at SCCR/22. The African Group was committed to having an international legally binding instrument including exceptions and limitations for the visually impaired persons. A number of regional seminars, organized in India, Mexico and Nigeria, had contributed to the substantive advancement of the negotiations on the protection of audiovisual performers and broadcasting organizations. The proposals made by Brazil, India, Mexico and the United States of America on the protection of the audiovisual performances contributed in finding a solution to an impasse that has lasted for eleven years. It also expressed satisfaction for not reopening the 19 Articles provisionally agreed upon in 2000. It supported the proposal of reconvening the diplomatic conference and stressed the importance of achieving agreement on the few outstanding issues, namely the three proposed agreed statements and the addition to the preamble stressing the importance of the DA. The Group also welcomed the advancements regarding the issue of broadcasting organizations and, in particular, the work program agreed during the previous session of the SCCR. The proposals of the Delegations of Canada, South Africa and Japan were extremely helpful in the process of negotiation of a possible treaty on the rights of broadcasting organizations.

85. The Delegation of Pakistan, on behalf of the Asian Group, noted the report on the work of the SCCR as contained in document WO/GA/40/6. It underscored the progress made on the three substantive issues of the Committee's agenda, namely, the protection of broadcasting organizations, the protection of audiovisual performances and limitations and exceptions to copyright and related rights. It also welcomed the decision of SCCR/22 to recommend to the General Assembly to resume the suspended 2000 Diplomatic Conference on the Protection of Audiovisual Performances, and indicated that the Asian Group looked forward to the preparatory process for the Conference. The Delegation of Pakistan pointed to the ongoing discussions in the SCCR on limitations and exceptions as a very positive development, since they brought about the necessary balance between private intellectual property rights (IPRs) and the public interest in the context of national public policies and development goals. It stressed the Asian's Group hope that discussions could lead to a suitable normative framework in the area of limitations and exceptions to copyright. In this regard, the Delegation of Pakistan welcomed the work plan adopted at SCCR/21 with a well-defined timeframe to develop a normative framework on limitations and exceptions to make copyright-protected works accessible to visually impaired persons and other disabled groups, libraries, archives, and educational and research institutions. It also expressed the Asian's Group encouragement regarding the progress made with regard to the draft of the international instrument for visually impaired people, and looked forward to its early finalization and adoption, enabling the visually impaired and reading disabled persons to have access to a large collection of printed literature from across the globe.

86. The Delegation of Poland, speaking on behalf of the EU and its member States, took the floor and passed it to the Representative of the EU. The EU and its member States welcomed the agreement reached during SCCR/22 to recommend to the General Assembly to resume the Diplomatic Conference on the Audiovisual Performances Treaty suspended in 2000, with the understanding that the treaty text should be finalized with the 19 Articles provisionally adopted in 2000, the existing agreed statements and the new Article 12 agreed

to by consensus at SCCR/22. The EU and its member States considered that suitable wording for the three additional agreed statements to be drafted in relation to Articles 1, 2 and 15, in line with other international instruments on copyright and related rights should be addressed. The EU and its member States stressed that the WIPO treaty on broadcasting organizations remained a high priority for them. It thanked the Secretariat for organizing the informal consultation meeting on this subject held on April 14 and 15, 2011, and it thanked the Chair for providing a useful contribution to the ongoing negotiations. The EU and its member States were looking forward to an improvement in the international protection of broadcasting organizations and manifested their conviction that such an improvement was still feasible within WIPO, bearing in mind the ambitious work plan approved during SCCR/22, with the aim of making a recommendation to the 2012 WIPO General Assembly on the possible scheduling of a diplomatic conference. The EU and its member States recognized the need to improve the access of persons with print disabilities across the world to works in accessible formats, and indicated the continuity of their efforts towards an effective solution that provided the expected results on the ground. They also reiterated their full support for the work of the WIPO Stakeholders' Platform and pointed out that technological developments and standardization were essential to achieve the above-mentioned goals, for which full coordination of efforts at the international and the regional levels was essential. The EU and its member States looked forward to the possibility of exchanging national experiences with WIPO Member States on the issues relating to the activities of libraries, archives, educational teaching and research institutions. They remained committed to contributing to the work of the SCCR in a constructive manner.

87. The Delegation of India applauded the efforts of the Secretariat in organizing three additional days for discussing limitations and exceptions for visually impaired and other reading disabled persons during SCCR/22 in June 2011. It endorsed the text agreed by Member States. It looked forward to moving beyond words to a positive international binding instrument to facilitate access to copyrighted materials in all accessible formats for disabled groups. The Delegation of India also applauded the initiative of the Secretariat in allocating three additional days during SCCR/23 in November 2011 to discuss issues pertaining to limitations and exceptions for libraries and archives. Regarding the proposed WIPO Treaty on Protection of Broadcasting Organizations, the Delegation reiterated its commitment to comply with a signal-based approach towards developing an international treaty to update the protection of broadcasting and cablecasting organizations, in the traditional sense, consistent with the 2007 General Assembly mandate. The Delegation reiterated its opposition to the inclusion of any element on webcasting and simulcasting issues. It also indicated its opposition to any attempt to amend the early mandate of the General Assembly to include retransmission over computer networks, or retransmission over any other platform, because those activities were not broadcasting in the traditional sense. The Delegation manifested its disposition to engage in any constructive discussion to achieve an agreement on the nature, scope and object of protection of broadcasting organizations during SCCR/23. It applauded the proposal of the Secretariat to allocate two additional days to hold informal discussions on broadcasting issues in November 2011. On the issue of the proposed WIPO Treaty on the Protection of Audiovisual Performances, the Delegation highlighted its participation in drafting a joint proposal with the Delegation of Mexico and the United States of America on Article 12 related to the transfer of rights, which was finally accepted by all Member States. It also noted the agreement at SCCR/22 to include the agreed statements in relation to Articles 1, 2 and 15, and one additional clause in the preamble of the proposed treaty recognizing the importance of the recommendations of the DA. It hoped that the General Assembly would approve those recommendations on the convening of the diplomatic conference to finalize the treaty.

88. The Delegation of India, on behalf of the DAG, thanked the Secretariat for the report contained in document WO/GA/40/6, outlining the current state of discussions in the SCCR. The DAG was pleased to see the progress being made on the three substantive issues on the Committee's agenda, such as, exceptions and limitations to rights, the draft Treaty for protection of Broadcasting Organisations and the draft Treaty for protection of audiovisual performances.. The DAG was also pleased to see that the Committee reviewed its contribution to the DA, for the first time, at its twenty-second session held from June 15 to 24, 2011, in compliance with the General Assembly's mandate on the coordination mechanism for WIPO-wide mainstreaming of the 45 recommendations of the DA. As mentioned in its opening statement, the DAG attached great importance to the ongoing efforts to evolve an effective normative framework for harmonizing exceptions and limitations to copyright in specific sectors. The DAG viewed exceptions, exclusions and limitations as an intrinsic and essential part of the IPR framework that brought much-needed balance between private IPRs and larger public interest, in the context of national public policies and development goals. The DAG therefore welcomed the clear work plan and the well-defined timeframe, adopted at SCCR/21 for evolving a normative framework, for providing exceptions and limitations to make copyright-protected works accessible to visually impaired persons, libraries, archives, education, research and groups with other disabilities.. In that context, the DAG took positive note of the dedication of three additional days for discussion on limitations and exceptions for visually impaired and other print disabled persons, during the SCCR/22. The DAG was encouraged by the progress made with regard to the draft visually impaired persons treaty, and looked forward to its early finalization and adoption, in order to enable the vast population of visually impaired and reading disabled persons to access, enjoy and benefit from the large wealth of printed literature around the world. The DAG sincerely hoped that discussions on other exceptions and limitations for libraries and archives, educational and research institutions, and other groups of persons with disabilities, would similarly make timely progress and fructify in legally-binding international instruments in these key areas, in accordance with the work program. In that context, it was happy to note that three additional working days would be allocated at SCCR/23 in November 2011, to discuss issues pertaining to limitations and exceptions for libraries and archives, and looked forward to the continuation of the spirit of collaboration and constructive engagement among Member States, that had characterized the recent sessions of the SCCR. The DAG welcomed the progress being made on the long- pending treaties for the protection of audiovisual performances and broadcasting organizations, and looked forward to an early finalization of the two instruments. The DAG remained committed to engaging constructively in finalizing these two instruments at an early date. As stated at SCCR/22, the DAG reiterated the importance of ensuring that all norm-setting initiatives underway in the SCCR were treated on par, with no 'second class' treatment accorded to any particular issue or community. It also hoped that the DA recommendations, especially those pertaining to norm-setting in cluster B, would be taken on board when finalizing those instruments.

89. The Delegation of Japan supported the statement of the Delegation of the United States of America on behalf of Group B, and appreciated the meaningful discussions held at the SCCR session. It also noted that with the great advances taking place in the era of digital and network technologies, copyright infringements more than ever were occurring on a global scale across national borders. In that connection, Japan supported the recommendation made by the SCCR in June 2011 on the reconvening of a diplomatic conference to adopt a treaty on the protection of audiovisual performances. In addition, the Delegation of Japan supported the work plan for the protection of broadcasting organizations prepared by the Chair of the SCCR, and was interested to see an early adoption of a WIPO Treaty on the Protection of Broadcasting Organizations. Regarding the issue of limitations and exceptions, the Delegation of Japan pointed out that it was essential to ensure proper balance between the protection granted to rightholders and the interests of users. It also hoped to contribute actively to the discussion on the access by persons with print disabilities to copyrighted works. The Delegation of Japan stated that there were three important points

regarding the provisions for concrete limitations and exceptions: first, discussion should be focused on a specific scope; secondly, any instrument should not go beyond the scope of the three step test; and thirdly, any international instrument should provide sufficiently flexibility to allow implementation at a domestic level.

90. The Delegation of Brazil aligned itself with the statement made by the Delegation of India on behalf of the DAG. It noted the advances of the SCCR negotiations since the last General Assembly, as well as the engagement and flexibility showed by delegations during the previous sessions and consultations, which had made it possible the achievement of agreements on substantial issues. The Delegation of Brazil highlighted the progress made in the negotiations on limitations and exceptions. It stressed that the approval at SCCR/21 of a detailed work program would help the negotiation of appropriate international legal instruments that met the needs for balance within the copyright system for the benefit of persons with print and other reading disabilities, libraries, archives, educational teaching and research institutions, and persons with other disabilities. The Delegation indicated that the presentation at SCCR/22 of a joint proposal on an international instrument on limitations and exceptions for persons with print disabilities reflected the growing consensus around the substantial provision of a future legal instrument, although there was no agreement at the moment to conclude a treaty on the matter. The Delegation opposed a second class solution to address the access of reading disabled to copyright protected works, expressing that if binding instruments were provided to right holders, the same legal certainty should also be provided to persons with print disabilities. It was a unique opportunity for WIPO to demonstrate its commitment to implement Article 30 of the United Nations Convention on the Rights of Persons with Disabilities. It was also an opportunity to show that Member States can find solutions to harmonize commercial interests with social and humanitarian demands. The Delegation thanked the World Blind Union (WBU), and all other entities that represented the interests of persons with print disabilities, for working closely together with Member States in order to find solutions for that matter and for contributing not only with its practical experience and technical knowledge, but also with its political sensibility. The Delegation of Brazil noted that those organizations were showing flexibility, as they had moved from their first position adapting their necessity to the same concerns presented by Member States and rightholders. It expressed that it was up to Member States to show flexibility and conclude the negotiation with the best result possible, i.e. a binding instrument. The Delegation looked forward to the discussions on limitations and exceptions for libraries and archives that would take place in the next SCCR session, in view of the utmost importance for knowledge diffusion and conservation.

91. The Delegation of El Salvador recalled that during SCCR/21, a work program on limitations and exceptions for 2011/2012 had been established. The Committee had developed the work on exceptions and limitations for the benefit of persons with print and reading disabilities, and would do the same on the issue of archives, libraries, educational teaching and research institutions. The Delegation was of the view that a diplomatic conference could be convened once a consensus was achieved with the participation and commitment of all parties. It also stressed the need for the protection of broadcasting organizations to remain on the agenda of the SCCR.

92. The Delegation of Barbados welcomed the progress made with respect to the three main issues, namely the protection of broadcasting organizations, the protection of audiovisual performances and limitations and exceptions for print disabled persons. With respect to the protection of audiovisual performances, the Delegation supported the General Assembly's adoption of the recommendations of SCCR/22 to resume the 2000 diplomatic conference on the understanding reached at that SCCR meeting. As regards limitations and exceptions for the print disabled, the Delegation supported the adoption by the General Assembly of the recommendation to continue discussions with the aim of agreeing to and finalizing a proposal for an international instrument on limitations and exceptions for

persons with print disabilities. It hoped that the progress achieved would enable the SCCR to recommend that the 2012 General Assembly convene a diplomatic conference on limitations and exceptions for print disabled persons.

93. The Delegation of Norway noted the report on the work of the SCCR contained in document WO/GA/40/6 and supported its recommendations. It aligned itself with the statement made by the Delegation of the United States of America on behalf of Group B. To bring the protection of audiovisual performers in line with the updated protection provided in the 1996 treaties for certain rightholders, the Delegation fully supported the recommendations of the SCCR for the resumption of a diplomatic conference. It also welcomed the progress and work plan launched for further informal consultations on a draft treaty for broadcasting organizations. It pointed out that the topic of such a treaty—to address technological developments and to update broadcasters' rights—had been on the SCCR agenda for 13 years. Regarding the equally important issue of limitations and exceptions for persons with print disability, the Delegation was ready to continue discussion on a proposal for an international instrument and was pleased to note the considerable progress made toward this goal.

94. The Delegation of Argentina underlined the need to continue to work on an instrument on exceptions and limitations for persons with print disabilities to ensure a substantive solution to the issue of access to reading materials for visually impaired persons. That was a matter of particular interest because of its close link with general principles of the DA and the need to ensure balance between protection of copyright and the economic and social interests of populations. The Delegation welcomed the principles of agreement on matters of substance that had been observed since the last session of the Committee.

95. The Delegation of Kenya supported the statement made by the Delegation of South Africa on behalf of the African Group and appreciated the work done during the last two sessions of the SCCR. The Delegation thanked the Secretariat for organizing the regional meeting on the protection of broadcasting organizations, for preparing the study on the social and economic dimensions of the unauthorized use of signals and for addressing the social and economic effects of the proposed treaty. The Delegation welcomed the recommendations of the SCCR regarding the diplomatic conference for the proposed treaty on the protection of audiovisual performances. It thanked the Delegations of India, Mexico and the United States of America for their invaluable contribution in drafting Article 12 to unlock the deadlock of 2000. It pointed out that the discussions on exceptions and limitations had also been on the agenda for a long time. That was very important for countries like Kenya, especially for purposes of access to teaching and learning material. The recently concluded study on copyright and related rights in relation to access to materials, carried out in eight different countries within Africa, indicated that the current laws had very limited exceptions and limitations. Most of them did not have specific provisions for visually impaired persons. The ongoing discussions in the SCCR would help in addressing that gap at the international, local and regional levels. The Delegation reiterated the position of the Africa Group and its commitment to having international legal instrument in these three areas.

96. The Delegation of Ecuador stated the need to balance private and public interests as well as to respect human rights. Within the DA, it was vitally important to give priority to the right of visually impaired persons. The work program already agreed by the Committee on exceptions and limitations in that regard, as well as for libraries, archives, educational institutions and research institutions, should continue. At its next session, the SCCR should be requested to reach an agreement on the necessary provisions for convening a new diplomatic conference on exceptions and limitations for visually impaired persons. That conference should take place jointly with the one on the protection of audiovisual performances in 2012, or at the latest, in 2013. The Delegation indicated that WIPO should

not neglect the rights of visually impaired persons who should have the opportunity to fully participate in cultural developments.

97. The Delegation of Iran (Islamic Republic of) supported the holding of a Diplomatic Conference on the Protection of Audiovisual Performances in 2012. It underlined the urgent need to protect broadcasting organizations and to prevent piracy and supported the establishment of a new treaty to protect the signals of broadcasting organizations. The informal consultations on the protection of broadcasting organizations had provided important elements concerning the specific scope and objective of the treaty. The Delegation welcomed the time frame for the negotiations on that matter and called on the General Assembly to approve the proposed timetable to facilitate the finalization and the preparation of the treaty on the protection of broadcasting organizations. The possible implication on access to information should be taken into account by the inclusion of limitations and exceptions in the treaty. The treaty should not extend to the protection of organizations other than traditional broadcasting organizations. With regard to limitations and exceptions, the Delegation was pleased to see a concrete work plan and a specific timetable. There was sufficient ground for moving towards the harmonization of minimum international standards in the field of limitations and exceptions. The Delegation welcomed the beginning of the negotiations on a treaty for ensuring greater access to copyright protected works by the visually impaired and other disabled persons and stressed that only a binding legal instrument could ensure sustainable accessibility of visually impaired persons to copyrighted material.

98. The Delegation of Mexico appreciated the contributions of all the delegations to the work of the SCCR. Substantive progress had been made on the topics of the agenda of that very important Committee. The Delegation was ready and willing to actively participate in all the work of the Committee, given the great importance its government attributed to the question of exceptions and limitations for visually impaired persons, the protection of broadcasting organizations against the piracy of signals, as well as to the future treaty on audiovisual performances.

99. The Delegation of Sweden supported the statements made by the Delegation of the United States of America, on behalf of Group B, and by the Delegation of the EU and its member States. The Delegation was pleased with the recent developments in the SCCR. The spirit of cooperation between different delegations, and the WIPO Secretariat in the continuous effort to move the issues on the agenda forward, was an example for the Organization. It reiterated its commitment to constructively participate in the future deliberations of the Committee. The Delegation fully supported the recommendation to convene a diplomatic conference in the area of the protection of audiovisual performances and looked forward to progress in the areas of protection of broadcasting organizations and of exceptions and limitations for persons with print disabilities.

100. The Delegation of Trinidad and Tobago expressed its continued support for the work of the SCCR. During the last General Assemblies, the Delegation had expressed its commitment to begin discussions relating to expanding the scope of exceptions and limitations for persons with print disabilities and it was extremely heartened that the work of the Committee had progressed towards an agreement on the content of an international instrument on that matter. On the issue of the protection of audiovisual performances, the Delegation had supported the convening of a diplomatic conference in 2000 and continued to support the reconvening of such a conference in 2012. The Delegation was also in agreement with the new work plan for the protection of broadcasting organizations as signal piracy was a growing problem in developing countries and a modern treaty addressing that issue was required.

101. The Delegation of Indonesia associated itself with the statement made by the Delegation of India on behalf of the DAG. The Delegation attached great importance to the issues discussed in the SCCR, particularly limitations and exceptions, protection of broadcasting organizations, protection of audiovisual performances and the contribution to the DA recommendations. With respect to the protection of broadcasting organizations, Indonesia favored continued negotiations using a signal approach in accordance with the mandate given by the General Assembly in 2007 and it welcomed the work plan agreed in the SCCR to allocate more time for informal consultations during SCCR/23. The Delegation supported the resumption of the 2000 Diplomatic Conference on the Protection of Audiovisual Performances. It underlined that the work of the Committee on limitations and exceptions and on the contribution to the DA recommendations was of vital importance in creating a more balanced global system in the area of copyright and related rights. The Delegation hoped that the Committee would reach a consensus on the instrument on limitations and exceptions for visually impaired persons, libraries, archives, and educational and research institutions.

102. The Delegation of Nigeria supported the statement made by the Delegation of South Africa on behalf of the African Group. It found much value in the various informal consultations that had been organized in the past and expressed its appreciation for the openness and flexibility shown by Member States. The Delegation noted the progress made by the Committee on the protection of broadcasting organizations and was optimistic that the renewed commitment of Member States to continue the work would lead to a positive outcome. On the issue of exceptions and limitations, the Delegation supported the position of the African Group and was particularly pleased with the support that the African Group's proposal had received among Member States in order to eventually address the need for exceptions and limitations in various areas, including the particular needs of the visually impaired. The Delegation underlined the urgent need to address the provision of appropriate exceptions and limitations for the blind and visually impaired.

103. The Delegation of Algeria welcomed the efforts made to continue discussions on important issues such as the protection of broadcasting organizations, audiovisual performances and limitations and exceptions. It supported the statements made by the Delegation of South Africa, on behalf of the African Group, and by the Delegation of India, on behalf of the DAG. Regarding the importance of limitations and exceptions for the dissemination of knowledge, the Delegation was in favor of international standards on the subject of visually impaired persons. It underlined the need for increased work to be done on exceptions and limitations for teaching, research institutions, libraries and archives. The Delegation welcomed the consensus reached on the draft treaty on the protection of audiovisual performances and called on the General Assembly to reconvene the diplomatic conference to adopt the treaty.

104. The Delegation of South Africa aligned itself with the statements made by the African Group and the DAG. The considerable progress made, particularly in respect of broadcasting organizations and audiovisual performances, could undoubtedly be attributed to the seminars held in various regions, particularly in Abuja, Nigeria, and in Johannesburg, South Africa. Noting developments regarding the treaty for the protection of audiovisual performances and acknowledging the emerging consensus relating to Article 12 on the transfer of rights, the Delegation expressed its support for the recommendation of the Committee on the reconvening of the suspended diplomatic conference in 2012. Concerning the issue of the protection of broadcasting organizations, the Delegation hoped that the work plan adopted by the Committee would ensure that discussions would be expedited and focused. Significant progress needed to be made before the holding of a diplomatic conference in the next 2012-2013 biennium for the adoption of a treaty. That matter had significant impact not only on broadcasting organizations, but also on the public interest at large. It urged the Committee to be cognizant of technological developments to ensure that

the outcome of the process would be effective to combat signal piracy in any form. The proposal on the draft treaty on the protection of broadcasting organizations presented at SCCR/22 provided the national position on that issue.

105. The Delegation of Cuba recalled that visually impaired persons were facing barriers to their access to creative content on a daily basis. On average, only five per cent of printed material was made available in an accessible format, but in Latin America, that percentage dropped to less than one per cent. A binding international instrument was needed in order to grant the visually impaired the right to access copyrighted content. The Delegation also supported the statements of the Delegations of India, on behalf of the DAG, and of Ecuador.

106. The Delegation of Morocco expressed support for the statement of the African Group on the protection of broadcasting organization, audiovisual performances and exceptions and limitations. As regards broadcasting organizations, the Delegation had always contributed to the discussions to update their rights. Technological developments had brought about many challenges that should be addressed by updating those rights. Good results had been achieved in the previous session of the SCCR through the agreement on the work program. It urged Member States to convene a diplomatic conference as soon as possible. Regarding the protection of audiovisual performances, since 1998, Morocco had always been supporting the process of negotiation. The objective of safeguarding the provisionally agreed 19 Articles had been achieved and Member States were ready to have a successful diplomatic conference. On the subject of limitations and exceptions, it supported the position of the African Group but stressed that, for the sake of flexibility, it was important to achieve progress on the more mature areas. It, therefore, suggested to start with the issue of the visually impaired and persons with other print disabilities, and to thereafter continue after with other sectors such as libraries, archives and research institutions.

107. The Delegation of Chile attached great importance to the progress made in the negotiations in the area of limitations and exceptions and remained committed to work constructively on such important issues.

108. The Representative of the World Blind Union (WBU) was pleased to see major advancements in the work of the SCCR, such as the decision to give a mandate to the Chair to prepare a text for an international instrument on limitations and exceptions for persons with print disabilities. The document was a good basis for a WIPO treaty for people with reading disabilities. A binding treaty carried more weight than any soft law recommendation and that was why Member States had opted for a treaty in the case of audiovisual performances. In 1990, the United Nations (UN) had agreed on the non-binding guidelines called the Standard Rules on Equalization of Opportunities for Disabled People. Those guidelines had very little effect except delaying a binding UN disability convention for many years. By contrast, the Convention on the Rights of Persons with Disabilities had been opened for signature in March 2007 and already it had over 150 signatures and 100 ratifications. Moreover, the impact of the binding convention had already been felt across the world as countries improved their disability laws and practice to meet the needs of the disabled. WBU supported Ecuador's calls for the 2012 diplomatic conference to work on two treaties, one for audiovisual performances and another for people with reading disabilities. Such an approach would save a significant amount of money and time.

109. The Representative of Knowledge Ecology International (KEI) expressed support for the proposal made by Ecuador to broaden the agenda of the possible Diplomatic Conference on the Protection of Audiovisual Performances in order also to include the issue of limitations and exceptions for the benefit of the visually impaired. KEI expressed concerns in relation to the protection of broadcasting organizations as a treaty should not be signed until problems were clearly identified and until WIPO conducted an economic impact analysis. It might be more useful for WIPO to consider a more limited treaty on sport broadcasting than something



broader and more costly. In relation to the issue of access to knowledge in general, the Representative stressed that the 1971 Appendix to the Berne Convention had failed to achieve its original objectives, but the SCCR had never dealt with that problematic issue. The work of the SCCR should focus on building an environment and enabling lawful access to content and information. The Representative warned the General Assembly of the risks for social networks and other innovative online services linked to the approval of a number of international agreements, such as the Anti-Counterfeiting Trade Agreement (ACTA) and free-trade agreements, which imposed parties to recognize a level of protection higher than the standards imposed by the TRIPS Agreement.

110. The Representative of the International Federation of Musicians (FIM) thanked the Secretariat and Member States for the results achieved in the negotiation on the protection of audiovisual performances. The agreement on the new draft of Article 12 was crucial because it recognized a right of remuneration for performers. The community of performers, both audio and audiovisual, was extremely satisfied with the reconvening of the diplomatic conference.

111. The Representative of the International Federation of Reproduction Rights Organizations (IFRRO) acknowledged the efforts to reach a consensus solution regarding a WIPO instrument to enable effective access to copyrighted works by persons with print disabilities. IFRRO supported an international legal instrument on exceptions and limitations in favor of people with print disabilities, the content of which was more relevant than its form. In relation to the content, four main concerns were expressed: first, the exception should apply only to works which were not made accessible in a certain country; secondly, the cross-border exchange of files should only be allowed with the express authorization of the rightholder or under a licence; thirdly, the instrument should be clearly linked to the Berne Convention and, in particular, to Article 9(2), regulating the three-step test; and, finally, the cross-border transfer of files must be limited to works lawfully published in the country where the entity performing the transfer was based, meaning that re-exportation of files should not be allowed. Any enabling legal framework needed to be complemented by concrete practical solutions to boost the number of works in formats accessible to people with reading impairment and their exchange across borders. The system based on trusted intermediaries, combined with joint stakeholder efforts in relation to enabling technologies, offered real opportunities to improve substantially access to works by persons with print disabilities.

112. The Representative of the International Publishers Association (IPA) congratulated Member States on the advancements made during SCCR/22 towards a single text for a treaty for the benefit of the visually impaired. IPA had specific proposals to improve the wording of the instrument that could be made available to Member States. IPA suggested that Member States looked at the successful example of the audiovisual treaty. In order to succeed, any WIPO instrument must be clear on the expected outcome and allow sufficient flexibility to enable different solutions proven effective at the national level. IPA was willing to collaborate constructively on concluding the text on limitations and exceptions for the visually impaired. The Representative recalled that during the upcoming months, the SCCR would discuss exceptions for libraries and educational institutions which were part of the essential economic base for local publishers in the developing world.

113. The Representative of the International Video Federation (IVF) joined the audiovisual sector in welcoming the breakthrough on the protection of audiovisual performances reached by the SCCR. The reconvening of the suspended diplomatic conference was appropriate and Member States should focus on outstanding issues, such as the three additional agreed statements in relation to Articles 1, 2 and 15, and one additional clause in the preamble recognizing the importance of the DA. IVF also welcomed pragmatic solutions to increase the availability of books in specialized formats for print disabled persons and was ready to support an international instrument on the matter.

114. The Representative of the International Federation of the Phonographic Industry (IFPI) welcomed the breakthrough in the negotiation on the protection of audiovisual performances. The discussion on the few outstanding issues, such as the new agreed statements, was crucial for the final outcome of the diplomatic conference and should guarantee the necessary consistency with the 19 Articles and other international copyright instruments.

115. The WIPO General Assembly:

- (i) took note of the information contained in the document WO/GA/40/6; and
- (ii) encouraged the SCCR to continue its work regarding the issues reported on in this document.

#### ITEM 30 OF THE CONSOLIDATED AGENDA

#### RECOMMENDATION ON HOLDING OF A DIPLOMATIC CONFERENCE ON THE PROTECTION OF AUDIOVISUAL PERFORMANCES

116. Discussions were based on document WO/GA/40/11.

117. The Chair introduced Agenda Item 30 which dealt with document WO/GA/40/11 on the Recommendation on Holding of a Diplomatic Conference on the Protection of Audiovisual Performances, and gave the floor to the Secretariat.

118. The Secretariat observed that several delegations had supported the recommendation when giving their statements regarding previous Agenda Item 29. It stressed that Annex I of document WO/GA/40/11 contained the necessary steps to move to a diplomatic conference, and that it was a procedure similar to the ones followed by the Secretariat to organize other diplomatic conferences. The Preparatory Committee of the Diplomatic Conference on the Protection of Audiovisual Performances had been tentatively scheduled for November 30, 2011, and, if necessary, also December 1, 2011. The meeting would be held back-to-back at the next session of the SCCR.

119. The Delegation of Poland, speaking on behalf of the EU and its member States, took the floor and passed it to the Representative of the EU. The EU and its member States thanked the Chair and the Secretariat for bringing delegations closer to the successful completion of a treaty on audiovisual performances. They welcomed the decision to resume the suspended 2000 diplomatic conference with the understanding that the Treaty text should be finalized as the 19 Articles provisionally adopted, including the existing Agreed Statements, the new Article 12 agreed to by consensus at SCCR/22, three additional agreed statements to be drafted in relation to Articles 1, 2, and 15, and a clause on the preamble to the Treaty recognizing the importance of the DA. The EU and its member States stressed that delegations should work toward finding the proper wording of those agreed statements in line with the international treaties on copyright and related rights. They said that they remained committed to develop that work in the most constructive manner.

120. The Delegation of China commended the Secretariat for the constructive, fruitful and large quantity of work in the past year, which it considered had a positive influence on all parties in deepening their understanding and reaching consensus in the copyright field. It pledged its commitment to continuing its active participation in all the work at WIPO. It supported the decision to hold a Diplomatic Conference on the Protection of Audiovisual Performances and was happy to see that with the joint efforts by all, great progress had been made towards the conclusion of a treaty on audiovisual performances. It said that China was favorably disposed to be the venue of the diplomatic conference, and would discuss it in more details with the Secretariat.

121. The Delegation of Brazil supported the recommendation to hold a diplomatic conference provided that the treaty text be finalized as the 19 Articles provisionally adopted, including the existing Agreed Statements, the new Article 12 agreed to by consensus at SCCR/22, three additional agreed statements to be drafted in relation to Articles 1, 2, and 15, and a clause on the preamble clause recognizing the importance of the DA. Progress on that topic had been possible because Member States had been flexible enough to accommodate the different interests and views on the issue. It recalled that the agreed statements to be drafted in relation to Articles 1, 2, and 15 were an essential part of the treaty and their adequate drafting could guarantee the successful conclusion of the diplomatic conference. Those agreed statements would update the already old 19 Articles agreed some years ago taking into account the political, economical and social developments that occurred since 2000. That would have to prevent the treaty from being old. As to the proposal by the Delegation of Ecuador, the Delegation would support a diplomatic conference to adopt a treaty on limitations and exceptions for persons with print disabilities provided that there was consensus among Member States.

122. The Delegation of Japan supported the reconvening of the diplomatic conference to adopt a treaty on the protection of audiovisual performances. It clarified the relationship of Article 12 and certain provisions of the Japanese existing national law on the exclusive rights of performers. In the last SCCR session, Japan had stated that it did not interpret Article 12 as forbidding other arrangements permissible under the treaty. Japan had stated that comment based on the following understanding. In Article 91 of the Japanese National Law, based on Article 19 of the Rome Convention, the performer's exclusive right to make sound or visual recordings of his/her performances shall not apply to performances which have been incorporated in cinematographic works with authorization of the owner of the right. In other words, under Japanese national law, the performer's exclusive rights cannot be exercised by the performers after the authorization of the performer. Japan expressed its understanding that its national law, particularly Article 91 of its copyright act, is permissible under the treaty. The Delegation stated its understanding that to clarify its interpretation of Article 12 of the draft treaty on the protection of audiovisual performances and to share its understanding among Member States in an appropriate manner is within the range of the mandate of the diplomatic conference. The Delegation looked forward to working with other Member States in reaching consensus on the Agreed Statements to address specific concerns raised by Member States..

123. The Delegation of the Democratic People's Republic of Korea welcomed the various positive developments regarding copyright matters in WIPO. Technology advancements had considerable impact in the production and use of audiovisual performances. Therefore, the Delegation supported the decision to hold a Diplomatic Conference on the Protection of Audiovisual Performances. Member States had taken more than 10 years to bridge their differences regarding the transfer of rights from the performer to the producer. The Delegation hoped that a balanced treaty would be finally adopted in the near future.

124. The Delegation of Paraguay expressed its support to hold a Diplomatic Conference on the Protection of Audiovisual Performances. It supported the suggestion of the Delegation of Ecuador regarding the consideration to hold a diplomatic conference on the limitations and exception for the visually impaired at the same time.

125. The Delegation of Venezuela (Bolivarian Republic of) supported the statement of the Delegation of Ecuador. The Assembly should be consistent in relation to the work on the adoption of treaties, particularly regarding the needs of developing countries. It proposed to try to reach an agreement that would allow the holding of a diplomatic conference on limitations and exceptions for persons with print disabilities. The Delegation had had a reservation regarding the setting up of a date for the Diplomatic Conference on the Protection of Audiovisual Performances last June 2011, but document WO/GA/40/11

contained already a tentative date to hold the meeting. It believed that a similar treatment should be given to the issue of the treaty on limitations and exceptions given the advanced development of negotiations among Member States. A date for a diplomatic conference was also needed in that respect.

126. The Delegation of Mexico proposed to host the future Diplomatic Conference on the Protection of Audiovisual Performances. Given the Delegation of China's similar proposal, it said it was committed to further discuss all options and find a common solution regarding the venue and date of the conference.

127. The Delegation of Bolivia (Plurinational State of) supported the statement of the Delegation of Ecuador to hold a diplomatic conference on limitations and exceptions for the persons with print disabilities. Priority should not be given to the issue of audiovisual performances in detriment of the needs of the visually impaired.

128. The Delegation of Morocco expressed its full support regarding the holding of a Diplomatic Conference on the Protection of Audiovisual Performances. It also proposed hosting the diplomatic conference in Morocco.

129. The Representative of the International Federation of Actors (FIA) expressed its unconditional support to the reconvening of a diplomatic conference that shall finally lead to the acknowledgement at international level of the IPRs of performers on their audiovisual work. That landmark achievement would resolve a discrimination that existed since the early 60's and that had been the cause of much prejudice for FIA's members. With a new WIPO treaty to protect their work, audiovisual performers would finally be granted rightholder status and achieve the level of recognition they so deserved. Audiovisual content was a major driver for technological development, boosting economies but also helping shape social consciousness and improve cohesion in societies. Needless to say, performers were at the very heart of all of that. The new WIPO treaty would finally do them justice and give them the tools they so desperately needed, especially in the digital environment, to preserve their image and reputation; to get a fair reward for their talent and try and make a living of their craft. It thanked all organizations that had been sympathetic to its cause all the way, including when they had other priorities. The new draft treaty would hold a very meaningful combination of rights, both moral and economic, extremely appropriate for the globalized world where content could be made available for millions to enjoy with the click of a mouse. The way the treaty would be drafted would equally do justice to the various legal systems in place.

130. The Representative of the Ibero-Latin-American Federation of Performers (FILAIÉ) highlighted the positive compromise of delegations regarding the reconvening of a diplomatic conference. The excellent legal work done by all parties had contributed to that result. It also congratulated the EU and its member States for having adopted the new 70-year term of protection for sound recordings. It looked forward to continue working in such a positive atmosphere for the next Diplomatic Conference on the Protection of Audiovisual Performances.

131. The Representative of the International Federation of Film Producers Associations (FIAPF) said that what creative producers and production companies in Africa, the Middle-East, Asia, Europe and the Americas, all had in common was a reliance on IPRs to finance and distribute new projects and generate revenues to support the considerable expenditure necessary to develop fresh audiovisual content that will meet audiences' expectations. WIPO was the custodian of a global legal architecture that should serve to incentivize creativity and creative enterprise so that citizens and consumers might continue to access and enjoy a diverse range of audiovisual creations. FIAPF supported the aim of reconvening a diplomatic conference based on the 19 Articles over which agreement already

had prevailed in 2000 and the new Article 12. It called on Member States to work strenuously to reach agreement on the outstanding issues, namely the three Agreed Statements which were added at the last SCCR session. The agenda for the proposed diplomatic conference should be kept strictly to the audiovisual performers' draft treaty. The momentum for achieving consensus on the issue gave reasonable prospects of a successful outcome.

132. The Representative of the Motion Picture Association (MPA) supported the reconvening of the Diplomatic Conference on the Protection of Audiovisual Performances of 2000. It stressed the importance of the agreement achieved on the consolidation of rights in Article 12. That provision should provide sufficient comfort for Member States regarding the national system for the disposition of rights. MPA was convinced that the objective of drafting the Agreed Statements in relation to Articles 1, 2 and 15, and the clause in the preamble on the DA was achievable within the meaning of the understanding reached in June 2011. Failure to reach a consensus on those pending issues would mean also failure regarding a successful outcome. It stressed the importance of not adding more impediments to the long overdue issue of updating the protection of audiovisual performances.

133. The Representative of the Association of European Performers' Organizations (AEPO-ARTIS) commended the excellent work achieved to finally propose the reconvening of the Diplomatic Conference on the Protection of Audiovisual Performances. It was a very important commitment for Member States to protect performers at national level. It recalled that Article 12 did not determine how the rights would be transferred but it contained the organization of that transfer. Consolidation and transfer were not the same thing. AEPO-ARTIS favored the reconvening of the Diplomatic Conference on the Protection of Audiovisual Performances, but also attached great importance to the implementation in national laws once the treaty be adopted.

134. The Representative of Latin-Artis said that a new treaty on the protection of audiovisual performances would benefit the unknown actors. The Representative praised the positive spirit and engagement of Member States and members of the industry to agree on Article 12 in June 2011. It was obvious that the internationalization of audiovisual performances was a reality, more than in 1996 and 2000, and actors remained the only ones without adequate rights so far. A Diplomatic Conference on the Protection of Audiovisual Performances would bring the answer to that question and would strengthen the system of copyright protection as a whole.

135. The WIPO General Assembly decided to hold a Diplomatic Conference on the Protection of Audiovisual Performances in accordance with the recommendations contained in Annex I of document WO/GA/40/11.

#### ITEM 31 OF THE CONSOLIDATED AGENDA

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

136. Discussions were based on document WO/GA/40/7.

137. The Chair of the WIPO General Assembly introduced the document and drew attention in particular to the proposed new mandate of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) for the 2012-2013 biennium, as set out in paragraph 16 of the document.

138. The Secretariat provided additional information on the work conducted by the IGC during the 2010-2011 biennium, notably, four sessions of the IGC and three sessions of the IGC's Intersessional Working Groups (IWGs). The Secretariat thanked His Excellency Ambassador Philip Owade (Kenya), who was the Chair of the IGC for the 2010-2011 biennium, as well as the IGC's Vice-chairs, Mr. José Ramon Lopez de León (Mexico) and Mr. Vladimir Yossifov (Bulgaria), and the various chairs, rapporteurs and facilitators of the IWGs. The Secretariat also thanked the Delegation of Australia for its generous contribution to the WIPO Voluntary Fund for Accredited Indigenous and Local Communities.

139. The Delegation of South Africa, on behalf of the African Group, noted that, in 2009, the Assemblies of the Member States of WIPO had mandated the IGC to undertake text-based negotiations towards an international legal instrument(s) for the effective protection of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs) and to report back to the 2011 Assemblies of the Member States of WIPO which would decide on convening a diplomatic conference. The African Group briefly assessed the IGC's work in executing the mandate given to it in 2009. It recognized that the IGC had made significant progress in advancing text-based negotiations on TCEs and TK in the past two years. Even though the mandate of the IGC stated that norm-setting had to advance equally on all three substantive issues, the negotiations in the past two years had focused significantly on TK and TCEs with GRs lagging behind. The African Group had always maintained the position that the three issues should be accorded equal treatment. Given that view, the African Group had submitted a proposal (document WIPO/GRTKF/IC/17/10) at the seventeenth session of the IGC to direct the IGC's work on GRs. That proposal had built on the submissions made by the Delegations of Switzerland and of the EU on a disclosure requirement. The proposal had called for text-based negotiations on a mandatory disclosure requirement and further identified other options pertaining to defensive protection and mutually-agreed terms as supplementary work that the IGC could undertake on GRs. The African Group had believed that its proposal could contribute significantly to guiding the work of the IGC toward developing a text on GRs focusing mainly on a mandatory disclosure requirement. Regrettably, that proposal had been ignored in the IGC, with the text-based negotiations on GRs confined to discussing objectives and principles. Although the IGC was requested to submit to the 2011 Assemblies of the Member States of WIPO the text(s) of an international legal instrument(s) which would ensure the effective protection of GRs, TK and TCEs, given the current state of negotiations in the IGC, the African Group recognized that the texts on all three issues had not been sufficiently developed to recommend a diplomatic conference to this General Assembly. Naturally, that meant that the mandate of the IGC had to be renewed. At the 19<sup>th</sup> session of the IGC, the African Group had engaged in negotiations in a group called "the Friends of the Chair" assembled by the Chair of the IGC, Ambassador Philip Owade, tasked with negotiating the terms of reference for the new mandate. It was pleased that the IGC had managed, on its own account, to agree to the terms of reference for the new mandate without deferring the negotiations to the Assemblies of the Member States of WIPO. The African Group wished, however, to place on record that agreement on holding a diplomatic conference had been the subject of intense negotiations in 2009. The Group urged Member States to refrain from making attempts aimed at deleting key elements of the 2009 mandate, which constituted the basis of negotiating future mandates of the IGC. The African Group supported the new mandate simply because it reflected the key elements of the 2009 mandate, chief among which was a diplomatic conference. The African Group expected all Member States to respect and remain truthful to the agreements negotiated in WIPO. It wished for the IGC to implement fully the new mandate focusing on providing equal treatment to all issues, however, with more emphasis on text-based negotiations on GRs. The African Group welcomed the three thematic sessions on the three areas of negotiations, as well as the eight days allocated to the thematic session to expedite the negotiations on GRs. Member States were encouraged to utilize those thematic sessions optimally to realize the overall objective of producing text(s) of an international legal instrument(s) for the effective protection of GRs, TK and TCEs. The

African Group remained committed to preventing the misappropriation of African indigenous knowledge without appropriate benefit-sharing. Continued momentum and political will were necessary for the IGC to fulfill its new mandate and to present a comprehensive negotiated text(s) to the Assemblies of the Member States of WIPO in 2012. The African Group remained positive and expected the IGC to conclude negotiations of an international legally-binding instrument(s) without any further delay. It wished the Assemblies of the Member States of WIPO in 2012 to decide on a diplomatic conference to be held in 2013. In conclusion, the African Group expressed its heartfelt gratitude to the outgoing Chair of the IGC, Ambassador Philip Owade, for the excellent chairing of the IGC over the past biennium. The IGC had done exceptionally well under Ambassador Philip Owade's leadership as evidenced by the texts developed for TCEs and TK, as well as by his facilitation of the successful negotiation of the terms of reference of the new mandate in the IGC, a feat outlined by many as exceptional and unprecedented in the history of the IGC. The African Group beamed with pride at Ambassador Philip Owade's accomplishments and wished him well in his future endeavors.

140. The Delegation of Panama, speaking on behalf of the Group of Latin America and Caribbean Countries (GRULAC), recognized the progress made at WIPO in relation to TK, GRs and TCEs and supported the recommendation to renew the mandate of the IGC. GRULAC underscored its interest in reaching agreement on those issues, which would enable the establishment of links between IP and biodiversity in order to protect and make best use of its genetic and cultural wealth.

141. The Representative of the EU, speaking on behalf of the EU and its member States, recognized the importance of the work carried out by the IGC. He welcomed the outcome of the work of the IGC under the mandate adopted by the Assemblies of the Member States of WIPO in 2009 and expressed its satisfaction with the considerable advancement of the work on draft articles for the protection of TCEs and TK. In particular, during the last session of the IGC, thanks to the hard and dedicated work of the teams of facilitators, the number of options and alternatives in both texts had been significantly reduced. Progress on GRs, as well as the efforts of the facilitators to reduce the number of options of objectives and principles, also deserved words of gratitude and recognition. The EU and its member States proposed that the next IGC consider whether the texts of the facilitators should be regarded as working documents. However, much substantive work still remained to be done in order to reach a successful conclusion. Therefore, the EU and its member States supported the recommendation for the 2011 Assemblies of the Member States of WIPO to renew the mandate of the IGC for the 2012-2013 biennium, which provided for continuing work on text-based negotiations, convening four sessions of the IGC, three of which would take place in 2012 and which would focus on each issue separately, and the last one taking place in 2013, which would consider the decision of the 2012 Assemblies of the Member States of WIPO and take stock of further work required. The EU and its member States strongly believed that structuring further work in that way would better serve the objective of the negotiation which was reaching agreement on a text(s) of an international instrument(s) ensuring the effective protection of GRs, TK and TCEs. The EU and its member States would, however, like to reiterate their understanding that such an international instrument or instruments should be flexible, sufficiently clear and non-binding. They remained committed to contributing constructively to the work of the IGC, in order to reach the goals set under its new mandate. Therefore, they continued to be open and willing to collaborate with all delegations to finding ways to achieve tangible results.

142. The Delegation of China appreciated the constructive work done by all delegations and the IGC's positive progress on all three issues in the past two years. The Delegation was pleased to see that the text-based negotiations had been very fruitful. The Delegation believed that the renewal of the mandate and the continuation of text-based negotiations would positively promote the work of the IGC so as to achieve the expected objectives.

Therefore, it endorsed the recommendation on future work, and expected that all delegations would continue to collaborate to achieve substantive results as soon as possible.

143. The Delegation of India, speaking on behalf of the DAG, thanked the Secretariat for the efficient organization of the IGC meetings, which included both meetings of the IWGs and formal sessions of the IGC during the 2010-2011 biennium. The DAG thanked the outgoing Chair and Vice-chairs of the IGC for their excellent work. It attached great importance to the work of the IGC, as the protection of GRs, TK and TCEs was a national priority for its members. Hence, the DAG was firmly committed to contributing substantially to the fulfillment of the mandate of the IGC and welcomed the proposed renewal of the IGC's mandate. The IGC had made significant strides during the past biennium. These included the holding of three meetings of the IWGs and four regular sessions of the IGC. These sessions, particularly the IWGs, had contributed immensely to developing legal texts for TCEs and TK instruments. It had been not only a busy but also a productive year for the IGC. The Delegation was pleased that the TCEs and TK texts had advanced a great deal resulting in some articles being rationalized and subsequently reduced to fewer drafting options. The DAG was hopeful that the future work of the IGC, if organized optimally, would culminate in the further narrowing down of options and thereby facilitating the finalization of the texts for TK and TCEs. It believed that while the organizational aspect did contribute to the outcomes, it was the political commitment of WIPO Member States that would enable finalization and adoption of the texts. The DAG hoped that the increasing level of engagement seen in the biennium would not only continue but further strengthen. It noted that another positive development was the fact that the terms of reference for the new mandate of the IGC had been successfully negotiated at its 19<sup>th</sup> session in July 2011. That had been an unprecedented achievement that all WIPO Member States should deservedly be proud of. The DAG was pleased that the new mandate provided for thematic IGC sessions that would result in all three issues receiving equal treatment. It was also pleased that those thematic sessions would focus specifically on articles where there were wide divergences, with a view to further streamlining the texts by crystallizing divergent views into two or more alternative options. While progress had been made in TK and TCEs negotiations, the IGC had unfortunately not been able to embark on text-based work on GRs as mandated by the 2009 mandate. The DAG considered it essential to advance work on GRs with the inclusion of a mandatory disclosure requirement. It looked forward to developing a legal text on GRs as called for in the new mandate, and hoped that all three texts would be presented at the 2012 Assemblies of the Member States of WIPO so that a diplomatic conference would be convened in this biennium to adopt a legally-binding international instrument(s). The DAG stated that it valued the participation of indigenous and local communities in the IGC sessions and appreciated their contribution to the ongoing discussions. The Voluntary Fund which had been set up to assist representatives of those groups to participate in IGC meetings enabled a number of them to attend and contribute to past IGC sessions. Given the diminishing reserves in the Fund, it encouraged Member States to contribute to the Voluntary Fund. In that context, it commended the Government of Australia for contributing 100,000 Australian Dollars. In conclusion, the DAG endorsed the new mandate of the IGC and hoped that it would expedite the negotiations towards the conclusion of a legally binding instrument for the protection of TK, TCEs and GRs, without any further delay.

144. The Delegation of Paraguay associated itself with the statement made by the Delegation of Panama speaking on behalf of GRULAC. It was pleased with the consensus reached in the IGC and considered it very important that the mandate of the IGC be extended. It hoped that an agreement on a legally-binding instrument could be reached on GRs, TK and TCEs. The Delegation considered that negotiations should continue and stressed that some of the texts were mature enough to make progress. It wished to see greater flexibility on the part of certain delegations. A clearly defined timetable had been established for the next biennium. However, political will was needed to achieve specific



results. It was concerned that positions were not sufficiently close together. It did not agree on extending the mandate every two years with the same terms of reference. It expected that the next Assembly would be in a position to convene a diplomatic conference. It wished other delegations success in the work of the IGC in the next biennium.

145. The Delegation of Switzerland supported the work done by the IGC, and welcomed and endorsed the progress made over recent years. The IGC had really moved the work forward on TK, TCEs and GRs. Those good results were certainly due to a spirit of dialogue and constructive discussion, but the IGC had not yet completed its task and there were major issues that still needed to be discussed. It thus needed to continue and intensify its work. At its 19<sup>th</sup> session, the IGC had agreed on the renewal of its mandate. The Delegation welcomed the compromise reached for the 2012-2013 biennium. It supported that decision and the extension of the mandate, so as to continue and complete the work which was of great importance. The time had then come to reconcile the differences that continued to exist within the IGC and to come to an understanding. That would only be possible if all Member States were willing to compromise. It attached basic importance to the participation of indigenous representatives at all the meetings where their rights and interests were discussed. Their participation in the future work of the IGC would be essential to finding appropriate and practical solutions for the protection of TK, TCEs, and GRs. With respect to the future IGC meetings, it was important to note that the Voluntary Fund no longer had the necessary resources to ensure the participation of indigenous representatives. It therefore invited all Member States and other possible donors to contribute to the Voluntary Fund as Switzerland had already done on two occasions, to ensure the effective participation of indigenous observers.

146. The Delegation of Algeria thanked the Secretariat for the excellent organization of the meetings of the IGC and for preparing the relevant documentation. The Delegation aligned itself with the statements made by the Delegation of South Africa on behalf of the African Group and the Delegation of India on behalf of the DAG. It stated that the IGC was symbolic of the balanced approach taken to its work by WIPO and that the IGC, together with the CDIP, characterized a development-based approach which the Member States wished to give to the work of WIPO, in particular by having adopted the WIPO DA. The Delegation wished to recall that the IGC was set up on the basis of a proposal from the African Group, and that, since then, the African Group had worked continuously to submit proposals to the IGC which had served as a basis for its work. The Delegation noted that it had participated in those efforts very actively and would continue to do so in the future. The Delegation also noted with satisfaction the scope of the work accomplished during the meetings of the IGC and at the IWGs. Those had made an enormous contribution to the development of legal texts on TCEs and TK. It was confident that the negotiating format adopted would make it possible to make further headway in the negotiations. The Delegation, however, remained very concerned with the negotiations on GRs and urged that the next meetings be used to make further progress on this issue. The Delegation welcomed the fact that the terms of reference for the new mandate of the IGC had, for the first time, been successfully negotiated during the last session of the IGC. It reiterated its desire to see the negotiations in the IGC have a successful outcome, being the adoption of one or several legally-binding international instruments to protect GRs, TK and TCEs against illegal appropriation and abusive exploitation of the cultural and scientific heritage. The Delegation supported the renewal of the mandate of the IGC for the 2012-2013 biennium. That would enable the continuation of fruitful consultations and achieve specific results for the protection of GRs, TK and TCEs. The Delegation expressed its gratitude to the Delegations of South Africa and Indonesia for their substantial contribution to the organization of regional meetings towards making more headway to ongoing negotiations on those issues.

147. The Delegation of Sri Lanka aligned itself with the statement made by the Delegation of India on behalf of the DAG. It noted that the issues of TK, TCEs and GRs were important to Sri Lanka and, therefore, the Delegation attached great significance to the work of the IGC. It took note of document WO/GA/40/7, and was pleased with the forward movement of the work of the IGC. While acknowledging the complexity and sensitivity of the issues involved, it believed that much progress had been achieved during the recent meetings of the IGC, particularly with regard to TCEs and TK. It remained hopeful that similar progress would be made in the negotiations on GRs that would ultimately lead to the finalization of an international legal instrument(s) for the effective protection of TK, TCEs and GRs. The Delegation supported the renewal of the IGC's mandate for the 2012-2013 biennium and was pleased with its work program which would accelerate the work of the IGC towards a tangible outcome.

148. The Delegation of Brazil aligned itself with the statement made by the Delegation of India on behalf of the DAG and to the one made by the Delegation of Panama on behalf of GRULAC. It took note with satisfaction of the report on the work of the IGC since the last Assemblies of Member States of WIPO. It noted in particular the results achieved by the three IWGs that had taken place since July 2010. Those meetings had been very helpful for settling remaining technical doubts and for providing creative solutions for the ongoing negotiations. Despite recognizing that good progress had occurred since the approval of the current mandate of the IGC, the Delegation was concerned that negotiations were not advancing as fast as needed. Efforts made so far were commendable and demonstrated that the IGC had been able to advance the discussions on the effective protection of TCEs, TK and GRs. However, the time had come to undertake additional and stronger efforts with a view to concluding those negotiations, according to the mandate of the Assemblies of Member States. The work of the IGC had to complement related developments taking place in other organizations, such as the Convention on Biological Diversity (CBD) and the World Trade Organization (WTO). In that regard, it recalled the need to make the IP system compliant with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, adopted in 2010 (the Nagoya Protocol). The establishment of a mandatory disclosure requirement for patent applications involving GRs and associated TK was the best solution to be delivered by the IP regime in contribution to the fight against the theft of cultural and genetic heritage, a problem that affected traditional communities and nations all over the world. Finally, the Delegation recalled that the ongoing negotiations in the IGC were of special interest to developing and least developed countries. They were in line with the WIPO DA principles and objectives. In order to be effective and inclusive, the IP regime had to benefit all Member States and society as a whole, and not only those most innovative economies and sectors. Concrete results in the negotiations in the IGC would contribute to the balance of the IP system.

149. The Delegation of El Salvador stressed the importance it attached to the work of the IGC. The IGC, set up by a group of developing countries, had worked very hard to bring about effective protection for TK, TCEs and GRs in the international context, so that there were equitable results for all Member States. It had supported and would continue to support the work done by the IGC. It associated itself with the statement made by the Delegation of Panama on behalf of GRULAC with respect to the renewal of the mandate of the IGC for the next biennium.

150. The Delegation of India appreciated the efforts put in by the Secretariat to facilitate the deliberations on a legal instrument on GRs, TK and TCEs, following the mandate in 2009 for text-based negotiations, as well as for organizing the meetings of the IGC and the IWGs. The Delegation assigned great importance to the work of the IGC in developing legally-binding instruments for providing effective protection to TK, GRs and TCEs. At the national level, India had taken a number of steps, which included the creation of a legislative framework protecting TK and legislation such as the National Biodiversity Act, the Patent Act,

the Plant Varieties Protection Act, the Forest Act and the Forest Dwellers' Rights Act, which incorporated provisions aiming at protecting TK. In addition, the Traditional Knowledge Digital Library (TKDL) was a pioneering initiative in the defensive protection of India's TK, specifically that related to traditional medicine. The TKDL was a tool to enable patent examiners to examine claims of novelty made in patent applications. Through the TKDL, India had succeeded in the cancellation, withdrawal or modification of claims in a number of patent applications in different patent offices in the world. However, new patents, misappropriating TK, continued to be filed. Besides, India had to file third-party oppositions to enable patent offices to take cognizance of the database. There was, therefore, an urgent need to have a legally-binding international instrument on GRs, TK and TCEs. The Delegation was pleased with the progress made in the IGC, particularly in the past year, which had resulted in two comprehensive texts on TK and TCEs. Recognizing the importance of initiating constructive deliberations on GRs, the like-minded developing countries, of which India was part, had tabled a text on GRs, in addition to texts on TK and TCEs. It hoped that those documents, included as working documents of the IGC, would facilitate progress on the three issues. It welcomed the proposal of the IGC for the renewal of its mandate for the 2012-2013 biennium, particularly its well-defined work program. The Delegation hoped that the latter, which allowed three separate thematic sessions in 2012, would enable intensive deliberations, facilitate focused discussions on each issue, and assist in building consensus. Considering the need to make substantial progress on GRs, the Delegation was happy to note that the next session would see deliberations for a longer period of eight days. As one of the countries that continued to be the most affected by misappropriation and biopiracy, it attached great importance to the early finalization of an international legally-binding instrument or instruments on all three issues and the convening of a diplomatic conference within the 2012-2013 biennium.

151. The Delegation of Oman expressed appreciation for the efforts made by the Director General and the Secretariat to foster progress in the work of the IGC. The Delegation wished to support the statements made on behalf of the Arab Group and the Asian Group, and welcomed the consensus among Member States, at the IGC's 19<sup>th</sup> session, to renew its mandate. The Delegation recommended the continuation of text-based negotiations in order to agree on an international legal instrument or instruments that would secure effective protection for GRs, TK and TCEs. The Delegation also supported the convening of a diplomatic conference in 2012. Recognizing the role of TK registration and documentation, the Delegation highlighted the outcome of the International Technical Workshop on Documentation and Registration of Traditional Knowledge and Traditional Cultural Expressions (Muscat, June 26 to 28, 2011) that had been organized by WIPO in cooperation with the Public Authority for Craft Industries (PACI) of Oman. The Delegation stated that the report of the meeting (document WIPO/GRTKF/IC/19/INF/10) confirmed the importance of TK, TCEs and GRs registration and documentation in order to complete the setting of norms and rules that were required for the protection of TK, TCEs and GRs. Oman had submitted a proposal to the IGC with regard to the establishment of an international register for the protection of TCEs, TK and GRs. The Delegation recommended the report of the International Technical Workshop for discussion by the 21<sup>st</sup> and 22<sup>nd</sup> sessions of the IGC with a view to adopting recommendations and considering their introduction into relevant legal instruments. The Delegation looked forward to further technical assistance from the Secretariat in crystallizing the said proposal into an appropriate legal formula.

152. The Delegation of Ecuador supported the statements made respectively by the Delegation of India on behalf of the DAG and by the Delegation of Panama on behalf of GRULAC. Ecuador was a country vastly endowed with natural and cultural resources, which it wanted to preserve, promote and protect as part of its heritage, sovereignty, ancestral identity and history. Those resources were renewable and constituted valuable assets that Ecuador could use in order to improve its people's quality of life. The Delegation thanked the Member States for their work in the IGC and expressed support for the renewal of the IGC's

mandate in view of building an international legal system that would protect the natural and cultural heritage of all countries and, in particular, of megadiverse countries like Ecuador. It requested that this future system be legally-binding and include such provisions as a disclosure of origin. It did not support the continuation of the IWGs as those bodies had tended to become repeated versions of the IGC despite the efforts made by some small developing countries as Ecuador to assign experts for each issue. The Delegation said that it was in its country's interest that those issues continued to be tackled in WIPO, as IP was pivotal in protecting natural and cultural resources. It hoped that WIPO would meet Member States' expectations in that regard in a fair, equitable and inclusive way. The Ecuadorian Institute of Intellectual Property was in the process of developing several scenarios regarding the elaboration of a draft law that would preserve, promote and protect TK, TCEs and TK-related GRs. The Delegation added that the country was presently mapping the institutional framework in order to ensure holistic coordination of all stakeholders involved. It recalled that Ecuador was providing capacity-building facilities to communities, civil society and public institutions, had made several publications available on the subject and was working on a national system of registers that included TK, GRs, TCEs, researchers, products that resulted from the research, publications, related patents, etc. Ecuador had begun to work on the creation of a national office to fight biopiracy. The Delegation recalled that Ecuador was among the signatories of most of the relevant international instruments and was about to be among the first countries to submit its instrument of ratification of the Nagoya Protocol. It also mentioned that the national regulation that implemented the Andean Decision 391 regarding a common regime on access to GRs was about to come into force in the following days. Ecuador was evolving into a bio-knowledge society in the framework of an Innovation, Science, Technology and Knowledge National Plan. Ecuador was about to create an Institute of Genomic Biology and had initiated feasibility studies focusing on phytopharmaceutical products. All those endeavors were vested in the Constitution and the National Plan for Well-Being, as Ecuador was fully committed to human and collective rights. Those rights encompassed the preservation and sustainable use of biodiversity as well as cultural diversity, conceived as a source of wealth that would facilitate poverty alleviation, reactivate and support economic development, as well as promote well-being, with the view to reaching the *suma kausay*, that is, a life in plenitude. It therefore postulated that IP and *sui generis* IP systems should serve as a tool for peoples' development. The Delegation was proud to say that its country was taking up the task at home. While it was aware that this task was not an easy matter and solutions could always be improved, it hoped that all those efforts would achieve international and legally-binding protection of TK, TCEs and GRs.

153. The Delegation of Trinidad and Tobago congratulated WIPO and its Member States for their continuing efforts related to the IGC during the 2010-2011 biennium and acknowledged the tremendous amount of progress made during that period. The Delegation joined the other Member States in support of the extension of the IGC's mandate for the next biennium. The task ahead was challenging and extremely ambitious, but a lot of work had already been done regarding the draft articles. It noted that the texts regarding TCEs and TK had started to take shape and looked promising. It looked forward to the objectives put forward for GRs being transformed into a meaningful text. The IGC had been working toward consensus as the successful outcomes of the IWGs clearly demonstrated. It hoped that, through the WIPO Voluntary Fund, wide participation from indigenous groups, whose views had proven to be invaluable, would continue. Just as it had done already at various sessions of the IGC, the Delegation of Trinidad and Tobago emphasized again the importance in its view of protecting indigenous carnival. The Delegation recalled that a model provision titled "works of mas" had been submitted as a drafting proposal to be included in the draft text on TCEs. It added that this provision was part of the Copyright Act of Trinidad and Tobago. It had no doubt that the IGC had crossed several hurdles. The Delegation anticipated that the IGC's mandate be renewed in order to allow the IGC to complete its work and then, hopefully, open discussions on a date for the convening of a diplomatic conference.

154. The Delegation of Japan expressed its appreciation for the tireless and constructive efforts made by Member States to conduct vigorous discussions on those difficult issues and increase mutual understanding and respect for each other's views. The Delegation fully endorsed the proposed recommendation made by the IGC in support of the renewal of its mandate as agreed by consensus at its 19<sup>th</sup> session. The Delegation believed that it was important to make progress on the three issues, namely TCEs, TK and GRs, on an equal footing and to do so patiently, steadily and in a step-by-step approach. The Delegation expressed its commitment to actively and constructively contributing to the discussion on these important issues.

155. The Delegation of Indonesia aligned itself with the statements made by other delegations and expressed its highest appreciation for the work of the IGC during the 19<sup>th</sup> session in July 2011 and the work of the Secretariat in preparing the report of the IGC for the Assemblies of the Member States of WIPO. The Delegation also associated itself with the statement made by the Delegation of India on behalf of the DAG. It looked forward to the Assemblies of the Member States of WIPO supporting the results of the IGC's work and called for Member States' further supportive consideration, with a view to achieving more balanced and comprehensive results on the protection of GRs, TK and TCEs. The Delegation recalled the recommendations of the second meeting of Like-Minded Countries, held in Bali, Indonesia, from June 27 to 30, 2011, adopted by the last session of the IGC, and referred to the unprecedented result on the positions on the three texts which would serve as the basis for future work of the IGC. It also emphasized that the expected results would enhance the work that had been carried out since. The Delegation attached great importance to the effective protection of GRs, TK and TCEs and was committed to continuing and accelerating the work of the IGC to further build up areas of common ground and to finalize the texts. Taking into account recommendation 18 of the WIPO DA, the Delegation urged all Member States to fast-track the process of the IGC in order to fulfill the mandate within the specific agreed timeline. It also wished to see the recent mandate being fulfilled and the result being adopted. It believed that, with such cooperation and flexibility among WIPO Member States, the mandate, which was already a strong basis for the IGC's work, would reach its objectives. The Delegation was confident that a successful and concrete result of the negotiations to develop international legal instruments on the protection of GRs, TK and TCEs would ultimately serve the purpose of creating a more balanced global IP protection system, also for future generations. It concluded with extending its highest appreciation to the Chair of the IGC for having ably led the IGC to its objectives.

156. The Delegation of Papua New Guinea noted the tremendous progress that the IGC had made since September 2009. It also noted the hard work of the members of the IGC. Papua New Guinea and other Pacific Island countries had substantive and critical interests in all aspects of IP and GRs, TK and TCEs. Developments on those subjects were being watched with keen interest. The sooner the IGC concluded its work on all those subjects, the clearer those countries would become about how to address the issues at a national level. Therefore, the Delegation expressed its support for the renewal of the mandate of the IGC for the 2012-2013 biennium, noting specially the schedules and timetables which would guide that mandate.

157. The Delegation of Saint Kitts and Nevis associated itself with the statement made by the Delegation of Panama on behalf of GRULAC and the one made by the Delegation of Trinidad and Tobago. The Delegation welcomed the report of the IGC and commended the considerable progress made so far by the IGC in its attempt to craft a text of an international legal instrument for the protection of TK, GRs and TCEs. The work of the IGC was of great importance to the Delegation. National legislation for the management, development, protection and preservation of its natural resources, TK, traditional cultural resources and biodiversity had so far been mostly effective. The continued flagrant misappropriation and commercial exploitation of natural and cultural resources were of great concern. Issues such

as mandatory disclosure and access and equitable benefit-sharing were critical. Consequently, there was an urgent need to have an international binding agreement. Therefore, the Delegation strongly supported the recommendation for the renewal of the IGC's mandate and hoped that it could reach a consensus on the text of an internationally binding instrument which would ensure the effective protection of GRs, TK and TCEs in the very near future.

158. The Delegation of Panama highlighted that it had been an active participant in the work of the IGC. It welcomed the major advances that had been made and supported the renewal of the mandate for the 2012-2013 biennium, based on the extensive work done to date and on the conditions set out in paragraph 16 of document WO/GA/40/7. It endorsed the statement made on behalf of GRULAC.

159. The Delegation of Mexico said that, bearing in mind that over the last 10 years considerable progress had been made in various international fora and organizations such as the Convention on Biological Diversity (CDB), the Food and Agricultural Organization (FAO) and WIPO, it was satisfied with what had been achieved in the negotiating process within the IGC on GRs, TK and TCEs. It reiterated its commitment to finding the mechanisms which would enable the IGC to reach agreements leading to binding international instruments in respect to GRs, TK and TCEs. The Delegation understood its responsibility as one of the countries which had participated actively in the various negotiating processes and was committed to making them successful. For the Delegation, achieving tangible results from the current negotiating process was a national priority.

160. The Delegation of Argentina expressed its satisfaction with the progress made in the IGC and, in particular, the substantive work done to bring about greater convergence in an area where there was a considerable diversity of views. It was necessary to discuss a framework of reference where GRs, TK and TCEs were considered and where greater legal certainty could be provided to users and providers of those resources. It emphasized that this issue was of importance to them because it was directly related to the general principles of the WIPO DA, in particular recommendation 18 which called on expediting the process of providing protection for GRs, TK and TCEs without prejudice to any particular outcome. It also expressed its support for the renewal of the mandate of the IGC for the 2012-2013 biennium and conveyed the wish to have the future work based on the texts and studies that had already been carried out as well as other contributions by Member States including new inputs for the negotiation on a complex matter which was being looked at by various fora at the same time.

161. The Delegation of Jamaica associated itself with the statements made by the Delegation of Panama on behalf of GRULAC and the Delegation of Trinidad and Tobago, respectively. In noting the report of the IGC, it was pleased that the IGC had made substantial progress in the last biennium where it now had draft texts on TCEs and TK. It commended the Secretariat for the very significant work that had been accomplished. It, however, expressed its disappointment with the slow progress on the draft text on GRs and said that much work still needed to be undertaken. It further reiterated its support for the recommendation that the Assemblies of Member States renew the mandate of the IGC for the 2012-2013 biennium to facilitate four more sessions of the IGC, three of which would be thematic, so as to build on the progress made. In order to maintain the accelerated pace of drafting that had been accomplished during the last biennium, the current Assemblies of Member States should mandate the IGC to submit to the next Assemblies the draft text or texts of an international legal instrument or instruments for the protection of GRs, TK and TCEs. The Delegation also highlighted its concern regarding the need for greater involvement and participation in the negotiation process of indigenous communities as the IGC worked towards the establishment of international norms and treaties for the protection of GRs, TK and TCEs. Accordingly, it asked that due consideration be given to facilitating

the participation of indigenous communities so that their views and concerns could be duly taken into account.

162. The Delegation of Egypt conveyed its gratitude to Mr. Francis Gurry, the Director General, and the Secretariat for the preparation of the report concerning the IGC. It offered its support to the statements made on behalf of the African Group and of the DAG. It said that the IGC as part of its mandate should have submitted a legal text to the current session of the Assemblies, one which would guarantee effective protection of TK, TCEs and GRs, leading to the convening of a diplomatic conference. But, unfortunately, the IGC had not been able to conclude its work in such a way as to make that possible despite the long discussions held and the proposals presented from Member States, the African Group and the Like-Minded Group. It also recalled recommendation 18, which required the IGC to speed up its work in order to provide due protection to GRs, TK and TCEs. Additionally, the Delegation stated that the said issues were of massive importance to the majority of Member States, particularly developing countries. Those countries had a great store of TK and GRs which needed to be protected against misappropriation, exploitation, piracy, etc. It was convinced that IP protection systems, and provisions such as mandatory disclosure requirements, PIC, etc., could play a central role in that area. It also said that it expected WIPO to play an important role in that, given its wide expertise and emphasizing its credibility in the field of treaty making and norm setting. Thanks to the positive contribution by Member States, the IGC had been able to reach agreement on recommendations on the work program for 2012-2013 that had been submitted to the Assemblies for approval. The Delegation fully endorsed the recommendations. It said that the IGC had now the opportunity to work positively and constructively together in an open minded spirit in order to be able to present to the 2012 Assemblies of Member States specific results in the form of binding international legal instrument or instruments. to ensure the effective protection of TK, TCEs and GRs. The Delegation looked forward to working and consulting with all delegations to successfully implement the IGC mandate, thus taking a remarkable historical step, yet feasible with the political will, to protect human heritage of TK, GRs and Folklore.

163. The Delegation of Iran (Islamic Republic of) thanked the Secretariat for its efforts in holding three intersessional and four regular sessions of the IGC during 2010 and 2011. Holding such a number of meetings not only provided Member States the time to deliberate more extensively, but had also thrust the negotiations forward. That was clearly reflected in the progress established in that period. Establishing new international norms was the only way to prevent the current situation of piracy and misappropriation of TCEs, TK and GRs at the international level. That was a long-pending aspiration of developing countries as well as those who valued IPRs. As a result, the Delegation attached great importance to the work of the IGC, which was mandated by the Assemblies of the Member States of WIPO to develop binding instruments for protection of those areas of IP which had been neglected for years. Having those international norms in place would undoubtedly improve the enabling environment of developing countries for their social and economic advancement. The Delegation welcomed the progress in the text-based negotiations in the IGC pursuant to the adoption of its new mandate in 2009. It also endorsed the renewal of the mandate by the current Assemblies of the Member States of WIPO, with the hope that it further expedite the negotiations towards the conclusion of legally-binding instruments for the effective protection of TCEs, TK and GRs. The renewal of the mandate demonstrated the commitment of Member States to the work of the IGC and it was hoped that, with the constructive engagement and goodwill shown by the Member States, there would be a diplomatic conference by 2013 to adopt binding instruments on those important subjects. It was noted that, while progress had been made on TK and TCEs, the IGC had not been able to provide a treaty text on GRs. It was essential to advance work on GRs as well. Therefore, the Delegation called upon the IGC to build upon new international developments, such as the Nagoya Protocol, and to develop new norms on the related issues, such as a mandatory disclosure requirement. While the negotiations in the IGC continued, the Delegation invited

the Secretariat to provide technical assistance to countries in the area of formulating robust national protection systems, as well as for developing new methods for the commercialization of TK and TCEs for the benefit of their holders. That would improve the enabling environment of developing countries for their social and economic advancement.

164. The Delegation of South Africa aligned itself with the statements made by the African Group and by the DAG. The Delegation thanked the Secretariat for organizing the meetings of the IGC in the past biennium, and His Excellency Ambassador Philip Owade for the efficient manner in which he had conducted the sessions of the IGC during the past biennium. The Delegation wished him all the best in his future endeavors. It supported the decision taken at the 19<sup>th</sup> session of the IGC in July 2011 to renew the mandate of the IGC for the 2012-2013 biennium. In its ten year history, it was the first time that the IGC had been able to recommend a decision on the terms of its mandate to the Assemblies of the Member States of WIPO, and this indicated a greater level of consensus. South Africa and other developing countries had for a long time been calling for the international protection of GRs, TK and TCEs. The Delegation considered that the renewed mandate to be adopted at these Assemblies of the Member States of WIPO constituted an important step to accelerate the work of the IGC towards the adoption of an international legally-binding instrument/s for GRs, TK and TCEs. South Africa was of the view that a strong focus of the IGC in the next biennium should be on advancing text-based negotiations on GRs with specific emphasis on a mandatory disclosure requirement in line with the proposal made by the African Group in document WIPO/GRTKF/IC/17/10. In conclusion, the Government of South Africa supported the Voluntary Fund for Indigenous and Local Communities which was aimed at facilitating the participation of representatives of these communities in the work of the IGC. The Government of South Africa believed the contribution of indigenous and local communities was important to the work of the IGC. To that end, the Government of South Africa had contributed to the Voluntary Fund in 2009 and 2011. Given the fact that the Fund was almost depleted, the Delegation encouraged Member States to contribute to the Voluntary Fund. The Delegation commended the pledge made by Australia to the Voluntary Fund during these Assemblies of the Member States of WIPO.

165. The Delegation of Ghana aligned itself with the statement made by the Delegation of South Africa on behalf of the African Group. The Delegation welcomed the progress made by the IGC in its work and recognized the relevance of the work of the IGC. The Delegation was optimistic about the positive outcomes and recognized that the only way to realize this was through the establishment of an international binding instrument to protect TK, TCEs and GRs. The Government of Ghana welcomed and endorsed the recommendation to renew the mandate of the IGC for the 2012-2013 biennium to enable the IGC to complete its work on text-based negotiations with the objective of reaching an agreement on the text(s) of an international instrument which would ensure the effective protection of GRs, TK and TCEs for the possible benefit of Member States as quickly as possible. For Ghana, this was critical, as the country had a rich culture and was well endowed with GRs, TK and TCEs. The country had made efforts over the years to protect the rich culture of the people and, to that end, was a signatory to the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore, adopted on August 9, 2010, at Swakopmund, Namibia, for the member States of ARIPO. In this regard, the Delegation continued to believe in the need to protect TK holders from the infringement of their rights through misappropriation, misuse and exploitation beyond the traditional context. The Delegation looked forward to working with other Member States to move the process forward.

166. The Delegation of Norway stated that it supported the renewal of the IGC's mandate as recommended by the IGC at its 19<sup>th</sup> session. The Delegation noted that Norway had signed the Nagoya Protocol in May 2011, and looked forward to continued constructive discussions on the issue of GRs in the IGC. Developing an international framework within WIPO for the mandatory disclosure of origin for GRs would be instrumental in achieving results. The



Delegation supported the development of internationally legally-binding instruments with regard to both TCEs and TK, provided that these instruments were balanced and a robust public domain was maintained. The Delegation believed that such new developments would stimulate and benefit cultural diversity and innovation and also promote respect and acknowledgement of TK and TCEs.

167. The Delegation of Peru aligned itself with the statements made by the Delegation of Panama on behalf of GRULAC and many other megadiverse countries, and attached great expectations to the work of the IGC towards a legally-binding instrument to ensure the effective protection of GRs, TK and TCEs. In the light of progress made, it supported the renewal of the mandate of the IGC as contained in paragraph 16 of document WO/GA/40/7. It underscored that the IGC should expedite and finalize text-based negotiations while taking into account existing work and avoiding any possible delay. The previously-agreed work schedule should be respected to finalize the legal instrument. The Secretariat should continue to provide technical assistance and funding, in the most efficient manner, of the participation of its experts in the negotiations. The Delegation was fully committed to the process and the efforts made in that area. That would enable implementation of the WIPO DA recommendations, in particular recommendation 18, and ensure that IP played its role as a tool to advance all fields and levels of knowledge.

168. The Delegation of Kenya thanked the Secretariat for the detailed report on the IGC and aligned itself with the statement made by the Delegation of South Africa on behalf of the African Group. The journey towards the protection of TK, GRs and TCEs had been long and difficult, but tremendous progress had been made in the previous year. The Delegation of Kenya appreciated the dedication of Member States and the Secretariat during the sessions of the IGC and the IWGs. The experts from Member States in the IWGs had greatly contributed to the acceleration of the work of the IGC by providing texts for discussion. The Delegation of Kenya supported the recommendation of the IGC to extend its mandate for the 2012-2013 biennium, and to expedite its work on text-based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument (s) which would ensure the effective protection of GRs, TK and TCEs. Therefore, it welcomed the proposed work program.

169. The Delegation of Morocco was grateful to the Secretariat for its efforts in preparing the documents and reports that had enabled the IGC advance its work, and for the good preparation of the previous sessions of the IGC and the IWGs. It supported the statement made by the Delegation of South Africa on behalf of the African Group. The Delegation attributed great importance to the protection of TK, GRs and TCEs. Protection against misuse and misappropriation could not be achieved, unless the IGC adopted a legally-binding instrument, since national legislation alone had been insufficient to protect such resources in Morocco. The Delegation had contributed positively to the work carried out in previous sessions of the IGC and it fully supported to the renewal of its mandate. It emphasized that the flexibility and the constructive spirit within the IGC had enabled it to come up with draft texts which were almost mature on TK and TCEs. With regards to GRs, the IGC should increase its efforts to work on text in order to make progress. The Delegation supported the renewal of the mandate on GRs, TK and TCEs. It hoped that the IGC could agree on a text, as provided by the mandate, and that the General Assembly in 2012 could then finalize the work.

170. The Delegation of Barbados thanked the Secretariat for the report and aligned itself with the statement made by the Delegation of Panama on behalf of GRULAC. It supported the renewal of the mandate of the IGC for the 2012-2013 biennium. In addition, it reiterated that the scope of the beneficiaries in international legal instruments on GRs, TK and TCEs

had to be wide enough. That would facilitate protection in certain small countries, such as Barbados, with no identifiable indigenous peoples but with GRs, TK and TCEs liable to misappropriation.

171. The Delegation of Colombia stated that it was fundamental that work continued on the protection of GRs, TK and TCEs. It stressed that these were of immense value to States and to local and indigenous communities and that they should be protected by a legal instrument so that they could be used properly to meet the growing needs of local and indigenous communities. For that reason, it supported the renewal of the mandate of the IGC. The Delegation paid tribute to the major efforts made to ensure the progress of the text-based negotiations. It hoped that those texts would be binding, and the Delegation expressed its gratitude that the negotiations were taking place in a participatory environment. It hoped that this would continue to be the case and that the interests and viewpoints of Member States and other interested parties would be duly taken into account. The Delegation believed that as its work progressed, the IGC should concentrate more on making balanced progress on all three issues with the objective to get a text on which people could agree and which would recognize States' sovereignty over their resources. In order to do this, the obligation to respect the provisions on access and the agreements which had already been established by individual countries should be very clear. It recognized the need for specific provisions which should provide for mandatory disclosure, and the need to ensure that there was prior informed consent and mutual agreement between those who wished to exploit the resources and the communities who owned them. It believed that these should be *sine qua non* requirements for studying a patent application. It was convinced that a legally-binding text on GRs, TK and TCEs was the best solution for strengthening international protection and ensuring the just use of these resources, so as to conserve and to preserve them over the long term. It insisted on the need for the IGC to continue making progress with the negotiations so that it could reach agreement on, and ensure the entry into force and application of, legal texts which would give protection to TK, TCEs and GRs.

172. The Delegation of the Russian Federation welcomed the extension of the mandate of the IGC for the next biennium. It supported the proposal elaborated at the last session on the mechanisms for organization of work which would accelerate the negotiations in the IGC based on existing texts, with a view to reaching an agreement on a text of an international legal document(s) that would guarantee the effective protection of GRs, TK and TCEs. It believed that the proposed program of work, providing for four sessions of the IGC, three of which would be thematic on GRs, TK and TCEs, would enable the IGC to make progress and to seek balanced and adequate solutions. The Delegation was of the view that the issue of convening a diplomatic conference could be looked at by the General Assembly in 2012 based on the analysis of the texts prepared by the IGC and an evaluation of the progress that would have been achieved by the IGC in its sessions.

173. The Delegation of the United States of America stressed that it had been fully engaged in the work of the IGC. It believed that the work of the IGC had been constructive, and it supported the continuation of that work in the new biennium as recommended by the IGC at its 19<sup>th</sup> session. The Delegation strongly believed that any instrument that came out of the IGC had to avoid a detrimental effect on creativity, cultural preservation and technological innovation, and had to include strong limitations and exceptions, and protect and respect a strong public domain. The Delegation believed that it had made its position very clear in the discussions of the IGC and it looked forward to continuing those discussions in the new biennium.

174. The Delegation of Angola welcomed the efforts made by the Secretariat. It took note of the information contained in document WO/GA/40/7, in particular, the recommendation in paragraph 16 for the renewal of the mandate of the IGC for the 2012-2013 biennium, which it endorsed entirely. The Delegation aligned itself with the statement of the African Group and

wished to pay tribute to the former Chair of the IGC, Ambassador Philip Owade for his efforts and engagement which had allowed the IGC to make progress. It hoped that the new Chair would continue in the same direction in order to reach consensus on this critical and complex matter, to achieve progress in the text-based negotiations of an international legal instrument for protection of GRs, TK and TCEs, and to hopefully convene a diplomatic conference in the next biennium.

175. The Delegation of Canada welcomed the statements made by the Delegations of Japan and the United States of America. The Delegation supported the recommendation of the IGC to the General Assembly, regarding the renewal of the mandate of the IGC as set out in document WO/GA/40/7. The Delegation reiterated the importance of sound working methods and the need to advance all three subjects on an equal footing. The Delegation remained committed to the IGC process and looked forward to continuing its work. It thanked the Secretariat for its support as a part of the IGC process.

176. The Delegation of Saint Lucia endorsed the statements made by the Delegation of Panama, on behalf of GRULAC, and by other delegations from the Caribbean which had expressed their support in the area. The Delegation noted that Saint Lucia was among the countries which had hosted fact-finding missions in 2009, and expressed its support for the work of the IGC in respect of TK, TCEs and GRs. It was pleased with the progress of the IGC's work in drafting legal texts which would create a legal framework for the protection of TK and TCEs against misappropriation and piracy. With regard to GRs, the Delegation was ready to embrace pending work which would advance the implementation of the relevant legal instrument to afford the protection required for GRs.

177. The Delegation of Nigeria was pleased to note the remarkable progress made at the IGC and supported the statement made by the Delegation of South Africa on behalf of the African Group. It also joined other delegations in commending Ambassador Philip Owade for having steered the IGC in such an efficient and constructive manner. While the Delegation was pleased with the advances already made in formulating appropriate texts for the protection of TK and TCEs, it was regrettable that the same level of success had not been achieved for GRs. It however remained optimistic that the issues would receive positive action from Member States within the renewed mandate. It joined other delegations in their support for the extension of the mandate of the IGC for the next biennium, and hoped that more commitment would be shown, particularly on the question of mandatory disclosure. It was encouraged by the positive spirit of cordiality and flexibility displayed in the last meetings of the IGC, which had enabled its members to agree on its terms of reference without pushing the assignment to the Assemblies of the Member States. It hoped that the spirit would be sustained in future meetings. It thanked those Member States that had helped to facilitate the participation of indigenous communities and thanked the Secretariat for fostering the wide participation of Member States in the work of the IGC. It also commended the Government of Australia for its renewed commitment to the Voluntary Fund.

178. The Delegation of Thailand, in supporting the statement made by the Delegation of Pakistan on behalf of the Asian Group, thanked the Secretariat for the report on matters concerning the IGC. It was pleased to note that the IGC had made considerable progress under its 2010-2011 mandate. The Delegation observed that the IGC had an intensive work program, with both the regular sessions as well as IWGs. It said that it had actively participated in the work of the IGC and would remain committed to supporting the IGC process in every way it could. In addition, it affirmed its support for the renewal of the IGC's mandate and an acceleration of its work to develop an international legal instrument or instruments for the effective protection of GRs, TK and TCEs and looked forward to continuing and concluding the negotiations in the IGC. It said that although there were a number of substantive issues that still needed to be tackled, all the key issues were currently on the table. The IGC was moving and had to move from the stage of stating national

positions towards the stage of finding possible compromises and common grounds. It stressed that, with a clear and more focused work program, the new mandate would allow the IGC to intensify its work and, hopefully, bring the IGC closer to an outcome acceptable to all. In this regard, the IGC needed to work to consolidate the various options on the table in order to advance towards consolidated texts. Further, the Delegation said that it was important for all to move on the basis of greater consensus and build up areas of common ground, while narrowing divergences. To this end, there had to be more active engagement by all Member States, more cross-regional dialogues and, most importantly, the needed political will. It was its hope that under the new mandate, the IGC would have a successful conclusion.

179. The Representative of the International Video Federation (IVF) acknowledged the progress reached by the IGC, including on the protection of TCEs. While he agreed that a successful outcome was long overdue, he urged Member States not to rush into solutions without having fully assessed implications in the real world. He welcomed therefore the renewal of the IGC's mandate in order to allow for more time to carefully consider options and their implications.

180. The Representative of the International Committee for the Indigenous Peoples of the Americas (INCOMINDIOS) stated that indigenous peoples' representatives had made it clear at the 18th and the 19th sessions of the IGC that their equal participation was necessary to protect their interests in developing the international instrument(s) on TK, TCEs and GRs. He interpreted subparagraph (f) of the decision for the renewal of the mandate of the IGC to mean that the General Assembly would give the IGC the authority to enhance the level of participation of indigenous peoples who were recognized as having the right to self-determination. He referred to the Article 1.2 of the Charter of the United Nations and noted the need for the level of participation to be equal to that of States. He also referred to the final report by Professor Miguel Alfonso Martinez stating that States needed to provide unassailable proof that indigenous peoples could be justifiably denied their level of recognition as peoples under the Charter of the United Nations and international law and with that their equal right to self-determination as peoples. He found it necessary to make this intervention given that indigenous peoples were not able to participate in the development of the decision for the renewal of the mandate of the IGC, and reserved the right of indigenous peoples to participate equally as subjects of international law.

181. The WIPO General Assembly took note of the information contained in document WO/GA/40/7, and decided to renew the mandate of the IGC for the 2012-2013 biennium on the terms set out in paragraph 16 of the said document.

## ITEM 32 OF THE CONSOLIDATED AGENDA

### COMMITTEE ON WIPO STANDARDS (CWS)

182. Discussions were based on document WO/GA/40/17 and a non paper containing a draft text which had been circulated prior to the discussion and reflected the outcome of consultations held by certain delegations.

183. The Secretariat briefly introduced the document and read the draft text of the non paper.

184. The Delegation of the United States of America, speaking on behalf of Group B, stated that Group B was pleased with the clarification of the Committee on WIPO Standards (CWS) mandate. The Delegation further stated that the clarification would enable the Committee to continue its very important work pursuant to paragraphs 11 to 16 of document WO/GA/38/10, and the Secretariat to continue its work in delivering technical advice and assistance to IP

Offices. The Delegation also looked forward to a greater participation by Member States in the CWS sessions and the e-forum.

185. The Delegation of Poland, speaking on behalf of the EU and its member States, expressed its satisfaction with the clarification of the mandate of the CWS as contained in the non paper which was circulated. It stated that it was now clear to WIPO Member States that the CWS, as the continuation of the Standards and Documentation Working Group (SDWG), would continue to work on the revision, development and follow-up of WIPO standards, while participation of experts from developing countries would be facilitated within existing budgetary resources. The Secretariat would endeavor to provide technical assistance on projects regarding dissemination of IP standards information and report regularly on this to the CWS and the General Assembly. The EU and its member States looked forward to agreeing in the next session of the CWS, in 2012, to organizational matters and special rules of procedure.

186. The Delegation of India, speaking on behalf of the DAG, stated that the Group was pleased to see that the mandate approved for the CWS by the General Assembly in 2009 had been reaffirmed this year. The Delegation welcomed the clarification of the Committee's mandate in terms of its technical assistance and capacity building activities and was particularly happy to see that funded assistance would be extended by the Secretariat to facilitate greater participation of technical experts from LDCs and developing countries in the standards setting body. The Delegation stated that the Group saw the usefulness of the technical work related to information technology standard setting undertaken by this new Committee, and was pleased with the clarification of the CWS's mandate provided by this Assembly which would enable it to commence its work. The member States of the DAG reiterated their commitment to constructive engagement in this new Committee. The Delegation also thanked the Chair for facilitating consultations with a view to finding an agreeable way forward on the clarification of the mandate. Finally, the Delegation also expressed its sincere appreciation to the Coordinator of Group B, the Delegation of the United States of America, for its open and constructive approach.

187. The Delegation of South Africa, speaking on behalf of the African Group, added its voice in thanking the Chair for managing this process so efficiently. The Delegation welcomed the clarification of the mandate of the CWS. The Delegation stated that the language proposed by the Chair, in consultation with other regional groups, satisfied the African Group as it captured all the elements of the mandate given to the Committee in 2009, especially regarding technical assistance and capacity building. The Delegation endorsed the language that had been proposed.

188. The Delegation of Japan supported the statement of the Delegation of the United States of America on behalf of Group B. The Delegation of Japan highly appreciated the newly tabled note on the mandate of CWS as a result of intensive consultation. The Delegation considered that the new proposed language well clarified the mandate of CWS. The Delegation stated that standards, such as WIPO standards, were technical, but at the same time, were basic components of infrastructure of IP systems which contributed to a wide range of IP offices as well as users of IP systems. The Delegation further stated that the CWS was, in nature, very open to all the Member States like other WIPO bodies were. In this light, the participation of interested delegates should be welcomed, unless the expense for that purpose exceeded the approved budget. The Delegation strongly hoped that the clarification of the CWS mandate was consensually agreed as presented to this General Assembly so that the CWS advance the many tasks in progress

189. The Chair appreciated the good spirit of cooperation among delegations to reach agreement and concluded that the mandate of the CWS was clarified by the text of the non paper as reproduced in the next paragraph.

190. The WIPO General Assembly reaffirmed and clarified its decision regarding the creation and mandate of the CWS at its 38<sup>th</sup> session in 2009, as contained in paragraph 229 of document WO/GA/38/20. The WIPO General Assembly also confirmed and clarified that the core mandate is that which is contained in paragraphs 11 to 16 of document WO/GA/38/10, and further agreed that, upon request from Member States, the Secretariat will endeavor to provide technical advice and assistance for capacity building to IP Offices by undertaking projects regarding dissemination of IP standards information. The Secretariat will provide regular written reports to the CWS on the details of such activities, as well as any other technical assistance and capacity-building activities that it undertakes in connection with the mandate, and provide the same to the General Assembly. The WIPO General Assembly decided that in order to encourage and facilitate the participation of technical experts from developing countries and LDCs in CWS meetings, the Secretariat will extend funding assistance for the participation of LDCs and developing countries, within existing budgetary resources.

#### ITEM 33 OF THE CONSOLIDATED AGENDA

#### INFORMATION REPORTS ON OTHER WIPO COMMITTEES

#### ITEM 33(i) OF THE CONSOLIDATED AGENDA: STANDING COMMITTEE ON THE LAW OF PATENTS (SCP)

191. Discussions were based on document WO/GA/40/8, "Information Reports on Other WIPO Committees", in particular on item 33(i): Standing Committee on the Law of Patents (SCP).

192. The Delegation of Poland, speaking on behalf of the EU and its member States, welcomed the constructive work of the sixteenth session of the SCP, held from May 2 to 6, 2011. The EU and its member States were pleased that delegations agreed to continue discussions in the SCP on the basis of the agenda adopted at the fifteenth session, and expressed satisfaction that topics such as "Quality of Patents, including Opposition Systems" as well as "Client-Patent Advisor Privilege" would be further elaborated and discussed at the following session of the SCP. The EU and its member States also recognized the importance attached to two other topics, *i.e.*, "Exceptions and Limitations to Patent Rights" and "Transfer of Technology". While expressing its appreciation for the inclusion of the topic "Patents and Public Health" in the agenda of the following session of the SCP, the EU and its member States emphasized that the existing work of international organizations, in particular the World Health Organization (WHO) and the World Trade Organization (WTO), needed to be carefully considered to evaluate WIPO's potential contribution to that work. The EU and its member States reaffirmed their commitment to the important work of the Committee and expressed their willingness to participate actively in continuing discussions within the context of an established agenda. They expressed the hope that during its next session, the Committee would be able to agree on a balanced future work program, which would include consideration of international harmonization of patent law.

193. The Delegation of South Africa, speaking on behalf of the African Group, stated that the African Group was of the view that the granting and exercise of patent rights should be consistent with the basic goals and interest of the public, particularly the promotion and protection of public use. In its view, if properly exercised, the patent system could play a significant role in advancing development goals in many developing countries by promoting innovation and creativity, as well as facilitating the dissemination and transfer of technology. The Delegation welcomed the activities undertaken by the Committee last year, among others, on exclusions, exceptions and limitations to patent rights, transfer of technology,

opposition systems and client-patent advisor privilege. The Delegation was pleased that, at its fifteenth session, the Committee had agreed to a balanced work program which included undertaking preliminary work on the topic of "Patents and Public Health". In its view, the patent system should be consistent with the fundamental public policy priorities and, in particular, the promotion of the protection of public health. In that context, the Delegation noted that, at the sixteenth session of the SCP, the African Group and the DAG had submitted a joint proposal for a work program to direct the work of the Committee on Patents and Health. The work program included three elements: (1) the elaboration of studies to be commissioned by the WIPO Secretariat; (2) information exchange among Member States and from leading experts in the field; and (3) the provision of technical assistance to Member States, particularly, developing and LDCs. The Delegation expressed its hope for a constructive discussion on that proposal at the seventeenth session of the SCP. It stated that it was also looking forward to making its contribution to the proposal made by the Delegations of Canada and the United Kingdom on the topic of "Quality of Patents". The Delegation expressed its hope that that particular proposal was not intended at substantive patent law harmonization or creating an international patent. In conclusion, the Delegation stated that the African Group remained positive that the Committee would find an equitable approach to its future work to advance the development of the patent system in a balanced manner to the benefit of all Member States, especially developing and LDCs, by giving due consideration to the DA recommendations. In its view, that would provide developing countries a policy space to design and implement national patent law in a manner conducive to their national development.

194. The Delegation of India, speaking on behalf of DAG, stated that the international patent system was a key element in the IP framework that impacted directly on national socio-economic development and social welfare. The Delegation noted that the fundamental premise of the patent system was that a country conferred an artificial and temporary monopoly on the inventor in exchange for disclosure of the invention to benefit the larger interests of society. The Delegation further stated that there was a growing acknowledgement that the current IP system focused heavily on ensuring rights to IP title holders, without adequately ensuring that the other side of the trade-off was taking place as it should, consequently leading to the concern that the patent system was not working as it had been originally intended. In its view, if the IP system had to thrive and encourage innovation and growth, a goal which was commonly shared and supported, this could only happen if there was a willingness to revise old incorrect assumptions and there was a commitment to improving the system, where needed, both for the benefit of Member States, and for the future viability of the system itself. The Delegation stated that the first step in that direction was a frank discussion and assessment of present-day realities. In its opinion, only through frank discussions on all those aspects a collective will and action necessary for improving the system could be forged. To that end, the Delegation welcomed the analytical and conceptual discussions that had taken place in the last few sessions of the Committee on a range of issues, such as the economic impact of the patent system, anti-competitive practices, standards and patents, alternative models of innovation, etc. In its view, those topics contributed to a more balanced and holistic understanding of many complex aspects of the international patent system. The Delegation further mentioned that the issue of patent quality was one such key issue to address in order to have an effective and credible international patent system. High quality and credible patents was an objective that all countries shared and were concerned about. The Delegation further noted that there was a considerable amount of literature and ongoing debate on that issue, in both developed and developing countries. However, in its view, it was necessary to ensure a shared and common understanding of what was meant by the term "patent quality" before proceeding to the discussion and finalization of a work program in that regard. The Delegation noted the constructive dialogue which had been initiated at the last session of the SCP, and looked forward to the revised proposal to be submitted by the Delegations of Canada and the United Kingdom at the next session. The Delegation expressed its confidence that the SCP

would be able to agree upon a useful and forward-looking work program on the topic of “patent quality” which would contribute to streamlining the international patent system to the benefit of all. The Delegation stated that another critical area was the issue of patents and health, which had seen animated discussions in the public realm and had led to many concrete actions in other organizations, such as WTO and WHO. Noting that WIPO had been conspicuously silent on that issue, the Delegation welcomed the inclusion of that issue into the agenda of the Committee. It further expressed its hope that the time lag in WIPO in addressing that issue would be made up in terms of concrete and meaningful actions in the SCP’s work program and that there would be a genuine and open-minded engagement of all Member States on the proposed work program submitted jointly by the African Group and the DAG in the next session of the SCP. The Delegation stated that, indeed, the improvement of patent quality which aimed to ensure that the public domain was not unnecessarily monopolized by private monopoly rights and the issue of patents and public health, which similarly sought to ensure that private patent rights did not impede larger public access to health, were two sides of the same coin. In its opinion, an objective and constructive consideration of the two issues would contribute to not only improving the patent system, but also to enhance its utility and credibility globally. The Delegation observed that the long prevalent and naive assumption that providing patent holders with stronger rights would, by itself, foster innovation and attract investments had been contested in the light of global economic realities and experiences. The Delegation noted that, while there was universal acknowledgement that the level of IPRs protection and IPRs strategies should be calibrated in keeping with the specific needs and the levels of development in a country, how countries could use exceptions and limitations and other flexibilities to actually do so, had been so far an academic discussion in the Committee. The Delegation expressed its hope that the adoption and circulation of a questionnaire on exceptions and limitations to patent rights at the sixteenth session of the SCP would be the first step towards having a concrete work program, enabling WIPO to play its due role in assisting countries in evolving tailor-made policies in the area of patents. Similarly, more tangible discussions were needed in the SCP on how patents could contribute to better addressing the key challenges facing humanity today in areas such as food and energy security, environment, poverty alleviation, etc. The Delegation expressed its hope that in the days ahead, there would be open and constructive engagement on those important issues. The Delegation underlined that, most importantly, the issue of “transfer of technology” was at the heart of the fundamental trade-off inherent in the patent system. An objective assessment of how the patent system had so far enabled or impeded technology transfer and identification of ways by which WIPO could help the patent system contribute to that goal, was at the core of the Committee’s work. Noting that the past few SCP sessions had seen some useful discussions, the Delegation looked forward to translating those discussions into useful elements of the SCP’s work program. In that context, it looked forward to the revised study on technology transfer and also to the convening of a seminar on patents and technology transfer, on the margins of the upcoming seventeenth session of the SCP. The Delegation stated that the SCP had started an important and necessary discussion on various development-related aspects of the patent system, which were hitherto not fully addressed. It welcomed that positive step and looked forward to a meaningful translation of those discussions into concrete elements of a work program for the Committee. It also expressed its hope that many critical issues that had not yet been addressed in the Committee would become the subject of honest and constructive consideration, leading to their integration in a holistic, development-oriented and balanced work program.

195. The Delegation of Japan congratulated the Secretariat for its hard work and Member States for their constructive participation in the SCP, which had been advancing productive discussions and been producing tangible results. The Delegation expressed its commitment to continuing its constructive contribution to the important patent issues. The Delegation emphasized, in particular, that issues addressed in the SCP should be able to contribute to the recommendations under the WIPO DA. Specifically, the Delegation noted that the



proposal for an SCP work program on quality of patents submitted by the Delegations of Canada and the United Kingdom fully supported DA recommendations 10 and 11, for example. The Delegation reiterated that the SCP should continue to consider critical issues in an efficient and appropriate manner, avoiding duplication within all WIPO bodies.

196. The Delegation of Brazil welcomed the positive evolution of the work of the SCP, in which important interchange of ideas on various aspects of the patent system had taken place. The Delegation considered that such dialogue was very useful for developing countries and could help them to better examine their national standards and legislations. The Delegation observed that the discussions on exceptions and limitations in the SCP represented an important contribution to the implementation of the DA recommendations. Therefore, the Delegation was of the view that studies on that subject should reflect the variety of points of view, showing the flexibilities in the international IP system. The Delegation expressed its support to the proposals submitted to the SCP by the Delegations of South Africa on behalf of the African Group and the DAG regarding a work program on patents and health. The Delegation noted that that subject offered the opportunity of a balanced discussion avoiding the common assumption that higher levels of patent protection were always the only solution regardless of the socio-economic context of the areas involved. In its view, concrete results on access to medicines would therefore reinforce the perception that IP protection as defined in Article 7 of the TRIPS Agreement was effectively contributing to technology promotion, transfer and diffusion. The Delegation observed that such achievement would benefit both producers and users of technological knowledge, combining social and economic welfare with the needed balance between rights and obligations.

197. The Delegation of Sweden supported the statement made by the Delegation of Poland on behalf of the EU and its member States. It welcomed the new constructive atmosphere in the SCP, and expressed its commitment to achieve progress on the agreed work program. The Delegation also highlighted its commitment to further the international harmonization of patent law through the work of the Committee, and was convinced that the latest developments would give those discussions new energy.

198. The Delegation of Norway stressed the importance of the work in the SCP. It considered that the Committee could make progress based on the agreed balanced work plan and move the issues forward in a concrete manner. The Delegation observed that the work in the SCP could build the understanding and trust that was necessary for possible future negotiations in that field.

199. The Delegation of Iran (Islamic Republic of) observed that the SCP should serve as a forum for evolving to a balanced IP regime, and welcomed the balanced work program of the Committee, in which development concerns constituted an essential element. It noted that the agenda of the SCP included transfer of technology and, for the first time, health, which were of great concern for developing countries. The Delegation considered it important that the SCP could develop concrete solutions for the IP-related multi-faceted challenges through setting up relevant guidelines and instruments. The Delegation expressed its hope for integrating discussions on other global challenges, such as climate change and food security, in the work program of the SCP. Given the inherent link between patents and public policy issues, the Delegation pointed out that the inclusion of those issues were essential. The Delegation expressed its belief that the SCP was the most relevant Committee to mainstream development. Through a constructive dialogue on patents and public policy issues, the Delegation observed that the SCP could explore the ways in which the patent system contributed to development in a manner conducive to the social and economic welfare of Member States. Moreover, the Delegation stressed the importance of getting a consensus view of Member States before WIPO was involved in, and contributed to, IP-related issues in other international bodies, such as WHO. In its view, the SCP was the most proper committee for Member States to discuss those issues first. The Delegation

considered that all of those activities should be reported through the SCP annual report to the Assemblies in the form of a description of its contribution to the implementation of the respective DA recommendations in the framework of the coordination mechanism and monitoring, assessing and reporting modalities.

200. The Delegation of the United States of America supported a balanced work program going forward in the SCP. The Delegation expressed its belief that the non-exhaustive list of issues that was appended to the Report on the International Patent System provided a good basis for such discussions, as it contained issues of interest to all Member States. Thus, the Delegation supported further studies of those issues in a balanced manner as a way to reach consensus for the work program that took into account the range of interests represented by Member States. The Delegation aligned itself with the statement made by the Delegation of Japan that the Committee must be mindful of the many projects being undertaken in other WIPO committees, especially in the CDIP, as well as in other international organizations, such as WHO and WTO. In its view, the work undertaken in the SCP should not be duplicative of work being done with other bodies. The Delegation expressed its support for going forward with the agenda that was currently being discussed in the SCP and underscored that it would continue to support those discussions as long as they maintain that balance.

201. The Representative of Knowledge Ecology International, Inc. (KEI) supported the constructive comments made by the Delegation of South Africa on behalf of the African Group and the Delegation of India on behalf of the DAG. The Representative observed that, following the WIPO DA and other reforms over the period of 2003 to 2007, he had expected WIPO to change its role, and to address social concerns about the IP system. However, the Representative noted that, so far, there was scant evidence that WIPO could deliver meaningful outcomes that helped persons who were poor, or curbed abuses of the patent system. He considered that the agenda of the SCP was now more balanced and sensitive to social issues, and hoped that the SCP would produce useful outcomes. On the issue of patent quality, the Representative noted that that was a polite word for addressing the flood of unwarranted, unjustified and unwanted encroachments on the public domain. In his view, the SCP needed to look deeper into why that problem had persisted since the beginning of the patent system, and what measures actually curbed the granting of trivial, non-original and obvious patents. The Representative stressed the need of a best practices guide for avoiding trivial, non-original, obvious patents, and of economic data on the costs of litigating patent validity, by country, to better appreciate the consequences of issuing bad patents in various countries. Regarding patents on health, the Representative stated that both WHO and WIPO played a role, and should collaborate. The Representative particularly supported the completion of WIPO studies on compulsory licensing. Further, he recommended that the SCP collaborate with WHO to provide a report on the unequal access to patented drugs for cancer. Finally, the Representative suggested that the PCT consider an amendment to set aside some of the fees on patents to finance challenges against poor quality patents on medical inventions.

202. The Representative of Third World Network Berhad (TWN) stated that the SCP deliberations should lead to a development-oriented approach which would enhance the capacity of developing countries to use the flexibilities available within the patent regime. Accordingly, the Representative was of the view that the deliberations on patents should be focused on addressing development challenges and not on promoting the efficiency of granting patents that benefited a few. The Representative considered that the recent proposal submitted to the SCP by the Delegation of South Africa on behalf of the African Group and the DAG on patents and health was timely and an important step forward in initiating discussions on patents and public health in WIPO. In her view, access to medicines continued to be a challenge in all countries, but in particular in developing countries, and the recent adoption of the Declaration on HIV/AIDS and Non-Communicable Diseases by the UN

General Assembly attested to this fact. The Representative noted that, in that Declaration, the use of flexibilities had been identified as a critical issue in speeding up treatment. For example, the recent Declaration on Non-Communicable Diseases stated that “promote access to comprehensive and cost-effective prevention, treatment and care for the integrated management of non-communicable diseases, including *inter alia* increased access to affordable, safe, effective and quality medicines and diagnostics and other technologies, including through the full use of trade-related aspects of IPRs flexibilities”. The Representative expressed its belief that it was not only within WIPO’s purview, but that it was also WIPO’s obligation under its numerous basic instruments to take steps to enhance the capacities of developing countries on flexibilities, so that they were able to take steps to combat communicable and non-communicable diseases, as well as scaling up treatment. The Representative stated that accordingly it was important to also address linkages between patents and public health by undertaking studies, collecting data and facilitating access to and exchange of information through the SCP. Finally, the Representative suggested that WIPO’s Division on Global Challenges report to the SCP and be guided by Member States on its patent-related activities, as WIPO claimed it was dealing with challenges such as health, climate and food security.

ITEM 33(ii) OF THE CONSOLIDATED AGENDA: STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS (SCT)

203. Discussions were based on document WO/GA/40/8 “Information Reports on Other WIPO Committees”, in particular on item 33(ii): Report on the Work of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT)

204. The Delegation of India, speaking on behalf of the DAG, said that the Group took note of the progress made with regard to the evolving set of draft provisions on industrial design law and practice, while recognizing that there continued to be divergences on several draft provisions. Given the existing diversity among national systems in this area and the fact that countries would be required to make substantial changes to their national laws to harmonize procedures, the Delegation underlined the need to continue the open and participatory dialogue in the SCT on this issue, before proceeding to the penultimate step of convening a diplomatic conference for the conclusion of an international legally-binding instrument in this regard. The Delegation said that, at the time of the twenty-fifth session of the SCT in March 2011, nearly 88 per cent of the international registrations filed under the Hague system belonged to only three developed countries and the European Community, while there were 29 developing countries and LDCs, out of the 58 member States of the Hague system, that did not have a single registration to that date. The Delegation added that, given this reality, it would be critical to examine how the proposed harmonization of industrial design registration procedures would benefit developing countries and LDCs. The Delegation indicated that it was precisely to address such situations that Cluster B of the DA mandated the integral consideration of developmental considerations. Recommendation 15 explicitly called for taking “into account different levels of development” and for a consideration of “balance between costs and benefits”, and mandated that norm-setting should “be a participatory process, which takes into consideration the interests and priorities of all WIPO Member States and the viewpoints of other stakeholders”. The Delegation recalled that recommendation 17 called on WIPO to “take into account the flexibilities in international IP agreements, especially those which are of interest to developing countries and LDCs”. The Delegation also indicated that recommendation 22 stated that WIPO’s norm-setting activities “should be supportive of the development goals agreed within the United Nations System, including those contained in the Millennium Declaration”, and referred specifically to “the possibility of additional special provisions for developing countries and LDCs”. The Delegation declared that it was therefore pleased to note that the

Secretariat had been tasked with the preparation of an information document on how the DA recommendations, in particular Cluster B, had been mainstreamed with regard to the work of the SCT on industrial design law and practice. The Delegation pointed out that the DAG looked forward to the presentation of this document in the next session of the SCT and to integrating its considerations in the discussions on the proposed norm-setting initiative, so as to ensure that norm-setting in this Committee adhered to the requirements of the DA adopted by the General Assembly in 2007. The Delegation stated that this would also ensure a consensual, smooth and successful outcome to these discussions. The Delegation further indicated that the DAG took note of the discussion proposed to take place at the forthcoming session of the SCT, on the modalities for convening an information meeting on the liability of Internet intermediaries for alleged trademark infringement. The Delegation declared that, as this was an emerging issue that was little understood, the DAG welcomed the decision of the Committee to hold an information session to first listen to different opinions and views on the interface between trademarks and the Internet, and then proceed in a participatory and inclusive manner. In conclusion, the Delegation declared that the DAG remained committed to the discussions in this Committee and would remain constructively engaged in its deliberations.

205. The Representative of the EU reaffirmed the strong commitment of the EU and its member States to the important work of the SCT. The EU and its member States considered effective and efficient design protection to be of increasing importance for fostering innovation and creativity. In this context, they agreed that international harmonization and simplification of design registration formalities and procedures would bring clear benefits to both users and administrations. The EU and its member States therefore welcomed the advancement of the priority work of the SCT on the draft provisions on industrial design law and practice and hoped that it would be feasible to convene a diplomatic conference for the adoption of a design law treaty in the 2012-2013 biennium. The EU and its member States remained committed to contributing constructively to the work of the SCT, and continued to be open and willing to collaborate with all delegations to find ways to achieve tangible results.

206. The Delegation of Brazil expressed its positive views on the exchange of information on industrial designs. The Delegation pointed out that Brazil contributed to this exchange with information on the applicable law and practice in Brazil. The Delegation stated that it considered that the debates were at an early stage, and that more developments were therefore necessary, before all the conditions required to convene a diplomatic conference on the subject were fulfilled. With regard to trademarks and the Internet, the Delegation expressed its hope that there would be a balanced debate at the next SCT session, taking into consideration the complexity of the subject and the new developments. Subjects such as demands for access for Internet by citizens, consumer rights and the possibility of abuse of IPRs, should require more attention. The Delegation declared that, only after a comprehensive discussion of all aspects involved, should a review of the Joint Recommendation be undertaken.

207. The Delegation of Norway declared that it was very pleased to note the considerable progress on the work towards a design law treaty, and that Norway remained dedicated to the goal of moving forward towards a diplomatic conference in the coming biennium. The Delegation further said that the discussions, within the framework of the SCT, on the Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on Internet, of 2001, were stimulating and important, taking into account the ever growing use of Internet in commerce.

208. The Delegation of India declared that it took note of the progress made in the twenty-fourth and twenty-fifth sessions of the SCT. In this regard, the Delegation reiterated its earlier suggestions that there should be focused discussions to see whether there was

agreement among all WIPO Member States about the need of new norm-setting in the area of design registration, considering the diversity among Member States and, so far as the system of design protection was concerned, the fact that less than a third of the Member States of WIPO had adopted the Hague system with an even smaller fraction of it making use of the system. The Delegation said that the attempt at new norm-setting seemed to be a little premature. The Delegation further suggested that, as mandated by DA recommendations 15 and 22, the Secretariat prepare a working document outlining the costs and benefits, taking into account Member States' different levels of development. The Delegation also stated that it was pleased to note that the Committee recognized the need to organize information sessions on the emerging issues of liability of Internet intermediaries for trademark infringement. The Delegation felt that adopting a transparent, inclusive and participatory approach would facilitate the functioning of the Committee. The Delegation declared its readiness to contribute to the discussion in a constructive manner.

209. The Delegation of El Salvador declared its satisfaction with the major headway made within this Committee. The Delegation, indicating that it appreciated the development of work concerning the use of trademarks and signs on the Internet, as well as the work relating to the protection of country names, said that the SCT had prepared valuable documents concerning the protection of country names against their use as trademarks, which were a good platform for the future work relating to this subject. With respect to the work on industrial design law and practice, the Delegation considered that the Committee had reached a level of progress in that work. The Delegation added that, notwithstanding the fact that a large number of delegations asked for a recommendation to be made to the General Assembly to convene a diplomatic conference to adopt a treaty, the Registry would like to finish internal consultations with users, as this would enable to reach consensus on each issue and to guarantee that the work carried by the Registry would be successful. The Delegation expressed the hope that the next meeting of the Committee would give the opportunity to talk about technical issues. The Delegation also suggested beginning an exchange of experiences on the protection of geographical indications under the different national legislations.

210. The WIPO General Assembly took note of the information contained in document WO/GA/40/8.

#### ITEM 33(iii) OF THE CONSOLIDATED AGENDA: ADVISORY COMMITTEE ON ENFORCEMENT (ACE)

211. Discussions were based on document WO/GA/40/8, "Information Reports on Other WIPO Committees", in particular on item 33(iii): Advisory Committee On Enforcement (ACE).

212. The Secretariat explained that the information report in document WO/GA/40/8 summarized the work of the ACE at its sixth session, held on December 1 and 2, 2010, and chaired by Mr. Makiese Augusto. The session had addressed the agreed work program that had focused on four areas: (i) a literature review of methodologies and gaps in existing studies that seek to measure the socio-economic impact of counterfeiting and piracy; (ii) the identification of different types of infractions and motivations for IPRs infringements, taking into account social, economic and technological variables and different levels of development; (iii) targeted studies with an aim to developing analytical methodologies that measure the social, economic and commercial impact of counterfeiting and piracy on societies taking into account the diversity of economic and social realities, as well as different stages of development; and (iv) an analysis of various efforts, alternate models and other possible options from a socio-economic welfare perspective to address the counterfeiting and piracy challenges. Discussions on the work program had been supported by research papers and expert presentations. For its seventh session, the Committee had agreed on a

continuation of the work program, with the exception of the first item which had been completed. The Secretariat referred to views by Member States on the contribution of the Committee to the implementation of the DA recommendations that had been expressed at its sixth session, and that were reproduced in paragraphs 25 and 26 of document WO/GA/40/8.

213. The Representative of the EU, speaking on behalf of the EU and its member States, thanked the Secretariat for preparing and producing various documents for the sixth session of the ACE, and for its extensive activities of technical and legal assistance over the past year. Sustained creativity, inventiveness, creation and innovation were of crucial importance to the economic well-being of every country. IPRs were key business assets which helped to ensure that innovators and creators were incentivized to invest and create, and as such it was important that effective measures were in place to protect these rights. The EU and its member States announced that the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) was proposed to be entrusted with tasks related to the enforcement of IPRs, including the assembling of public and private sector representatives as a European Observatory on Counterfeiting and Piracy. The Observatory would serve as a platform to exchange experiences and information and to share best practices on enforcement. The EU and its member States observed that it was widely recognized that organized infringement of IPRs, in particular counterfeiting and piracy, had become a serious threat to many business sectors, to consumers and governments all over the world, and was currently a global phenomenon. By making use of legitimate developments in communication, technology and transportation, counterfeiters and pirates used intricate supply chains to manufacture, distribute, and sell fake and counterfeiting goods throughout the world. In doing so, they deprived creators of their appropriate rewards, undermined competitiveness, threatened the health and safety of consumers, endangered jobs and blocked needed revenue to public finances. There was an urgent need to support the enforcement of IPRs through better statistics and information about the scope, scale, and impact of counterfeiting and piracy; by improving cooperation through more effective cross border exchanges of information; by improving best practices in enforcement; and by raising public awareness about the growing risks to health and safety. The EU and its member States placed great value on the work of the ACE and therefore urged the Committee to intensify its efforts to build a shared understanding of the effects and impact of IPRs infringements, so that effective prevention and enforcement strategies could be adopted.

214. The Delegation of Japan stressed that it attached a great deal of importance on Building Respect for IP which was one of the most important key concepts of WIPO, guided by not only Strategic Goal VI but also by recommendation 45 of the WIPO DA. It was highly appreciated that, in that context, the ACE had been helping Member States appropriately, and had deepened the understanding of the problem of counterfeiting and piracy. The Delegation reported that the WIPO Japan Office (WJO), established in 2006 by, and run under, the Japan Funds-in-Trust, had been working extensively with the same aim. The Delegation wished to take the opportunity to present the recent activities of the WJO. The preceding week, the winner of an anti-counterfeiting Manga competition, held by WIPO in spring 2011, had been published. It was presently available on the WIPO website free of charge, and printed copies were also available at the CIGG entrance gate. Manga was one of the characteristics of modern Japanese cultures, and had big fans all over the world. The project aimed at raising awareness about the counterfeiting issue through Manga. Currently, only English and Japanese versions were available, but it soon would be translated into other UN official languages. The Delegation encouraged the use of Manga for global awareness campaigns, and hoped that it would be factually helpful for that purpose.

215. The Delegation of Brazil stated that the studies and debates that were being carried out within the ACE represented an opportunity for qualitative change in the treatment of IP enforcement at WIPO. The consensus achieved in the Committee with regard to the work program, based on recommendation 45 of the WIPO DA, had consolidated the ACE as one

of the relevant bodies for the implementation of that Agenda. The Delegation hoped that the ACE, at its next session, would be able to continue with the work of developing reliable methodologies to gauge the economic impacts of piracy and counterfeiting. Such methodologies should consider empirical evidence and take into account the different socio-economic landscapes. The Delegation noted that the studies presented at the sixth session of the Committee had provided opportunities to discuss IPRs infringements under different perspectives. Such a debate reinforced the perception that, in order to face IPRs infringement, a comprehensive policy was necessary that combined, in a balanced way, repressive measures with educational efforts and public policies to foster the creation of formal jobs. The Delegation recalled that IPRs infringements were a global phenomenon which affected all countries, developed and also developing ones. In that regard, there were no “one size fits all” solutions. Each country required specific solutions. The risks associated with a superficial approach were, among others (i) the abuse of IPRs; (ii) the rise of obstacles to legitimate commerce, which had already led to serious consequences in the area of public health, with, for instance, the apprehension of medicines in transit; and (iii) disregard of the due process of law and disrespect for civil rights. The desired results in the area of IP enforcement would have to contribute to the objectives of the IP system, which were the promotion of innovation and technology transfer, to the benefit of both producers and users of technological knowledge. The Delegation concluded that solutions would have to favour socio-economic welfare, as well as a balance of rights and obligations of right owners and of the public in general.

216. The Delegation of India, speaking on behalf of the DAG, welcomed the more holistic approach to the enforcement of IPRs that had emerged in the ACE since its establishment by the 2002 General Assembly. The Delegation was encouraged to see that the discussions on IPR infringements in the 6<sup>th</sup> session of the ACE endeavored to adopt a holistic view in the complex issue of IPR violations and tried to address various aspects of this multi-dimensional problem. The DAG noted that the studies presented during the sixth session of the ACE provided valuable insights on key issues that impacted on the discourse on IP enforcement. In particular, the Delegation was pleased to see a literature review of methodologies and gaps in the existing studies on counterfeiting and piracy, especially acknowledging the need to improve data collection methods, the consideration of socio-economic, technical and developmental variables; the impact of pricing policies and media piracy; and recent research on consumer attitudes *vis-à-vis* counterfeiting and piracy. The Delegation heartily welcomed and encouraged the Secretariat’s initiatives to invite a range of speakers who provide an enriching diversity of views and research findings. This contributed to a more comprehensive and pragmatic understanding of the various aspects of IPRs infringements rather than the conventional and simplistic approach based on the limited perspective of criminal-judicial enforcement which had proved to be inadequate in dealing effectively with the challenge. The studies reflected WIPO’s efforts to develop an inclusive approach in its activities to building respect for IP by taking into account diverse views and opinions on enforcement issues, which constituted a good basis to promote a balanced discussion on building respect for IP. The DAG referred to initiatives to establish stricter IP enforcement rules and procedures outside the multilateral fora, as evidenced from the negotiations of TRIPS-plus bilateral, regional, and plurilateral instruments, which were putting at risk the already limited policy space available to developing countries, and were undermining existing flexibilities needed for the continued development of LDCs and developing countries. The DAG underscored that the identification of the underlying elements to create an enabling environment to promote respect for IP in the ACE should be firmly premised on the objectives of Article 7 of the TRIPS Agreement, as stated in recommendation 45 of the WIPO DA. There was a need to intensify efforts to mainstream the DA recommendations adopted by the WIPO General Assembly in 2007, particularly recommendation 45 on the promotion of technological innovation and transfer and dissemination of technology. Recommendation 45 stated that IP enforcement should be approached “in the context of broader societal interests and especially development oriented concerns, with a view to ensure that the protection and

enforcement of IPRs should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations". The Delegation noted that, while the last session of the ACE made a welcome attempt to address the issue of IP enforcement in the context of broader societal and development concerns, as called by the DA recommendation 45, it considered far from realizing the latter elements of the recommendation, namely, how to ensure that IP enforcement was designed to contribute to the promotion of innovation and transfer of technology. That had become more urgent in the light of the global financial crisis that had further widened the development divide. The DAG concluded that it had shared broad perspectives on the issues under discussion in the ACE, and that it looked forward to the continued dialogue in the next session on the agreed work program that would take into consideration the group's views while respecting those of others. The DAG reiterated its firm commitment to engaging constructively in those discussions.

217. The Delegation of Norway expressed its support to the continued work of the ACE. The Delegation announced that in Norway, there was on-going work in the Ministries of Justice and Culture on proposals to Parliament, both with regard to copyright and IP enforcement. The Delegation was ready to share its experiences in the forthcoming session of the Committee.

218. The Delegation of El Salvador noted that, during the last session of the ACE, the Committee had continued working on substantive aspects such as the analysis and debate of IP infringements in all its complexities, taking into account initiatives such as the request to the Secretariat to carry out an analysis of methodologies and gaps in existing studies; different types of infractions and motivations for IPRs infringements, taking into account social, economic and technological variables and different levels of development; as well as targeted studies on the social, economic and commercial impact of counterfeiting and piracy on societies. The Delegation wished to take the opportunity to report on a workshop on the enforcement of IPRs for prosecutors and the national police that had been held in the capital in September 2011. That workshop had been a helpful activity for developing El Salvador's commercial and IP policies. The Delegation thanked WIPO for its effective support in that work.

219. The Representative of the Third World Network (TWN) referred to recommendation 45 of the WIPO DA. Access to knowledge was an important factor for economic development, and it should not be hampered by enforcement. The Representative proposed that Member States should review the role of WIPO in the organization of the Global Congress on Combating Counterfeiting and Piracy. The ACE should analyze the effects of TRIPS-plus measures in bilateral trade agreements as well as of flexibilities to achieve the objectives of recommendation 45 of the WIPO DA. Public health considerations were often used to promote enforcement. This did not protect health as it could result in undermining access to generic medicines.

220. The Representative of the Knowledge Economy International (KEI) indicated that important initiatives that related to IP enforcement were taking place outside WIPO, such as the Anti-Counterfeiting Trade Agreement (ACTA) and the Trans-Pacific Partnership Agreement. WIPO should get involved in such initiatives to ensure transparency. The Representative proposed that the ACE in its future work should analyze the role of privacy in the context of copyright enforcement; abusive copyright enforcement; as well as the effects of pricing policies and new business models on IP infringements.

221. The WIPO General Assembly took note of the information contained in document WO/GA/40/8.



ITEM 38 OF THE CONSOLIDATED AGENDA

WIPO ARBITRATION AND MEDIATION CENTER, INCLUDING INTERNET DOMAIN NAMES

222. Discussions were based on document WO/GA/40/9.

223. The Chair introduced Agenda Item 38 on the WIPO Arbitration and Mediation Center (Center), including Internet domain names. The Chair noted that document WO/GA/40/9 provides an update on the activities of the Center as an international resource for time and cost efficient alternatives to court litigation of IP disputes, with the Center acting both as a provider of legal and organizational expertise and as an administrator of cases. The Chair noted that document WO/GA/40/9 includes an update on domain name-related activities as previously reported in document WO/GA/39/10, covering the Center's administration of domain name cases as well as selected policy developments, in particular concerning rights protection mechanisms for the introduction of new generic top level domains (gTLDs), the emergence of internationalized domain names, the contentious issue of possible revision by the Internet Corporation for Assigned Names and Numbers (ICANN) of the Uniform Domain Name Dispute Resolution Policy (UDRP), as well as the status of recommendations made by the Member States in the context of the Second WIPO Internet Domain Name Process. The Chair called upon the Secretariat to present document WO/GA/40/9.

224. The Secretariat noted that document WO/GA/40/9 provides an outline of the activities of the Center aimed at enhancing its alternative dispute resolution services, particularly for cases administered under the WIPO Arbitration and Mediation Rules. Document WO/GA/40/9 also provides an update on engagements by the Center with various stakeholders aimed at the establishment of specialized alternative dispute resolution procedures adapted to the particular needs of the stakeholders and sectors concerned.

225. The Secretariat noted that document WO/GA/40/9 also provides an update on the Center's domain name-related activities, including case administration under various UDRP-based procedures. This includes updated statistics showing the demand for the Center's case administration services, which in 2010 represented a 28 percent increase from 2009, covering nearly 2,700 disputes under UDRP-based procedures. The Secretariat further noted that document WO/GA/40/9 provides an update on the Secretariat's collaboration with country code top level domain (ccTLD) administrators, in particular noting the Center's assistance to such administrators wishing to adopt registration and dispute resolution procedures in accordance with international standards. The Secretariat noted that the Center now collaborates with 66 ccTLD administrators, and that the relative importance of ccTLDs continues to grow, as illustrated by the fact that the number of WIPO domain name cases involving ccTLDs has risen from one percent in the year 2000 to 15 percent in 2010.

226. The Secretariat noted that a significant portion of document WO/GA/40/9 is devoted to policy developments in the domain name system (DNS), in particular ICANN's plans for a possibly exponential expansion of the DNS through the introduction of further new gTLDs. The Secretariat noted that it has been monitoring this ICANN process over the past years, as explained in more detail in document WO/GA/40/9. This document explains how ICANN's ultimate determinations as to the mechanics of new gTLD rights protection mechanisms continue to present issues. The Secretariat noted in closing that the agenda of the SCT includes an item on the introduction of new gTLDs which will allow for further briefing to and discussion among Member States on the subject.

227. The Delegation of China took note of the Secretariat's report which summarizes the activities of the Center in facilitating appropriate protection of the rights and interests of trademark owners and noted that it finds the efforts made by the Secretariat highly

commendable. The Delegation noted that the Center had a specific status and played an irreplaceable role in the resolution of the disputes involving trademarks and domain names. The Delegation expressed its hope that the Center could continue its active engagement with ICANN in the area of new domain name policies that protect the rights of trademark owners.

228. The Delegation of Switzerland thanked the Secretariat and in particular the Center for their continued commitment concerning ICANN developments in the area of domain names and the UDRP system. The Delegation expressed the view that it is important for the Secretariat to continue to provide its expertise especially concerning external developments that threaten trademark rights on the Internet. The Delegation noted with regret an earlier decision by ICANN not to accord an adequate level of protection in the DNS to certain geographic identifiers and country names in accordance with the recommendations of the General Assembly; the Delegation noted however ICANN's recent recognition of concerns about these identifiers and names, and expressed the view that adequate protection mechanisms should be available. The Delegation expressed interest in continuing its discussion on the issue of protection on the Internet for country names and other distinctive signs such as geographic indications, in the context of the SCT.

229. The Delegation of the United States of America noted that it was a long-standing supporter of the UDRP and the role played by the Secretariat with respect to the promulgation and maintenance of the UDRP; the Delegation expressed thanks to the Secretariat for its excellent work done over many years. The Delegation noted that in any rollout of new gTLDs, appropriate IP protection mechanisms must be in place to avoid trademark abuse, consumer confusion, and a general undermining of public trust in the DNS. The Delegation expressed concern about the adequacy of rights protection mechanisms foreseen in the context of ICANN's new gTLD program; the Delegation noted that it supports periodic evaluation of the efficiency of such mechanisms. The Delegation noted its strong concern about the timing of any UDRP review efforts; it noted that the adoption of rights protection mechanisms for the new gTLD program presumed the continuing availability of the UDRP as it currently exists, and that a review of the UDRP, if any, should not take place until after the new gTLD program has been established and the efficacy of such new gTLD rights protection mechanisms has been evaluated.

230. The WIPO General Assembly took note of the contents of document WO/GA/40/9.

#### ITEM 39 OF THE CONSOLIDATED AGENDA

#### COOPERATION UNDER THE AGREED STATEMENTS BY THE DIPLOMATIC CONFERENCE REGARDING THE PATENT LAW TREATY (PLT)

231. Discussions were based on document WO/GA/40/10.

232. The Secretariat introduced the document which described the activities of WIPO that facilitated the filing of communications in electronic form in developing and LDCs and countries in transition, reflecting item 4 of the Agreed Statements by the Diplomatic Conference for the Adoption of the Patent Law Treaty (PLT).

233. The WIPO General Assembly took note of the contents of document WO/GA/40/10.

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