

## **WIPO General Assembly**

### **Forty-third (21<sup>st</sup> Ordinary) Session Geneva, September 23 to October 2, 2013**

#### **REPORT**

*adopted by the General Assembly*

1. The General Assembly was concerned with the following items of the Consolidated Agenda (document A/51/1): 1, 2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 41, 42, 47 and 48.
2. The reports on the items, with the exception of items 7, 10, 18, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, and 46 are contained in the General Report (document A/51/20).
3. The reports on items 10, 18, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 41 and 42 are contained in the present document.
4. Ambassador Päivi Kairamo (Ms.) (Finland), Chair of the General Assembly, and in her absence the two Vice-Chairs Ambassador Mikhail Khvostov (Belarus) and Mr. Mokhtar Warida (Egypt), presided over the meeting.

## ITEM 10 OF THE CONSOLIDATED AGENDA

### COMPOSITION OF THE PROGRAM AND BUDGET COMMITTEE

5. Discussions were based on document WO/GA/43/1.
6. The Chair invited the Legal Counsel to introduce document WO/GA/43/1.
7. The Legal Counsel reported that successful consultations had taken place among Group Coordinators and 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 2013 to October 2015.
  8. The following States were unanimously elected by the WIPO General Assembly as members of the Program and Budget Committee for the period from October 2013 to October 2015: Algeria, Argentina, Azerbaijan, Bangladesh, Belarus, Benin, Botswana, Brazil, Cameroon, Canada, Chile, China, Colombia, Croatia, Czech Republic, Ecuador, El Salvador, Ethiopia, France, Gabon, Georgia, Germany, Greece, Guatemala, Guinea, Hungary, India, Indonesia, Iran (Islamic Republic of), Italy, Japan, Kenya, Kyrgyzstan, Mexico, Morocco, Pakistan, Paraguay, Poland, Republic of Korea, Romania, Russian Federation, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland (*ex officio*), Turkey, United Kingdom, United States of America, Viet Nam (53).

## ITEM 18 OF THE CONSOLIDATED AGENDA

### PROPOSED DEFINITION OF "DEVELOPMENT EXPENDITURE" IN THE CONTEXT OF PROGRAM AND BUDGET

9. Discussions were based on documents WO/GA/43/21 entitled "Proposed Definition of "development expenditure" in the context of the Program and Budget" and A/51/14 entitled "Summary of Decisions and Recommendations made by the Program and Budget Committee at its 21<sup>st</sup> Session (September 9 to 13, 2013).
10. The Chair recalled that this item had already been the subject of informal consultations under the Chairmanship of the Vice Chair of the General Assembly, Mr. Mokhtar Warida. The Chair informed delegations that the consultations had resulted in consensus and read out the text of the decision agreed during those informal consultations: "The WIPO General Assembly requested Member States to engage in informal consultations with a view to finalizing the definition of development expenditure in the 22nd session of the Program and Budget Committee in time for the preparation of the Program and Budget 2016/17."
11. The Chair offered the floor to delegations, noting that quite some time had been spent on this issue during the informal consultations, and that Member States' position were well-known. The Chair reminded the delegations that other pending matters still needed to be discussed and encouraged delegations who wished to take the floor to be brief. The Chair further recalled that general statements could be submitted in writing to the Secretariat to be included in the report which would subsequently be circulated.
12. The Chair then opened the floor to delegations for comments. As no delegations requested the floor the Chair proposed the text already read out as the agreed decision of the Assembly under Agenda Item 18. In the absence of any objections it was so decided. The Chair thanked the Vice Chair of the General Assembly, Mr. Mokhtar Warida for his efforts in resolving this matter and closed the agenda item.

## ITEM 24 OF THE CONSOLIDATED AGENDA

### FINAL REPORT ON THE IMPLEMENTATION OF THE WIPO STRATEGIC REALIGNMENT PROGRAM (SRP)

13. Discussions were based on two documents which were presented for consideration under WO/GA/43/20, entitled, "Final Report on the Implementation of the Strategic Realignment Program (SRP)," and A/51/14 entitled, "Summary of Decisions and Recommendations made by the Program and Budget Committee (PBC) at its Twenty-First Session from September 9 to 13, 2013."

14. The Director General was invited to briefly introduce the item. The Director General stated that, in response to questions raised by one of the delegations in its general statement, he wished to provide clarifications on the origin of the SRP because, in a certain sense, this had been lost in the mists of time. The Director General explained that the genesis of the SRP dated back to the recommendation of the Joint Inspection Unit (JIU) in 2005 that WIPO undertake a desk-to-desk assessment of its human and financial resources. The Director General said that, following an international tender, a contractor was selected, namely PWC. The desk-to-desk report had then been produced in the year 2007, which recommended that WIPO undertake an organizational improvement program. The WIPO Audit Committee, as it then was, which had been mandated to oversee the desk-to-desk assessment, recommended to the Member States that such a program be undertaken by WIPO. The General Assembly in turn, approved the recommendation of the WIPO Audit Committee concerning the Organizational Improvement Program. All of that had taken place in 2007. The Director General stated that, when he took office in 2008, this recommendation was still outstanding. New Strategic Objectives were approved by the General Assembly and the Member States in the Program and Budget in December of 2008 and the Organizational Improvement Program was redesigned as a SRP in order to accommodate, not just the recommendations that had been made in the desk-to-desk report, but also initiatives for improving the Organization in line with the new Strategic Objectives. The Director General stressed that the SRP had been undertaken in the course of the last five years and had been an extremely intensive process for the Organization. He further stated that the Program had been closely monitored by the Member States in various ways, first of all, through the Independent Advisory Oversight Committee (IAOC), with which the Secretariat had had constant interactions with respect to the SRP, and to which he wished to express the Secretariat's gratitude. In addition, periodic reports had been given to the PBC and to the General Assembly. Informal mechanisms had also been used for reporting to the Member States. With regards to the SRP, the Director General reported that the Program had reached the stage where it had been completed. It had involved, as was well known 19 initiatives and those initiatives had been designed around four values. The Director General, in stating that the first of those values was Service Orientation, requested to diverge to inform the Member States that the Delegation of Brazil had requested the insertion of an additional sentence in the report that had been given in this regard, in paragraph 5 of the report. The sentence would read "the concept of Service Orientation implemented by the SRP encompasses the understanding that WIPO provides diverse services to a wide range of stakeholders, first and foremost, as a United Nations specialized agency to its Member States." The Director General stated that the Secretariat had no difficulty in including the sentence proposed. Referring back to the 19 initiatives, designed around four values, the Director General further recalled that the second was Working as One. The third value was Accountability for Results, which encompassed taking accountability or responsibility for our results as the Secretariat. The final value was Environmental, Social and Governance responsibility. He stated that the SRP had been successfully concluded. In concluding the introduction of this item, the Director General confirmed that there were two initiatives that remained outstanding and which had been planned to be outstanding at this stage: Risk Management and Internal Control and the Enterprise Resource Planning (ERP), concerning which there had been a report given earlier in the session and which would take some years to

complete. The Director General expressed his thanks to the senior management and to all the staff because this Program had been a very intensive process over a number of years and the cooperation that had been received was outstanding. The Director General stated that the positive results of the SRP were shown by the latest staff survey and their responses to the SRP.

15. The Chair thanked the Director General for his introduction and additional clarifications and opened the floor to Delegation for comments on Agenda Item 24.

16. The Delegation of Brazil thanked the Director General for the clarification provided on the genesis of this issue. The Development Agenda Group (DAG) requested the inclusion of the explanatory text because they were confused regarding what was meant by WIPO being a service organization. The Delegation stated that it was a concept that was used in almost all the programs of the Program and Budget. The Delegation of Brazil stated that it was in order to clarify that Member States were the driving force in the Organization.

17. The Chair proposed to adopt the following decision.

18. The WIPO General Assembly took note of the final report on the implementation of the SRP contained in document WO/GA/43/20.

#### ITEM 25 OF THE CONSOLIDATED AGENDA

#### REPORT BY THE WIPO INDEPENDENT ADVISORY OVERSIGHT COMMITTEE (IAOC)

19. Discussions were based on documents WO/GA/43/5 and A/51/14.

20. The Chair of the General Assembly invited the Chair of the WIPO Independent Advisory Oversight Committee (IAOC) to introduce document WO/GA/43/5.

21. The Chair of the IAOC made the following statement:

“It is my honor and pleasure, as Chairman of the WIPO Independent Advisory Oversight Committee to address the General Assemblies of WIPO today on this important occasion. I want to thank you for the opportunity given to the IAOC to address the General Assembly directly today, which is in line with the revised oversight structure approved during the 50th General Assembly meetings last year. To provide some context, I would like to refer to the IAOC Terms of Reference approved on September 12, 2012, currently in effect as part of WIPO’s Financial Regulations and Rules:

- Being a subsidiary body of the Program and Budget Committee, the IAOC is an independent, expert advisory and external oversight body established to provide assurance to Member States on the appropriateness and effectiveness of internal controls at WIPO, and to assist Member States in their role of oversight and for better exercise of their governance responsibilities.
- The Committee keeps Member States informed of its work on a regular basis, including quarterly information sessions and respective reports to Member States.
- Furthermore, the Committee submits an annual report covering the work conducted to the Program and Budget Committee and the General Assembly, which is the report presented to you in this occasion, for your reference, document WO/PBC/21/2 .

- In particular, the report also addresses the mandate of the Committee in considering and providing comments to the Program and Budget Committee regarding the reports of the External Auditor, in order to facilitate the Program and Budget Committee's report to the General Assembly.

"In general terms, the IAOC Annual Report was built on the basis of the corresponding quarterly reports to MS, plus the particular consideration of the recent PBC agenda 21th session. The Report is structured in four main sections: first, the IAOC mandate, membership and working methods; second, audit and oversight, covering the committee's interaction with the External Auditor and the WPO Internal Audit and Oversight Division; third, WIPO's Program Performance and Financial reviews; and, lastly, Progress on Major WIPO projects and Administrative Matters.

"Regarding the first section, the IAOC engaged in substantive discussions with senior management on issues that it considers to be of significance or which the senior management would like to present to the Committee for its information or consideration. These discussions often result in comments and advice given by the IAOC to the Director General and the Senior Management Team. Usually, these discussions conclude with agreement on the topic under consideration. It also engaged in substantive discussions with the Internal Audit and Oversight Division and the External Auditor and emphasizes certain issues that it feels should be brought to the particular attention of Member States.

"Regarding the second section, Audit and Oversight, I first must make a reference to the interaction of the Committee with the External Auditor. Shortly prior to the reporting period, after the arrival of the Comptroller and Auditor General of India as the new appointed External Auditor of WIPO, the Committee had the opportunity to discuss different matters including the proposed external audit work plan. The committee met again recently with the External Auditor at its 30<sup>th</sup> session, shortly prior to the PBC 21<sup>st</sup> session, to discuss their results. The Committee took note of the "unqualified audit opinion on the WIPO's financial statements for the financial period ended 31 December 2012" but also noticed the significant findings presented in the report. The Committee emphasized to Member States three particular matters: the disclosure of Reserves, Treasury and Cash Management, and acquisitions under Special Service Agreements. It is my duty to bring to your attention the closing paragraph of the External Auditor's report which urges WIPO "to take action to implement past and current recommendations of the external auditor".

"On the internal oversight function, the Committee also was able to exercise its oversight of this very important function. My understanding is that the General Assembly are considering the report of the Director of the Internal Audit and Oversight Division and the annual report of our Committee includes additional information. We recognize the very positive quality of the work of the Internal Audit and Oversight Division. "Regarding the work of the UN Joint Inspection Unit, the Committee had the opportunity to receive the visits of the JIU team twice during the period, as part of the "Review of Management and Administration in WIPO" currently in process. In addition, the Committee also took note of the progress report of the Administration on the implementation of JIU recommendations. The Committee will take on board the requests made by the Program and Budget Committee and by the General Assembly to continue reviewing and overseeing the actions taken by the Secretariat to address the internal and external oversight recommendations and the JIU recommendations if applied.

“On the section Program Performance and Financial Reviews, the Committee took note of various matters that were submitted to the Program and Budget Committee at its 21<sup>st</sup> session. Particular comments were provided to the PBC regarding the WIPO Human Resources Annual Report and HR Strategy.

“The Committee also reports on the work done regarding the Progress Reports on Major Projects and Administrative Matters, including: the Final Report on the Implementation of the WIPO Strategic Realignment Program (SRP), and the Progress Report on the New Conference Hall Project and New Construction Project.

“Madam Chair, before closing, I would like to make a couple of important recognitions. I would like to make special mention of somebody who made a substantial contribution to IAOC, to WIPO as a whole, and also to other entities of the UN system. I am speaking about the former IAOC Chair, Mr. Gian Piero Roz, who passed away early this year. May his soul rest in peace. In term of recognitions, I want also to thank all the current members of IAOC, for their collective support in fulfilling the mandate of the Committee. In particular, I would like to thank the outgoing members of the Committee, namely, Ms. Beatriz Sanz-Redrado, past Chair of the Committee, Mr. Kjell Larson, and Mr. Ma Fang. I wish them the best in their future endeavors. Finally, I look forward and welcoming in advance the three new members of the Committee as recommended by the Selection Panel.

“On behalf of the Committee, I wish to thank again the Director General and all WIPO staff members with whom we have interacted for their availability and willingness to engage in constructive dialogue. I also wish to thank Member States for sharing their questions and comments at the IAOC Information Sessions. I would further like to reassure Member States of the highest commitment by our Committee to continue discharging our role to the best of our abilities and with the highest professional standards. Madam Chair, Thank you very much.”

22. The United States of America stated that it very much appreciated the efforts of the IAOC and had read with interest the report of the IAOC. The IAOC’s activities provided insights into the Organization that were critical for Member States in order to execute their governance and oversight responsibilities and, for this reason, the Delegation commended the IAOC and wished to emphasize how important the Delegation believed its function to be. It wished to encourage the IAOC to consider including in future reports recommendations directly to the PBC on issues within its purview. In this connection, it had found the practice at other specialized agencies, such as the Independent Management Advisory Committee of the International Telecommunication Union (ITU), to be particularly helpful for all Member States. It wished to encourage the IAOC to take the same approach in making whatever recommendations it considered appropriate directly to the PBC.

23. The Delegation of Mexico wished to take this opportunity to welcome the Committee’s report as presented by the Chair of the IAOC and to acknowledge the work of the Committee and all of its efforts in terms of oversight. The Delegation had made general comments on the report at the PBC. It wished to thank all Committee members, especially those three members who would be departing as their mandates were coming to an end, and who would be replaced by three new members.

24. The Delegation of Spain thanked the Chair of the IAOC and the Committee for the work done. It also wished to thank the Secretariat for always being available to the Committee and for the exchange of opinions between the Secretariat and Member States. It wished to support the statement made by the Delegation of the United States of America and looked forward to seeing whether the Committee in its future reports to the PBC could perhaps identify recommendations that it felt appropriate for consideration in the PBC and by Member States.

25. In the absence of further comments, the Chair of the General Assembly read out the decision paragraph of document WO/GA/43/5.

26. The WIPO General Assembly took note of the contents of this document, taking into consideration any recommendation made in this respect by the PBC as recorded in document A/51/14.

#### ITEM 26 OF THE CONSOLIDATED AGENDA

#### REPORT OF THE SELECTION PANEL FOR THE APPOINTMENT OF THE NEW MEMBERS OF THE WIPO INDEPENDENT ADVISORY OVERSIGHT COMMITTEE (IAOC)

27. Discussions were based on documents WO/GA/43/6 and A/51/14.

28. The Chair of the General Assembly invited the Chair of the Selection Panel for the Appointment of New Members of the WIPO Independent Advisory Oversight Committee (IAOC) to introduce document WO/GA/43/6.

29. H.E. Ambassador Abbas Bagherpour, Iran (Islamic Republic of), Chair of the Selection Panel for the Appointment of New Members of the WIPO IAOC, thanked the Chair of the General Assembly and made the following statement:

“It is my pleasure to present to you the Report of the Selection Panel for the Appointment of Members of the IAOC, a Panel for which I had the honor to be elected as Chair.

“Before presenting the Report, I would like to thank all of the distinguished members of the Selection Panel for their active participation and efficient contribution. I should also like to extend the sincere appreciation of the Panel to the Director General and to his team, in particular to the Secretary of the Panel, for the tireless efforts in preparation for the meetings that we have had in such an excellent manner.

“Madam Chair, I would like to highlight that the Panel's recommendation contained in paragraph 31 was unanimous and that the process has been one that was entirely Member State driven.

“On the process itself, you may recall that the Panel was set up by the PBC last September and that the procedures for selection and rotation of IAOC members are set out in General Assembly (GA) document WO/GA/39/13 and in the IAOC's terms of reference. In line with the GA procedures, each of WIPO's seven Groups of Member States nominated one representative for the seven-member Panel. The Panel established and followed its own Rules of Procedure as provided for by the GA.

“Regarding composition of the IAOC itself, I would first recall that, of the three departing IAOC members, one is from China and two are from Group B. The Group of Central European and Baltic States (CEBS) is currently not represented on the IAOC.

“Document WO/GA/39/13 states that the IAOC will be composed of one member from each of WIPO seven Groups. The IAOC’s terms of reference state that, at the time of rotation, a candidate from an un-represented Group will be selected to replace a departing member of an over-represented Group. The Panel therefore agreed that priority should be given to selection of candidates from China, Group B and CEBs. This prioritization was reflected in the vacancy announcements and the letter from the Director General to all Member States inviting applications.

“In response to the vacancy announcements, we received 160 applications representing nationalities in all WIPO Groups. In line with the GA procedures, we finalized an Evaluation Matrix that contained all of the individual and corporate IAOC skills set out in document WO/GA/39/13 and in the IAOC’s terms of reference. The Matrix was, in fact, practically the same as that used for the 2010 IAOC selection process.

“The next task required of the Panel was the screening of all 160 applications to identify those applications eligible for detailed assessment by the IAOC. In view of the work required we engaged an external expert. The screening was carried out on the basis of the criteria used for the 2010 IAOC screening process with a very minor modification that the criterion intellectual property became a core competency. As a result of the screening exercise, 44 Priority Group applications were transmitted to the IAOC, an amount comparable to the number of applications assessed in detail by the IAOC for the 2010 selection process.

“The IAOC carried out its detailed assessment in May and sent its results to the Panel under cover of a letter. In that letter, the IAOC recorded the expertise of the departing members as internal audit, evaluation, investigation, and intellectual property, and made a number of observations that are summarized in paragraphs 24 and 25 of the Panel’s Report.

“As regards selection of candidates, document WO/GA/39/13 states that the Panel’s recommendation will be based on the IAOC’s assessment and provides for interviewing of candidates by the Panel if needs be. The Panel identified the highest ranking candidates in each Priority Group and agreed on a short list of six candidates—two candidates from each Priority Group. We interviewed all six candidates by video-conference, using questions set by the Panel in advance, and the Secretariat completed reference checks in mid-August. The Panel then proceeded to make its recommendation, which is contained in paragraph 31 of the Panel Report annexed to document WO/GA/43/6 in front of you.

“The Panel’s recommendation was presented to the 21<sup>st</sup> session of the Program and Budget Committee earlier this month. As can be seen from the decision paragraph contained in document WO/GA/43/6 in front of you, the PBC approved the Panel’s recommendation and recommended its approval by the General Assembly.

“By its unanimous decision, Madam Chair, the Panel has recommended candidates that would ensure full geographical representation in the IAOC as required by the General Assembly. And in doing so, the Panel believes that, not only has it selected the best candidates of the respective Groups, but that it has also selected three candidates who will ensure continuity of the right mix of skills and experience in the IAOC. I thank you for your attention.”



30. The Delegation of Mexico, speaking as a member of the IAOC Selection Panel, wished to support the recommendation of the Panel for selection of new IAOC members and the statement made by H.E. Ambassador Bagherpour, Chair of the IAOC Selection Panel. The Panel had reached a unanimous decision that had taken into account the main concerns of all of the Panel members, in particular as regards ensuring geographical balance in the IAOC and the skills and knowledge required for IAOC membership.

31. In the absence of further comments, the Chair of the General Assembly read out the decision paragraph of document WO/GA/43/6.

32. The General Assembly approved the recommendation of the Selection Panel for the Appointment of New Members of the WIPO Independent Advisory Oversight Committee (IAOC).

#### ITEM 27 OF THE CONSOLIDATED AGENDA

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

33. Discussions were based on document WO/GA/43/7.

34. The Director of the Internal Audit and Oversight Division (IAOD or the Division) presented the Summary Annual Report of IAOD which set out the results of the work done over the past year. The Director, IAOD, mentioned that document WO/GA/43/7 was the same document as WO/PBC/21/17 which had been discussed by the PBC. The Director, IAOD, stressed the independence of IAOD, that meant that planning and reporting on audit, evaluation and investigations were done with no interference. The Director, IAOD, stated that independence of the Division did not mean that there was no control or that the Division did not interact with others. The Division consults and reports with/to others, in particularly with/to the Director General, audited/evaluated bodies, the IAOC and Member States. The Director, IAOD, stated the Division reported findings and conclusions through five audits, two evaluations and several investigations as listed in the Annex to document WO/GA/43/7. The Director, IAOD, recalled that in the 2012 General Assembly, it was decided to amend the WIPO Internal Oversight Charter to facilitate Members States' access to audit and evaluation reports. This was done through a secure electronic communication. As a result since the charter was changed, IAOD has received requests from 13 Member States for 53 reports. This procedure has been in place since autumn 2012 and works well. As for the results of audits and evaluations, the Director, IAOD, explained they were appreciated as could be concluded from the satisfaction surveys sent to audited and evaluated units and described in document WO/GA/43/7. A number of recommendations that were made during the evaluations and audits have already been implemented. The report WO/GA/43/7 gives an outline of what the situation was when the work was carried out. For example out of the 12 audit recommendations on management of travel, eight have already been implemented. Regarding investigations, during the reporting period, 16 new cases were registered and 28 were actually closed (compared to 18 and 16 during the previous period). The Director, IAOD, explained that the figures show that the number of new cases was stable, but the Division managed to actually deal with more cases. The delay in dealing with cases has now been overcome. On June 30, 2013, only two cases were pending, and now three were pending at the time of the General Assembly. IAOD had managed to increase productivity. The average duration of cases was now six months for investigations. The Director, IAOD, indicated that IAOD had drafted an investigation policy reflecting the six-month period to complete investigations. The draft of the investigation policy was transmitted to Member States in August. Member States were invited to make comments on this proposal if they so wish until October 16, 2013. On the issue on follow-up recommendations, the Director, IAOD, stressed that the Internal Oversight Charter provided

that the Director General was responsible for the implementation of recommendations through Program Managers. The Director, IAOD, informed that recommendations were implemented within a reasonable time frame compared to other Organizations that were in a comparable situation to WIPO; all the details and figures were contained in document WO/GA/43/7. The Director, IAOD, mentioned that since the last summary report in 2012, the Division has implemented a new web-based software for the follow-up of recommendations which provides more interactive dialogue between the Division and Program Managers and he was optimistic that in the future, WIPO would be more swift in putting recommendations into practice. Apart from the work on reports, the Director, IAOD, indicated that the Division also played an advisory role as observer in different Secretariat Committee meetings and was consulted in terms of drafts of regulations or general policy. A list of such advisory activities could be found in Annex 4 of document WO/GA/43/7. In terms of resources, the Director, IAOD, mentioned that personnel issues in the past had been a hindrance to effective operation of the Division within WIPO. Over the last two biennia, resources had significantly increased and been made available to address the Division's workload. In 2014, the Division would be going through an external quality assessment of audit and evaluation activities, and, on the basis of the recommendations, which would be shared with Member States, the Director, IAOD, would determine whether the Division would need more resources.

35. The Delegation of the United States of America expressed their appreciation for the hard work of IAOD and encouraged the Director General to implement IAOD's recommendations in a timely manner. The Delegation mentioned that they were pleased to see that IAOD found the restrictions on business class travel had yielded cost savings and encouraged the Director General to find other opportunities for savings in that area. The Delegation stated that at the High Level Committee on Management of the Chief Executives Board in March, chaired by the Director General, Mr. Francis Gurry, there were fruitful discussions about creative ways some Organizations were tackling the issue of travel costs. The Delegation stated that the Rome-based Organizations have started capitalizing on their purchasing power by collectively negotiating corporate fares and favorable rates with hotels in high volume travel destinations requiring staff to stay in those locations to yield savings to the organizations. The Delegation asked whether WIPO coordinates with other organizations in a similar way; otherwise, the Delegation encouraged the Secretariat to explore the pros and cons of that option. The Delegation also noted that IAOD's recommendation for finding cost savings through timely booking of travel arrangements was a common issue echoed throughout the UN System and should be adopted swiftly. The Delegation was concerned by IAOD's comments regarding data integrity and the payment management cycle, particularly given the effort invested in making the ERP system fully operational. The Delegation urged the Director General to strengthen controls in the use of *ex post facto* requisitions and to be sure that the data was accurate and not duplicate. The Delegation acknowledged the hard work of the investigation section and the demonstrated increase in productivity and welcomed informative reports like IAOD's. The Delegation also expressed their gratitude for the opportunity to review the draft investigation policy and mentioned that it was pleased with the quality of the document which reflects best practices in investigation policies. The Delegation stated that it was concerned about two related issues: the method of submitting reports of misconduct anonymously and the communication plan for ensuring organization-wide understanding of staff obligations and protections. The Delegation mentioned that a number of International Organizations struggle with the issue of staff trust of management efforts to build a culture of transparency and accountability and they found that well-constructed strategies to address those two issues often lead to stronger staff engagement. The Delegation asked what was the current way in which individuals, either within or outside WIPO, could submit misconduct allegations anonymously. The Delegation also asked if there was a dedicated hotline and who was the person that receives the calls. The Delegation mentioned that some organizations and companies in the private sector have begun using external call centers to manage incoming reports which added an additional layer of anonymity and this has seemingly helped increase staff confidence in the integrity of the process. The Delegation encouraged the Director General to develop a

comprehensive communication plan to ensure a high level of transparency and to engender staff confidence in the process. The Delegation stated that they believe that officials would welcome and fully comply with the policy if they were actually aware of the scope of the investigations, the method for reporting misconduct, the timeline for completing an investigation, the level of confidentiality guaranteed and staff members' rights to challenge findings.

36. The Secretariat responded to the Delegation of the United States of America on the issues which were raised and mentioned that a number of WIPO efficiency gains in the area of travel were already listed in the cost efficiency document, which was reviewed earlier, but this did not mean that they are exhaustive and the Secretariat were examining further cost efficiency measures be it with respect to travel or elsewhere. Regarding travel, the Secretariat reassured the Member States that just as Rome-based UN agencies have a network, a local network existed in Geneva and it provided a forum where information is exchanged and good practices are shared. In addition, the Interagency Travel Network, in which WIPO participates, is another forum where collaborative efforts with regard to travel-related matters are explored. On the issue of ex-post *facto* purchases, the Secretariat also reassured the Member States that a mechanism had already been put in place to address the issue.

37. The Director, IAOD, thanked the Delegation of the United States of America for their positive comments on the report and their support. The Director, IAOD, commented that there was nothing to add to what had been mentioned by the Secretariat but with regards to the hotline, the Division had set up such a hotline through which complaints or information concerning the possible existence of fraud, waste, abuse of authority, non-compliance with rules and regulations of WIPO in administrative, personnel and other matters or other irregular activities could be reported to the Director, IAOD. The hotline was composed of an email address, a telephone line and the possibility of filling out a form online anonymously. There was a link on WIPO's website. The Director, IAOD, mentioned that the hotline was announced to all staff, with the agreement of the Director General, at the beginning of July 2013, but it had not actually produced much information. The hotline was not actively used yet because people who want to report wrongdoings and make complaints can do so quite easily without the hotline.

38. The Chair thanked the Director, IAOD for the comments and also thanked the Delegations for their statements on the agenda item.

39. The WIPO General Assembly took note of the content of document WO/PBC/21/17 (Summary Annual Report by the Director of the Internal Audit and Oversight Division (IAOD)) and requested the Secretariat to continue to take appropriate action to address the recommendations addressed to it by IAOD, taking into consideration the recommendation made in this respect by the PBC as recorded in document A/51/14.

## ITEM 28 OF THE CONSOLIDATED AGENDA

### REPORT BY THE EXTERNAL AUDITOR

40. Discussions were based on documents WO/GA/43/8 (Report by the External Auditor) and A/51/14 (Summary of Decisions and Recommendations made by the Program and Budget Committee at its Twenty-First Session (September 9 to 13, 2013)).

41. The Chair introduced Mr. Singh, Minister of Audit and Senior Director of the Indian Audit Office, to present the report of the External Auditor.

42. Mr. Singh delivered his report as follows:

“Thank you Madame Chair. Madame Chair and Members of the Assembly, Director General, ladies and gentlemen, I would like to convey the compliments of the Comptroller and Auditor General whom I am privileged to represent at this 51<sup>st</sup> Meeting of the Assemblies. The audit of WIPO was assigned to the Comptroller and Auditor General of India for the financial period 2012 to 2017. It is my honor to present before this gathering our first audit report for the financial year 2012 on behalf of the Comptroller and Auditor General of India as mandated in the rules of WIPO. The audits included audit of the financial statements of WIPO, performance of the Patent Cooperation Treaty and compliance audit of sourcing and engagement of special service agreements and commercial service providers. I take this opportunity to place on record our deep appreciation of the cooperation extended by the staff of WIPO who always furnished their records promptly and made themselves available to us to explain matters whenever we required such help. I am happy to report to the Assembly that we have placed an unqualified audit opinion on WIPO's financial statements for the financial period ended 31<sup>st</sup> December 2012.

“Important findings arising from our audits were discussed with the management and thereafter conveyed to them through management letters. The most significant of these findings appropriately aggregated are presented through our audit report which is placed before the Assembly. Now I would like to highlight the significant issues contained in our report.

“During the conduct of the financial audit on the basis of our observations the management made certain improvements in the financial statements and notes thereto. We have noted that the improvements in the financial statements, as suggested by us, have been carried out by WIPO.

“We noted that WIPO incurred 14.818 million Swiss francs, as per note 24 on projects financed from reserves. However, no separate reserve is mentioned in notes 21 and 24 for existing projects and expenditure on said projects was charged to the statement of financial performance. We have recommended that WIPO may consider the creation of a separate reserve for the purpose of financing projects as stated in note 21 and 24 of the financial statements.

“We noted that WIPO did not have a treasury and cash management policy. There was no system of reporting financial risks associated with treasury activities. We also noted that the interest paid on borrowings and the commitment charges were significantly higher than the return on the investment of the organization. We have recommended that the management may consider formulating and implementing an appropriate treasury and cash management policy including borrowings to improve the financial management.

“Assets each with a value over 5,000 Swiss francs constitute only 14.46 per cent of the total number of items in physical numbers but 59 per cent in terms of financial value of the total. We have recommended therefore annual physical verification of high value assets instead of a biennial policy for tracking and recording assets.

“We noted that the regulatory framework for acquisition of services through special service agreements was inadequate. Competitive sourcing was absent in the process of acquisition of services, valuing 24 million Swiss francs during 2012/13 through SSAs. We appreciate that, based on our recommendations, WIPO has agreed to work towards closing this gap through a policy, “WIPO General Policy Framework on Non-staff Contracts” which will be published and implemented as an office instruction.

“Audit of commercial service providers revealed inconsistencies between the evaluation criteria published in the tendered documents and the criteria used in the evaluation matrix. Sub-criteria and evaluation matrix were firmed up after the publication of clarification to the queries of the bidders and minimum qualifying threshold for each criteria were not disclosed in the bid documents. These practices, we feel, may possibly impact adversely on the objectivity and transparency of the evaluation process. We note with appreciation that the management (the Procurement and Travel Division) has agreed to implement our recommendations by revising its procurement manual.

“In the performance audit of the Patent Cooperation Treaty (PCT), we noted that there was a need of higher degree of coordination between the International Bureau of WIPO, Receiving Offices (ROs) and International Search Authorities to improve the timeliness of critical activities. Delay in the establishment of international search reports resulted in republication, thereby putting pressure on the limited resources of the International Bureau and delaying the decision on the patentability of an invention or innovation. We have recommended that the International Bureau should improve its coordination with the ROs to ensure adherence to timelines. The International Bureau may like to consult and try to develop a mechanism specifically with those International Search Authorities where high numbers of ISRs are received after prescribed timelines.

“We noted that the schedule of fees provides for reduction of fees on account of e-filing which was introduced in 2004 to promote e-filing. Despite the increase of e-filing due to improvement of the information technology, the fee structure has not been revisited. We recommended that the schedule of fees, which was last revised in 2008, may be revisited taking into account the subsequent developments including the increased share of electronically filed applications. We also noted that there was a geographical shift in the filing of PCT applications away from the United States and Europe to Asian countries. However there was no change in the availability of translation skills in 2011 when compared to 2009 as far as Asian languages were concerned. We recommended that, considering the increase in the number of international applications received, diversity of languages received and automation of processing of applications, a skill gap analysis may be undertaken to formulate a long-term strategy.

“We noted that 21 new cases of existence of fraud, waste, abuse of authority, noncompliance with rules and regulations of WIPO were registered in the year 2012 and Internal Audit and Oversight Division had 12 investigation cases from 2012 and the previous years which were still being investigated. We recommend that WIPO may focus on further strengthening the internal controls to avoid recurrence of fraud cases.

“The monitoring and implementation of recommendations made by External Audit is an important part of the accountability process. The report contains the status and implementation of important recommendations made by the previous External Auditor. Most of the recommendations made in this report are at various stages of implementation. I would like to urge WIPO to take action to implement these recommendations.

“Our association with WIPO has been an extremely rewarding experience for us professionally. We hope that our audits done during 2012/13 have helped the Organization to improve its financial and accounting system for improved delivery of goods and services. I would like to sincerely thank WIPO once again for all the support and cooperation that we have received during our audit. Thank you very much.”

43. The Delegation of Spain welcomed the External Auditors from India and thanked the External Auditor for the quality of his report, as well as the Secretariat for the qualification obtained and for its openness and its willingness to implement as soon as possible the recommendations contained in the report. With regard to the recommendations of having a

better policy for treasury and including competitiveness in the special service agreements, the Delegation found the recommendations pertinent and added that these could lead to significant savings and efficiencies. It therefore urged the Secretariat to implement these recommendations as soon as possible.

44. In the absence of other comments, the Chair proposed the adoption of the decision paragraph.

45. The WIPO General Assembly took note of the contents of document WO/GA/43/8, taking into consideration any recommendation of the Program and Budget Committee made in this respect, as recorded in document A/51/14.

#### ITEM 29 OF THE CONSOLIDATED AGENDA

##### REPORT ON THE IMPLEMENTATION OF THE JOINT INSPECTION UNIT RECOMMENDATIONS FOR THE REVIEW OF WIPO LEGISLATIVE BODIES

46. Discussions were based on documents WO/GA/43/19 entitled, "Report on the Implementation of the Joint Inspection Unit Recommendations for the Review of WIPO Legislative Bodies" and A/51/14, entitled, "Summary of Decisions and Recommendations Made by the Program and Budget Committee at its 21<sup>st</sup> Session from September 9 to 13, 2013."

47. The Secretariat informed the meeting that this agenda item had been discussed at the 21<sup>st</sup> session of the WIPO PBC. The report before the Member States was being presented further to requests made by the Member States during the 19<sup>th</sup> session of the WIPO PBC. The document provided a status of the 44 relevant legislative bodies recommendations, made by the Joint Inspection Unit (JIU), during the period of 2010 to 2012.

48. In the annex to the document were those recommendations addressed to the legislative organs or governing bodies of JIU participating organizations of relevance to the WIPO legislative bodies, along with the current status of acceptance/implementation of the said recommendations. Of the 44 recommendations, 23 had been accepted and implemented. Nine had been accepted or were in progress. Eleven were under consideration, and one was considered not relevant to WIPO. The information was presented on a report-by-report basis. In the future, the Secretariat proposed to use the JIU's online tracking system to report on the status of implementation. The Secretariat informed Member States that the JIU online tracking system was available for their consultation.

49. As there were no interventions by Member States, the Chair proposed to adopt the following decision.

50. The WIPO General Assembly took note of the report on the Implementation of the JIU Recommendations for the Review of WIPO Legislative Bodies contained in document WO/GA/43/19 and requested the Secretariat to continue to take appropriate action to address the recommendations addressed to it by the JIU. The WIPO General Assembly also requested the Independent Advisory Oversight Committee to review and oversee the implementation of the recommendations in accordance with its mandate and report on the matter to the PBC.

## ITEM 30 OF THE CONSOLIDATED AGENDA

### GOVERNANCE AT WIPO

51. Discussions were based on documents WO/GA/43/18 entitled “Governance at WIPO” and A/51/14 entitled “Summary of Decisions and Recommendations Made by the Program and Budget Committee at its 21<sup>st</sup> Session (September 9 to 13, 2013).

52. The Chair informed delegations that this item had been subject to informal consultations under the Chairmanship of the Vice Chair of the General Assembly, Mr. Mokhtar Warida, whom she thanked for his work in this respect. It was the Chair’s understanding that a proposal by the DAG had been circulated and the Chair requested that this proposal be presented to the Plenary.

53. The Delegation of Brazil speaking on behalf of the DAG, recalled that the discussion on WIPO Governance was a long-standing item on the Member States’ agenda. This item had been discussed in the PBC over a long period of time and the latest round of discussions, on the proposals presented by Member States, had been shown to be not yet productive. In the last session of the PBC, the African Group had presented a proposal for discussion which the DAG understood should be the basis of a formal process of consultations on the subject. The Group had engaged productively in informal consultations during this session of the General Assemblies and unfortunately so far had not been able to reach consensus. The DAG provided the following proposal on governance to the General Assembly, for its decision:

“The WIPO General Assembly recognized the importance of sound, fair and good governance in WIPO. Took note of Member States’ proposals and comments on improving WIPO governance contained in document WO/PBC/17/2 Rev., and requested the International Bureau to organize a two-day meeting to discuss the JIU report, the proposal submitted by Member States and make recommendations for the 22<sup>nd</sup> session of the PBC, to be held in September 2014, including, but not limited to, on the following issues: Improving the work of the PBC, improving the work of the WIPO Coordination Committee, improving interaction between Member States and the IAOC, improving interaction between Member States and the auditors, establishing a fair and efficient mechanism to select chairs and vice chairs of WIPO bodies.” The DAG understood that its proposal would engage Member States at least in the preparation of discussions for the next session of the PBC, which would be the 22<sup>nd</sup> session in September 2014, in order that there could be a productive outcome for discussions on the JIU report in the proposal that would be presented by the Member States.

54. The Delegation of Egypt speaking on behalf of the African Group, delivered an introduction on the issue. Firstly, the African Group wished to associate itself with the decision point presented by the Delegation of Brazil on behalf of the DAG. The African Group noted that the issue of governance had been on the agenda of the PBC for a long time. Discussions had started during the 16<sup>th</sup> session of the PBC in 2011 and at that time the Secretariat had been requested to prepare a document and Member States had submitted several proposals, in this regard, on WIPO governance, including the African Group, the DAG, the Delegations of Australia, China, France, Germany, Japan, Monaco, Republic of Korea, the United Kingdom and the United States of America. Subsequent discussions had also taken place in the 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup> Sessions of the PBC and in the last session, in the absence of agreement and lack of progress on this matter, the Committee decided to refer the matter to the General Assembly to consider and to take appropriate action. In this regard the African Group wished to highlight the document it had presented to the PBC, which contained important proposals presented by Member States on approving WIPO governance. These proposals were captured in the PBC document and were not presented as a closed list but a way to start the process of ideas and proposals that were concrete and could be taken further. They

included, but were not limited to, improving the work of the PBC, for example the suggestion that the PBC could meet twice a year for five days for each session. The PBC should regularly review issues related to human resources; the working documents should be translated in six languages and posted on the web site two months prior to the meetings in order to allow the delegations time to analyze and consult on them. The second category included ideas related to improving the work of the WIPO Coordination Committee including: that the WIPO Coordination Committee could meet more regularly and be empowered with executive functions; also, to have a clear division of responsibilities between the PBC and the WIPO Coordination Committee. The third category included ideas related to improving the interaction between Member States and the IAOC, for example, through establishing a smaller PBC working group, on *ad hoc* business to consider IAOC and JIU recommendations and recommend to the PBC; to have quarterly meetings of the IAOC which would include a slot for regional chairs and interested delegations; to have quarterly reports of the IAOC which would include interventions and comments of regional chairs and other delegations; a quarterly meeting report to be widely circulated after meetings and included both in the PBC documents and on-line; and that the IAOC continued to produce a summary annual report to the PBC, recording the Regional Group and Member States' views on the issues raised. The fourth category related to improving the interaction between Member States and the auditors including also the interaction between the auditors and Member States which could and should be improved through regular and formal meetings. The final category included the establishment of a fair and efficient mechanism to select chairs and vice chairs of WIPO bodies aimed at improving the selection process for chairs and vice chairs of WIPO bodies, to ensure quality, fairness, expertise of chairs and vice chairs and a clear selection process. At this stage, after long discussion in the PBC, the Group felt that it was time for the General Assembly to express clear guidance on this issue, and that the proposal presented by the African Group and the DAG came in this spirit and the Group looked forward to its adoption in the General Assembly.

55. The Delegation of Belgium, on behalf of Group B, expressed its satisfaction with the successful finalization of the SRP and its ongoing continuous improvement. In its view, this program and the ongoing governance discussion during the PBC demonstrated that the governance debate was at the heart of the activities of WIPO. The Delegation further noted that, as was stated during the 21<sup>st</sup> session of the PBC, it looked forward to further refinement of this debate. In this regard, the Delegation noted that it was important to have a full list of options and possibilities available before deciding on the further direction of the debate. The recent paper by the African Group and DAG was therefore a first step. However, the Delegation also noted that the paper was based on the inclusion of certain topics that had been discussed over and over in an extensive manner and to no avail. An example of this was the establishment of a fair and efficient mechanism to select chairs and vice chairs of WIPO bodies. The Delegation further reiterated that Group B attached great importance to the JIU report, which would be available next year and may contain further recommendations in the context of governance. It noted that at this stage, it did not want to preclude the structure of the debate before having seen the JIU report. Group B looked forward to the debate on this topic at a later stage, and stressed the importance of this topic. It proposed to give this topic the space and time that it deserved, which, in its view, was not at this late stage during the present General Assembly.

56. The Delegation of India thanked the Vice Chair, Mr. Mokhtar Warida, for his efforts to arrive at consensus on the governance issue. It associated itself with the statement made by Brazil on behalf of the DAG, and noted that this issue had been on the agenda for the last two or three years and had been discussed in the relevant committees. It therefore hoped that delegations would agree to discuss the matter further to arrive at some consensus. The Delegation noted the statement made by the coordinator of Group B allowed some possibility to this end.



57. The Chair proposed that informal consultations on this matter continue upon the conclusion of the plenary, and that Mr. Mokhtar Warida, the Vice Chair of the Assembly, report back to the Chair as soon as possible.
58. The Vice Chair thanked the Chair for the confidence and noting the late hour, indicated that consultations would continue the following morning.
59. The Chair concluded that the proposed approach had been endorsed by delegations, and that informal consultations would continue as soon as possible.
60. See document A/51/20, Agenda Item 48 (Closing of the sessions).

#### ITEM 31 OF THE CONSOLIDATED AGENDA

##### REPORT ON THE OUTCOME OF THE MARRAKESH DIPLOMATIC CONFERENCE TO CONCLUDE A TREATY TO FACILITATE ACCESS TO PUBLISHED WORKS BY VISUALLY IMPAIRED PERSONS AND PERSONS WITH PRINT DISABILITIES

61. Discussions were based on document WO/GA/43/9 Rev.
62. The Chair moved to items that were related to WIPO Committees and the international framework. The Chair opened Agenda Item 31 and informed delegations that the document under consideration was document WO/GA/43/9 Rev. entitled "Report on the Outcome of the Marrakesh Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities." The Chair invited the Secretariat to introduce the agenda item.
63. The Secretariat explained that document WO/GA/43/9 Rev. had been prepared for information purposes and introduced a short video related to the agenda item. The video showed the highlights of the Diplomatic Conference and included comments by representatives from various delegations on the adoption of the Treaty. The Secretariat echoed the Director General's expression of gratitude when he had delivered his report to the Assemblies at the opening ceremony. The Secretariat expressed gratitude towards the organizations and individuals that had contributed to the success of the Treaty, in particular the Government of Morocco and the Member States. The Secretariat stated that 51 Member States had signed the Treaty when document WO/GA/43/9 Rev. was prepared and it was pleased to report that the number had risen to 54. The Secretariat concluded by assuring the Member States, as well as Mr. Stevie Wonder, that it would do all it could to assist all Member States who made a request for assistance, so that the Treaty would come into force at the earliest possible date.
64. The Chair thanked the Secretariat for the introduction and the presentation, indicating that it had been an inspiring presentation. The Chair opened the floor to delegations.
65. The Delegation of El Salvador congratulated the Member States, the Director General and the Secretariat on the adoption of the Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired and Otherwise Print Disabled. The Delegation stated that the Treaty was a landmark towards promoting the quality of life for its beneficiaries throughout the world, as it was a human right to have better access to existing published works and to achieve knowledge through books. In that context, the Delegation expressed its support for the statement of the Delegation of Brazil.
66. The Delegation of Morocco announced that it had been an honor to host the Diplomatic Conference to Facilitate Access to Published Works for Visually Impaired Persons and Persons with Print Disabilities. The Diplomatic Conference had been the first such event organized by

WIPO in an Arab country and in an Arab city. The Delegation expressed how the city of Marrakesh had been extremely pleased to welcome all of the Member States. The Delegation wished to pay tribute to the Member States, especially the various regional groups, for the successful outcome of the Conference and for their contribution to that success, which had played a major role in reaching the goal of adopting the Treaty. It acknowledged that the negotiations had been difficult, but the Delegation stated that the noble nature of the cause as well as its social and humanitarian scope had created a spirit of consensus and harmony among the delegations. The Delegation pointed out that the Treaty would open up a promising future for all visually impaired persons in the world. Further, the Delegation noted WIPO's role in international cooperation and stated that it was ready to stand alongside WIPO. It reassured the delegations that it would always be ready to take part in such events. The Delegation once again thanked the Member States for allowing it to host the Conference and paid tribute to the Member States for the historic achievement.

67. The Delegation of Belgium, speaking on behalf of Group B, wished to congratulate the Director General and the Secretariat for their hard work throughout five years of preparation leading up to the Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired and Otherwise Print Disabled. The Delegation also wished to congratulate the respective and succeeding chairs, vice chairs, committee chairs, officials and experts for the active, constructive and intensive negotiations that had resulted in a historic Treaty. It also expressed its gratitude towards the Government of Morocco for its organizational skills and hospitality. The Delegation expressed its conviction that the Treaty, together with other voluntary projects such as the TIGAR project, would help alleviate the lack of accessible format copies by protecting innovation and creativity within the framework of international copyright law. The Delegation reported that Group B would remain actively engaged with the follow-up of the Treaty. Finally, it expressed appreciation that 54 Member States had already signed the Treaty after its adoption.

68. The Delegation of Japan supported the statement made by the Delegation of Belgium speaking on behalf of Group B. It expressed its pleasure that the Treaty had been adopted. The Delegation also wished to thank the Government of Morocco for hosting the Diplomatic Conference and the Secretariat for its hard work. The Delegation pointed out how the international legal framework, with the adoption of the Treaty, provided copyright exceptions and limitations for the benefit of visually impaired persons and persons with print disabilities. This was a historic milestone with regard to the balance between the protection of the legitimate interests of the rights holders and the interests of people to access works. The Delegation hoped that the Treaty would come into force as soon as possible in order to provide that well-balanced framework. It also reminded Member States that there was more work to be done, especially in regard to the cross-border exchange and the ongoing efforts to implement the Treaty and enhance its effectiveness.

69. The Delegation of India took the opportunity to express its gratitude to the Government of Morocco for having organized the Marrakesh Diplomatic Conference. The Delegation congratulated the Director General and all of the Member States on the successful adoption of the Treaty. The Delegation stressed that it was a historical Treaty which it expected would help remove the book famine experienced by hundreds of millions of people around the world and would establish equal opportunities and rights for the blind, visually impaired and otherwise print disabled. The Delegation stated that the Treaty struck an appropriate balance between copyright and exceptions and limitations. The Delegation announced that it would soon be ready to sign the Treaty and hoped that it would come into force as soon as possible. In conclusion, the Delegation requested that the Secretariat take the necessary actions for capacity building measures if needed by the Member States, before and after joining the Treaty.

70. The Delegation of Poland, speaking on behalf of the Central European and Baltic States (CEBS) Group, congratulated the Member States, the non-governmental organizations and stakeholders on the outcome of the Marrakesh Diplomatic Conference and on the success of the long and intensive negotiations. The CEBS thanked the Government of Morocco for its exceptional hospitality and efficient organization. It highlighted its appreciation for the efforts of the Director General and the Secretariat in concluding a successful diplomatic conference. The CEBS noted that the aim of the Treaty was to improve access to published works for the blind, visually impaired and persons with print disabilities while, at the same time, preserving the interests of the rights holders. The CEBS acknowledged that the Treaty was an important step towards cultural inclusion of visually impaired and other print disabled persons around the world. It also noted that the new Treaty would overcome impediments in legal systems by ensuring proper guarantees for the protection of creative works, while also ensuring the export and importation of accessible format copies. The CEBS supported the possibility of providing solutions for those in need and preserving the principle of copyright protection at the same time.

71. The Delegation of Mexico highlighted the adoption of the Treaty and its importance for Mexico and multilateralism in general. The Delegation noted that the adoption of the Treaty was a major landmark in copyright law and a great triumph for persons with visual disabilities throughout the world. The Delegation thanked the Government of Morocco for its hospitality during the Diplomatic Conference. The Delegation pointed out that the Treaty heralded a new, inclusive, international standard which would ensure that books were prepared in accessible formats such as Braille, and enable trans-border distribution for hundreds of millions of people with visual disabilities and others with print disabilities. The Delegation referred to the words of the World Blind Union (WBU), highlighting that the Treaty was a response to the “book famine” and that it opened up a new world of reading, culture and amusement to visually impaired persons and persons with print disabilities.

72. The Delegation of Brazil speaking on behalf of the DAG, congratulated the Member States and the Secretariat for concluding the Treaty. The DAG noted that the Treaty was a result of a collective and intensive work that could not have taken place without the constructive engagement of all Member States. The DAG highlighted that WIPO had adopted a humanitarian approach in fulfilling its mandate as a specialized agency for intellectual property. The DAG noted that as the Treaty acknowledged the human rights of persons with disabilities, as contained in the United Nations Convention on the Rights of Persons with Disabilities concluded in 2007, it represented a great victory for multilateralism and the international community as a whole. It also noted that the Treaty was a balanced instrument that catered for the needs of persons with visual and print disabilities without encroaching on the rights of creators. The DAG called on Member States to accelerate the process of ratification of the Treaty in order to grant concrete rights to the intended beneficiaries who were still waiting for the advantages of the Treaty to be delivered to them. The DAG pointed out that the implementation of the Treaty would require more effort on the part of all Members States and the Secretariat. It would also involve human and financial resources, as well as technical cooperation. The DAG stated that the Member States must provide an adequate legal framework in order to facilitate the task of authorized entities in the cross-border exchange of accessible format copies. Finally, the DAG urged WIPO to facilitate technical assistance in accordance with the Treaty and the DA recommendations.

73. The Delegation of the United States of America expressed its happiness with the adoption of the landmark Treaty that would enhance access to published works to over 314 million people worldwide who were blind, visually impaired or had print disabilities within the framework of the international copyright system. The Delegation was pleased it had participated actively, along with more than 160 delegations, in the negotiations that resulted in the adoption of the Treaty. The Delegation noted that the United States of America hoped to sign the Treaty in the following weeks and that it looked forward to its entry into force and its practical application at the earliest possible time.

74. The Delegation of Cuba congratulated the Member States on the adoption of the Treaty and expressed its approval of the comments made by the Delegation of Brazil in the sense that the next great challenge was the implementation of the Treaty. The Delegation hoped that a similar solution would also be provided in the near future to other important issues such as libraries, archives, and educational and research institutions.

75. The Delegation of Algeria stated it was pleased with the successful organization of the Diplomatic Conference by the Government of Morocco and expressed its delight that such landmark event had been held in Africa. The Delegation acknowledged the role of WIPO in managing to steer Member States towards reaching consensus on crucial issues. The Delegation noted that WIPO had fostered a more balanced intellectual property system that balanced private interests with that of the larger public.

76. The Delegation of Lithuania, speaking on behalf of the European Union (EU) and its member states, congratulated the Member States for reaching an agreement during the Diplomatic Conference on the Treaty. The Delegation congratulated the host of the Diplomatic Conference as well as the Secretariat and the other stakeholders for their immense contributions towards the success of the Diplomatic Conference. The Delegation noted that the Treaty was a very important step in improving access to books while facilitating cross-border exchange of books and materials in accessible format. The Delegation expressed its confidence that the Treaty would help transform the lives of persons around the world who are blind, visually impaired or otherwise print disabled. It highlighted the role of copyright in rewarding creativity and the important place of authors in enriching the cultural, educational and scientific lives of the community. The EU and its member states had started the preparatory work to sign and subsequently ratify the Treaty in order to deliver its benefits to visually impaired persons without further delay.

77. The Delegation of Chile welcomed the signing of the Treaty and praised the Member States for their achievement in concluding the Treaty after almost 10 years of negotiations. The Delegation noted that since 2004, Chile had taken the position that intellectual property should respond positively to the problems of disadvantaged countries and that the present Treaty did exactly that. The Delegation welcomed the news that 54 countries had signed the Treaty and hoped that the Treaty would soon come into force through the necessary ratifications.

78. The Delegation of Paraguay referred to its opening statement which stressed the historic aspects of the Treaty. It emphasized its support for the three elements cited by the Delegation of Brazil in relation to the process of ratification and implementation of the Treaty. It also stressed the importance of guaranteeing sufficient resources to provide technical assistance within the framework of the Treaty. The Delegation also expressed the hope that the Secretariat would help in the dissemination of information about the Treaty with regional and national events. It ended by thanking the Government of Morocco for its hospitality as well as the Secretariat for all of the work that had been done.

79. The Delegation of Argentina expressed gratitude for all of the work undertaken by the Member States and the observers, the Director General, and the Secretariat for all the joint efforts undertaken. It emphasized that those efforts had allowed everyone to reach a historic international instrument on limitations and exceptions to copyright law which provided a benefit to many people who were visually impaired. The Delegation thanked the Government of Morocco for the excellent organization of the Conference and emphasized the fact that it was concluding the steps necessary for signing the Treaty. Finally, the Delegation expressed its support for the statement made by the Delegation of Brazil.

80. The Delegation of Mongolia congratulated all the Member States, the Government of Morocco and the Secretariat for their hard work and efforts which had led to extremely positive outcomes. It added that the successful conclusion of the Treaty by the Member States was proof that the intellectual property community had not only big heads but also big hearts. The Delegation emphasized that Member States should be proud of their membership and of the work they had done in Marrakesh as it demonstrated that they were capable of working together and overcoming not only intellectual property related challenges but also the challenges faced by humanity. It also expressed its belief that the phenomenon of the spirit of a successful outcome, which had started in Beijing and continued in Marrakesh, would continue for the future works of the Organization.

81. The Delegation of Pakistan congratulated all the Member States, the Government of Morocco, the Director General and the Secretariat for the successful adoption of the Treaty. It added that the Treaty was testament to the commitment of Member States to overcome challenges to reach a consensus, emphasizing that it was also a benchmark for the effectiveness of the multilateral system and the international community. The Delegation stressed however that that was just the beginning and that effective implementation needed to be ensured. The Delegation concluded by requesting that WIPO facilitate technical assistance to its members and promote activities to raise awareness.

82. The Delegation of Guatemala congratulated WIPO and its Member States for the conclusion of the Treaty. It added that the Treaty was of the utmost importance to Guatemala as it would become a great tool for access to culture and education on an equal footing for all. It also urged WIPO to continue implementing and disseminating the Treaty, emphasizing its support for the statement made by the Delegation of Brazil.

83. The Delegation of China expressed its congratulations on the adoption of the Treaty and also thanked the Government of Morocco for its efforts. The Marrakesh VIP Treaty was another important Treaty after Beijing to ensure visually impaired persons' access to published works. It concluded by expressing the hope that the Treaty would enter into force as soon as possible.

84. The Representative of Knowledge Ecology International (KEI) stated that KEI had been impressed with the number of rights holder organizations that had endorsed the Treaty and called for its fast ratification and implementation. The Representative also emphasized the contributions of several other non-governmental organizations (NGOs) in the negotiations such as the Third World Network (TWN) and CSI India, as well as several library associations. The Representative stated that there were quite a few NGOs that had supported the Treaty efforts over the five previous years, but that they could not be present in Marrakesh although their role had been very important. The Representative noted that during the five years of discussions on the Treaty there had been moments of frustration. Sincere efforts had been made to achieve a positive outcome, which was inspiring. It was impossible to single out all the delegations that had led the way as there were so many from all regions of the world. Regarding implementation, the Representative added that it would be important that the Member States found ways that were not overly complex or burdensome and above all, were effective in expanding access to published works. It also stated that there had been some disappointments in the negotiations, including the elimination of deaf persons as beneficiaries as well as the narrowing of exceptions to non-profit entities and the narrowing of the covered works. The Representative expressed the hope that these flaws would be addressed and corrected in the implementation as the Treaty provided for minimum exceptions. The Representative concluded by expressing gratitude for having been given the opportunity to comment, adding that the experience in WIPO had been extraordinary.

85. The Representative of the Third World Network (TWN) congratulated the Member States on the conclusion of negotiations on the Treaty. It was a landmark development as for the first time WIPO and its Member States had set minimum international obligations explicitly targeting

the users of intellectual property. The Representative added that it seemed like WIPO had, for the first time, put people's interests above corporate interests, and expressed the hope that the same concerns and care would be reflected in the coming days in other areas of intellectual property protection which interfaced with people's lives, such as medicines. The Representative highlighted that future norm setting activities should follow the spirit of Marrakesh to address development concerns with regard to the other areas of intellectual property protection. WIPO and its Member States should interpret and implement the Treaty in order to facilitate access to availability of works in accessible format copies for the benefit of persons, and not in the sole interests of industry. The Representative stated that one area of concern was the imposition of the three-step test requirement for export purposes, which was viewed as a TRIPS plus requirement that could prevent the cross-border transfer of works. One of the limitations of the Treaty was that it did not restrict contractual restrictions. Finally, the Representative stated that it supported the statements made by many developing countries regarding technical assistance and noted that unlike many other texts, the Treaty did not mention anything on technical assistance. It highlighted that technical assistance in the area should focus not only on the implementation of the Treaty but also on facilitating technology transfer for making accessible format works, as well as sharing of information on implementation. The Representative concluded by urging the Secretariat to carry out a technical assistance program even in the absence of an explicit mandate.

86. The Representative of the International Video Federation (IVF) started by congratulating Member States, the Director General, and the Secretariat on the conclusion of the Treaty. The Treaty was consistent with the established international copyright framework, conventions, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and the Beijing Audiovisual Performances Treaty, and it also confirmed the role of the three-step test as the international rule for balancing rights and exceptions. The Representative emphasized that audiovisual producers and publishers supported broad ratification and faithful implementation of the Treaty to achieve its intended objectives, including the establishment of an adequate legal framework which made cross-border exchange of special format copies a reality, and promoting cooperation with publishers and authorized entities.

87. The WIPO General Assembly took note of the contents of the "Report on the Outcome of the Marrakesh Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities" (document WO/GA/43/9 Rev.).

## ITEM 32 OF THE CONSOLIDATED AGENDA

### REPORT OF THE COMMITTEE ON DEVELOPMENT AND INTELLECTUAL PROPERTY (CDIP) AND REVIEW OF THE IMPLEMENTATION OF THE DEVELOPMENT AGENDA RECOMMENDATIONS

88. Discussions were based on documents WO/GA/43/10 and WO/GA/43/11.

89. The Chair introduced Agenda Item 32, which addressed two items, namely, the Report of the Committee on Development and Intellectual Property (CDIP) contained in document WO/GA/43/10, and Description of the Contribution of the Relevant WIPO Bodies to the Implementation of the Respective Development Agenda Recommendations, contained in document WO/GA/43/11.

90. The Secretariat introduced the two documents presented under Agenda Item 32. First, document WO/GA/43/10 contained the Report of the CDIP, with respect to the two sessions of the CDIP held since the last session of the General Assembly, namely the tenth session held from November 12 to 16, 2012, and the eleventh session held from May 13 to 17, 2013.

The Committee had agreed earlier that the Summary of the Chair for those two sessions would constitute the Committee's report to the General Assembly. Second, document WO/GA/43/11 pertained to the Contribution of the Relevant WIPO Bodies to the Implementation of the Respective Development Agenda Recommendations. The Secretariat recalled that the General Assembly at its 39<sup>th</sup> Session in 2010, approved the Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities ("the Coordination Mechanism"). In accordance with the Coordination Mechanism, the relevant WIPO bodies were required to include in their annual reports to the Assemblies a description of their contribution to the implementation of the respective DA recommendations. The General Assembly was then required to forward that description to the CDIP. Accordingly, the contribution of the relevant WIPO bodies to the implementation of the DA was displayed by document WO/GA/43/11, as references to the relevant paragraph numbers in their respective reports were provided to the General Assembly.

91. The Delegation of Belgium, speaking on behalf of Group B, reiterated the commitment of the Group to further progress in the field of development and therefore called for the 45 DA Recommendations to be gradually implemented in an appropriate, balanced and consensus-driven way. The Delegation thanked the Secretariat for its contribution to the activities of the CDIP but wished further improvements in the timely availability of documents in all WIPO languages. The Delegation pointed out the progress and positive evaluation of the implementation of several CDIP projects and welcomed the further follow-up with regard to the reports on feasibility of integration of the Millennium Development Goals (MDGs). It also acknowledged WIPO's Results-Based (RBM) framework and the Organization's indirect contribution to the achievement of the MDGs. The Delegation also referred to the CDIP's External Review of WIPO Technical Assistance in the Area of Cooperation for Development (CDIP8/INF/1) and its related reports, noting that many of the recommendations in these reports were implemented or in the process of implementation, and were duly answered by the Secretariat. However, challenges remained in issues of efficiency and sustainability of WIPO's Technical Assistance projects and the Delegation thought that they would be enhanced by better internal and external coordination, notably through the best practices and lessons learned from national projects with a focus on technical assistance. Furthermore, the Delegation reiterated that the CDIP should take a balanced and consensual decision on activities related to south-south cooperation, notably on the organization of a Conference on Intellectual Property and Development, pointing out the Group's endorsement of the list of speakers agreed by the CDIP and expressing its disappointment that some delegations were not in a similar position. The Group remained committed to further cooperating to the implementation of DA Recommendations and expressed confidence that this work would be carried out in a positive and constructive manner.

92. The Delegation of Djibouti read out a statement on behalf of the Chair of the CDIP, His Excellency Mr. Mohamed Siad Doualeh, Ambassador and Permanent Representative of the Republic of Djibouti. The Chair stressed that the subject of the DA was amongst the most important issues discussed at WIPO, and discussions at the CDIP were always driven by an enhanced use of the global intellectual property system for socio-economic and cultural development. The Chair of the CDIP also observed the good progress made by the Committee over the last two years, noting that thematic projects since 2009 had produced dividends as a number of technical assistance activities had been delivered in accordance with the DA principles. He added that under the Committee's close guidance, the Organization had advanced work on issues such as the flexibilities in the international legal instruments and the contribution of WIPO to the UN Millennium Development Goals (UNMDGs). He also called upon Member States to continue work with diligence and prudence, stressing that the WIPO DA was the vehicle for a lasting change, with the countries' shared vision and interest in the IP system. Further, he referred to the next session of the CDIP scheduled to be held from November 18 to 20, 2013, during which important issues such as the external review of the implementation of the DA and the convening of the International Conference on IP & Development would be discussed. He reminded Delegations that due to the difference of

opinion on certain issues, he had recommended the postponement of the International Conference on IP & Development to the Director General and hoped that delegations at the CDIP would positively engage in this and other issues. Ambassador Doualeh thanked the Director General, Mr. Francis Gurry, and the Deputy Director General, Mr. Geoffrey Onyeama, for their guidance and support to the work of the Committee, and Mr. Irfan Baloch, Director of the Development Agenda Coordination Division (DACD) for his able assistance in discharging his duties as the Chair. He concluded by encouraging Member States to pursue their collective mission towards a development-oriented use of IP, and expressed his commitment to working in a spirit of consensus and multilateral engagement.

93. The Delegation of Japan associated itself with the statement made by the Delegation of Belgium, on behalf of Group B, highlighting the importance of development projects, and therefore expressed its great appreciation to WIPO for its steady responses to development issues and its work in implementing the DA Recommendations. It underscored its belief that improving IP systems would enhance sustained economic development and global economic growth, and referring to the objectives outlined by the WIPO Convention in its Article 3, it stated that the implementation of the DA was a step in that direction. The Delegation reiterated its commitment to engage in discussions at the CDIP in a constructive manner.

94. The Delegation of Ethiopia endorsed the Report of the CDIP contained in document WO/GA/43/10 and thanked the Director General and the entire WIPO staff for their efforts over the past 12 months, as well as Ambassador Doualeh for his work as Chair of the CDIP, for which it expressed its support. The Delegation underscored the importance of the CDIP in coordinating, promoting and monitoring the implementation of the WIPO DA, which was a milestone in achieving the aspirations of developing countries for an international view of IP, more responsive to their realities and needs, and acknowledged the progress made in the implementation of least-developed countries (LDCs)-related DA projects. The Delegation also noted with interest the ongoing process, within WIPO, of redefining the notion of development expenditure, and expressed its full support for the adoption of a clear, precise definition that would help Member States evaluate efforts being made by the Organization in effectively implementing development-oriented activities. The Delegation stressed that the development challenges of LDCs were diverse and complex; improving innovation, creativity and technological advancement would strengthen their national capacity to address their wide-ranging development needs and priorities. Therefore LDCs' cooperation and partnership with WIPO would be more beneficial if it was more target-based and result-oriented, as well as more in line with a broader international cooperation program between LDCs and their development partners, namely the Istanbul Programme of Action (IPoA) for the Least Developed Countries for the Decade 2011-2020. The Delegation highlighted the importance of the implementation of this Program. Further, the Delegation hoped that WIPO would provide adequate financial and human resources support for the implementation of DA Recommendations in order to bring real benefits to developing countries, and LDCs in particular. The Delegation also viewed the building of a consensus on the 2014/15 Program and Budget as important for the smooth functioning of the various activities of WIPO, especially those involving the cooperation with LDCs, and the further strengthening of projects aimed at developing skills. It also attached great importance to the implementation of projects related to transfer of technology, especially in Ethiopia, in addressing common development challenges, and expressed its appreciation to WIPO for its offers of Masters-level and short-term trainings, as well as for the customization of its general course on IP into Ethiopian law. The Delegation expressed the belief that WIPO would strengthen its cooperation and partnership with LDCs and pursue the implementation of DA Recommendations.

95. The Delegation of the United States of America pointed out that the CDIP had made significant progress since the General Assembly approved its creation in October 2007, as 27 DA projects had been approved, with a budget of well over 25 million Swiss francs, and numerous technical assistance activities were being carried out pursuant to the



DA Recommendations. The Delegation considered it as a collective accomplishment of which all Member States could be proud because it had required a spirit of compromise on the part of all Member States and a willingness to proceed on the basis of consensus. The Delegation expressed its readiness to work with other delegations to find a constructive way forward on pending projects within the Committee.

96. The Delegation of South Africa welcomed the Report presented by the Secretariat and the work undertaken by the CDIP in the past 12 months, and commended the Secretariat for its commitment to the mainstreaming of the DA. It also commended the Organization for joining the UN MDG task force aimed at discussing issues related to the achievement of MDGs, indicating that WIPO had a role to play in achieving the MDGs. The delegation therefore supported and encouraged the Organization to do more. It further noted that the Project on enhancing south-south cooperation had been continuing with the last Interregional Meeting held in Cairo from May 6 to 8, 2013 and supported the continuation of this Project beyond the current phase, as south-south cooperation had an important role to play in the Organization and in the multilateral setup. Furthermore, it stressed that WIPO should do more to mainstream the Development Agenda (DA) throughout the Organization. The Delegation also called upon the CDIP to start discussing the third pillar of its mandate, interface between IP and development, and wished to appeal to the Committee to speedily adopt the Terms of Reference for the Independent Review of the implementation of the DA Recommendations, noting that the African Group had already submitted draft Terms of Reference to assist the Committee in this regard. It reiterated its commitment to the work to the CDIP and hoped for a resolution of all outstanding issues.

97. The Delegation of Lithuania, speaking on behalf of the European Union and its member states, noted that development was one of the most important challenges facing the international community and IP played an important role in this context, facilitating innovation, creativity, growth and employment. The European Union and its member states reiterated their commitment to further progress in this field in order to implement the DA Recommendations in an appropriate, inclusive and consensus-driven manner, and thanked the WIPO Secretariat for its valuable contribution to the work of the CDIP. The Delegation also welcomed WIPO's consideration for projects related to technical assistance and capacity building in the area of cooperation for development, and hoped that the collective efforts of Member States would ensure that the Organization's development activities would be conducted on the basis of transparency, good governance and best practice. The Delegation also underlined that all the development activities and projects undertaken must be presided by the idea of sustainability and guided by an area of indicators, which allow Member States to ensure that any specific activity or project met its objectives. In this regard, internal and external evaluation of projects and activities were key components in this process. The Delegation expressed its commitment to this work in a positive and constructive manner.

98. The Delegation of India highlighted the considerable importance to the work of the CDIP and was pleased to note that a number of steps had been taken to ensure a greater orientation in WIPO's work towards development, notably through the mainstreaming of the DA. The Delegation also emphasized the importance of the Independent External Review of WIPO's technical assistance with a view to improving implementation of DA projects and Recommendations, and in that regard, expressed its support to the joint proposal of the DAG and the African Group. The Delegation was pleased to note that the Second WIPO Annual Conference on South-South Cooperation on Intellectual Property and Development was scheduled after the 12<sup>th</sup> session of CDIP, in November 22, 2013, and called for this process to be pursued and for the recommendations that would arise from that conference to be duly implemented.

99. The Delegation of Brazil, speaking on behalf of the DAG, noted the good progress achieved in the implementation of the DA Recommendations, and pointed out to the adoption in 2010 of the Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities; the inclusion of a preamble related to the DA in the Beijing Treaty; the adoption and implementation of several important projects within the CDIP; the broader participation of civil society to WIPO meetings; and progress in the mainstreaming of DA Recommendations in WIPO's activities. The CDIP played an important role in facilitating such progress and in providing coherence to the work related to the DA, but despite all the progress made, more could be expected. The Delegation highlighted that the implementation of the DA depended especially on a cultural change within WIPO as well as in the framing of IP issues, adding that the incorporation of development aspects was a difficult but highly necessary challenge that must be faced by Member States and the IP system as a whole, with the aim to transform IP into a tool for development rather than a barrier. The DAG also stressed that after six years, it was time for Member States to renew their commitment to the full implementation of the 45 DA Recommendations and therefore observed with concern that neither the mandate of the CDIP nor the Coordination Mechanism, both adopted by the General Assembly, were being fully implemented. As both mandates constituted basic tools for the effective mainstreaming of the DA, the DAG urged all Member States to constructively engage in the implementation of these two mandates and referred to two particular issues, namely the implementation of the third pillar of the CDIP mandate, requesting the Committee to discuss the interface between IP and development, and the reports of the relevant WIPO bodies on their contribution to the implementation of the respective DA Recommendations as instructed by the Coordination Mechanism. The Delegation expressed regret that the multitude of views exchanged by Member States on both these issues, although very clear, did not lead to a successful solution. It had instead been impeding the full implementation of decisions adopted by the General Assembly, negatively affecting the predictability and confidence among Member States and ultimately leading to an institutional problem. The Delegation also referred to the discussions on WIPO's Technical Assistance in the Area of Cooperation for Development, taking place at the CDIP, and noted that it was one of the most important issues addressed by the DA. As the necessity to review it had already been recognized, and following the joint proposal by the DAG and the African Group contained in document CDIP/9/16, this process should be further enhanced and it was hoped that Member States would be able to report progress on this issue at the next General Assembly. Concrete results on the review of WIPO's Technical Assistance in the Area of Cooperation for Development would be one of the major contributions that the CDIP can give to the implementation of the DA. The Delegation concluded by expressing its regret regarding the postponement of the Conference on Intellectual Property and Development and recalled that discussions on the organization of such conference had been taking place for the past few years but due to a lack of consensus among Member States, it had to be postponed again. The Delegation believed that this conference remained a very important indicator on the implementation of DA Recommendations and it should therefore be agreed upon as soon as possible.

100. The Delegation of China was pleased with the efforts undertaken by WIPO to integrate development into its activities, and with the results achieved in the implementation of DA Recommendations, noting that 27 projects had been approved so far and covering 21 DA Recommendations. The Delegation congratulated the Director General and his team for their efforts in that regard and hoped that in future sessions, the CDIP would continue in a positive and constructive manner and engage in discussions on a more accurate definition of development expenditure, as it would lead the implementation of DA Recommendations towards greater benefit for more developing countries.

101. The Delegation of Cuba expressed support for the statement made by the Delegation of Brazil, on behalf of the DAG, and highlighted the importance of the DA and its implementation for WIPO and its Member States, as well as the necessity to implement WIPO's Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities. The Delegation also pointed

out the need for Member States to engage in a dialogue on Intellectual Property and Development within the CDIP and called the Organization to allocate more resources for the implementation of DA Recommendations.

102. The Delegation of El Salvador was pleased with the progress made and called all regional groups to continue working together towards progress in the implementation of DA Recommendations and consolidating projects that are important for developing countries. The Delegation aligned itself with the statements made by other delegations regarding WIPO's Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities. It was also pleased by the Report of the CDIP and congratulated its Chair for his efforts and commitment, the Secretariat for all the projects that had been implemented, and the Director General for his personal attention to them. The Delegation also urged all Member States to work towards an agreement on the organization of the Conference on Intellectual Property and Development.

103. The Delegation of Algeria, speaking on behalf of the African Group, thanked the Secretariat for the Report of the CDIP. The Group considered the CDIP as the most important of WIPO's bodies and the DA as one of the Organization's greatest achievements. However, it stressed that the vision of the international IP system needed to be adopted as a result. Although adopting projects contributed significantly to that, the third pillar of the CDIP's mandate should serve as a forum of exchange and discussion on the relation between IP and development. The Group also called upon Member States to be more involved in WIPO's activities on global challenges such as public health, climate change and issues directly related to development. It also called Member States to work on an effective and complete implementation of all DA Recommendations, as well as the Coordination Mechanisms, thereby ensuring that all WIPO Committees provide a complete report on their activities and their contribution to the implementation of DA Recommendations. The Group concluded by observing that discussions among Member States were losing from their dynamism and enthusiasm of the early years, as it was getting more difficult to reach consensus on DA projects, which consequently complicated the task for delegations to exert real activities. The Group therefore urged Member States and the Secretariat not to consider development as an issue of secondary importance but instead ensure its achievement.

104. The Delegation of Canada thanked the Secretariat for its hard work in conducting projects and continuing analysis on DA Recommendations and welcomed the ongoing work undertaken within the CDIP. The Delegation acknowledged the Director General's Report on the implementation of DA Recommendations and welcomed the progress made on this matter to date.

105. The Delegation of the Russian Federation acknowledged the Report of the CDIP and greatly appreciated the progress made by the Secretariat on the implementation of DA projects approved by the CDIP, particularly regarding those providing Internet resources on IP through the creation of Specialized Databases and Technology and Innovation Support Centers (TISCs). The Delegation was keen to continue its cooperation constructively on these issues and to ensure a successful implementation of DA Recommendations.

106. The Delegation of Iran (Islamic Republic of) associated itself with the statement made by the Delegation of Brazil, speaking on behalf of the DAG. The Delegation appreciated the work done at the CDIP and the consideration of the 45 DA Recommendations as an integral part of WIPO's mandate, it believed that all the Organization's bodies should take due account of these Recommendations in their activities and policy making decisions. A particular attention should be given to the challenges and needs of developing countries in projects implementing the DA as this would enable them to develop national IP strategies and formulate balanced IP systems in line with their cultural specifications, general and social needs and compatible with their level of development. The Delegation highlighted the great importance of mainstreaming development in all WIPO activities and of the speedy implementation of the 45 adopted

DA Recommendations under the WIPO DA, it believed that the CDIP had made good progress in the implementation of some parts of the DA in the recent years, and in this process, some concrete results had been achieved. Establishing the Coordination Mechanism constituted a good example of a positive step, even though it had not yet been re-captured by all WIPO's Committees and in that regard, it would be necessary to have a clear understanding of the overall purposes of WIPO's development cooperation activities, or of the conceptual framework of "development-oriented" assistance. The Delegation indicated that technical assistance should not be interpreted narrowly as merely promoting IP systems in different countries but rather could be utilized for exploring ways and studying best practices in order to reconcile the cause of development with that of protection of intellectual property rights (IPRs), and decrease areas of potential contradiction between the two. The Delegation stated that the *raison d'être* of the CDIP was to define and initiate IP strategies aimed at strengthening rights in this field. The ultimate goal would be the reduction of the knowledge gap between developing and developed countries by using flexibilities in IP treaties in order to promote access to education, health and medicines, to enlarge the public domain and to align IP laws with efforts to protect natural resources, TCEs, TK and GRs from unfair use. Therefore, technical assistance should focus on ensuring that developing countries would be able to benefit from the use of IP for economic, cultural and social development, and should contribute to the reduction of the knowledge gap and to greater benefits for developing countries from the knowledge economy. The Delegation concluded by noting that since the activities of WIPO as UN specialized agency should be in conformity with the broader development objectives and activities of the UN, systematic and continuous provision of further comprehensive reports concerning WIPO's contributions to the implementation of the development goals and objectives of the UN would be not only highly desirable and appropriate, but necessary.

107. The Delegation of Belgium, speaking on behalf of Group B, thanked the Chair for allowing it to make a second statement and thanked the Secretariat for document WO/GA/43/11 providing a Description of the Contribution of the Relevant WIPO Bodies to the Implementation of the Respective Development Agenda Recommendations. The Delegation noted that different interpretations existed with regard to the term "Relevant WIPO Bodies" as mentioned in the decision of the General Assembly establishing the Coordination Mechanism in 2010 and contained in document WO/GA/39/7. The Group reiterated its position on this matter by stating that WIPO bodies should themselves determine whether they were relevant for the purpose of the Coordination Mechanism. Furthermore, neither the Committee on WIPO Standards (CWS) nor the PBC had determined that they were relevant bodies for the purpose of the Coordination Mechanism. The Group noted that the CWS was dealing with the establishment of non-binding technical standards whereas the PBC was competent for the financial underpinnings of WIPO and thus neither of these activities was related to development.

108. The Delegation of Venezuela (Bolivarian Republic of) thanked the Secretariat for introducing the Report of the CDIP and acknowledged the progress made, especially considering that at the beginning WIPO was barely mentioned in discussions on development. Having established the DA was a great progress because it positioned WIPO in line with the MDGs. The Delegation called for a continuation of the implementation of DA Recommendations, notably through the adoption by the Assembly of a cross-cutting mechanism that would not differentiate between relevant and non-relevant WIPO bodies. The Delegation stressed that all WIPO Committees should be involved in the Coordination Mechanism.

109. The Delegation of Egypt expressed its support for the statements made by the Delegation of Algeria, on behalf of the African Group, and by the Delegation of Brazil, on behalf of the DAG. The Delegation stressed the importance of the effective implementation of DA Recommendations and noted that the work of the CDIP was substantial, as many of the DA projects would be completed this year. Therefore, sufficient resources should be planned ahead and available to be allocated to future projects, as the implementation of DA Recommendations would not stop with the completion of its related projects. It pointed out that

DA Recommendations were general and covered all the Organization's activities; their implementation was a dynamic and continuous operation. The Delegation also wished to highlight some of the difficulties and priority issues addressed by the CDIP in the past year, starting with the implementation of the Coordination Mechanism. Two major WIPO Committees, namely the CWS and the PBC, had not yet submitted reports on their contribution to the implementation of DA Recommendations, which would be a source of concern, given their considerable influence on WIPO's view of the development dimension within the IP system. The Delegation also regretted that the Description of the Contribution of the Relevant WIPO Bodies to the Implementation of the Respective Development Agenda Recommendations, contained in document WO/GA/43/11, were only an outline of the delegations' statements and did not provide sufficient analysis on this actual contribution. Furthermore, the CDIP encountered difficulties regarding the implementation of the third pillar of the Committee's mandate, which despite the General Assembly decisions in 2007 and 2010, the Committee had been prevented from implementing the third pillar of its mandate, i.e., to discuss IP and development related issues. The Delegation also referred to the External Review of WIPO Technical Assistance in the Area of Cooperation for Development (CDIP8/INF/1) and to the Joint Proposal by the DAG and the Africa Group on WIPO's Technical Assistance in the Area of Cooperation for Development (CDIP/9/16), emphasizing the need for WIPO to continue the implementation of the recommendations contained in these two documents. As for the use of the CDIP as a forum for discussion and exchange, the Delegation suggested that the CDIP would contribute to Program 18 of the PBC, IP and global challenges, in bringing ideas on IP and public health, food security and environment. The Delegation thanked the CDIP for its activities on DA projects over the past year and was prepared to engage in informal discussions on pending issues addressed by the CDIP in the course of the present Session of the WIPO Assemblies.

110. The Delegation of Thailand expressed its appreciation to the role of WIPO as a global IP service provider and recalled its belonging to the UN family, which underlined the necessity of its meaningful contribution to broader UN goals, particularly to development. It was thus pleased with the increase of development expenditure in the overall share for the next biennium, although it called the CDIP to continue discussion and reach conclusion on the new definition of development expenditure, to be applied in the 2016-2017 biennium, in order to ensure a more accurate reflection of resources dedicated to development. The Delegation thanked the Secretariat for initiating projects and activities in this area and, noting that the implementation of the DA was everyone's responsibility at the Organization, encouraged Member States to submit more project proposals under the CDIP. In that regard, it appreciated WIPO's support for Thailand's Product Branding Project, which had been successfully concluded, and looked forward to exploring new projects with the Secretariat. The Delegation also supported the Joint Proposal by the DAG and the African Group on WIPO's Technical Assistance in the Area of Cooperation for Development, contained in document CDIP/9/16, and looked forward to further discussion on all recommendations of the External Review of WIPO Technical Assistance in the Area of Cooperation for Development, contained in document CDIP8/INF/1. Furthermore, the Delegation welcomed the reports from all WIPO bodies on their implementation of the DA, but emphasized the need to strike a balance in the norm setting work within the various committees, taking into account the realities and needs of developing countries. It was particularly concerned that the specific discussion on IP and development-related issues had not yet taken place, and requested the CDIP to establish a specific agenda item on this issue in its future Sessions as soon as possible.

111. The Representative of TWN expressed concerns with regard to the resistance among certain Member States in the implementation of DA Recommendations. The DA was the result of a Member State driven process and Recommendations were adopted on the basis of consensus. However, this implementation was slow and often as a stand-alone program without much progress in the mainstreaming of these Recommendations in WIPO's programs. Despite previous decisions of the General Assembly, until now there was no standing agenda

item on IP and development. The Representative called upon Member States to facilitate the smooth implementation of DA Recommendations during this present Session. Moreover, the UN was engaged in a process of drawing up a post-2015 DA of which technology was considered as an important pillar. While the crucial role of technological innovation in improving living standards in developing countries should be acknowledged, it should not be mixed with IP protection, as technological innovation could take place even in the absence of IP protection, IP should not be considered as a necessary condition for innovation. The Representative stressed that revamping technical assistance projects was an important aspect of DA recommendations and noted the absence of notable improvements in this regard. The independent review carried out by the Secretariat clearly pointed out the existing gaps in the technical assistance programs. For instance, WIPO's projects on technical assistance to strengthen national IP strategies, outlined in documents CDIP/3/INF/2 and CDIP/9/10 Rev., ignored key development concerns and often advocated maximalist IP positions. The Representative therefore urged the Secretariat to carry out technical assistance activities in accordance with DA principles and urged the CDIP to adopt the Joint Proposal by the DAG and the Africa Group on WIPO's Technical Assistance in the Area of Cooperation for Development, outlined in document CDIP/9/16. The Representative also urged the Secretariat to ensure transparency and accountability in the implementation of technical assistance projects. As to the review of the implementation of the DA Recommendations undertaken by the CDIP and reported to the General Assembly in the current biennium, the Representative specifically asked that it should be carried out by a panel of independent experts specialized in IP, and called upon the Member States to finalize the terms of reference of this review and the composition of the panel of independent experts at the coming CDIP meeting in November.

112. The Chair thanked the delegations for their statements under this agenda item, and Chair read out the decision paragraphs in respect of the documents concerned:

“The WIPO General Assembly is invited to take note of the contents Report of the Committee on Development and Intellectual Property (CDIP), as contained in document WO/GA/43/10.

“In respect to the Description of the Contribution of the Relevant WIPO Bodies to the Implementation of the Respective Development Agenda Recommendations, contained in document WO/GA/43/11, the WIPO General Assembly is invited to, first, take note of the information contained in this document, and second, forward the reports referred in the document to the CDIP.”

113. The Delegation of Brazil, speaking on behalf of the DAG, observed that some delegations requested, at an earlier stage of the discussions on Item 32, further discussions on the issues of the full implementation of the CDIP mandate and the Coordination Mechanism. It stated that a significant part of WIPO's Member States supported the full implementation of these instruments and requested decisions to be taken on these two subject matters after consultation with all Member States.

114. The Delegation of Algeria, speaking on behalf of the African Group, supported the statement made by the Delegation of Brazil, on behalf of the DAG. The Group requested further discussions in order to obtain a decision from the General Assembly on these pending issues within the CDIP, namely, the implementation of the Coordination Mechanism and the inclusion of an item on IP and development within the agenda of the CDIP Sessions.

115. The Delegation of Egypt supported the statements made by the Delegation of Brazil, on behalf of the DAG and the Delegation of Algeria, on behalf of the African Group. The Delegation pointed out that taking note of the reports would not bring any solution to the issues raised but would leave them pending, which would not facilitate the future work of the CDIP.

The Delegation called for a clear decision to be taken by the Assembly on the implementation of the third pillar of the CDIP's mandate.

116. The Delegation of Belgium, speaking on behalf of Group B, noted that the agenda of the General Assembly was already full for its plenary sessions and informal consultations had been launched on many outstanding issues. Therefore, the Group wished to defer discussion on this agenda item.

117. The Delegation of South Africa supported the statements made by the Delegation of Brazil, on behalf of the DAG, the Delegation of Algeria, on behalf of the African Group and the Delegation of Egypt. It called for a decision to be taken by the General Assembly on the full implementation of the CDIP mandate.

118. The Delegation of the United States of America supported the statement made by the Delegation of Belgium, on behalf of Group B, regarding the fact that many informal consultations had already been launched and the agenda of the General Assembly was already full. The Delegation added that the CDIP would be the correct place to continue these discussions on the CDIP mandate and the Coordination Mechanism. Referring to the statement made by the Delegation of Djibouti, it observed discussions on these issues were already scheduled at the next meeting of the CDIP in November. Further, discussions within the CDIP would be undertaken by delegates who have the best knowledge of these issues. Therefore the Delegation suggested that these issues should be brought up at the next Session of the CDIP.

119. The Chair stated that there was a need for informal consultations before further discussion of this item. After having taken note of the statements made by delegations, the Chair decided to leave Agenda Item 32 open and stated that there was a need for informal consultations before further discussion of this item at a later stage of this General Assembly.

120. Following informal consultations, under the chairmanship of the Vice Chair of the General Assembly, Mr. Mokhtar Warida, the Chair announced that delegations had reached agreement on the following text:

“The WIPO General Assembly:

- (i) recalls its 2007 decision on Establishing the Committee on Development and Intellectual Property, contained in document A/43/13, and its decision on the Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities, contained in document WO/GA/39/7, and reaffirms its commitment to their full implementation;
- (ii) reaffirms that all WIPO Committees stand on equal footing and report to the General Assemblies;
- (iii) takes note of concerns expressed by some Member States on the implementation of the CDIP mandate and the implementation of the Coordination Mechanisms; and
- (iv) requests the CDIP to discuss these two matters during its Twelfth and Thirteenth Sessions, report back and make recommendations on the two matters to the General Assembly in 2014”.

121. The WIPO General Assembly adopted the text as contained in paragraph 120.

122. Before closing Agenda Item 32, the Chair thanked the delegations and expressed her gratitude to the Vice Chair of the General Assembly, Mr. Mokhtar Warida, for his efforts and dedication on resolving the matter during informal consultations under this agenda item.

#### ITEM 33 OF THE CONSOLIDATED AGENDA

##### CONSIDERATION OF THE CONVENING OF A DIPLOMATIC CONFERENCE FOR THE ADOPTION OF A DESIGN LAW TREATY

123. See document A/51/20, Agenda Item 48 (Closing of the sessions).

#### ITEM 34 OF THE CONSOLIDATED AGENDA

##### MATTERS RELATING TO THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)

124. Discussions were based on document WO/GA/43/13.

125. The Secretariat introduced document WO/GA/43/13 and explained that three subjects were under consideration: the protection of broadcasting organizations, limitations and exceptions for libraries and archives and limitations and exceptions for education and research institutions and persons with other disabilities. The Secretariat pointed out that some of the broad targets for advancing in the work had already been approved by the 2012 WIPO General Assembly as indicated in the document.

126. The Delegation of Belgium, speaking on behalf of Group B, welcomed the work of the Secretariat and the progress achieved during the past year of SCCR and inter-sessional meetings. Group B looked forward to moving towards a discussion on developing an international treaty to update the protection of broadcasting and cable organizations in the traditional sense. A common understanding was required on what the objectives of that treaty were, in terms of the problems to be addressed and the protection to be granted. With reference to limitations and exceptions in favor of libraries, archives and educational and research institutions, the existing copyright framework already enabled those institutions to fulfill their roles both in the analog and digital world. Group B was ready to debate and work alongside other Member States so that those exceptions and limitations functioned in the best possible way within the existing framework of international treaties and conventions. Group B suggested with reference to the many meetings held over the last year that the SCCR should consider taking a more measured approach to the pace of its work. Group B believed that the SCCR could accomplish that goal in the upcoming year by updating the protection for broadcasting and cable organizations and through developing a deeper understanding of exceptions and limitations in the international copyright system through the exchange of experiences.

127. The Delegation of Poland, speaking on behalf of the CEBS Group, expressed its gratitude to the Chair and the Secretariat on the successful Marrakesh Diplomatic Conference and the continued deliberations on other topics of the SCCR agenda. The CEBS Group highlighted that all of the points in the SCCR agenda were important and it supported the view that the main priority for the SCCR should be finalizing the proposal for a treaty on the protection of the broadcasting organizations with the objective to convene a diplomatic conference in the near future. Ensuring adequate protection at the international level for broadcasting organizations was important and updating it for the 21<sup>st</sup> century was long overdue. The CEBS Group supported the call of broadcasters to introduce a global solution to signal piracy which jeopardized legitimate and necessary investments. The development of media was a key



element of social cohesion, political pluralism and the cultural enrichment of all societies. It was high time to achieve that goal and prepare the ground for calling the diplomatic conference. The first step was agreeing on a stable and reasonable roadmap for the work of the SCCR. The CEBS Group had drafted a proposal and asked all delegations to take it into consideration and adopt it. The Group suggested that the General Assembly agree that the SCCR should accelerate the work on broadcasting as a priority matter. It explained its proposal, namely that prior to the 2014 General Assembly, no less than three days per SCCR meeting would be devoted to refining the text of document SCCR/24/10 Rev. The CEBS Group also explained that the SCCR should submit to the 2014 General Assembly a text in order to allow the General Assembly to consider the progress made and decide on whether to convene a diplomatic conference in 2015. The Group looked forward to the discussions on the issues of libraries and archives as well as educational, research, and teaching institutions, as both played an important role in the dissemination of culture and research. The exchange of experiences could facilitate the functioning and effective application of exceptions and limitations in both the analog and digital worlds. The CEBS Group noted that despite the intense agenda it was advisable to include new items in the SCCR agenda as that would reflect a technological and cultural balance, which was key to the promotion of creation. New items should facilitate the adoption of frameworks and provide the boundaries for normative attempts and exchanges of national experiences. The CEBS Group also noted that it was advisable to focus on evidence-based policy in the area of copyright and related rights. Finally, the CEBS Group reinforced its commitment to work with the SCCR in a constructive manner.

128. The Delegation of Lithuania passed the floor to the Delegation of the European Union and its member states.

129. The Delegation of the European Union and its member states said that it had been actively involved in the discussions for a treaty for the protection of broadcasting organizations. It attached great importance to such negotiations and was encouraged by the progress in the last round of discussions. The Delegation acknowledged that work remained to be done before calling a diplomatic conference. It expressed its willingness to undertake such work given that the Marrakesh VIP Treaty had been successfully concluded. A common understanding was urgently needed as to the objectives in terms of problems to be addressed and the protection to be granted. With regard to limitations and exceptions for libraries, archives, education and research institutions, the Delegation believed that the current international copyright framework enabled Member States sufficient legal space to ensure meaningful limitations and exceptions in the analog and digital context, while respecting the necessary balance to ensure that copyright continued to be an incentive and a reward to creativity. The Delegation was ready to debate and work so that those limitations and exceptions functioned in the best possible way in the framework of existing international treaties. The Delegation noted that the exchange of ideas and best practices offered the way forward on the issue.

130. The Delegation of El Salvador expressed its appreciation for the progress made during the SCCR over the past years. The Delegation called attention to the high quality of the services that WIPO had provided regarding legislative assistance in the process of implementing treaties. The Delegation asked the Director General and the Secretariat to continue giving their support. The Delegation was currently working on the area of copyright limitations and exceptions for libraries and archives. The Delegation was also committed to the subject of protection of broadcasting organizations.

131. The Delegation of Japan expressed its support for the statement made by the Delegation of Belgium on behalf of Group B and its appreciation for the meaningful discussions that had taken place in the SCCR since the previous General Assembly. The Delegation noted that the next target of the SCCR was the treaty on the protection of broadcasting organizations. The Delegation recalled that the Beijing Treaty on Audiovisual Performances was a necessary response to the digital era. In the same sense, an international legal response should be also

provided with respect to broadcasting organizations. The Delegation pointed out that the single, draft treaty text was a result of long discussions and that there should be a continuation of the concrete discussions on the substantial issues in order to reach a consensus consistent with the mandate given by the General Assembly in 2007, with the goal of convening a diplomatic conference as soon as possible. The Delegation was eager to contribute to further substantial progress towards such an important treaty. On the issue of limitations and exceptions to copyright, it was essential to ensure a proper balance between the interests of rights holders and access to works. The Delegation explained that if the best incentives were not created, the interests of the users could be affected. The Delegation recalled that the three-step test had already been introduced in some Member States and that any international instrument should provide flexibility to allow implementation at a domestic level on the premise that the scope of the three-step test would not be affected.

132. The Delegation of Thailand welcomed the progress made by the SCCR and congratulated delegations on the success of the Diplomatic Conference. The Delegation noted that the Marrakesh VIP Treaty was a successful reflection of the principles of non-discrimination, equal opportunity, accessibility, full and effective participation and inclusion in society proclaimed in the Universal Declaration of Human Rights and the UN Convention on the Rights of Persons with Disabilities. It also noted that the Marrakesh VIP Treaty would benefit 314 million people who were blind, visually impaired or print disabled. The Delegation expressed its wish to participate in constructive discussions relating to limitations and exceptions for libraries, archives, educational purposes, research institutions and persons with other disabilities. On the protection of broadcasting organizations, the Delegation praised the work done by the SCCR and looked forward to constructive work based on a signal-based approach which was consistent with the mandate given by the General Assembly in 2007. The Delegation pointed out that WIPO activities were not limited to intellectual property rights, but reflected a broader social and development context.

133. The Delegation of the United States of America expressed its support for the statement made by the Delegation of Belgium on behalf of Group B, in particular with respect to the protection of broadcasting organizations. The Delegation highlighted its support for prioritizing work on updating protection for broadcasting organizations under the terms of the General Assembly mandate which called for a signal-based approach to provide protection for the activities of broadcasting organizations in the traditional sense. The Delegation believed that such protection should be carefully targeted, focusing specifically on the unauthorized simultaneous or near-simultaneous retransmission of broadcast signals to the public over any type of platform, including over-the-air broadcasts as well as the Internet. The Delegation informed delegates that it was actively preparing for the December 2013 session of the SCCR based on that approach. It looked forward to the opportunity to advance the development of a treaty text that achieved common goals in a manner consistent with the terms of the General Assembly mandate. The Delegation pointed out that its specific ideas for the SCCR were: three days devoted to broadcasting during the December session, three sessions in 2014 as already agreed upon following the cancellation of the July session, with possible dates in April, early July and November. The Delegation also proposed that the 2014 WIPO General Assembly take stock of the progress achieved at that point and decide whether to convene a diplomatic conference in 2015. On the issue of exceptions and limitations, the Delegation noted that the United States of America had a well-developed range of exceptions and limitations to copyright, both specific exceptions and a long standing judicially developed doctrine of fair use. The Delegation expressed its support for the work in the SCCR aimed at deepening the mutual understanding of Member States of copyright exceptions and limitations with respect to libraries and archives, educational and research institutions and persons with other disabilities. The Delegation noted that it stood ready to further share its own national experiences in the implementation and use of exceptions as well as learning from the experiences of other Member

States. Tremendous progress could be achieved through such discussions and focus should be given to developing common understandings and goals while ensuring appropriate flexibility at the international level. The Delegation was of the view that moving towards norm setting activities in this area was not productive.

134. The Delegation of Mexico was pleased with the progress that had been made on items covered by the SCCR through the active participation, great goodwill and flexibility shown by Member States. The Delegation addressed the two recent treaties which had been negotiated in the SCCR, the Beijing Treaty and the Marrakesh VIP Treaty, and pointed out that there were more than 15 years between those two most recent treaties and the WIPO treaties of 1996. In that regard, the Delegation hoped that the new spirit of unity which those two historical treaties had encouraged could continue to prevail in the work of the SCCR. The Delegation reminded Member States of the significant challenges faced by copyright and related rights in respect of technological advancements and economic globalization. It stated that it would participate actively in the work of updating protection for broadcasting organizations. The Delegation supported the calendar put forward by the Delegation of Poland speaking on behalf of the Group of CEBS, and stated that it would be prepared to work within the scope of that calendar. The Delegation planned to continue to facilitate consultations in the hope of reaching a decision on limitations and exceptions for libraries and archives, as well as limitations and exceptions for educational and research institutions.

135. The Delegation of Brazil, speaking on behalf of the DAG, pointed out that the Marrakesh VIP Treaty and the Beijing Treaty were examples of successful negotiations completed by the SCCR. DAG underscored that achievement on other agenda issues had also made good progress since the last General Assembly. DAG expressed its commitment to the discussion on limitations and exceptions for the benefits of libraries and archives, educational and research institutions, and persons with other disabilities. It reaffirmed the importance of moving forward with these discussions to find concrete and balanced solutions. The DAG commended the efforts that had been made towards the conclusion of a treaty on the protection of broadcasting organizations.

136. The Delegation of Brazil expressed its delight with the progress achieved in the SCCR. The Delegation pointed out that the SCCR had been capable of building consensus between the rights holders and the users of copyrighted works, as well as answering their demands. The Delegation hoped that the results achieved would encourage further solid achievements in other parts of the SCCR agenda. The Delegation highlighted the importance of the continuous negotiation of international legal instruments for the benefit of libraries, archives, educational and research institutions, and persons with other disabilities, in accordance with the work program approved in 2010 and renewed in 2012. The Delegation stated its commitment to engage constructively in the process of discussing the broadcasting issue in line with the mandate approved by the 2007 General Assembly. The Delegation requested clarification on the proposal made by the Delegation of Poland on behalf of the CEBS Group.

137. The Delegation of Algeria, speaking on behalf of the African Group, thanked the Secretariat and the Member States for their participation in the work of the SCCR, highlighting the results that had been achieved and the importance of the issues which had been considered. The African Group stated its commitment to implement the work program which had been adopted by the Committee at the 24<sup>th</sup> session of the SCCR on limitations and exceptions for libraries and archives. The Group had submitted proposals for an international legal text. The African Group stated that it would continue to contribute to the debate and noted the need to establish a binding international legal framework that would facilitate access to knowledge through an obligation to provide limitations and exceptions to the international copyright system in the interests of libraries, archives, educational and research institutions. The African Group stated that by establishing norms on limitations and exceptions this would allow the SCCR and the Secretariat to do even more for development across borders. The

African Group stressed the need for greater access to knowledge in developing countries. It also expressed its commitment to the work towards adopting a treaty on the protection of broadcasting organizations. The African Group requested more information on the proposal made by the Delegation of Poland on behalf of the CEBS Group.

138. The Delegation of Poland underscored that the SCCR had successfully resolved two main issues within the scope of two years and pointed out how reasonable and balanced approaches ensured continued respect for copyright and creativity. It was now important to focus the work of the Committee towards broadcasting organizations and to agree on a stable and reasonable roadmap on how to achieve the goal of holding a diplomatic conference on the issue. The Delegation concluded that this could only be achieved if enough time were devoted to the concrete topic in the 2014 meetings. It supported the statement made by the CEBS Group.

139. The Delegation of Egypt stated that it supported the statements made by the Delegation of Algeria on behalf of the African Group and the Delegation of Brazil on behalf of the DAG. The Delegation also wished to take the opportunity to express its delight with the progress that had been made by WIPO in recent times and how the Member States had proved that they could work together to produce international agreements and treaties in a balanced and development focused way. The Delegation underscored that the Member States now had to look towards the future particularly on issues regarding limitations and exceptions. The Delegation referred to a working document on limitations and exceptions for educational and research institutions and persons with other disabilities based on proposals made by the Delegations of Uruguay, Brazil and other Member States and hoped that it could be further discussed before the 30th session of the SCCR in order to have a recommendation for the 2015 Assemblies. The Delegation also pointed out the Committee's commitment to addressing the issues of libraries and archives so it could be discussed in the 2014 WIPO General Assembly and referred to document WO/GA/41/18, page 43, paragraph 147, which reflects the SCCR work agreed to by the 2012 WIPO General Assembly. The plan also included discussion of the protection of broadcasting organizations. The Delegation requested more information on the proposal made by the Delegation of Poland on behalf of the CEBS Group, and expressed its concern that the proposal would affect the current work program. The Delegation said that the SCCR should build on the successes achieved in Beijing and Marrakesh, working in the spirit of solidarity that had prevailed at those Diplomatic Conferences.

140. The Delegation of Morocco congratulated the Chair and pointed out the excellent way in which she had conducted work in the past. The Delegation announced that it had distributed a book to the Member States which reported on the events at the Diplomatic Conference in Marrakesh, with a royal introduction and many photographs of signatures by Member States. WIPO and its Member States had succeeded in Marrakesh and the Delegation hoped for another diplomatic conference.

141. The Delegation of China expressed its appreciation to the Secretariat and the SCCR for the constructive and productive work in the copyright domain. The Delegation highlighted the successful conclusion of the Beijing Treaty and the Marrakesh VIP Treaty and stated its belief in the possibility of reaching a fast consensus on the outstanding issues in the field of copyright. The Delegation also stated that it would continue to take an active part in the discussion on all issues on the agenda of the SCCR.

142. The Delegation of Kenya indicated its support for the statement made by the Delegation of Algeria on behalf of the African Group and wished to congratulate the Member States and the Secretariat for the successful completion of the Marrakesh VIP Treaty. The adoption of the Treaty had proven that Member States could achieve positive results with common resolve and commitment. In this spirit, the Delegation welcomed the progress that had been made in the SCCR on protection of broadcasting organizations and proposed to build upon it taking into account changing technologies, without prejudice to the 2007 General Assembly mandate. The

Delegation emphasized the need to adopt a clear work program with specific days set aside to address the proposal. It noted that the current item had been on the SCCR agenda for over 15 years and looked forward to a discussion on a concrete text dealing with substantive issues to work towards a binding international instrument within the next biennium. On the issue of limitations and exceptions for libraries and archives, the Delegation wished to echo the sentiments expressed by the Delegation of Algeria on behalf of the African Group. The SCCR had made useful progress and it looked forward to having a concrete text within the next two sessions, based on a clear, concise work plan. There had not yet been extensive discussions on exceptions and limitations for educational institutions and persons with other disabilities but the Delegation anticipated that sufficient time would be dedicated to the discussions in the next two sessions. The Delegation remarked that studies had been carried out in eight African countries on the topic, underscoring the importance of these limitations and exceptions in the copyright environment. Several Member States already have specific laws with these limitations and exceptions and an international instrument would be important in the global setting. It should be possible to bring texts on libraries and archives, education, and persons with other disabilities to future General Assemblies with clear guidelines and a proper work plan.

143. The Delegation of Iran (Islamic Republic of) noted that the conclusion of the treaties in Beijing and Marrakesh was due to constructive engagement in recent years among Member States in the SCCR and it hoped that that spirit of engagement would drive the Committee's program forward towards positive outcomes in other areas. The Delegation also congratulated the Member States, the Director General, and the WIPO Secretariat for those achievements. The Delegation welcomed the commitment of the SCCR to continue its work on limitations and exceptions in a global and inclusive approach. The Delegation was of the view that there was sufficient ground to move towards the harmonization of minimum international standards on exceptions and limitations. It believed that a robust system of limitations and exceptions should be established to ensure access to knowledge, and supported any pragmatic norm setting solutions moving towards a balanced international copyright law for the benefit of rightholders and public policy issues. The Delegation believed that the work of the SCCR on limitations and exceptions should provide a clear and important example of development-oriented norm setting activities and efforts for the implementation of the DA. It also expressed the hope that the outcome of the expected international instrument resulting from the work of the SCCR would provide more opportunity for facilitating access to literary and artistic works from the creative minds of human beings. On the issue of limitations and exceptions for libraries and archives, and educational, teaching, and research institutions, the Delegation encouraged the SCCR to make further progress on those important matters, and stated its confidence that the Committee, after appropriate deliberations, would be able to focus on a text for negotiations on limitations and exceptions. The Delegation stated its readiness in that context to engage constructively and productively with others in the process in order to meet the concerns and needs of millions of people without delay. The Delegation supported the continuation of discussions to work towards appropriate legal instruments with the target of submitting recommendations by the 30<sup>th</sup> session of the SCCR to the WIPO General Assembly. On the issue of protection for broadcasting organizations, the Delegation stated that it is important to have an international instrument to protect broadcasting organizations and prevent signal piracy. It expressed its support for the continuation of the work on the subject of signal-based protection of broadcasting organizations in the traditional sense, consistent with the 2007 General Assembly mandate, towards the objective of reaching a decision on the possible convening of a diplomatic conference on the protection of broadcasting organizations in the near future. The Delegation stated that while it is necessary to update the protection of broadcasting organizations, that protection should be granted without prejudice to the public interest, especially with respect to access to information already in the public domain. It emphasized the importance of striking a balance between the rights of broadcasting organizations and the larger public interest, particularly in relation to education, research, and

access to information. It added that the new treaty should not restrict free access to knowledge, information, and science by society, and should be based on a robust system of exceptions and limitations. In conclusion, the Delegation expressed its readiness to participate actively in the deliberations of the SCCR with a view to the realization of its objectives.

144. The Delegation of Venezuela (Bolivarian Republic of) congratulated the Secretariat for the adoption of the Marrakesh VIP Treaty and reaffirmed its support for the Treaty that aimed to provide access to persons with disabilities, which brought WIPO in line with the MDGs and it should be implemented to be effective for those who most need it. The Delegation supported a limitations and exceptions treaty for libraries and archives and for persons with other disabilities, which will support developing countries. Regarding the issue of protection of broadcasting organizations, the Delegation believed that it was premature to talk about a diplomatic conference given its view that copyright should be focused on human rights for individuals and not platforms for transmission. The Delegation mentioned the proposal presented by the Delegation of Poland on behalf of the CEBS Group and regretted the lack of consultation with the SCCR before the proposal was brought to the WIPO General Assembly.

145. The Delegation of India congratulated the Director General and the Secretariat for their efforts taken to complete the Marrakesh VIP Treaty in such a short time after the Beijing Treaty. The Delegation reiterated its commitment to an international treaty, based on a signal-based approach, to update the protection of broadcasting and cablecasting organizations in the traditional sense consistent with the 2007 General Assembly mandate, which was agreed during SCCR/25. Further, it reiterated its opposition to the inclusion of webcasting and simulcasting in the framework of the draft broadcasting treaty. The Delegation believed that the 2007 mandate of the General Assembly had adequately taken care of the question of technological developments in traditional platforms and urged the General Assembly to reaffirm its 2007 mandate. The Delegation expressed its willingness to engage in constructive discussions to achieve an agreement on the nature, scope and object of protection of broadcasting organizations during the next session of the SCCR. It had presented its proposed legal text with suitable alternatives covering all outstanding issues during the inter-sessional meeting on the protection of broadcasting organizations held in Geneva between April 10 and 12, 2013 and would present it again during SCCR/26. The Delegation was also eager to discuss the issues pertaining to the proposed WIPO treaty on limitations and exceptions for libraries and archives during SCCR/26. It believed that the sharing of materials was vital for the advancement of knowledge particularly for the libraries of developing countries, and it was imperative to provide an exception for non-profit libraries and archives for activities including parallel imports and interlibrary loans. The Delegation supported a legally binding treaty on limitations and exceptions for libraries and archives. The Delegation also expressed its interest in discussing the issues related to the proposed WIPO treaty on limitations and exceptions for educational and research institutions at WCCR/26. The Delegation also supported a legally binding treaty on this subject, because reproduction and making available of educational material in the digital online environment is key for the progress of education and the improvement of access to knowledge. The Delegation requested more time to respond to the proposal from the CEBS Group.

146. The Delegation of South Africa supported the statements made by the Delegation of Algeria on behalf of the African Group and the Delegation of Brazil on behalf of the DAG. The Delegation welcomed the successful adoption of the Marrakesh VIP Treaty, thanked all Member States for their commitment, dedication and flexibility during the long hours of the negotiations, and hoped that a similar spirit of cooperation and political will would help advance the proceedings on the issue of exceptions and limitations in the SCCR, particularly in relation to educational and research institutions, as well as libraries and archives. It stressed the need for access to educational material in developing countries and reiterated its support to advance the work. The Delegation also looked forward to substantive engagement on a treaty on the protection of broadcasting organizations with a view to convening a diplomatic conference in the

near future and concurred with the views expressed by the Delegation of Kenya on a concrete work plan. The Delegation looked forward to SCCR/26 with confidence that it would involve intensive negotiations and play a positive role in guiding WIPO's work forward.

147. The Delegation of Nigeria expressed its support for the statement made by the Delegation of Algeria on behalf of the African Group. It congratulated the Secretariat for adopting the Beijing and Marrakesh VIP Treaties, noted its active participation in the SCCR discussions and diplomatic conferences for both Treaties and pledged its commitment to the underlying objectives of both treaties. It stated that Nigeria had commenced a comprehensive review of its copyright system with a view to ensuring that it met the emerging challenges and also reflected its various treaty obligations. The reform includes establishment of an e-copyright registration system. The Delegation also noted the need to expeditiously address limitations and exceptions for libraries and archives, as well as for educational and research institutions and persons with other disabilities. The Delegation was pleased with ongoing efforts to progressively develop the text for the protection of broadcasting organizations with a view to convening a diplomatic conference in 2014. The importance of the treaty was emphasized given the increasing challenges posed by emerging technologies. The Delegation reiterated its commitment to negotiations using a signal-based approach and underscored the need to adopt a flexible approach that would take into account future technological developments without prejudicing the rights of owners of broadcast content. The Delegation was optimistic that with the renewed commitment to the SCCR work and the understanding and consensus building that characterized the diplomatic conferences, there would be a positive impact on the work of the SCCR.

148. The Representative of the World Blind Union (WBU) expressed appreciation to the Member States and the Secretariat for the conclusion of the Marrakesh VIP Treaty. The Representative said that the Treaty would significantly help to end the book famine under which very few, indeed only a small percentage of all published works, were ever produced in accessible formats to enable blind and print disabled people to independently read them for themselves. The Representative thanked all those who had contributed to the successful conclusion of the Treaty and noted that many people had previously warned it would never happen. The Representative said that great credit should be given to the Government of Morocco for the excellent hosting of the Diplomatic Conference. It also thanked all of the Member States and the Secretariat for the hard work to achieve the agreed text of the Treaty. The Representative thanked the non-governmental organizations for supporting its long campaign. It informed delegations that it placed considerable importance on the need to protect the rights holders' interests while in parallel improving the lives of its members. The Representative pointed out that those two goals were totally compatible. It added that that was also the reason why the WBU had worked for many years at WIPO to secure the Treaty. The Representative stated that WBU was continuing to work with authors and publishers, recognizing that without them, the inclusion aspired to would continue to elude the blind and persons who are print disabled. Any agreement was only of use when it was implemented and the WBU would work tirelessly to ensure that the Treaty delivered the benefits that it promised. The Representative stated that the group was already campaigning around the world for early ratification. It would take 20 Member States to ratify the Treaty before it could come into force and the more ratifications the greater the benefits, the more accessible books would arrive in the hands of visually impaired and print disabled readers so they could enjoy them independently. The Representative urged all Member States to encourage the development of a speedy and effective ratification strategy so that the Treaty could begin to put accessible books into the hands of constituents the Treaty was designed to help. The Representative thanked all Member States for participating in a new chapter of inclusion for the visually impaired and the print disabled community. WBU looked forward to working on the realization of the life changing possibilities that the Treaty promised.

149. The Representative of KEI said that there should be an evidence-based approach in the SCCR to identify problems or challenges that existed in the copyright system. The process should be that people explained first why norm setting was needed or why it was not needed and when they thought that it was needed then they could craft solutions that related to the identified problems. Regarding the broadcasting issue, the Representative pointed out that there was a lack of description in the previous interventions as to what the problem was and that the SCCR should avoid a situation where there was a treaty on broadcasting that created a new layer of permissions that people had to get if they wanted to use copyrighted works or that undermined the interests of copyright owners. The Representative added that it could be that there were some gaps in enforcement as a number of broadcasters had explained, but that it was not obvious why the broadcasters could not solve the problems they had in enforcement under the existing copyright system or through market transactions. The Representative noted that it was likely that an explanation existed on why there were such problems, but it just had not been expressed openly within those discussions. It would be helpful if the problem was clearer and if it was understood that the proposed remedy would somehow be based on solving that problem and not some other agenda in the copyright system such as expanding the economic rights of broadcasters. The Representative also noted that an agreement could not be reached on how to handle the economic rights. It suggested that this issue should be taken off the SCCR agenda and that Members States should stop pretending that there was consensus. The Representative highlighted that consensus could be achieved on identifying some enforcement problems if those could be figured out. Whether people that owned television and radio stations should get some slice of the economic rights and works that they did not own and create themselves could not be resolved in the SCCR. On the issue of libraries, archives, education and research, the Representative stated that it was good to continue working in those areas. It recommended that as a parallel and complementary process, the SCCR update the 1976 UNESCO WIPO Tunis Model Law on Copyright and its provisions on exceptions. A long time had passed since 1976 and it would be interesting to see if it was possible to have a fairly transparent process that was similar to the 1976 process. It could be an interesting complement to the work on binding norm setting since it was a model law that covered a lot of the same ground. The Representative explained that when dealing with the idea of limitations and exceptions the SCCR needed to take a long, hard look as to whether the three-step test was needed. The Representative pointed out that it was a potential disaster if it was broadly applied to regulated exceptions especially if it became subject to investor state sanctions or other institutional resolution and trade agreements. The Representative noted that the three-step test presented a risk to countries signing trade agreements like the Trans-Pacific Partnership or some agreements with the European Union and its member states and the United States of America, or if they put investment rights into it, such as Canada was finding out in a patent case. The Representative stated that if suit could be brought under the three-step test then it would be a risky proposition for people. The three-step test was an anti-democracy measure since it took away the rights of governments and bodies like WIPO to craft resolutions for society. That route was a mistake. The Representative believed that it was important to have such matters discussed further and to have better experts examining the options.

150. The Representative of the North American Broadcasters Association (NABA) urged WIPO to accelerate and prioritize work on a new treaty to update the international regime for the protection of broadcast signals. The Representative stated that piracy and unauthorized misappropriation of broadcast signals was a serious and ever increasing threat to broadcasters' activities. New digital technologies made it easy, fast and cheap to copy and redistribute broadcast signals on a variety of platforms. The Representative pointed out that piracy harmed not only the broadcasters but also all the creative contributors to, and consumers of, broadcasting services. In 1996, WIPO had adopted two treaties that updated the rights and protections of many rights holders and in 2012 it adopted new rights for audiovisual performers in the Beijing Treaty on Audiovisual Performances. Broadcasters too had similar needs for updated protections. The Representative recalled that the principal international treaty, the



1961 Rome Convention, was outdated and wholly inadequate in the modern communications environment as it did not even address older cable and satellite technologies, much less newer, Internet-based ones. The Representative stated that the need for updated protection for broadcast signals was broadly recognized and supported by Member States. More than fifteen years of work had been done consisting of many studies, economic analyses, legal research, formal and informal consultations in Geneva and in all regions, as well as ongoing discussions at the SCCR meetings since 1998. The Representative also noted that such extensive work provided much evidence on the need for and benefits of a treaty, and the records provided a rich resource to inform the final work of drafting a treaty proposal. The Representative noted that given the urgent need for a new international protection for broadcast signals and the many years of work devoted to the issue, NABA and other broadcast unions urged the General Assembly to direct that the SCCR accelerate work on a treaty text on a priority basis, with a view to presenting next year's General Assembly with a treaty proposal suitable to support the convening of a diplomatic conference in 2015. The Representative thanked the Delegation of the United States of America and the Delegation of Poland, on behalf of the CEBS Group for proposing concrete and detailed work plans. It added that those proposals would greatly facilitate progress towards completing the final work needed to move to a diplomatic conference to finally adopt a treaty.

151. The Representative of the IVF stated that the group was not convinced that binding norms at the international level was the solution for the work on limitations and exceptions on the SCCR agenda. Adequate access was a legitimate concern and so was copyright protection. The existing international copyright framework, in particular the WIPO Copyright Treaty, offered all of the necessary tools and flexibilities for balancing limitations and exceptions with corresponding exclusive rights. Finally, if work proceeded towards a treaty for the protection of broadcasting organizations, the Representative voiced support for an instrument focused on signal piracy that would effectively protect the broadcasting organizations, provided that it would not have a negative impact on the international copyright framework.

152. The Representative of the International Federation of Library Associations (IFLA) spoke on behalf of an international body representing libraries in more than 160 countries. Like many Member States and non-governmental organizations that had spoken the previous day, the group was thrilled with the results of the Diplomatic Conference in Marrakesh. It looked forward to the discussions on the agenda of SCCR/26 concerning limitations and exceptions for libraries and archives. From the beginning, copyright laws had given libraries a special place in the copyright ecosystem, as the first limitation on copyright related to a deposit of copyrighted works in various libraries in the United Kingdom. The provisions recognized the critical and privileged role libraries had always played in the preservation of cultural heritage. The Representative also emphasized that libraries played another critical role in the copyright arena, which was to educate users about permissible uses of copyright works. In a digital world, the immense disparity in national limitations for libraries made it virtually impossible to fulfill their role as intermediaries between rights holders and users. The Representative also referred to a study commissioned by WIPO and completed by Professor Kenneth Crews in 2008, demonstrating that it was problematic to determine what library exceptions actually existed in many countries and that 25 per cent of Member States located almost entirely in Africa and Latin America did not have any exception for libraries. This raised the question as to how libraries could possibly serve as effective intermediaries in such a chaotic, international information exchange environment. The Representative looked forward with great anticipation to the next SCCR in which the Committee was scheduled to resume text-based discussions with regard to an international instrument on exceptions and limitations for libraries and archives, and invited Member States to submit recommendations on limitations and exceptions to the General Assembly no later than the 28<sup>th</sup> session of the SCCR.

153. The Representative of the European Broadcasting Union (EBU) stated that according to the European media regulation, broadcasters had the obligation to inform, to educate and to entertain. Live television was the fastest growing segment of all copyright infringement and that was what broadcasting unions had been pointing out to the SCCR over the previous years. Signal piracy affected all broadcasting organizations, whether private or public, all over the world, which meant that an urgent global solution to that problem was long overdue. The Representative highlighted three elements. First, broadcasting was not a static but rather a dynamic process, and as the primary role of broadcasters was to serve the interests of the public, they needed to be both traditional and modern. Broadcasters were traditional in editorial values and responsibility and modern in the types of distribution. Second, the broadcaster's treaty was not simply about protecting a business model but broadcasters created many opportunities for jobs in order to provide access to entertainment and to heavily promote cultural events in an affordable way. Therefore, the treaty was about the service and the innovation that broadcasters brought to the public at large. The Representative gave the example of the BBC, which was one of the most traditional broadcasters in the world and the first to invent the iPlayer technology. The unfinished business of the treaty needed to be finalized urgently so that the broadcasters would not be crippled and could serve the audience in the best way. Third, misappropriation of broadcasting also affected other rights holders. Some misunderstandings needed to be corrected. The treaty protected only the signals and the rights of the contributors to the broadcast content remained entirely unchanged. All rights holders could freely continue to exercise their rights against anyone including broadcasters. As the treaty would not deal with contracts, nothing could limit the rights of content owners in the programming; it was a bit embarrassing to need to stress that point among the world's leading intellectual property experts. Signal piracy was a threat to affordable access to knowledge and to an outlet to the promotion of a local culture by broadcasters. The Representative finished by calling on the General Assembly to urgently accelerate and finalize the work on the broadcasting treaty, adding that the work plan proposed by the Delegation of Poland, on behalf of the CEBS Group and other delegations was the best way forward.

154. The Representative of the International Publishers Association (IPA) congratulated WIPO and the SCCR for the conclusion of the Marrakesh VIP Treaty. This demonstrated that the existing treaty framework was robust and flexible and it was able to balance all interests. The Representative called on all Member States to implement all WIPO treaties including the new Treaty so that an overall robust and flexible intellectual property system could be applied. With respect to accessibility, the work was not over and concluding an international treaty was actually the easy part. The Representative highlighted the need to make sure that books were published in special accessible formats and that they reached persons with print disabilities in the needed languages in order to guarantee equal access to education and culture. That would require a very different kind of effort than what had been done until then and the Representative asked that WIPO support and actually provide access to knowledge for persons with disabilities. The Representative also made a brief statement on the future work of the SCCR stating that the circumstances of the Treaty were very special as there were clear and distinct humanitarian causes at stake and that there was a clear special file format which was unique to persons with disabilities, with no existing legitimate international commercial or non-commercial traffic for those types of files. The situation was very different for libraries and educational institutions and Member States should look more closely at the implications of international treaties for libraries and for education. In different areas, local publishers could collaborate with local authorities as well as with local educational institutions and libraries to enable the required access. It was not the role of international treaties to bully Member States into what they already could choose to do or not do under the existing legal framework.

155. The Delegation of Brazil wished to briefly react to the proposals presented to Member States. It thanked the Delegation of Poland speaking on behalf of the CEBS Group for having shared a hard copy of those proposals. The Delegation understood that the guidance on the SCCR's program had already been decided in the previous discussions as reflected in

document WO/GA/43/13. The Delegation was inclined to approve the mandate, as already agreed by Member States, adding however that if a specific framework was also to be approved along with the mandate a discussion would be needed to define that framework. Insofar as it had just received that proposal, it needed to consult with its capital and that it was not in a position to approve the proposal raised.

156. The Delegation of Ecuador apologized for not having been present during the debate as it had been participating in consultations. It welcomed the adoption of the Marrakesh VIP Treaty and congratulated the Secretariat for all the work that it had carried out to ensure that people with visual impairment and print difficulties could have access to published works. The Delegation believed that this was a landmark Treaty and Ecuador was taking all the necessary steps to be able to speedily ratify the Treaty as quickly as possible. The Delegation also stated its support for work on libraries and archives and expressed the hope that everyone could make headway on that issue.

157. The Chair stated that having heard the delegations' comments, proposals and statements, the General Assembly was not in a position to adopt a decision on the agenda item. The Chair pointed out that a discussion with the regional coordinators was necessary in order to reflect on the formulation of the decision of the General Assembly. The Chair therefore suggested returning to the agenda item at a later stage.

158. See document A/51/20, Agenda Item 48 (Closing of the sessions).

#### ITEM 35 OF THE CONSOLIDATED AGENDA

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

159. Discussions were based on document WO/GA/43/14.

160. The Chair of the General Assembly opened Agenda Item 35 "Matters Concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)" and referred to informal consultations that had taken place on this item. The Chair thanked Mr. Ian Goss from Australia for his assistance in facilitating, at her request, the informal consultations and also thanked Ms. Alexandra Grazioli, the Vice-Chair of the IGC, for her assistance. She thanked all delegations and the Regional Coordinators as well. The Chair advised that the informal consultations had resulted in agreement on a draft decision, which read as follows:

"Bearing in mind the Development Agenda recommendations and acknowledging the progress made, the WIPO General Assembly agrees that the mandate of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore be renewed as follows:

(a) The Committee will, during the next budgetary biennium 2014/2015, and without prejudice to the work pursued in other fora, continue to expedite its work with open and full engagement, on text-based negotiations with the objective of reaching an agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs.

(b) The Committee will follow, as set out in the table below, a clearly defined work program, based on sound working methods, for the 2014/2015 biennium. This work program will make provision for three sessions of the IGC in 2014,

including thematic and cross cutting/stocktaking sessions. At the beginning of IGC 26 an Ambassadorial/Senior Capital-Based Officials meeting will be held to share views on key policy issues relating to the negotiations, to further inform/guide the process. The IGC may decide to hold further Ambassadorial/Senior Capital-Based Officials meetings during future IGC meetings.

(c) The focus of the Committee's work in the 2014/2015 biennium will build on the existing work carried out by the Committee and use all WIPO working documents, including WIPO/GRTKF/IC/25/5, WIPO/GRTKF/IC/25/6 and WIPO/GRTKF/IC/25/7 which are to constitute the basis of the Committee's work on text-based negotiations, as well as any other textual contributions by members.

(d) The Committee is requested to submit to the 2014 General Assembly the text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs. With a view to finalising the text(s) within the biennium, the General Assembly in 2014 will take stock of and consider the text(s), progress made and decide on convening a Diplomatic Conference, and will consider the need for additional meetings, taking account of the budgetary process.

(e) The General Assembly requests the International Bureau to continue to assist the Committee by providing Member States with necessary expertise and funding, in the most efficient manner, of the participation of experts from developing countries and LDCs, taking into account the usual formula.

The General Assembly takes note of the possibility for members of the IGC to request studies or to provide examples to inform the discussion of objectives and principles, and each proposed article, including examples of protectable subject matter and subject matter that is not intended to be protected, and examples of domestic legislation. However, examples and studies are not to delay progress or establish any preconditions to the text-based negotiations."

161. The Chair of the General Assembly also referred to the table on the second page of the text, and noted that copies of the draft decision had been made available to all delegations. The Chair then opened the floor for statements.

162. The Delegation of Trinidad and Tobago, on behalf of the Group of States of Latin America and the Caribbean (GRULAC), thanked the Secretariat and Mr. Ian Goss for their efforts in arriving at a consensus. GRULAC welcomed the extension of the mandate of the IGC and the current work program, which included, *inter alia*, an intense session on GRs in February 2014, and back-to-back sessions on TK and TCEs in April 2014. It trusted that the work during those critical sessions would be intensive and productive in order to expedite the work of the IGC. At IGC 25, GRULAC had believed that an Ambassadorial meeting was necessary as political will had been lacking in the IGC process and needed to be reinvigorated. Therefore, GRULAC was extremely pleased to see that a consensus among all Member States had been found with respect to its proposal for an Ambassadorial/Senior Capital-Based Officials meeting to be held at the beginning of IGC 26 in February 2014. It, however, wished to reiterate that, in order to make such a meeting work, expert positions should not be rehashed or regurgitated. GRULAC stated for the record that studies and examples were not its preference. However, in the spirit of compromise and utmost flexibility, GRULAC had been prepared to retain those ideas within the mandate on the condition that such studies and examples should not be used so as to prejudge or retard the progress of the negotiations in 2014. GRULAC retained its commitment to the process and to finalizing all texts on the three thematic areas during the next biennium.

Once that occurred, GRULAC would call for the convening of a diplomatic conference in 2015. It reiterated that the work of the IGC was extremely important to its members. GRULAC would work constructively in the IGC in 2014 to reach the end goal which was the convening of a diplomatic conference in order to ensure the effective protection of GRs, TK and TCEs not only within its region but also in a global landscape.

163. The Delegation of India wished to convey its deep appreciation to the Chair for early commencement of discussions on the renewal of the IGC's mandate and also for nominating Mr. Ian Goss, from the Delegation of Australia, to facilitate those discussions, on a matter of great importance to a large number of developing countries, including India. It also thanked all delegations for adopting a constructive approach in renewing the mandate for an additional two-year period starting from 2014. It assigned great importance to the work of the IGC in developing a legally binding instrument(s) providing effective protection to GRs, TK and TCEs. While India had taken a number of steps at the national level to create a legislative and administrative framework that protected TK and GRs, their trans-boundary protection remained a major, unaddressed challenge. A large number of developing countries shared a similar perspective. Such a normative gap could be filled only through development of an internationally legally binding text(s) on those three subject areas. Substantial progress had been achieved in the IGC in 2013 in developing the texts of the three international legal instrument(s). The texts had reached a fair level of maturity. The past few days had seen extensive deliberations among Member States on renewing the IGC mandate. It appreciated the spirit of accommodation and flexibility shown by Member States. The renewed mandate would result in the finalization of international legally-binding texts in GRs, TK and TCEs during the next biennium, and also assist the General Assembly in 2014 to decide on a date for convening the diplomatic conference in 2014-15. It looked forward to constructive engagement of Member States during the accelerated and intensive deliberations of the IGC in 2014. On the issue of studies, it wished to place on record that this had not been its position, as a large number of studies already existed on various aspects of the subject. However, there was a clear and shared understanding among Member States that studies would not impede the IGC negotiations. The Delegation remained committed to contributing to the work of the IGC, and believed that the conclusion of international legally binding texts would provide a win-win situation for all countries in an important area for WIPO.

164. The Delegation of Australia was encouraged that Member States had renewed the IGC mandate for a further biennium, and it took note of the language relating to "with a view to finalizing the text or texts within the biennium." It also noted that the 2014 General Assemblies would take stock of and consider the texts and decide on convening a diplomatic conference. It recognized the frustration among some Member States at the slow pace of the negotiations. However, the negotiations were complex and were considering new norms that had an impact across the IP system and on wider social policy. Those norms also intersected with other international instruments including the UNDRIP, the Nagoya Protocol and norms under consideration within UNESCO, WTO and WHO. It was considering the potential to establish new *sui generis* regimes. Noting the complexity and scale of the negotiations, it would be important, to move forward, that delegations continue to gain a shared understanding of different views and come to meetings prepared to discuss core policy issues of substance and engage collaboratively. Regarding the status of the current negotiations, clearly more work was required. In particular, the objectives had to be consolidated across the three subject matter areas. That would ensure that the work was focused on core outcomes. There was merit in starting to develop a declaratory statement, as a preamble to the work, which reflected the intent and provided linkages to related international agreements such as the CBD and UNDRIP. Importantly it should be a demonstration of commitment to the key stakeholders in those negotiations: indigenous peoples. On GRs, the critical issue blocking progress was a lack of consensus in relation to a disclosure mechanism. Key concerns related to the potential burden on the IP system and business, and unintended consequences, which could create uncertainty in the IP system, and limit access to GRs and associated TK, impeding innovation and

achievement of economic benefits. It shared those concerns and would not agree to any outcome that compromised them. In relation to TK and TCEs, it was clear that there was consensus regarding moral rights. However, significant work remained in developing an approach which addressed economic rights, while balancing the needs of the users and holders, and took account of the different national environments, including legal environments and environments in which indigenous peoples and local communities operated. One size would not fit all; critical would be establishing a flexible agreement which provided implementation flexibility at the national level. Across both subject matters, there were key issues on which common ground was still needed: definitions, beneficiaries, scope of protection and exceptions and limitations. In addition, two key issues that would need to be addressed were the impact on publicly available information or public domain and diffused knowledge. Lastly, it offered some key words which should reflect the characteristics of the negotiations into the future, if it was to be successful: “balance,” “flexibility,” “substance,” “shared understanding,” including engagement with key stakeholders, indigenous peoples and users, and perhaps most important of all “trust and political will.”

165. The Delegation of the EU, speaking on behalf of the EU and its member states, recognized the importance of the work carried out by the IGC. It also welcomed the steps taken by the IGC along the path to completing the mandate adopted by the General Assembly in 2012. It extended words of gratitude and recognition to the facilitators through whose efforts the number of options and objectives had been reduced. However, there remained issues of fundamental importance to be resolved in all texts. Many differences of opinion and understanding still needed to be bridged. Despite three days of stock-taking, discussion, and intensive negotiation at IGC 25, the IGC had not been able to produce a recommendation to the General Assembly for its future work. Thus, it was clear that further work was needed to be done by the IGC. The Delegation extended its thanks to Mr. Goss, of Australia, for effectively conducting informal consultations to allow the elaboration of a mandate and work program for the coming year. While its preference would have been to elaborate a less intensive work program over a two-year mandate, in the spirit of compromise, it expressed its agreement to that which had been established. It reiterated its understanding that any international instrument(s) to be created should be non-binding, flexible, and sufficiently clear. In that respect, it reminded Member States that no decision had been reached on the nature of the instruments to be adopted. Once the IGC achieved solid, clear and consolidated texts, would it be able to decide on the nature of the contemplated instruments. It remained committed to contributing constructively to the work of the IGC in order to reach the goals set under the new mandate. It continued to be open and willing to collaborate with all delegations to finding ways to achieving tangible results. Accordingly, it looked forward to establishing a reasonable and pragmatic work program for the next two years, bearing in mind the financial implications and costs of having extra meetings and also the goal of making strides towards the more efficient management of meetings.

166. The Delegation of Algeria, speaking on behalf of the African Group, emphasized the great importance that it attached to the work of the IGC. It recalled that the African continent had a rich biological diversity as well as plenty of TK and TCEs. The conclusion of the work of the IGC would increase development opportunities for Africa’s populations. During its current mandate, the IGC was to expedite text-based negotiations with the objective of concluding an appropriate international legal instrument or instruments for the effective protection of TK, TCEs and GRs. It believed that through the three meetings organized under its current mandate, the IGC had been able to make progress on the texts relating to TK, TCEs and GRs. In the texts as submitted to the General Assembly, the key contentious issues had been clearly set out. Those issues related to four articles, namely the subject matter of protection, beneficiaries, scope of protection and limitations and exceptions. The time had come to adopt a holistic and political approach to resolving those issues. It was confident that with goodwill, strong commitment and engagement from Member States, an agreement could easily be reached on them. Regarding the way forward, the Delegation believed that a roadmap that would enable the IGC to reach its

objective had to, first, set a clear timeline for the text or texts to be ready for the diplomatic conference, and then, second, identify the number of IGC sessions needed in order to be well prepared for the diplomatic conference. It strongly believed that structuring further work in that way would better serve the objectives of the negotiations. The Delegation was of the view that the General Assembly ought to send a strong message to the international community regarding the commitment of the Member States to conclude the work of the IGC. In that regard, the General Assembly should renew the mandate of the IGC to intensify its work in good faith with the view to finalizing the text or texts of an international legal instrument or instruments in 2014, in order to convene a diplomatic conference for the next biennium. To achieve this aim more IGC sessions were needed. Member States should recognize that there was a need for thematic sessions as well as cross-cutting sessions to allow a holistic perspective of the IGC work. The African Group remained fully engaged in the discussions and stood ready to consider all the proposals that the Chair would formulate that served the objective of the African Group, which was the conclusion of a legally binding treaty or treaties for the protection of GRs, TK and TCEs against misappropriation and misuse.

167. The Delegation of Poland, speaking on behalf of the CEBS Group, recognized the importance of the IGC's work. It welcomed the outcome of the work that had resulted from the mandate that had been given by the General Assembly in 2012. It expressed its satisfaction with the considerable advancement of work regarding the draft articles for the protection of TCEs, TK and GRs. The Delegation supported the development of an instrument or instruments for the protection of GRs and TK and TCEs that would fulfill the basic requirements of legal certainty, clarity and flexibility. It emphasized that the nature of this instrument or instruments was still to be determined as the CEBS Group had made clear on several occasions. It extended warm thanks to Mr. Goss for having facilitated the informal consultations that had helped delegations reach agreement on a new mandate. It stated that, in a spirit of compromise, the CEBS Group was ready to endorse the draft mandate as agreed upon during those consultations. It said that the Group remained committed to further contributing to the negotiations within the IGC in order to fulfill its mandate.

168. The Delegation of El Salvador congratulated all regional groups and the informal groups set up to develop the draft decision regarding the renewal of the mandate of the IGC and that the General Assembly was going to adopt. It extended its warm thanks to Mr. Goss, from Australia, who had served as a facilitator during the consultations. The Delegation said that it was pleased with the renewal of the mandate of the IGC. The new mandate would include a calendar for thematic meetings as well as a high-level meeting, as requested, with a view to issuing a call for a diplomatic conference in real time. It fully endorsed the statement made by the Delegation of Trinidad and Tobago on behalf of GRULAC, and firmly believed that consensus was reachable and that political guidance provided to the IGC by Ambassadors and senior officials would be of great assistance in the IGC process. It strongly hoped that sufficient funds would be provided in order to ensure a full and active participation of experts from its country in the IGC meetings as well as in all the other relevant Committees.

169. The Delegation of Thailand attached priority to the timely conclusion of an international legal instrument or instruments on GRs, TK and TCEs as a means to unleash their huge economic value, prevent misuse and misappropriation, and achieve fair and equitable benefit-sharing for both rights-holders and users. It was pleased with the renewal of the IGC's mandate and its work program in 2014. It thanked all Member States for their constructive engagement in the informal consultations that had taken place on the new mandate and Mr. Goss for his excellent facilitation. Going forward, it was important to make the best use of the three IGC meetings in 2014. The Delegation emphasized the need to expedite the text-based negotiations in order to enable the call for a diplomatic conference, preferably within the year 2015. It very much looked forward to greater engagement by Permanent Representatives and senior officials in the process and expected their meetings to play a significant role in providing clear policy guidance and make necessary decisions to expedite the

text-based negotiations by experts. It urged that the texts on GRs not be sealed immediately after IGC 26, nor on TK and TCEs after IGC 27, but that they remain open for deliberation and revision in the cross-cutting meeting at IGC 28. The Delegation encouraged Member States to organize and participate in more informal meetings in-between IGC sessions. It recalled that Thailand had hosted the Bangkok Retreat in July 2013. It appreciated India, South Africa and Indonesia for having held similar meetings. It believed in the benefits of these inter-sessional meetings as they enhanced the Member States' understanding of the nuances, complexity and practical implications of the new instrument or instruments, and built up trust and confidence among negotiators by helping to bring them closer together. To solve many pending issues in IGC, it emphasized that a constructive spirit, a determination to find solutions, and a political commitment were required. The ultimate aim of the IGC should be to achieve consensus on a text or texts that were acceptable to all. The Delegation was committed to continue to participating actively and constructively in the IGC. It also recognized the valuable contribution of relevant stakeholders, especially the indigenous communities, in the work of the IGC, and appealed for sufficient funds to be provided to ensure their continued participation. It reiterated its appreciation to His Excellency Ambassador Wayne McCook, the Chair of the IGC, as well as the WIPO Secretariat, in particular Mr. Wend Wendland, for their invaluable support for the Bangkok IGC Retreat in July 2013. In conclusion, the Delegation also thanked the participants in the Retreat for their active and substantive contribution.

170. The Delegation of China thanked the Secretariat and all delegations for their active work. It believed that the work of the IGC was very important. It hoped that a diplomatic conference would be held as soon as possible. Even though the new mandate did not reflect all of its concerns on future work, the Delegation wished to show its flexibility in order to expedite the work of the IGC.

171. The Delegation of Colombia endorsed the statement made by the Delegation of Trinidad and Tobago on behalf of GRULAC. It recognized the work and dedication of Ambassador McCook. It highlighted the valuable contribution of Mr. Goss and the Secretariat. The IGC had reached a point where technical discussions had to reach the level of political decisions, in order to clearly allow the negotiations to be concluded in the next biennium. The expected result could not be less than legally binding texts ensuring the protection of IP and GRs, TK and TCEs. The Delegation recognized that discussions on each thematic area had different levels of maturity. It was, therefore, important to agree on a work plan that would allow the IGC to continue and to conclude the negotiation process for each thematic area. It called on all members, in the same spirit which had allowed for the adoption of the treaties of Beijing and Marrakesh, to adopt a new impetus in order to conclude the negotiations in the short term.

172. The Delegation of Japan thanked the IGC Chair, Ambassador McCook and the Secretariat for their hard work. It also thanked all the facilitators and Member States for their great dedication. It highly appreciated that the mandate proposed was the result of the informal consultations that had taken place during the last week. The Delegation thanked, in particular, the sterling effort that Mr. Goss had made. It was fully aware of the significance of the effective protection of GRs, TK and TCEs and thus it had participated in discussions on the current mandate and had joined forces with other Member States. The IGC had seen significant progress over the last two years; however, further work remained to be done in order to overcome divergent views. To that end, it was necessary, with patience and flexibility, to get to grips with various outstanding issues facing the Committee. Japan had no doubt that fact-based studies would allow the IGC to delve deeper into the subject. Analysis based on concrete examples of subject matter to be protected and not to be protected could lead to the possible boundary of scope of protection, thereby complementing and facilitating the textual exercise. Such analysis could give insight into the appropriate legal nature of the possible outcome. It welcomed the renewed mandate, since it opened the door to further elaboration on the issues and resolving its concerns. Taking this mandate on board, it wished to continuously apply itself to the future sessions in a faithful and constructive manner.



173. The Delegation of Sweden stressed the significance of the work carried out by the IGC. It fully supported the statement made by the Delegation of EU, speaking on behalf of the EU and its member states. It thanked Ambassador McCook for his able work during the last two years, all Member States for their flexibility and Mr. Goss for his hard work that had led to the suggested new mandate. It reiterated its understanding that any international instrument or instruments to be created in the IGC had to be non-binding, as well as flexible and sufficiently clear. Any outcome of the negotiations had to respect the need to secure rights already acquired by third parties, legal certainty and a rich and accessible public domain, and all that in the fundamental interest of stimulating creativity and innovation. The IGC had made some progress along those paths during the past year; however, there were still fundamental differences of opinion on the content of protection or safeguarding of TCEs, TK and GR. Those differences were a clear indication that one could not hasten the work of the IGC. Differences of opinion needed to be respected and be met with rational arguments in a mature and prudent manner. Sweden remained committed to participating productively and looked forward to the future work of the IGC under the suggested new mandate.

174. The Delegation of Peru congratulated the members of the General Assembly for the decision to be adopted, which reflected the commitment of Member States to conclude the negotiations with a stronger mandate for the IGC, which included a high-level segment that had been proposed by GRULAC. It supported the statement of the Delegation of Trinidad and Tobago speaking on behalf of GRULAC. It expressed its appreciation to Ambassador McCook and to the facilitator, Mr. Goss, who had helped Member States come up with a mandate to finalize the negotiations on the texts and allow the next General Assembly to decide on convening a diplomatic conference. It believed that was the right path and it was sure that that objective would be reached with the political commitment of all Members. With regards to the studies and examples, the positions had been made clear in informal consultations. They were elements which could be illustrative but should not be distracting. For Peru, it was of great importance to have legally-binding texts which would provide effective protection to GRs, TK and folklore, since the *status quo* was prejudicing the interests of the indigenous peoples in Peru and elsewhere in the world.

175. The Delegation of Switzerland thanked the Chair of the IGC, Ambassador Wayne McCook, for his unwavering commitment to the IGC. It supported the work of the IGC and approved the developments and progress made over the past two years. The Committee had managed to make substantive progress on TK, TCEs and GRs, which could be attributed to the constructive dialogue and work among delegations. However, the Committee's task was not yet finished and important subjects still remained to be addressed and clarified. The Committee needed to continue to work intensively in the near future, as it had done in 2012 and 2013. The Delegation welcomed the compromise that had been reached on the renewal of the mandate and on the work plan of the IGC for the next biennium. It fully supported the renewal of the mandate in accordance with that compromise and wished to thank Mr. Goss and congratulate him on the way in which he had assisted the consultations so that positive results could be reached. The Delegation also wished to thank the Government of Indonesia for having organized an informal meeting to prepare for work during the Assemblies. The Delegation had participated very actively in that meeting. This had been helpful in order to deepen participants' mutual understanding with regard to the work that still had to be conducted within the IGC, so as to come up with a useful result for all Member States of WIPO in the near future. It was indeed important for the Delegation that substance was and had to remain at the center of the process. The Delegation had engaged in the consultations by basing itself on this principle. The Delegation would continue to engage in the Committee's continued work. It was also this principle that would need to be borne in mind at IGC 28, when the Committee would have to assess the progress made on GRs, TK and TCEs and present its recommendation on future work to the 2014 General Assembly. Among the possibilities that would be available at that time would also be, as other delegations had mentioned, the possibility of convening a

diplomatic conference. It was important for the Delegation that the process of work, whether in the IGC, in consultations, or in informal work sessions, continued to respect principles of inclusiveness and transparency. Equally, it was important that the principle of multilateralism, which was at the heart of the Organization, be respected in the work of IGC and that the IGC remained a negotiating and decision-making forum. Great commitment from all would be needed in the near future so as to move work forward, and it was prepared for this. Such commitment, of course, implied an investment in time and also, in particular, an investment by all so that positions could be brought closer together, if results were to be produced in the near future. This commitment, to a great extent, would need to be seen during inter-sessional periods among delegations. The texts reproduced in document WO/GA/43/14 would allow the IGC to focus its work in that way, without, however, forgetting the useful elements present in other documents and proposals submitted in the context of the past work of the IGC. The Delegation attached fundamental importance to the participation of indigenous representatives at all meetings where their rights and interests were addressed. Their participation in the future work of the Committee would be crucial in order to find convenient and practical solutions for the protection of TK, TCEs and GRs. With regard to future meetings of the IGC, it was important to note that the Voluntary Fund no longer had sufficient resources to ensure participation of indigenous representatives. It, therefore, invited all Member States and other possible donors to contribute to the Fund, as the Delegation already had done twice, in order to ensure the effective participation of indigenous observers at future meetings of the IGC.

176. The Delegation of Canada thanked Mr. Goss of Australia for his hard work as facilitator, as well as all Member States involved in the consultations. The Delegation also thanked Ambassador McCook and the Secretariat for their work and commitment. It was pleased to see that Member States were able to find a mutually agreeable solution on the renewal of the IGC's mandate. It recognized the importance of the work conducted by the IGC and was strongly committed to that work. As an active participant in the IGC, it was fully aware of the complex outstanding issues that were still to be addressed in all three texts. The Delegation shared the concerns on substance of the texts as expressed by the Delegation of Australia and others. It would be looking for a clear, flexible and pragmatic outcome, or outcomes that could also ensure legal certainty. The Delegation looked forward to continue to work actively and constructively with other Member States under the renewed mandate.

177. The Delegation of Guatemala endorsed the statement made by the Delegation of Trinidad and Tobago on behalf of GRULAC. It congratulated the coordinators and the participants in the informal consultations. It was grateful for the conclusive document which led to a renewed mandate for the IGC, which would help the Committee conclude negotiations on a binding text on GRs, TK and TCEs and lead in due course to the convening of a diplomatic conference. These were themes of great importance for Guatemala. The Delegation wished to congratulate the coordinators and the Chair of the IGC for the methodology proposed, as well as the Secretariat for its work. All this had made it possible to make great progress over the last IGC sessions.

178. The Delegation of Germany endorsed the statement made by the Delegation of the EU, speaking on behalf of the EU and its member states. It noted the broad concerns of Member States to continue work within the IGC. The Delegation supported therefore the renewal of the mandate of the IGC and the continuation of the work of the IGC on text-based negotiations. It thanked the facilitator, Mr. Goss, for his hard work and commitment that had led to the current compromise. A renewal of the mandate and work on the existing draft texts were necessary in order to continue work in this area, which was far from complete. There was still some way to go to reach consensus on a *sui generis* non-binding legal instrument that took into account the holders of GRs, TK and TCEs, and at the same time did not harm the functioning of the international IP system. In this connection, the Delegation called on all WIPO Members States to commit to efficient participation in future sessions, to cooperate in a constructive and transparent manner in the IGC, and to make use of the results of the facilitator's process.

179. The Delegation of Jamaica associated itself with the statement of Trinidad and Tobago on behalf of GRULAC and joined in thanking Mr. Goss for his tireless efforts in achieving a consensus on the mandate. The Delegation fully supported the engagement of its Permanent Representative to the UN in Geneva, Ambassador Wayne McCook, as Chair of the IGC, with the understanding that Member States would continue to work in a constructive manner and in accordance with the IGC's mandate. The IGC had made substantial progress which allowed the IGC to finalize the text or texts of an international legal instrument or instruments which ensured the effective protection of GRs, TK and TCEs. The Delegation anticipated that in an equally timely manner a decision would be made towards convening a diplomatic conference.

180. The Chair acknowledged the presence of Ambassador McCook and expressed her appreciation for his work as the IGC's Chair.

181. The Delegation of Egypt thanked the IGC, its Chair and the facilitators who had helped the General Assembly for a period of eleven years. Member States had devoted legal, human and financial resources to this work. The time had definitely come to have a reasonable solution so that Member States could establish a legally binding instrument in order to be able to protect GRs, TK and TCEs. The Delegation thanked all participants for coming up with agreement on a renewed mandate. Moreover, it was necessary to make every effort so that Member States could achieve a consensus. Delegations needed to make those efforts so that next year negotiations could be conducted at the highest possible Governmental level with participation by all Member States. Every Member State had the right to put forward any proposals that they would wish to. The Delegation recalled that there was agreement by Member States that any studies would not be used as an obstacle to further negotiations. Finally, the Delegation thanked Ambassador McCook and the WIPO Secretariat for the very professional and tremendous efforts made last year in the work of the IGC.

182. The Delegation of the United States of America thanked the WIPO Secretariat and Ambassador McCook for their efforts in facilitating the work of the IGC. The Delegation also thanked Mr. Goss for his efforts during the General Assembly. The Delegation recalled its active participation in the IGC process since its inception. The Delegation had shared national experiences, exchanged views on objectives and principles and participated in discussions on text and it hoped that that process could continue with all Member States. Nevertheless, the Delegation had observed that conflicting objectives and divergent positions persisted between Member States. This was reflected in the heavily bracketed texts. Despite the diligent efforts of the IGC, it was abundantly clear that Member States were far from agreement on the most fundamental provisions in the texts. Member States would also need to consider other challenging issues in the texts, such as administration of interests, exceptions and limitations, exercise of interests, transitional measures, and consistency with the general legal framework. In light of these divergences, including on foundational objectives, the Delegation believed that the subject matter of the IGC was not ready for a Diplomatic Conference. The Delegation thought it would prejudice the outcome of the negotiations. The Delegation expressed its readiness, pursuant to the renewed IGC mandate, to find common ground on the objectives and principles which would enable the IGC develop texts for the effective and balanced protection of GRs, TK and TCEs, as well as understand the relationship between the texts and other international instruments.

183. The Delegation of South Africa aligned itself with the statement delivered by the Delegation of Algeria, on behalf of the African Group. The Delegation thanked Mr. Goss and Ambassador McCook for the commitment and dedication they had demonstrated in their work on reaching agreement on the renewal of the mandate. The Delegation also thanked the Secretariat, as well as all the Member States that had participated in the negotiations. South Africa had high regard for WIPO as the nodal point in the UN system on IP issues. In recent years, IP had proved to be popular and yet it was an increasingly complex subject. South Africa

attached great importance to indigenous knowledge systems (IKS). Since the Cabinet had adopted an IKS policy in 2004, the Government of South Africa had invested considerable sums of money in developing instruments for the appropriate protection and exploitation of IKS. Some of the measures taken included the amending of all IP laws to include provisions for the protection of IKS. The launch of a bioprospecting consortium for the research, development and innovation of IKS and the National Recordal System, a cutting edge data management system, were also some of the recent achievements. Most government departments had established directorates for the exploitation of IKS in order to improve the quality of the lives of South Africans. Most importantly, the National Development Plan also positioned IKS as one of the strategic resources for development and modernity. Clearly, for South Africa, IKS was one of its priority strategic interests that the country pursued at WIPO. However, it was with great concern that after thirteen years of deliberations in the IGC, there was still no agreement in sight and this reflected poorly on WIPO's normative initiatives. The failure to reach finality on the instrument(s) was not due to a lack of progress on substantive matters but more to a lack of political will to acknowledge misuse and misappropriation and to provide legal remedies for such acts. South Africa had persistently played an active and positive role since the establishment of the IGC, including through contributions to the Voluntary Fund. Through the African Group, South Africa had been an active facilitator of informal meetings with other regional groups in pursuit of solutions to unlock challenging conceptual issues. It had also participated in preparatory meetings and hosted one in Pretoria in April 2013, which had been aimed at establishing consensus on the four critical issues listed in the 2012 General Assembly decision. In reaching agreement on the renewal of the IGC mandate, South Africa served as the African Group's focal point in the negotiations. It was important to reaffirm the importance of reaching an agreement on an international instrument(s) for the effective protection of GRs, TK and TCEs. The Delegation noted that this would be a historic turning point as it would be the first time that the IP system advanced the developmental work of Africa and other developing countries. Overall, this could only benefit all Member States as it would enhance trust and confidence in the IP system. Failure to reach agreement on an instrument(s) to effectively protect GRs, TK and TCEs would be tantamount to denying developing countries their basic fundamental rights as well as the implementation of the principles of justice regarding misappropriation and misuse. This would also deny them legal remedies for such acts. The Delegation hoped that the negotiating parties would display trust and good faith and work towards a common goal of affirming the basic founding principles of justice, such as the prevention of misappropriation and misuse, in order to reach agreement on the objective of the international legal instrument(s). Only legally binding instrument(s) could create certainty for a win-win outcome for the benefit of all citizens. This would ensure that there would only be winners and no losers. The texts presented to the General Assembly so far contained mature texts that constituted the basic proposals for negotiations in the special sessions and subsequently in the Diplomatic Conference. With the overwhelming consensus among the majority of Member States and indigenous communities, the Delegation was of the view that the need to conclude this process was now more urgent than at any time. It called for a recommitment of all parties to the process in good faith and with mutual trust, and expressed its commitment to the work of the IGC in the coming year.

184. The Delegation of Indonesia expressed its appreciation to the Chair for her initiative in authorizing the informal consultations on the IGC. The Delegation also thanked the Chair of the IGC, His Excellency, Ambassador McCook, as well as Mr. Goss and the Secretariat for facilitating the work of the IGC. It noted that there had been progress in the work of IGC. It also noted its pleasure at the outcome of the Bali consultative meeting, which had been held from September 2 to 4, 2013. The Delegation pointed out that the outcomes of the Bali meeting had, in one way or another, been reflected in the compromise that had been reached in the recommendation submitted to the WIPO General Assembly. It expressed its appreciation to delegations for their flexibility with respect to the formulation of the recommendation and stressed that there was a need to conclude a legally binding instrument for the protection of GRs, TK and TCEs. Hard work was required for the implementation of the work plan as

stipulated in the recommendation. It also stressed that there was the need for the IGC to finalize the textual negotiations in order to enable the next WIPO General Assembly to decide to convene the diplomatic conference. On the issue of studies, the Delegation reiterated that the studies were by no means expected to delay progress or establish any preconditions to the text-based negotiations.

185. The Delegation of Senegal expressed its support for the statement made by the Delegation of Algeria, speaking on behalf of the African Group. The WIPO Secretariat was thanked for the assistance provided to the Member States in the IGC. The IGC was of particular importance to Senegal due to the great wealth of GRs and cultural diversity which Senegal enjoyed. The Delegation noted that at the national level, its development objectives found GRs to be an important heritage which it wanted its communities to benefit from. It was of the view that the IGC had made considerable progress in the negotiations on the three draft texts over the past year with a view to adopting one or more legal instruments for the protection of GRs, TK and TCEs. The Delegation regretted that the 51<sup>st</sup> meeting of the Assemblies of Member States could not decide on a diplomatic conference. It, however, expressed its conviction that the work done by all Member States, including that which had resulted in the text regarding the IGC's future work, was the key to reaching a solution and to achieving consensus on the convening of a diplomatic conference no later than December 2015. It expressed its support for the draft workplan and noted that the development of this recommendation was crucial for the objective of convening a diplomatic conference. It was of the view that the effective protection of GRs, TK and TCEs could not be achieved without a legally-binding instrument.

186. The Delegation of Zambia aligned itself with the statement made by the Delegation of Algeria on behalf of the African Group. It noted that it had been participating in, and following the work of, the IGC very closely. Although a lot of work had been done, some polishing up was still required. In this regard, it welcomed the renewal of the mandate of the IGC. It expressed the hope that controversial issues would be ironed out and that concrete results on the text-based negotiations would have been achieved by the end of the 2014, which would enable the holding of a diplomatic conference within the biennium. The Delegation noted that Zambia had rich indigenous knowledge and pointed out that most of this knowledge was not protected. It noted that although it had produced a Bill for the protection of GRs, TK and TCEs, efforts by individual Member States to protect GRs, TK and TCEs were always difficult. A concerted effort was required by all Member States to achieve such national aspirations on the protection of GRs, TK and TCEs. For this reason, the Delegation of Zambia noted that it was looking forward to a logical conclusion of the IGC's negotiations so that its TK could be adequately protected. It thanked the Secretariat, delegations and indigenous communities that had participated in and assisted the IGC to have attained its present state of work.

187. The Delegation of Angola expressed its support for the statement made by the Delegation of Algeria on behalf of the African Group. It was of the view that the work that had been done on TK, GRs and TCEs would open the way for the convening of a diplomatic conference that would achieve an agreement of great importance for Angola to develop its national policy.

188. The Delegation of Trinidad and Tobago thanked the Secretariat and the Chair of the IGC, Ambassador Wayne McCook, for their work in the IGC during the 2012-2013 biennium. It expressed its gratitude to the Government of Indonesia for having hosted the informal consultations in Bali and noted that some of the views expressed in Bali had formed the backbone of the informal consultations at these Assemblies and had shaped the current mandate of the IGC. The IGC negotiations had begun many years ago and that, at the close of the 25<sup>th</sup> session, there had been no definitive conclusion on the Committee's future work. It was, therefore, pleased to see that Member States had agreed on a future work program for the IGC. It was extremely important, for developing countries in particular, that the IGC negotiations continued during 2014/2015 biennium with a view to further developing an international

instrument or instruments. The Delegation noted that agreement had been reached, during the course of previous IGCs, that meetings should not only be held at the technical level but also at the Ambassadorial level. For this reason, it welcomed the convening of an Ambassadorial/senior official meeting in 2014 to discuss policy issues which pertained to the IGC. The Delegation expressed its delight with the clear renewal of the mandate of the IGC which incorporated definitive decisions regarding the work schedule and the convening of the thematic sessions. It assured the Chair of its full support and reiterated its preference for the convening of a diplomatic conference in 2015.

189. The Delegation of Zimbabwe aligned itself with the statement made by the Delegation of Algeria on behalf of the African Group. It expressed its appreciation to Ambassador McCook for his commitment in chairing the work of IGC. It also thanked Mr. Goss for his wonderful work in leading the discussions in the informal sessions regarding the IGC work which had helped in yielding the document on the renewal of the IGC mandate for the next biennium. The Delegation pointed out that it attached great importance to the work of the IGC and hoped that the next year's negotiations would help in finalizing the texts currently before the Committee. The current texts were sufficiently mature to form the basis of the negotiations and to reach consensus on having international legally-binding instruments for the effective protection of GRs, TK and TCEs. The Delegation appealed to all Member States to limit the submissions of new textual proposals during the future IGC meetings as, it noted, these could potentially slow down progress. It welcomed the spirit of compromise that had been shown by all delegations in the renewal of the mandate of the IGC and hoped that all Member States would be able to come to a fruitful conclusion on the work of the IGC with the convening of a diplomatic conference.

190. The Delegation of Côte d'Ivoire expressed its appreciation to Ambassador McCook for the important work that he had accomplished over these past two years in moving ahead the negotiations in the three thematic areas. It was also pleased that there was a renewed and further strengthened mandate for the IGC which required a more active participation by Member States. The Delegation noted that Cote d'Ivoire was working for the negotiation of one or more legally-binding instruments on GRs, TK and TCEs. It noted that these were matters of great concern to it at the highest levels and were viewed as fundamental aspects of its development strategy. It expressed its support for the statement made by the Delegation of Algeria on behalf of the African Group and invited all Member States to show more flexibility so that a diplomatic conference could be convened in 2015.

191. The Chair thanked all Delegations for the statements made and proposed that the text which she had read out before, including the schedule of meetings in the table, be adopted as the agreed decision of the Assemblies under Agenda Item 35. It was so adopted.

Bearing in mind the Development Agenda recommendations and acknowledging the progress made, the WIPO General Assembly agrees that the mandate of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore be renewed as follows:

(a) The Committee will, during the next budgetary biennium 2014/2015, and without prejudice to the work pursued in other fora, continue to expedite its work with open and full engagement, on text-based negotiations with the objective of reaching an agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs.

(b) The Committee will follow, as set out in the table below, a clearly defined work program, based on sound working methods, for the 2014/2015 biennium. This work program will make provision for three sessions of the IGC in 2014, including thematic and cross cutting/stocktaking sessions. At the beginning of IGC 26 an Ambassadorial/Senior Capital-Based Officials meeting will be held to share views on key

policy issues relating to the negotiations, to further inform/guide the process. The IGC may decide to hold further Ambassadorial/Senior Capital-Based Officials meetings during future IGC meetings.

(c) The focus of the Committee's work in the 2014/2015 biennium will build on the existing work carried out by the Committee and use all WIPO working documents, including WIPO/GRTKF/IC/25/5, WIPO/GRTKF/IC/25/6 and WIPO/GRTKF/IC/25/7 which are to constitute the basis of the Committee's work on text-based negotiations, as well as any other textual contributions by members.

(d) The Committee is requested to submit to the 2014 General Assembly the text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs. With a view to finalising the text(s) within the biennium, the General Assembly in 2014 will take stock of and consider the text(s), progress made and decide on convening a Diplomatic Conference, and will consider the need for additional meetings, taking account of the budgetary process.

(e) The General Assembly requests the International Bureau to continue to assist the Committee by providing Member States with necessary expertise and funding, in the most efficient manner, of the participation of experts from developing countries and LDCs, taking into account the usual formula.

The General Assembly takes note of the possibility for members of the IGC to request studies or to provide examples to inform the discussion of objectives and principles, and each proposed article, including examples of protectable subject matter and subject matter that is not intended to be protected, and examples of domestic legislation. However, examples and studies are not to delay progress or establish any preconditions to the text-based negotiations.

Indicative Dates	Activity
February 2014	IGC 26 GR. <ul style="list-style-type: none"> <li>• Ambassadors/Senior Capital-Based Officials meeting to share views on key policy issues relating to the negotiations on GRTKTCE, to further inform/guide the process. Duration – Half Day</li> <li>• Undertake text-based negotiations on GR with a focus on considering options for a draft legal text - Duration four and a half days. Duration 5 Days</li> </ul>
April 2014	IGC 27 TK followed by TCE. <ul style="list-style-type: none"> <li>• Consideration of Cross Cutting TK/TCE Issues – 1 Day</li> <li>• TK - Focus on objectives, principles, 4 key Articles <i>viz</i> Subject Matter of Protection, Beneficiaries, Scope of Protection and Limitations and Exceptions - Duration 4 Days</li> <li>• Consideration of Cross Cutting TK/TCE Issues – 1 Day</li> <li>• TCE - Focus on objectives, principles, 4 key Articles <i>viz</i> Subject Matter of Protection, Beneficiaries, Scope of Protection and Limitations and Exceptions Duration 4 Days</li> </ul> Duration 10 Days

July 2014	IGC 28 Cross-cutting session/Stocktaking. <ul style="list-style-type: none"> <li>• Cross Cutting GR/TK/TCE session.</li> <li>• Take stock of progress and make a recommendation to the General Assembly</li> </ul> Duration 3 Days
September 2014	WIPO General Assembly With a view to finalising the text(s) within the biennium, the General Assembly in 2014 will take stock of and consider the text(s), progress made and decide on convening a Diplomatic Conference, and will consider the need for additional meetings, taking account of the budgetary process.

## ITEM 36 OF THE CONSOLIDATED AGENDA

### REPORTS ON OTHER WIPO COMMITTEES

#### ITEM 36(i) OF THE CONSOLIDATED AGENDA

#### STANDING COMMITTEE ON THE LAW OF PATENTS (SCP)

192. Discussions were based on pages 1 to 3 of Annex I to document WO/GA/43/16.

193. The Secretariat explained that pages 1 to 3 of Annex I to document WO/GA/43/16 provided a progress report on the work of the Standing Committee on the Law of Patents (SCP) at its nineteenth session held in February 2013, and described the contribution by the SCP to the implementation of the DA recommendations. The latter consisted of the statements extracted from the preliminary draft report of the nineteenth session of the SCP (document SCP/19/8 Prov.1, paragraphs 133 to 136). The Secretariat invited the General Assembly to take note of the information contained in the document.

194. The Delegation of Belgium, speaking on behalf of Group B, thanked the Chair of the SCP for his efficient chairing of the 19<sup>th</sup> session of the Committee and the WIPO Secretariat for its hard work over the past year in preparing the documents. The Delegation noted that during the last session of the SCP, its Group engaged actively and constructively on the topics established within the balanced work program, such as the quality of patents, including opposition systems; confidentiality of communications between clients and their patent advisors; exceptions and limitations to patent rights; patents and health; and transfer of technology. Noting that its Group looked forward to further activities and substantial progress of the Committee, the Delegation stressed that Group B remained interested, in particular, in further information on work sharing programs among patent offices and in the use of external information for search and examination. Similarly, the Delegation welcomed further information on experiences relating to the issue of confidentiality of communications between clients and their patent advisors. The Delegation further reiterated that the aim should always be a balanced work program of the SCP. Hence, in its opinion, any duplication of work with other WIPO Committees and other international organizations should be avoided. Finally, the Delegation stated that Group B remained committed to the SCP as a forum to discuss issues, facilitate coordination and provide guidance concerning the progressive international development of patent law, including patent law harmonization.



195. The Delegation of Poland, speaking on behalf of the CEBS Group, expressed its appreciation to the Secretariat for preparing the documents for the Committee which had been helpful for its work. The Delegation was pleased that the Committee had agreed to continue discussions on the issues of special importance for its Group, in particular, on the quality of patents, including opposition systems, and the confidentiality of communications between clients and their patent advisors. The Delegation expressed its satisfaction that both topics remained on the agenda of the Committee for discussion at its next session. The Delegation also stated that CEBS was ready to discuss issues of limitations and exceptions to patent rights, as well as transfer of technology. Further noting that the mandate of the SCP was to serve as a forum to discuss issues leading to the progressive development of international patent law, the Delegation urged that the SCP keep discussing issues in an efficient and appropriate manner and avoid duplication of work. Finally, the Delegation underlined the importance of international collaboration in order to find ways to achieve tangible results.

196. The Delegation of Lithuania, speaking on behalf of the EU and its member states, noted that the 19<sup>th</sup> session of the SCP reached a positive conclusion in the sense that the Committee agreed to continue discussions on the basis of the advanced work program that included topics such as quality of patents, including opposition systems, confidentiality of communications between clients and their patent advisors, exceptions and limitations to patent rights, transfer of technology and patents and health. The Delegation stated that those topics addressed important and complex issues related to the international patent system with the hope that the discussions on those topics would result in a more efficient and accessible patent system. The EU and its member states were particularly keen to advance on the topics of quality of patents, including opposition systems, as they believed that the work on that topic would be of interest to Member States across the spectrum of development. In addition, the EU and its member states were interested in the topic of confidentiality of communications between clients and their patent advisors as, in their view, convergence of different privileges would be of benefit to users of the patent system, irrespective of a level of development of individual WIPO Member States. Further, the Delegation stated that the EU and its member states remained committed to all topics on the balanced work program of the Committee, and expressed its hope that further work would enable fruitful discussions on the technical issues concerning patent law, and international harmonization to be established.

197. The Delegation of Japan associated itself with the statement made by the Delegation of Belgium on behalf of Group B. The Delegation welcomed the progress made at the 19<sup>th</sup> session of the SCP regarding the future work plan. The Delegation highly appreciated the Secretariat's efforts in that regard. The Delegation further stated that it attached great importance to the forum where the Member States could discuss the core issue in IP, namely patents. Although the agreement on the future work plan was just a small step, the Delegation was of the view that it was a firm step in the right direction. The Delegation expressed its strong belief that Member States should continue to commit their constructive contribution to important patent issues, including quality of patents, which would bring benefits to all countries in assuring the certainty of rights. The Delegation emphasized that issues addressed at the SCP would contribute to the DA recommendations. Finally, the Delegation maintained its position that the SCP should continue considering critical issues in an efficient and appropriate manner, and avoid duplication within all the WIPO bodies, as it had repeatedly iterated before.

198. The Delegation of the United States of America supported the statement made by the Delegation of Belgium on behalf of Group B, and it supported a balanced work program for the SCP. The Delegation believed that a non-exhaustive list of issues provided a good basis for such discussions, as it contained issues of interest to Member States of all level of development. The Delegation supported the further study of issues in a balanced and targeted manner as a way to reach consensus on a work program that would take into account the range of interests represented by Member States. The Delegation supported the work program proposed by the Chair at the 19<sup>th</sup> session of the SCP, which had been agreed to by all Member

States. However, the Delegation was mindful that the success of the work program would depend on whether it would be developed in a balanced and targeted manner. The Delegation continued by stating that it did not support focusing on exceptions and limitations to the patent rights, without also having a strong component focused on substantive patent rights. The Delegation was also mindful of the projects undertaken in other WIPO Committees, especially the CDIP, as well as in other international bodies such as the World Health Organization (WHO) and the WTO. In its view, work undertaken in the SCP should not be duplicative of work being done in those other bodies. The Delegation welcomed further discussions and invited additional concrete proposals on the work program on quality of patents from all Member States. In particular, the Delegation believed that practical ways to improve the operation of Patent Offices should be studied taking, as a starting point, programs that had been shown to be effective in the past. Further referring to the Patent Prosecution Highway (PPH) as one example of a very successful work sharing program, the Delegation stated that the program embraced over 25 Patent Offices, and had been beneficial to the offices and applicants in terms of efficiency and quality. The Delegation continued by stating that, far from being a program which rubber stamped the patentability decisions of one office in another office, the PPH had helped participating national offices to make their own speedy and correct patentability decisions. Work sharing programs had been shown to be effective in improving the operation of participating offices resulting in greater quality and efficiency and, at the same time, they also gave to users faster and less costly services. Thus, the Delegation welcomed further study in the SCP of the PPH program or other similarly effective work sharing programs with the aim of further improving the quality of work carried out by the national offices of Member States.

The United States of America also welcomed further study of tools that could make sharing more effective, such as IT systems to share information, ways to better understand how offices apply their national laws, and ways to increase trust and confidence between the examiners of cooperating offices. The Delegation did not believe that flexibilities were the exclusive solution to the public health problems faced by developing countries and LDCs. Instead, in its view, the combination of voluntary licensing arrangements, such as patent pools, and vast market commitments and global funding together with innovative capacity building would provide a more effective approach to solving those important problems. The Delegation supported a balanced and targeted approach to surveying public health challenges in developing countries and LDCs, which was not limited to factual and non-conclusive survey of flexibilities such as compulsory licensing and patent exhaustion. Therefore, the Delegation did not support normative work in that area and opposed the production of recommendations, either by Member States or the Secretariat. In its view, any work on those issues must include the benefits of strong IPR regimes and the effect of non-IPR barriers to delivering health care. Further, the Delegation opposed developing, within WIPO, technical assistance modules on flexibilities contained in the TRIPS Agreement. In its opinion, the WTO was the appropriate body with the mandate to determine compliance with the TRIPS Agreement. It however supported the conducting of an information sharing session as described by the Chair during the last session of the SCP, without analysis from the Secretariat on the Member States' use of health related flexibilities. While noting that the work carried out to date on exceptions and limitations provided useful information, the Delegation, however, did not support further work on that topic because such information was available to interested Member States without further expense of scarce WIPO resources. The Delegation stressed that -the institution must avoid duplicating its own efforts which had been proved to be difficult. Further, the Delegation stated that it supported the Secretariat preparing a document on how five exceptions and limitations were implemented in the Member States, with the remaining exceptions and limitations being addressed at the following session of the SCP. According to its understanding, that document would be based on input received from Member States and would not involve any evaluation or analysis by the Secretariat. While the Delegation supported continuing the discussions on technology transfer, it stressed that such discussion must be balanced, targeted and must address the IPR incentives as well as any potential impediments to technology transfer. Thus, it was not

acceptable for the Delegation carrying out further work that would only study alleged impediments created by the patent system. In conclusion, the Delegation reiterated the importance of avoiding within the SCP the duplication of work carried out in other bodies such as the CDIP.

199. The Delegation of India attached great importance to the work of the SCP. The Delegation stated that it was happy to see the adoption of a well-balanced work program for the SCP at its 19<sup>th</sup> session. It was particularly content to see in the agenda of the Committee the topics of patents and health, transfer of technology, and exceptions and limitations to patent rights. The Delegation was of the view that quality of examination of patent application needed to be improved substantially so as not to create a huge social cost of granting patents to insignificant improvements which would only lead to litigation and create barriers to technology dissemination. On the issue of work sharing, the Delegation was of the view that it could not be considered for addressing the backlogs and in improvement of the quality of granted patents. The Delegation strongly believed that work sharing would adversely affect capacity of IP offices in developing countries in assessing an application. Therefore, in its view, work sharing should not become an area of norm setting in the future. Further, the Delegation stated that, in its opinion, there was a need to study the various impediments relating to transfer of technology, so that appropriate steps could be taken to address them. Finally, on the issue of patents and health, the Delegation supported the session for sharing of information on health-related patent flexibilities in the 20<sup>th</sup> session of the SCP.

200. The Delegation of China stated that the Committee should make further progress in the discussions of the topics of quality of patents, patents and health, as well as other various items contained in its agenda.

201. The Delegation of Brazil expressed its satisfaction, in general, with the development of work in the SCP. It noted that, as provided by many studies, including those published by WIPO, the last 15 years showed a surge in the number of patent filings in industrial property offices from all over the world, reaching historically unprecedented levels. It continued by stating that the causes for that growth were varied, and included both filings of new inventions and multiple filings of the same invention in different jurisdictions, among other factors. In its opinion, those explanations provided valuable input for policymakers in order to evaluate the public policies put in place and their effectiveness in generating innovation and economic growth. The Delegation stated that besides those factors, the surge also posed a challenge for IP offices, especially for those that undertook substantive examination of patent applications. It considered that those offices received great constraints on their human resources and technological infrastructure, and offices responded accordingly in order to maintain the quality of the examination of patent applications, while keeping the backlog at tolerable levels. Taking that into account, the Delegation noted that many Member States had tabled proposals regarding the issue of quality of patents. It stated that while some of those proposals presented challenges for specific member States, others were very useful for providing a rich background for discussions to be held in the Committee. The Delegation pointed out that patents of high quality were paramount for attaining the goals of the patent system. The Delegation considered it useful to engage in a discussion on that important issue, as a contribution to the improvement of the patent system, including therein the search and examination of patents and the evaluation of the workflow. The Delegation expressed its belief that patents of very high quality were key to reach the objectives of patent protection, i.e., to 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. As a contribution to the discussion, the Delegation was of the view that a first step could be the exchange of information regarding access to patent databases in light of the shared objective of continuously raising patent quality. It noted that some patent offices, including the National Institute of Industrial Property, had already made available search and examination documents on their web sites. In

its view, access to such information was helpful in order to enable examiners to carry out search and examination with adequate quality, as long as the flexibility for access and use of the databases was maintained. The Delegation stated that since some countries faced obstacles in accessing such databases, it could be useful to explore the reasons behind those difficulties. The Delegation further stated that another subject of great interest was exceptions and limitations to patent rights. It considered that they were relevant to an adequate and a balanced patent system, and that Member States had developed different approaches for their implementation. In its view, a flexible policy space was necessary in order to allow Member States to develop and adapt a set of exceptions and limitations that was more adequate for their realities, independent of the level of development of a country. The Delegation stated that the simple existence of the exceptions and limitations was not sufficient by itself in order to evaluate the benefits or obstacles faced by their implementation. The Delegation explained that that was the reasoning that underpinned the second phase of its proposal, for it aimed at investigating, which exceptions and limitations were more effective to address development concerns and what the conditions for Member States were to enjoy it to the fullest, since national capacities would obviously affect the capacity for using exceptions and limitations. Furthermore, the Delegation noted that the use of exceptions and limitations by Member States to improve their IP systems in place was a core value of the DA, as it was explicitly mentioned in recommendation 22, while it was directly related to recommendations 3, 10, 11, 12 and 14, among others. Regarding the issue of patents and health, the Delegation expressed its support for the proposal by the African Group and the DAG. It noted that providing access to essential medicines at affordable prices was the goal of all countries, and was a necessary step for the achievement of the MDGs. The Delegation further stated that the relationship between the patent system and health also offered a clear picture of inherent trade-off of intellectual property, that is, governments offered incentives for innovation while controlling eventual negative effects on competition, thus ensuring an adequate balance between the rights granted and access to the products. It considered that the Doha Declaration on the TRIPS Agreement and Public Health conveyed the understanding that health technologies were different from other products, and should not be treated as a commodity.

202. The Delegation of Canada expressed its support for the intervention made by the Delegation of Belgium on behalf of Group B. It stated that Canada had been engaged for many years in the discussions in the SCP, and considered that the SCP was an appropriate multilateral forum to discuss issues regarding the development of the international patent system. The Delegation expressed its commitment to active engagement in the discussions regarding the substantive work program of the SCP. The Delegation looked forward to the ongoing harmonization efforts in the Committee, including prior art, novelty, inventive step and grace period. Moreover, the Delegation expressed its support for the interventions made by the previous speakers who had advocated balanced and targeted discussions in the SCP. In addition, the Delegation expressed its openness to discussing other patent-related issues, provided that the topics were addressed in an appropriate body and that there was no duplication of work among multiple fora.

203. The Delegation of Guatemala expressed its willingness to continue discussing, in the SCP, the issues such as the flexibilities in the patent system. It considered that such discussion was important for developing countries, and that the Committee would contribute to the improvement of patent examination with a view to establishing a more effective patent system.

204. The Delegation of El Salvador stressed the importance of the issue of exceptions and limitations to patent rights for its country, and expressed its appreciation for the work carried out by WIPO, including legislative assistance. The Delegation urged Member States to continue working on the five issues in the agenda of the SCP in order to meet the objectives of the Committee and to fulfill the Committee's mandate. The Delegation expressed its hope that the discussions at the next session of the SCP would be harmonious and be held in trust so that the Committee could indeed reach its objectives.

205. The Representative of TWN stated that he attached great value to the work of the SCP, which was expected to inform the needs of a large part of WIPO's membership. In his view, however, there was an organized resistance to discussions on the topics which were beneficial to developing countries. The Representative noted that, although the SCP had been expected to discuss the proposal regarding patents and health submitted by the African Group and DAG in 2011, the SCP could not discuss that topic. He was of the view that the reluctance of the SCP to discuss the issue of patents and public health had not only questioned the legitimacy of the SCP, but had also put a big question mark on WIPO's objectives and purposes. The Representative considered that developing countries needed more information with regard to use of flexibilities related to public health and patents. In that regard, the Representative noted that many developing countries had initiated reform of their patent systems, especially to address the quality of patents. Referring to the Indian Supreme Court's decision on the *imatinitib mesylate* patent, the Representative stated that the Supreme Court of India had clearly struck down the strategies of multinational pharmaceutical companies that had sought multiple patents on the same substance. The Representative stressed the importance of discussing those types of issues in order to grant patents on only genuine innovations and to avoid use of patents as a tool to extend the monopoly beyond the spirit of patents. The Representative looked forward to the next SCP session, in which Member States would be in a position to take a decision to discuss the issue of public health and patents.

206. The WIPO General Assembly took note of the contents of document WO/GA/43/16.

#### ITEM 36(ii) OF THE CONSOLIDATED AGENDA

#### STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS (SCT)

207. Discussions were based on pages 4 to 6 of Annex I to document WO/GA/43/16.

208. The Delegation of El Salvador noted that it would continue to study legislation and practices, currently in force at both the national and regional level, in relation to the protection of country names in the area of trademark registrations. In light of the "Study on the Protection of Country Names" and also the proposal tabled by various members of its regional group, which it supported, the Delegation looked forward to discussing, during the thirtieth session of the SCT, any comments or observations in relation to the updated study and reiterated that this agenda item was of great importance to it. The Delegation also reaffirmed its support for the extremely technical work of the SCT in relation to industrial designs, in which it had participated. It was of the view that technical assistance and capacity-building were very important and that even though work in these areas had not yet been completed, it should be possible, under the guidance of the chairmanship, to conduct informal consultations on these matters. In light of the previous discussions, the Delegation was of the view that there were positive prospects for the conclusion of the work and the convening of a diplomatic conference, which the Delegation favored. Finally, the Delegation stated that the SCT would also work on issues such as geographical indications, an area in which SCT members had made no contributions during the period under consideration. The Delegation hoped, however, that at future sessions, the SCT could focus on this topic.

209. The Delegation of Jamaica commended the work done by the Secretariat and the SCT and remained convinced of the need to improve the intellectual property protection of country names. It therefore supported efforts by Member States to promote and protect the value attached to the use of country names. It continued to work with SCT members to explore a suitable approach for the protection of the names of countries against registration and use as trademarks. The most recent study prepared by the Secretariat, document SCT/29/5, showed that although protection was available for country names through alternative means, the

protection that currently existed internationally for country names was limited to particular circumstances and was, therefore, inadequate. The Delegation remained of the view that an adequate protection of names of States within national laws, policies and procedures, should be facilitated through a Joint Recommendation of the WIPO General Assembly, as had been done in relation to other trademark areas of common importance and convergence. At the twenty-ninth session of the SCT, Jamaica had requested the Secretariat to use the study to update the original reference document for circulation to Member States ahead of the thirtieth session of the SCT, which course of action was agreed by the SCT. The Delegation was in the process of reviewing and analyzing the study in detail and called upon Member States to do the same. It intended to present an updated proposal to the thirtieth session of the SCT as to the way forward.

210. The Delegation of Switzerland associated itself with the Delegations of El Salvador and Jamaica in highlighting the importance of the work being undertaken by the SCT on the protection of country names. It thanked the Delegation of Jamaica for its commitment on this question and the proposals already made and looked forward to seeing its new proposal at the thirtieth session of the SCT. The Delegation considered that it should be of great importance for all countries to protect country names and to have rules for the use of country names to identify products so that a link with the country of origin of the product is maintained. The Delegation also supported the commitment of the Secretariat with regard to domain names in Internet Corporation for Assigned Names and Numbers (ICANN).

211. The Delegation of Algeria, speaking on behalf of the African Group, declared that the SCT had a mandate to further work towards a treaty with proper provisions on technical assistance and capacity building for developing countries and LDCs. This would help the General Assembly to take stock of progress made and take a decision on the possible convening of a diplomatic conference. For the African Group, this meant that at the end of this session, there should be an inclusive draft treaty reflecting the interests of all Member States and taking on board the concerns of all delegations. The Delegation said that, in line with Cluster B of the WIPO DAREcommendations, the work of the Committee had to be exhaustive, take account of different levels of development and maintain a balance between costs and benefits. The African Group believed that it was currently difficult to judge whether the advantages of a harmonized procedure for registration of industrial designs were the right price to pay for the modification of national legislation and the establishment of infrastructure and of necessary technology. While highlighting the importance of law and practices in terms of industrial design, the African Group wished to strengthen national capacities in order to draw benefits and increase the number applications for registration. The African Group, therefore, wished to insist on the need for a balance between costs and benefits, particularly in the light of the impact study carried out by WIPO. This study clearly showed that in low-income and medium-income countries, there was a need for assistance in administration, legal competence and training, which was much greater than in high-income countries. Also, according to statistics, 40 per cent of applications in developing countries came from non-residents. There was, thus, a huge disparity between developed and developing countries in terms of registration of industrial designs, which had to be taken on board as the work of the Committee continued. Notwithstanding this, the African Group had shown a spirit of cooperation by presenting a proposal, consisting of a set of articles on technical assistance and capacity building and other articles concerning reduction of fees. The Group considered that inclusion of these articles in the treaty would make it possible to formulate an international instrument which would conform to the needs and realities of all Member States. The Group also noted with satisfaction the proposals presented by the Delegations of the Republic of Korea and the EU with regard to technical assistance and capacity building. These new proposals would enable a balance in the debate on the draft treaty and establish a climate of dialogue and mutual understanding. Noting that delegations had shown flexibility to include provisions on technical assistance and capacity building in the body of the treaty, the African Group welcomed this progress and said that it would continue to contribute to the consensus on the basis of the proposals by the African Group, the Delegations

of the EU and the Republic of Korea. However, the Group recalled the importance of the proposed articles concerning the reduction of fees, particularly for developing countries and LDCs. The Group wished to give sufficient time to the discussion of these articles during this session, in order to ensure better understanding and an acceptable formulation for all Member States. Finally, the African Group assured all of its commitment to ensure the success of the Committee.

212. The Delegation of China stated that it had always attached great importance to the work of the SCT and that it was pleased to see that the discussion on the Design Law Treaty (hereinafter referred to as “DLT”) had sufficiently advanced. The Delegation stated that China would actively participate in the relevant informal consultations on the DLT, and hoped that the parties would bridge their gaps and achieve a satisfactory result for all.

213. The Delegation of Poland, speaking on behalf of CEBS, declared that CEBS supported the normative work of the SCT on converging design formalities, which was of particular importance to the Group and for the benefit of all countries at each stage of economic development. CEBS believed that harmonization of formalities would be a useful tool for promoting innovation and economic activity. Furthermore, CEBS was of the view that the text of the treaty was mature enough for the General Assembly to recommend the adoption of the treaty in the first semester of 2014. Any outstanding differences could be settled at the SCT session scheduled for November and at the preparatory meeting which could be held during the first quarter of 2014. At those sessions, the SCT should finalize the basic proposal for the treaty and give appropriate consideration to the needs of developing countries in technical assistance and capacity building for the implementation of the future treaty. CEBS hoped that its proposal would find the necessary support in the Assembly during this session.

214. The Delegation of the EU, speaking on behalf of the EU and its member states, reaffirmed its strong commitment to the important work of the SCT. The Delegation of the EU and its member states reiterated that they recognized and stressed the great importance and added value of harmonizing and simplifying design registration formalities and procedures for users. The SCT had, over several years, made great and substantial progress towards addressing these issues. The draft articles and regulations responded to the ultimate goal of approximating and simplifying industrial design formalities and procedures, but were also appropriate to establish a dynamic and flexible framework for the subsequent development of design law, able to keep up with future technological, socio-economic and cultural changes. In brief, the draft articles and regulations were technically mature. Furthermore, in line with the respective agenda recommendations, studies in relation to the impact of the proposed treaty had been carried out and updated. The study results indicated that the respondents in all countries believed the proposed changes would bring about positive impacts. The Delegation of the EU and its member states said that, while there were differences of opinion as to the issue of how technical assistance and capacity building was dealt with in relation to the treaty, it would appear that no Member State questioned their provision. Therefore, consensus surrounding the issue would be rapidly resolved at, or ahead of, a diplomatic conference. The provision of technical assistance had arisen during negotiations in the STLT. In each case, the matter had been resolved to the satisfaction of all parties during the diplomatic conference itself. From experience, that was a problem which could be easily solved. That said, in order to help with the solution, the Delegation of the EU and its member states had, in the spirit of cooperation and flexibility and as a public statement of their ongoing support for the DA, tabled a proposed Article on technical assistance and capacity building for inclusion in the treaty. This was contained in document SCT/29/8. The Delegation hoped that such a proposal, with its clarifying measures, might prove a useful compromise between demanders of an Article and those who favored a Resolution. In conclusion, the Delegation of the EU and its member states proposed that the General Assembly agreed on a further session of the SCT held in the autumn, followed by a diplomatic conference in 2014.

215. The Delegation of Belgium, speaking on behalf of Group B, declared that Group B wanted to recommend the convening in 2014 of a diplomatic conference for the Adoption of a Design Law Treaty. This recommendation was based upon the fact that sufficient progress had been made during the twenty-eighth and the twenty-ninth sessions of the SCT. The Delegation recalled that the Chair of the SCT had concluded at the end of the twenty-ninth session that “the SCT has made good progress on the draft articles and draft rules included in documents SCT/29/2 and 3 and the work on technical assistance and capacity building has advanced”. This had resulted in a political maturity of the draft articles and rules which clearly exceeded the maturity of other draft treaty texts that had successfully been sent towards a diplomatic conference. Regarding the issue of technical assistance and capacity building, Group B acknowledged that further progress was needed to reach a concrete outcome. In these transactions, members of Group B had made several proposals. Group B was convinced that these and possibly others to come, could form the basis for a successful diplomatic conference. Furthermore, earlier studies had been successfully undertaken in the context of the SCT. These studies clearly demonstrated that the DLT would benefit all Member States and users irrespective of their stages of development. Finally, Group B welcomed the fact that the Russian Federation had already announced its intention to host the diplomatic conference.

216. The Delegation of Iran (Islamic Republic of) declared that, in line with the overall objectives of the Organization, it was of the view that the work of the SCT should be in conformity with the development objectives of WIPO and with the requirements of the DA. It should take into account the relevant recommendations regarding the concerns of developing countries for the effective implementation of any possible legally binding instrument and hold preparatory work for meetings. Regarding the draft for the design law treaty, the Delegation took careful note of some progress in the negotiations on the preparation of a text with a legally binding nature. At the same time, there were some outstanding issues that should be resolved before deciding on the next step. Envisaging national flexibilities and defining the requirements for a framework, and rules and modalities for technical assistance and capacity building, were just two examples of remaining issues. There were certainly some other areas that might be faced with new ideas and proposals in the upcoming meetings of the SCT, taking into account further national and international studies. The Delegation, therefore, believed that it was premature to decide at this stage on the convening of a diplomatic conference. Before that, the SCT should constructively and in a meaningful manner work towards coming up with a common understanding that the text was mature enough. This was in line with the report of the twenty-ninth session of the SCT, in which there had been no reference to any kind of agreement or consensus on convening a diplomatic conference, as there were still Member States who had not come to the conclusion that the text was sufficiently ripe to go to the next step. Developing countries were ready to engage in a constructive discussion with a view to meeting their legitimate concerns about those prerequisites which had to be met before entering into a second stage. Adopting suitable measures to alleviate the concerns of developing countries would enable them to support the process and to reach consensus on it, as well as create better acceptance of the treaty by all countries. This would lead to a more efficient implementation of the treaty.

217. The Delegation of the United Kingdom declared that it supported the statements made on behalf of Group B and the Delegation of the EU and its member states. The Delegation recalled that, in 2012, the Assembly had agreed to review, in 2013, the progress of the work done on the DLT, and to make a decision on convening a diplomatic conference. The text of what would form the DLT had progressed and was finalized in substance, especially after concrete proposals had been made to allow for the provision of technical assistance and capacity building. The Delegation stated that it was very encouraged by statements from regional groups and delegations expressing support for a diplomatic conference in 2014. The Delegation therefore believed that the moment was right for this Assembly to take the decision to convene a diplomatic conference in 2014. The Delegation wished also to thank the Russian Federation for expressing its willingness to host a diplomatic conference in 2014.



218. The Delegation of Germany, endorsing the statements made by the Delegations of the EU and Belgium on behalf of Group B, expressed its appreciation for the progress made in the Articles and Regulations on Industrial Design Law and Practice to harmonize industrial design formalities and procedures. The Delegation further considered that a multilateral agreement would consolidate the protection of industrial designs for strengthening innovation and creativity. Therefore, the Delegation expressed its support for the convening a diplomatic conference in 2014.

219. The Delegation of Japan, supporting the statement made by the Delegation of Belgium on behalf of Group B, welcomed the significant progress made by the SCT and considered that the draft text had reached the maturity to be brought to a diplomatic conference. The Delegation recognized the importance of technical assistance and capacity building for the implementation of the treaty, and believed that Member States could further discuss how it could be realized and how it should be reflected in the treaty and/or the relevant document of the treaty at a diplomatic conference. The Delegation considered that users of IP systems expected this kind of outcome, and also that WIPO should be instrumental in the process as a result of its role as a specialized agency whose function is the promotion of development measures designed to facilitate sufficient protection of intellectual property throughout the world and to harmonize national legislation. The Delegation said that it would continue, in a constructive manner, to contribute to the discussion at the remaining SCT sessions to finalize a negotiation as soon as possible in order to maximize the benefit.

220. The Delegation of Norway expressed its support for the declaration made by Group B. The Delegation, observing that the SCT had made significant progress on the draft articles and draft regulations, and that the time was ripe for a diplomatic conference, believed that the SCT would soon be able to finalize its work on the draft articles and regulations. As regards technical assistance and capacity building, the Delegation noted the positive tone of the interventions made by other delegations. Furthermore, by creating a set of rules for such harmonization, the Delegation pointed out the golden opportunity to simplify the life of users and offices, and added that convening a diplomatic conference might serve as a function for the SCT to reach agreement on other outstanding issues. The Delegation concluded by recommending the convening of a diplomatic conference for the conclusion of a design law treaty in the coming year.

221. The Delegation of Spain, echoing the statements made by the Delegation of the EU and by Group B, believed that these Assemblies should accept the possibility of holding a diplomatic conference on industrial design in 2014. Mentioning the proposal made by the Delegation of the Russian Federation to host the diplomatic conference, and considering that important progress had been made as regards the maturity of the language of the draft articles and rules, in particular regarding technical assistance, the Delegation called for recovering the spirit of the Beijing and Marrakech Diplomatic Conferences and recommended these Assemblies to decide on the holding of a diplomatic conference in 2014.

222. The Delegation of Canada expressed its support for the statement made by Group B and joined other delegations in supporting a recommendation for a diplomatic conference on a DLT in 2014. The Delegation declared that it recognized the need to address outstanding issues including those regarding technical assistance and believed that an agreement on these issues was within the reach of the SCT.

223. The Delegation of Venezuela (Bolivarian Republic of) said that, particularly since the DLT would be a procedural treaty, it would not be unwise to call for a diplomatic conference on industrial design. Underlining that technical assistance must be guaranteed, in line with WIPO's commitment to the DA, the Delegation declared that, in a context of goodwill and balance, the parties should be able to come to an agreement.

224. The Delegation of France aligned itself with the statements made by Group B, the Delegation of the EU and many other delegations. The Delegation believed that the text of the DLT had reached a level of maturity. Taking into consideration that the DLT would assist its users considerably as reflected in a number of proposals, including those of the EU that had been based on capacity building and technical assistance, the Delegation believed that the Committee was ready to call a diplomatic conference in 2014.

225. The Delegation of Chile reiterated its support for a diplomatic conference in 2014 as suggested by other delegations. The Delegation underlined that the DLT did not seek to change any substantive elements of industrial design law, and therefore the Delegation did not foresee any difficulty in reaching consensus. Due to the maturity of the text as well as the number of meetings already held, the Delegation said that discussion should be pursued particularly on the issue of technical assistance which was an important element for such a treaty.

226. The Delegation of Hungary aligned itself with the statements made by the Delegation of the EU and its member states, and the Delegation of Poland, on behalf of the CEBS. The Delegation, reaffirming its strong commitment to the work of the SCT, shared the view of many delegations that the discussion on the proposed DLT had reached its final phase. The Delegation further considered that the draft articles and regulations were technically mature enough. Therefore, the Delegation called on the General Assembly to decide to convene the diplomatic conference for 2014.

227. The Delegation of Belgium concurred with the delegations which believed that the text of the proposed treaty was sufficiently mature to allow this Assembly to decide on the holding of a diplomatic conference next year.

228. The Delegation of Italy associated itself with the statements made by Group B and the Delegation of the EU and its member states, as already mentioned in its initial statement. The Delegation said that the adoption of a treaty that facilitated the registration of industrial designs and reduced the costs involved would prove advantageous for all WIPO Member States, whether developed or developing countries. The Delegation, highlighting the importance of the technical assistance issue, observed that with goodwill, a solution could be reached. The Delegation, observing that the adoption of a treaty would be a vehicle for economic progress and social change, expressed its support for convening a diplomatic conference.

229. The Delegation of Portugal supported the statements made by the Delegation of the EU and its member states and Group B. The Delegation said that members had overcome the major differences between positions and that it was the right time for recommending to the Assembly the convening of a diplomatic conference for the adoption of the DLT in 2014.

230. The Delegation of Guatemala expressed its gratitude for the work of the Secretariat within the SCT. The Delegation also called for the convening of a diplomatic conference for the adoption of the DLT and reiterated the importance of focusing on technical assistance. Further, the Delegation supported the initiative presented by the Delegation of Jamaica in respect of country names.

231. The Delegation of South Africa recalled that at the twenty-ninth session of the SCT, the Chair concluded that the SCT had made good process on draft articles and draft rules and that the work on technical assistance and capacity building had advanced. The Delegation considered that despite the good progress made, it was still not sufficient for the SCT to recommend to the WIPO General Assembly the convening of a diplomatic conference. There was a need for more progress on technical assistance and capacity building in order to take into account the concerns of developing countries and LDCs in line with the DA Recommendations.

232. The Delegation of Ecuador supported the statement expressed previously by a number of delegations and thanked the Secretariat for the work in this area. The Delegation also supported recommending to the Assembly the convening of a diplomatic conference for the adoption of the DLT.

233. The Delegation of Egypt supported the statements by the African Group and the Delegation of South Africa. The Delegation believed that the draft treaty should contain articles on capacity building and technical assistance, as this would facilitate the participation of all Member States in the work on the treaty.

234. The Representative of TWN expressed the view that the whole exercise on a text-based negotiation of the draft design law treaty and regulations had been initiated without any decision of the WIPO Governing Bodies, including the SCT and the General Assembly. The decision in the SCT had been to discuss areas of common practice and divergence, which was different from the mandate for negotiating a text. Hence, the process was against the DA and it was a *fait accompli* to the large number of the WIPO membership. The Representative believed that even though the treaty was presented as a procedural law treaty, it had implications for substantive law, particularly in the areas of grace period, multiple applications and licensing of designs. Developing countries had marginal use of design and it was important to realize that merely getting a registration was not sufficient for deriving benefits in the developing country context or for businesses in developing countries. The SCT should undertake an analysis of the misappropriation of TCEs and traditional designs to trademark and industrial design protections. The SCT should discuss the development implications of trademarks, especially in the context of public health, and in particular, the implications of new generation trademarks, like smell, look and feel, on access to medicines. The Representative recalled that WIPO was a member of the UN task force on NCD and on tobacco control. The Representative believed that it was an imperative on the part of WIPO to discuss the promotion of plain packaging of tobacco or other harmful products like alcohol. Similarly, it was also important to discuss the promotion of generic names in the context of medicines and baby food. In this regard, the Representative recalled the ongoing discussion on the branding of baby food and alcohol.

235. The WIPO General Assembly took note of the information contained in document WO/GA/43/16.

#### ITEM 36(iii) OF THE CONSOLIDATED AGENDA

##### COMMITTEE ON WIPO STANDARDS (CWS)

236. Discussions were based on document WO/GA/43/16.

237. Since sub item 3, Committee on WIPO Standards (CWS) had been the subject of informal consultations, the Chair invited the facilitator, the Vice Chair of the General Assembly Mr. Mokhtar Warida, to report on these consultations.

238. The Vice Chair reported that he had proceeded with informal consultations on this matter with the regional coordinators, in particular, regarding the relationship between the CWS and the CDIP. An agreement had been reached that further consultations on the contribution of the CWS to the DA would take place at the forthcoming 12<sup>th</sup> and 13<sup>th</sup> sessions of the CDIP. The CDIP would then submit recommendations on this matter to the General Assembly next year.

239. Mr. Warida further indicated that the procedural matters and a proposal to add a standing item on the agenda of the CWS had not been discussed during the consultations, so a reference to former decisions by the General Assembly on these two items could be agreed.

240. Based on the report of the informal consultations by the Vice Chair, the Chair proposed the following decision paragraph:

“The WIPO General Assembly decided to instruct the CWS that, subject to further instructions to be given by the General Assembly in 2014, regarding the coordination mechanism, the CWS should continue to work in accordance with the present system, namely, WIPO General Rules of Procedure and the inclusion in its agenda of the Item “Report, by the International Bureau, on the provision of technical advice and assistance for capacity building to industrial property offices in connection with the mandate of the CWS”, as decided by the General Assembly in 2011.”

241. Following a request for clarification, the Vice Chair clarified that, while the coordination mechanism was consulted, the other two pending matters, namely, CWS’s rules of procedure and the inclusion of an agenda item on DA in the CWS agenda, were not discussed at the informal consultations. He further stated that the text read out by the Chair was an attempt to seek agreement, guided by the previous decision of the General Assembly taken in 2011.

242. The Delegation of Monaco who participated in the consultations clarified that the text was not used for the informal consultations as such.

243. The Delegation of Brazil, speaking on behalf of the DAG, stated that the DAG commended the efforts made by Ambassador Alfredo Suescum who conducted informal consultations during the last session of CWS. The aim of these informal consultations was to find a mutual solution on pending matters, in particular, coordination mechanism, the relationship between the CWS and DA recommendations in the organizational matters and special rules of procedure. Some proposals were submitted but unfortunately no agreement was reached. The DAG had been actively engaged in all consultations held on the pending issues of the CWS since 2011 and in negotiations that took place in the Committee. Since no consensus was reached the DAG understood that the CWS should hold further discussions on these matters at its next session. The DAG urged Member States to engage constructively in a discussion with a view to agree on a simple and efficient mechanism that allows the CWS to further develop its technical work in full compliance with DA recommendations. The DAG recalled that the General Assembly had adopted in 2010 a clear mandate establishing a coordination mechanism on the implementation of the DA recommendations which should be followed by all relevant bodies. The DAG believed that the DA should form integral part the work of WIPO, which included the CWS. As it’s already known this Committee developed important activities which directly impacted WIPO’s technical assistance in capacity building. Accordingly, this committee should be recognized as a relevant body and report on its contribution to the effective implementation of the DA.

244. The Delegation of Belgium stated that the Delegation reserved the right to revert to this matter at a later time.

245. In view of the interventions made, the Chair requested the Vice Chair to continue informal consultations on the matter of CWS.

246. See document A/51/20, Agenda Item 48 (Closing of the sessions).

## ITEM 36(iv) OF THE CONSOLIDATED AGENDA

### ADVISORY COMMITTEE ON ENFORCEMENT (ACE)

247. Discussions were based on paragraphs 37 to 46 of Annex I of document WO/GA/43/16.

248. The Secretariat introduced the document, which provided a brief report on the work of the Advisory Committee on Enforcement (ACE). Its eighth session took place on December 19 and 20, 2012, and it was chaired by Ambassador Thomas Fitschen, Deputy Permanent Representative, Permanent Mission of Germany. The document provided information on how the Committee addressed the various items of the agreed work program, through expert presentations. The Secretariat thanked all Delegations that contributed to those discussions. The ACE also agreed on a new work program for its ninth session, which would take place between March 3 and 5, 2014. The new work program would include: practices and operation of alternative dispute resolution systems in intellectual property (IP) areas; and preventive actions, measures or successful experiences to complement ongoing enforcement measures with a view to reducing the size of the market for pirated and counterfeited goods. Finally, the document included views expressed by delegations on the contribution of the ACE to the implementation of the WIPO DA Recommendations, which was reflected in paragraph 45 of the document.

249. The Delegation of Belgium, speaking on behalf of Group B, thanked the Chair of the ACE for his efficient chairing of the eighth session and the WIPO Secretariat for its hard work over the past year. Group B stated that creativity and innovation were of crucial importance to the global economy. In that regard, IPRs were key business assets, helping to ensure that innovators and creators were incentivized to invest and to create. As such, the further development and effective enforcement of measures that protect those rights would be needed. Group B reiterated the importance it attached to this Committee and to the effective enforcement of IPR more generally. The ACE was a valuable forum for exchanging views and advice on measures at the national and international levels to ensure full respect for and compliance with the relevant IP treaties. Enforcement was of the utmost importance for right holders, consumers and the economy, irrespective of the stage of development. It remained crucial for the well-functioning of the global IP system. Group B stated that it looked forward to further work during the ninth session of the Committee. As agreed at the previous session, it would enable Member States to gain a better understanding of the practices and operations of alternative dispute resolution systems in the IP context. It would also focus on preventive actions that complement ongoing enforcement measures with a view to reducing the size of the market for counterfeited or pirated goods.

250. The Delegation of the United States of America stated that it was fully committed to working closely with WIPO in a shared commitment to assist developing and LDCs in improving their enforcement of IPRs. The Delegation stated that the ACE provided a valuable forum in which to exchange information and best practices concerning the enforcement of IPRs. The experiences of individual countries shared in prior ACE meetings have been informative and useful in providing Member States with information on developing awareness raising, training and education programs in the field of IP enforcement. The Delegation stated that it hoped the Committee would maintain its focus on the objectives set forth in its mandate: coordination with certain organizations and the private sector to combat counterfeiting and piracy activities, public education, assistance, coordination to undertake national and regional training programs for all relevant stakeholders, and exchange of information on enforcement issues. In that respect, the United States of America has found that the presentations and exchanges during the previous ACE sessions on such issues have been fruitful and very informative. The Delegation stated that the United States of America would like to see the ACE remain dedicated to being a forum for discussing best practices in IPR enforcement. The Delegation stated that it did not support work that distracted the ACE from its mandate and was duplicative of work being capably

handled in other bodies. The Delegation stated that it looked forward to the ninth session of the ACE and to learning of the work of the Member States in the thematic areas of alternative dispute resolution and preventive measures. The Delegation congratulated WIPO for its efforts to coordinate and enhance the enforcement aspects of its technical assistance efforts and stated that the United States of America fully supported WIPO's work in reinforcing cooperation among enforcement authorities and relevant organizations in this field.

251. The Delegation of Brazil, speaking on behalf of the DAG, welcomed the good progress achieved during the last years in the work of the ACE. The Committee had upheld a holistic view on the complex issue of building respect for IP, seeking to address the various aspects of this multidimensional problem. The discussions proved that it was necessary to develop a comprehensive policy to build respect for IP, by combining, in a balanced way, repressive, economic and educational measures with a view to discouraging both the commerce and the consumption of IPR infringing goods. The DAG thanked the Secretariat for the studies prepared for the ACE. It stated that the debates that took place in the Committee provided a good opportunity to improve the treatment of enforcement of rights in WIPO, including in terms of the technical assistance provided by the Organization in that area. The DAG recalled that WIPO had the legitimacy and the technical expertise to be the multilateral forum dedicated to this issue. Since this was a global phenomenon that affected all countries, developed and developing, it was important to have a multilateral forum to exchange views and experiences in order to enhance national capacities to deal with this challenge. The DAG stated that the work in the ACE had shown Member States that a broad and balanced approach was necessary to avoid negative side effects such as the abuse of IPRs, obstacles to legitimate commerce, and disrespect for civil rights. The DAG was confident that the work of the ACE would continue to contribute to the objectives of the IP system, which were the promotion of innovation and technology transfer for the benefit of both the producers and the users of technological knowledge, as stated in Recommendation 45 of the DA. The DAG stated that it remained firmly committed to engaging constructively in these discussions.

252. The Delegation of El Salvador thanked the Secretariat for the results of the Committee held in December 2012. Substantive analysis and study on the complexity of IPR enforcement were considered. The Delegation found that the presentation of the study was very positive because it took on board the technological, economic and social factors and the different levels of development. The Delegation stated that the ACE should continue with a process of analysis, and this would be very useful for El Salvador in the context of its own investigations. The Delegation stated that it was very pleased that practices and functioning of extra-judicial solutions to conflicts in terms of IP, as well as the exchange of experiences of Members, could be provided, particularly at the meeting to be held in early 2014. The Delegation stated that it had seen great benefit in this forum and urged Member States to continue making contributions.

253. The Delegation of Trinidad and Tobago congratulated the ACE and the efficient management by the Chair of the Committee. The Delegation commended WIPO for the way in which the work of the Committee and the work of the Division on Building Respect for IP have allowed some of that good work to filter down to a practical level, at national levels. The Delegation especially thanked the unit for assisting Trinidad and Tobago in developing a project that would be included in the Public Sector Investment Program for 2013-2014. This three year project has been developed along with the unit and the Delegation was pleased to report that work has already commenced with outreach activities starting with schools and universities, as well as with the Trade and Investment Convention. The Delegation noted that it was trying to spread the message all the way across the board as it applied to IP and the work of the ACE. The Delegation also thanked the Director of the Division and her staff for their guidance and assistance in the project and it finally thanked the ACE for its hard work towards creating an environment that fostered, very importantly, respect for IP.

254. The Delegation of Poland, speaking on behalf of the CEBS Group, expressed its gratitude to the Chair of the ACE and to the Secretariat for having prepared the program of the eighth session of the Committee. The Group placed great value on the work of building respect for IPRs and looked forward to intensify the work of WIPO in that regard. The CEBS Group stated that it was of the view that appropriate prevention and enforcement mechanisms were indispensable conditions for any efficiently working IP system. In the Group's view, one of the most important goals for the Organization should be the development of a methodology to measure the socio-economic impact of the infringements of IPRs. The Group stated that there was an urgent need to support enforcement of IPRs through better statistics and information about the scope, scale and impact of counterfeiting and piracy. The Group saw the value in improving the effective cross-border exchange of such information. The ACE should work as a platform for distributing knowledge on the best practices in both enforcement and raising public awareness about the growing risks related to those phenomena. The CEBS Group welcomed the proposal for the agenda of the ninth session of the ACE, as well as the plan to extend the session from two to three days. In its view, proportionate, alternative dispute resolution as well as preventive measures should be integral parts of the system of IPRs. The CEBS Group assured that it remained committed to the work of the ACE, in a constructive manner.

255. The Delegation of Canada supported the statement made on behalf of Group B, welcomed the progress achieved this year at the ACE and thanked the Secretariat for its support in that regard. The Delegation believed that the ACE provided a useful forum for the discussion and exchange of views on matters related to enforcement, in particular to technical assistance. The Delegation considered ACE's work on IPR enforcement important and was supportive of the Committee taking a proactive role in multilateral discussions. The Delegation reiterated Canada's support for the ACE.

256. The Delegation of Lithuania passed the floor to the Delegation of the EU.

257. The Delegation of the EU, speaking on behalf of the EU and its member states, thanked the Chair of the Committee for having successfully driven forward its work, and the Secretariat for having prepared and produced various documents for the eighth session of the ACE. The EU and its member states placed great value on the work of the ACE and urged the Committee to intensify its efforts to build a shared understanding of effective, preventive measures so that efficient prevention and enforcement strategies could be adopted. The Delegation stated that proportionate, alternative dispute resolution systems and preventive measures that were accessible to all rights holders, including individuals, were key components of legal redress. The EU and its member states welcomed the proposed emphasis of the ninth session of the ACE on these two areas of action which sought to combat IP infringing activities. The Delegation stated that IPRs, and more generally IP, should be accessible and applied by right holders in such a way that they would be incentivized to invest and to create. It was, therefore, important that effective measures would be in place to protect those rights and the Delegation encouraged their exploitation to the benefit of society at large. Such measures should be proportionate and not be subject to abuse. The Delegation stated that the European Commission was, on the basis of objective analysis provided largely by the European Observatory on Infringements of Intellectual Property Rights, seeking to bring together and develop such non-legislative actions in a holistic action plan that it would hope to be in a position to present at the ninth session of the ACE.

258. The Representative of TWN stressed that the efforts to address the issue of IP enforcement should be done in a balanced manner and guided by the principles of the DA. The Representative expressed its concern with regard to the growing number of TRIPS-plus IP enforcement initiatives, including the promotion of anti-counterfeit legislations in developing countries. The Representative stated that IP protection and its enforcement should respect other competing legal obligations of Member States, especially human rights obligations such as the right to development, the right to health, the right to education, and the right to enjoy the

benefits of scientific progress and its applications. The flexibilities existing in IP regimes not only would cover protection of IPRs but also enforcement of such IPRs. The Representative stated that, as part of the UN family, it was important for WIPO to discuss the flexibilities with regard to the enforcement of IPRs. A maximalist approach on IP enforcement could hamper the technological catching-up process in developing countries. Further, it might hamper legitimate business as it has happened in the case of Apple. The Representative stated that after the U.S. International Trade Commission's order banning the importation of iPhone 3G, iPhone 4 and the 3G, first generation iPad and iPad 2, on the grounds that Apple violated Samsung's patents, the U.S. President had intervened to protect the commercial interests of Apple. The U.S. President had exercised an executive power to bypass a quasi-judicial order. The Representative stated that this was a good example of using flexibilities existing in national laws to curb harmful IP enforcement initiatives. The Representative stated that the veto exercised by President Obama strongly suggested that other developing countries should incorporate similar flexibilities in their national law and use such powers to especially protect the vast needs of their population, in terms of the right to health, the right to food, the right to enjoy progress of science and technology, and the right to development. The Representative stated that, in other words, developing countries should use flexibilities not only to protect commercial interests as was the case in the United States of America, but also to protect human rights. The Representative underscored that such double standards should be shed and developing countries should be allowed to use flexibilities effectively and efficiently. Towards that end, the ACE should initiate discussions on the flexibilities existing with regard to IP enforcement. The Representative took the opportunity to express concerns regarding the promotion of public-private partnerships on IPR enforcement. The inherent conflict of interests of the private sector with regard to the protection and enforcement of IPRs would shed the neutrality and the accountability in the administration of justice. Hence, the Representative stated that public-private partnership models for IP enforcement should not be promoted as a vehicle for IP enforcement. Moreover, the Representative called for the Secretariat to avoid financial and technical collaboration with agencies that promote IP-maximalist, enforcement policies. In carrying out activities on IP enforcement, the Representative asked the Secretariat to follow an evidence-based approach, and called upon the Secretariat to prepare information and communication materials based on independent and verifiable evidence. The materials should not cite the data provided by industry associations and the studies funded by the industry. Lastly, the Representative asked for transparency and accountability in the Secretariat's activities with regard to IP enforcement. It stated that the Secretariat's activities in the area, including details of meetings, presentations, and details of resource persons, should be put in the public domain.

259. The WIPO General Assembly took note of the information contained in document WO/GA/43/16.

#### ITEM 41 OF THE CONSOLIDATED AGENDA

#### WIPO ARBITRATION AND MEDIATION CENTER, INCLUDING DOMAIN NAMES

260. Discussions were based on document WO/GA/43/17.

261. The Chair raised Agenda Item 41 on the WIPO Arbitration and Mediation Center (Center), including Domain Names. The Secretariat noted that the document for the General Assembly provides an overview of the work of the Center over the last year, in three parts. The first part, paragraphs 3 to 8, reports on the activities of the Center in the area of alternatives to court litigation, specifically arbitration, mediation, and expert determination of disputes submitted under WIPO Rules. The Secretariat highlighted the activities reported in paragraphs 4 and 5 concerning the Center's cooperation with IP Offices in establishing optional alternative dispute



resolution (ADR) procedures for opposition and other disputes before these Offices. The Secretariat also noted the Center's publication of a report containing the findings of its International Survey on Dispute Resolution in Technology Transactions, undertaken to assess the practices and needs of customers.

262. The second part of the document, paragraphs 9 to 15, reports on the Center's domain name case administration. The Secretariat noted that in 2012, a further 2,884 cases were filed with the Center under the Uniform Domain Name Dispute Resolution Policy (UDRP).

263. The Secretariat further noted that paragraphs 17 to 42 of the document address policy developments in the Domain Name System, notably with regard to the introduction of new generic Top Level Domains (gTLDs) by the ICANN, the authority which is charged with overseeing the Domain Name System. The expected introduction later this year or early next year of ultimately more than 1,000 new gTLDs raises IP concerns. The Secretariat noted that the document provides an overview of the mechanisms that rights holders have at their disposal to address these concerns, including the Legal Rights Objection procedure under which the Center recently administered 69 cases. The Secretariat noted that it will report on these developments to the General Assembly next year, and that the SCT has this item on its agenda.

264. The Chair noted that there were no comments on the document.

265. The General Assembly took note of the contents of document WO/GA/43/17.

#### ITEM 42 OF THE CONSOLIDATED AGENDA

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

266. Discussions were based on document WO/GA/43/15.

267. 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).

268. The WIPO General Assembly took note of the information contained in document WO/GA/43/15.

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