

WIPO General Assembly

Forty-Ninth (23rd Ordinary) Session
Geneva, October 2 to 11, 2017

REPORT

adopted by the WIPO General Assembly

1. The WIPO General Assembly was concerned with the following items of the Consolidated Agenda (document A/57/1): 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24, 25, 30 and 31.
2. The reports on the said items, with the exception of items 9, 10(i), 10(iii), 11, 13, 14, 15, 16, 17, 18, 19, 20, 24 and 25 are contained in the General Report (document A/57/12).
3. The reports on items 9, 10(i), 10(iii), 11, 13, 14, 15, 16, 17, 18, 19, 20, 24 and 25 are contained in the present document.
4. Ambassador Jānis Kārklīšs (Latvia), Vice-Chair, as Acting Chair and, in his absence, Ambassador Juan Raúl Heredia Acosta (Mexico), Acting Vice-Chair, presided over the meeting.

ITEM 9 OF THE CONSOLIDATED AGENDA

COMPOSITION OF THE PROGRAM AND BUDGET COMMITTEE

5. Discussions were based on documents WO/GA/49/1, WO/GA/49/20 and WO/GA/49/20 Corr.
6. Introducing the agenda item, the Legal Counsel informed that informal consultations on the Composition of the Program and Budget Committee amongst Group Coordinators were still ongoing and, consequently, suggested deferring the agenda item until these consultations had been successfully concluded.
7. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, reiterated what had been stated in the Group's General Statement, in welcoming the two Member States of the Marshall Islands and East Timor, adding that these new additions brought the membership of the Asia and the Pacific Group to 44, which was an increase from 39 in the previous biennium and made the Asia and the Pacific Group the second largest regional group in WIPO. The Group said that its active participation and contribution in WIPO, along with its growth in both international IP services and strength in numbers, should be reflected through a more balanced representation of the Asia and the Pacific Group in all WIPO committees, especially in the composition of WIPO governing bodies and namely in the WIPO Coordination Committee and the Program and Budget Committee (PBC). The Group noted the explanation provided by the Legal Counsel during a consultation held with him in which it had been explained that there were no rules governing the composition, or the election, of the PBC. It had been explained that while the PBC had grown to 53 members over time, there was no legal basis for the determination of the number of PBC seats or the allocation to each regional group. The Group maintained that, based on the calculations it had done which it would circulate, it was under represented in both the PBC and the WIPO Coordination Committee, by three and five seats, respectively. In other words, the Group should have three additional seats at the PBC if the allocation was to be fairly proportioned and representative of the relative size of the Group within WIPO. The Asia and the Pacific Group requested further discussions regarding the composition of the PBC with other interested delegations and therefore supported the deferral of the agenda item for further discussion at a later stage.
8. The Delegation of Iran (Islamic Republic of) informed that it supported the statement delivered by the Delegation of Indonesia on behalf of the Asia and the Pacific Group, adding that it would make a more in depth intervention at a later stage when the agenda item would be opened again.
9. The Delegation of the United Arab Emirates expressed its support of the statement delivered by the Delegation of Indonesia on behalf of the Asia and the Pacific Group and encouraged Member States to consider the merits and historical background behind such a proposal. The Delegation added that, at the outset, over the last 10 years of allocation of PBC seats, and taking the growth of WIPO's Member States into consideration, it believed that now was the right time to consider finding a sustainable solution to this matter. The United Arab Emirates had actively engaged in Program and Budget issues as an observer for a long time and would continue to participate constructively in the PBC during the forthcoming biennium.
10. The Chair confirmed that discussions would be deferred until a later stage for the aforementioned reasons, as given by the Secretariat.
11. The Chair resumed discussion on the item by remarking that, under normal circumstances, the item would involve a simple vote on proposals submitted by different Regional Groups but that, in the present year, there were extraordinary circumstances due to the proposal tabled by the Asia and the Pacific Group. The Chair wanted to give all delegations an opportunity to discuss the ideas outlined in the document and, more broadly, the composition

of the PBC, in plenary. Before giving the floor to any delegation wishing to comment, the Chair asked the Delegation of Indonesia to introduce the document on behalf of the Asia and the Pacific Group.

12. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, explained that the Group's active participation and contribution to WIPO, along with its growth in both international IP services and strength in numbers, should be reflected through a more balanced representation of the Group in all WIPO committees, especially in the composition of WIPO governing bodies, in particular in the WIPO Coordination Committee and the PBC. The Group had taken note of the explanation provided by the Office of the Legal Counsel during a consultation, namely that there were no rules governing the overall composition or election process of the PBC and that, while the PBC had grown in size from 33 to 53 members over time, there was no legal basis for the determination of the number of PBC seats, nor the allocation of seats to each Regional Group. The Group had done some calculations, which were included in the document circulated, and found that it was underrepresented in both the PBC and the WIPO Coordination Committee by three and five seats, respectively. In other words, the Group should have three seats in addition to the current nine seats at the PBC, which would reflect a representative allocation of the relative size of the Group in WIPO. The Group had already submitted documents WO/GA/49/20 and WO/GA/49/20 Corr. regarding the composition of the PBC, and was available to discuss the issue with other interested delegates. The Group considered that the PBC should be open to the full participation of all interested WIPO Member States, since the decisions made by the PBC, a key WIPO governing body, were relevant to all members. All members wishing to be involved should therefore be able to contribute in full, as neither WIPO's General Rules of Procedure nor existing guidelines provided a legal basis for the current limitation on either the number of the seats in the PBC or the allocation of seats to each Regional Group. This was a constructive proposal in line with the fact that international organizations should evolve to keep up with growth in size over the years. The Group requested the indulgence of other members and Regional Groups to discuss the issue. It was committed to continuing to be constructive and believed it was possible to find a solution on this matter by the end of the day. Therefore, the Group requested that the agenda item be momentarily suspended to allow for further discussions, which would be facilitated by the Chair, in order to come to a solution.

13. The Chair stated that he would prefer to keep the item open in order to allow other delegations to take the floor on the topic and listen to their opinions so that it would be possible to take a consensual decision if there was consensus. If there was no consensus, continued the Chair, a decision would be taken on the best way forward in order to reach consensus.

14. The Delegation of Singapore supported the statement made by the Delegation of Indonesia on behalf of the Asia and the Pacific Group. The Delegation said that the proposal to open the PBC to universal membership concerned the fundamental values of transparency, openness, inclusiveness and consensus, all of which formed the basis of the work undertaken at WIPO. The decisions made by the PBC were directly relevant to all members, and therefore all members should be able to contribute in full should they wish to do so. It had been mentioned earlier that, in practice, there was very little difference between being a member of the PBC and being an observer. If this was indeed the case, the Delegation considered that this perception of the situation should be aligned with reality. Neither WIPO's General Rules of Procedure nor the existing guidelines provided a legal basis for the current limitation on the number of seats in the PBC or for the allocation of seats to each Regional Group. The circumstances that had led to the current practice of having 53 seats in total remained opaque and lacked clear logic, and the Delegation saw little reason to be constrained by these. The last time that the Regional Group allocations of the PBC had been considered was 10 years ago, and the Delegation was convinced that it was time to re-examine these allocations. At the very least, said the Delegation, this was an opportunity to close the gap in Regional Groups' representation on the PBC for the 2018/19 biennium, so as to reflect the membership of the

Organization more correctly. The proposal made by the Asia and the Pacific Group represented a way forward in this respect. The Delegation recalled that there had been a precedent for this in 2003, when the Asia and the Pacific and African Groups were allocated one more seat than other Regional Groups so as to reflect the regional size of the two respective groups. While the Delegation was aware of the limited time left to consider this item in the WIPO General Assembly, it believed that the subject should be given due consideration given its systemic value for WIPO. The Delegation urged other Regional Groups and members to consider the proposal with the fresh perspective that it represented.

15. The Delegation of Georgia, speaking on behalf of the Central European and Baltic States (CEBS) Group, thanked the Asia and the Pacific Group for putting the proposal forward. The Group was open to fully considering an increase in the number of PBC members in the future, including universal membership and its potential benefits. However, it considered that focusing on such discussions at this stage of the Assembly would divert attention from consideration of the other outstanding issues and may not bring agreement among the Groups.

16. The Delegation of Senegal, speaking on behalf of the African Group, thanked the Asia and the Pacific Group for their proposal with regard to the composition of the PBC, as contained in document WO/GA/49/20. This proposal concerned the debate with regard to the equality of different Regional Groups in the PBC after the revisions of 2003 and 2007. It was based on a tangible reality, which was the lack of legal rules on the sharing of seats amongst members and also the current composition of Regional Groups. Since the PBC was one of the essential governing bodies of WIPO and important for the strategic resources of the Organization, the Delegation believed that all Member States should have an equal basis and equal footing to provide their input on its different agenda items. The African Group fully shared the concerns raised by the Asia and the Pacific Group with regard to the fact that the increased membership of groups was not currently being taken into account. In terms of representation in the PBC, all of the members of the Group had expressed an interest in being a part of the PBC and of the WIPO Coordination Committee. On this basis, the African Group wished to support the proposal for universal participation in the PBC and wanted to be a part of any discussions on this issue.

17. The Delegation of Costa Rica thanked the Asia and the Pacific group for their proposal, which had some constructive points that the Delegation wished to discuss among the membership. However, since these decisions required time to do some analysis, the Group suggested discussing these issues after the Assemblies.

18. The Delegation of Tajikistan, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European Countries (CACEEC), thanked the Asia and the Pacific Group for the proposal put forward. At the same time, the Group considered that there was not sufficient time to look into the details of this proposal and felt that consultations on the topic should begin after the Assemblies. The Group added that it would need time to look into the various issues and to discuss the principles that led to the creation of the Committee and that, therefore, it was unable to consider the proposal of the Asia and the Pacific Group straight away.

19. The Delegation of Japan, speaking on behalf of Group B, recalled that, during at least six months prior to the WIPO General Assembly, participants had been reminded about the necessity of timely preparations for the meeting. In that context, Group B wished to extend its appreciation to the Chair for his continuous efforts. The Group said that it was confronted with many important issues for the Organization during the present session of the Assemblies and, in that context, noted that document WO/GA/49/20 had been submitted in the middle of the WIPO General Assembly. For this reason, the Group was not prepared to support the proposal during the present Assembly, adding that it was not in a position to deliver its considered and thoughtful reaction to the proposal at such short notice. The Group wished to record that the current composition was a compromise between Member States and that this could not be

revised at such short notice by the end of the WIPO General Assembly. With respect to the Chair's proposal from the informal session of the previous day regarding universal membership for the PBC, the Group stated that it was not in a position to deliver a thoughtful reaction to this proposal; it would be an enormous change to one of the important governing bodies of the Organization, and there were considerable implications that needed to be taken into consideration. The Group did not wish to rush into such conclusions. It added that the potential advantages and disadvantages, including the possible systemic implications of such a change, needed to be fully explored and that this could not be done under such time constraints without adequate preparation and research. The Group recalled that the proposal had been received the previous day. It needed time to analyze the proposal but stood ready to discuss the matter after the conclusion of the WIPO General Assembly.

20. The Delegation of Iran (Islamic Republic of) supported the statement made by the Delegation of Indonesia on behalf of the Asia and the Pacific Group. The Delegation recalled that the PBC was one of the main governing bodies of WIPO, dealing with issues that affected the whole functioning of WIPO, and that these were relevant to all Member States. Therefore it was understandable that many countries were interested in being members of the Committee. As the proposal made by the Asia and the Pacific Group had no legal constraints, the Delegation urged all Member States and Regional Groups to consider it positively to find a way forward based on the current realities and the equal representation principle. Last but not least, the Delegation said it was not in favor of leveraging or prioritizing the different items that were on the agenda of the WIPO General Assembly meeting, as all agenda items were equally important for the Delegation. Regarding the last comments made by the Delegation of Japan on behalf of Group B about the submission of the proposal the day before, the Delegation wished to point out that all proposals had been discussed in an informal session with the Chair early on in the previous week and it had been formally tabled by the Group's Coordinator early that week, not just a day ago.

21. The Delegation of Thailand wished to align its position with the statement made by the Delegation of Indonesia on behalf of the Asia and the Pacific Group. Currently, some Regional Groups, particularly the Asia and the Pacific Group and the African Group, were underrepresented in the PBC, taking into account the expansion of members in the respective groups since the last review of the PBC composition in 2007. The Delegation therefore supported universal membership of the PBC to allow opportunity for all members to participate in the important work of the PBC, considering that this would not only enhance the effectiveness and transparency of the work done, but that it would also make WIPO a truly inclusive Organization.

22. The Delegation of the United Arab Emirates supported the statement delivered by the Delegation of Indonesia on behalf of the Asia and the Pacific Group. The Delegation encouraged Member States to consider the merits and historical background behind such a proposal as explained by the Asia and the Pacific and African Groups. At the outset, after 10 years since the last allocation of PBC seats, and taking into account the growth of WIPO Member States, the Delegation believed that it was the right time to find a sustainable solution for this matter.

23. The Delegation of Oman supported the statement made by the Delegation of Indonesia on behalf of the Asia and the Pacific Group. The Delegation underlined the importance of taking into account the principles of transparency and universality and the need for the participation of all members. It looked forward to positive interaction from all Member States to the proposal.

24. The Delegation of Brazil thanked the Asia and the Pacific Group for the proposal put forward. The Delegation underlined the importance of the PBC, which was of strategic importance for the Organization, and whose decisions were absolutely fundamental for the work of WIPO. The Delegation was absolutely committed to the principles of transparency, inclusivity

and to equitable geographical representation, and it also understood the concerns expressed by the Delegation of Indonesia on behalf of the Asia and the Pacific Group. These concerns were even more important given the increasing number of WIPO members in those regions. It seemed to the Delegation that the proposal was a very good one with great merit, and it considered that universal representation of all members in the PBC should be possible.

25. The Delegation of India supported the statement made by the Delegation of Indonesia on behalf of the Asia and the Pacific Group on this important topic. The Group had voiced its concerns in a very clear and collective manner and the Delegation was thankful to those Member States who had supported the proposal. In the Delegation's view, any Organization which wished to remain relevant and useful needed to evolve; it was even more important for a specialized agency of the UN, such as WIPO, to continuously seek evolution reflecting the reality of the time. The Delegation believed that the current composition of the PBC was unbalanced. The PBC was an important governing body of WIPO and, as could be seen in the discussions, there was a resistance among some Member States to work to evolve towards the correct composition of the PBC. The Delegation thought that there was a need to correct the imbalance. In response to the question of how this could be done, the Delegation recalled that it had been done in the past, and it could be done now. There was a precedent, since the Asia and the Pacific Group used to have only six members in the PBC, which was then increased to seven, and the current position was nine members. The Delegation pointed out that the total number of members from the Group had increased to 44, and that there was a widespread and growing interest among members of the Group to be part of the PBC. The Group had therefore submitted eleven nominations, and this was a reasonable expectation. The Delegation drew Members' attention to the chart which had been produced in the document submitted by the Group, and stated that it very clearly showed that some Regional Groups have a disproportionately larger membership in the PBC, while some Regional Groups had a lesser membership in the PBC. The Delegation wanted to engage with other Member States in an informal setting so that it could explain its position clearly and it hoped that they would understand its position, and that a consensus could be reached. Until that time, the Delegation believed that the solution was to maintain the *status quo*, as it would be better to take a decision at a later stage, than to make a wrong decision.

26. The Delegation of Malaysia supported the statement delivered by the Regional Coordinator and Members of the Asia and the Pacific Group on the very important issue of the composition of the PBC. The PBC was an integral governance body within WIPO, and the Delegation believed that it should be open and transparent to the full participation of all Member States. The Delegation very much supported the universality of its membership in order to allow the inclusive contribution of all Members. The Delegation urged all Member States to seriously consider the merits contained in the Group's proposal, and believed that this agenda item would benefit from further informal discussions as well, and invited all interested Member States to engage with it in order to find a way forward in the remaining two days of the Assemblies.

27. The Delegation of Bangladesh fully aligned itself with the statement made by the Delegation of Indonesia on behalf of the Asia and the Pacific Group in support of the Group's proposal outlined in document WO/GA/49/20, and believed that it was only rational to open the PBC to universal membership. As mentioned in the proposal document, in the current scenario, the composition of the PBC was very imbalanced and some Regional Groups, such as the Asia and the Pacific Group and the African Group, were very underrepresented. The Delegation recalled that the allocation was considered in 2007, which was 10 years ago, and remarked that many changes had taken place since then, and more and more delegations were interested in taking part in the PBC. The Delegation noted that its colleagues, including the Delegations of Singapore, Iran (Islamic Republic of), India, Malaysia and others, had already explained the rationale for the universal membership of the PBC. In the interests of time, the Delegation did not intend to repeat these rationales, but fully support them. The Delegation believed that it would only require an open mind to resolve this issue, and it believed this could be done in

informal consultations within the time remaining in the present WIPO General Assembly. The Delegation therefore requested that the Chair make room for further informal consultations.

28. The Delegation of the Republic of Korea aligned itself with the statement made by the Delegation of Indonesia on behalf of the Asia and the Pacific Group. The Delegation was of the view that the PBC was a fundamental body since it not only monitored the budget process and the program planning for the next biennium, but also looked into what should be improved in the process of program implementation. The Delegation agreed with the principle that all Member States should have the right to participate in the PBC in order to strengthen transparency and inclusiveness at WIPO. From that perspective, it believed that discussion of the proposal submitted by the Asia and the Pacific Group to increase the number of Members in the PBC to ensure the transparency and openness of the PBC should continue during the present WIPO General Assembly.

29. The Chair summarized the conclusions he could draw from the conversation. First of all, that there was an understanding that consideration should be given to increasing the number of members of the PBC due to the importance of the PBC and the considerable interest by Member States to participate in the work of the Committee. Secondly, it was understood that there might be some geographic representation imbalances that needed to be corrected. The proposal on whether membership should become universal or should be increased would be the subject of consultations because each approach had advantages and disadvantages. The Chair gave some examples of these. One such example, of course, was that there was universal membership in subsidiary bodies of the UN system. For instance, the WIPO General Assembly had six committees with universal membership. These met regularly and provided recommendations to the WIPO General Assembly. But with universal membership, the issue of quorum would become important. In the case of WIPO, continued the Chair, universal membership would mean the participation of 191 Member States, which would mean that the quorum requirement for the PBC would be around 96 or 97 delegations. The Chair added that, when chairing the meetings of the PBC the year before (as a member sharing the term of office with Estonia), his recollection was that the average number of participants in PBC meetings was around 50 to 60 delegations. So, by proposing or introducing new membership, there would be a risk of incapacitating the PBC and, as a result, the PBC would not be able to make any decisions simply due to a lack of quorum. This was just one example that needed to be considered carefully when talking about increased PBC membership or the universalization of PBC membership. The Chair added that he had not heard a consensus on the issue of when this decision should be made. The Asia and the Pacific Group and the African Group had asked that the decision be taken by the following day. Other Regional Groups, namely CEBS, Group B, the Group of Latin American and Caribbean Countries (GRULAC) and CACEEC, had clearly stated that they would prefer to talk about an increase in PBC numbers after the Assemblies. The Chair added that the same positions had been outlined the previous day during the informal consultations. The Chair would be pleased to continue consultations with all interested delegations on the topic, but noted that there was not much time left in the present Assemblies, adding that it would be a miracle if all Regional Groups were to change their positions within a day. The Chair was willing to try to work toward a decision but, if this were not possible, he would be prepared to table a recommendation or a decision that would suggest that members would engage in discussions about increased numbers in the PBC, taking into account equitable geographic distribution. Such discussions would take place in the period leading up to the next PBC meeting and the WIPO General Assembly, with a view to taking a decision in the 2018 WIPO General Assembly, which then would allow a new composition of the PBC to become effective in 2019, already according to the new agreed numbers. The Chair considered this a logical and rational way forward, and recalled the statement made by the Delegation of India, that it would be better to make decisions wisely, not in a rush. Were that approach to be followed, the Chair saw a further question to be resolved, since the members of the PBC for 2018 would still need to be elected according to the existing customary rules that had been uncontested since 2007, when the previous increase in numbers of PBC members

was agreed. That would suggest that those Regional Groups who had submitted their proposal according to existing numbers would be elected by acclamation, and it would be necessary to decide how to address the question of the greater number of candidates than seats for the Asia and the Pacific Group, unless the Group found a way to reduce its number of candidates and present a new list. The Chair was willing to entertain further informal consultations on this question, and would see when these could be arranged with interested delegations.

30. The Delegation of Indonesia thanked the Chair and stated that the proposal submitted by the Asia and the Pacific Group was a constructive one. The Delegation stated that this was not an Organization where there was a customary rule of admitting defeat too early, and that it also shared the other concerns of other Groups that there should not be any informal consultations in parallel. The Delegation suggested an informal consultation in the afternoon, in the same way that had been arranged on the previous day. The Delegation reiterated and reaffirmed that the Group was committed to continuing to be constructive, and believed that a solution could be found on this matter by the end of that day. If that were not possible, a temporary solution could be adopted, as was the case prior to 2003.

31. The Chair thanked the Delegation of Indonesia and informed Members that he would seek a facilitator for the suggested informal consultations, as he would not be able to attend. The Chair would inform Members of further details. The Chair then suspended the item and adjourned the plenary.

32. When discussions on the item were resumed, the Chair invited the Legal Counsel to introduce document WO/GA/49/1.

33. The Secretariat (Legal Counsel) indicated that, as reflected in the document, the composition of the PBC consisted of 53 members. As the mandate of the current members of the PBC would expire in October 2017, new members needed to be elected by the WIPO General Assembly for the period from October 2017 to October 2019. The Secretariat reported that, following informal consultations among Regional Group Coordinators, it was pleased to announce that there was agreement on the composition of the Committee. There was also agreement that the composition of the PBC shall be further considered. In that context, the Chair of the WIPO General Assembly would undertake consultations on an inclusive, transparent and effective PBC, taking into account, among other considerations, geographical representation, with a view to making a decision at the WIPO General Assembly at its 50th session in 2018. An informal document had been circulated among delegations listing the 53 members proposed for the PBC for the period of October 2017 to October 2019.

34. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, expressed its appreciation that the discussion on the composition of the PBC, which was a discussion in the interests of all Member States, had been started. The Delegation stated that its proposal did not demand an increase in membership for its own benefit, but to expose the imbalanced geographical representation in one of the most important bodies of the Organization. The Group's aim was to make the PBC a more inclusive, transparent and effective body of WIPO. In order to show its continued constructive spirit and its utmost flexibility, the Group had nominated only nine countries to be the members of the PBC in the following biennium. In that regard, the Delegations of Indonesia and Viet Nam had been willing to defer their nomination, on the basis of the agreed language in the decisions reached at the informal consultations earlier that afternoon.

35. The Delegation of Malaysia noted that the draft decision on Agenda Item 9 was a very difficult compromise for it, and for its colleagues in the Asia and the Pacific Group. The Delegation wished to put on record that it had accepted the draft decision on the understanding that consultations on the composition of the PBC based on the proposal of the Asia and the Pacific Group contained in document WO/GA/49/20 would continue, with a view to arriving at a

decision at the WIPO General Assembly in 2018. The Delegation supported a transparent and inclusive PBC with equitable geographical representation, and it urged all members to take the time during this period to examine and consider the merits of the Group's proposal. The Delegation looked forward to continuing discussions on the composition of the PBC, which was an important governing body.

36. The Delegation of the United Arab Emirates aligned itself with the statement delivered by the Delegations of Indonesia and Malaysia, and reiterated its support for having a balanced geographical representation in the composition of the PBC as an important governing body of WIPO. The Delegation noted that, as part of the Asia and the Pacific Group, it had showed great flexibility with a number of compromises during the negotiations based on the Group's proposal as contained in document WO/GA/49/20. To that end, the Delegation looked forward to considering the universality of PBC composition at the following WIPO General Assembly meeting, which would reflect an openness and transparent manner for future PBC discussions.

37. Following informal consultations among Group Coordinators, the following States were unanimously elected by the General Assembly as members of the Program and Budget Committee for the period October 2017 to October 2019: Algeria, Angola, Argentina, Azerbaijan, Bangladesh, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia (2019), Costa Rica (2018), Czech Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, France, Gabon, Germany, Greece, Guatemala, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Malaysia, Mexico, Morocco, Nigeria, Oman, Panama, Republic of Korea, Romania, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland (ex officio), Tajikistan, Thailand, Turkey, Uganda, United Arab Emirates, United Kingdom, United States of America (53).

38. The WIPO General Assembly decided to consider the composition of the Program and Budget Committee; in this context, the Chair of the WIPO General Assembly will undertake consultations on an inclusive, transparent, and effective PBC, taking into account, among other considerations, geographical representation, with a view to making a decision at the WIPO General Assembly at its fiftieth session in 2018.

ITEM 10 OF THE CONSOLIDATED AGENDA

REPORTS ON AUDIT AND OVERSIGHT

(i) Report by the Independent Advisory Oversight Committee (IAOC)

39. Discussions were based on documents WO/GA/49/2 and A/57/5.

40. The Chair of the WIPO IAOC made the following statement:

"Firstly, I would like to thank the outgoing members of the IAOC whose term expired in January for their services and valuable advice provided during their terms. The Committee wishes them success in their professional and personal lives.

"The Committee had four in person meetings during the reporting period, and had a large number of email exchanges to deal with matters of urgency between in person meetings.

"We have two types of activities, as you will know. There are recurring ones that can be planned in advance and the so called special projects that are either non-plannable or ad hoc in their nature. Out of the recurring activities, I would like to focus on two.

“The first is ethics. As you know, the Committee has been tasked with ethics related duties. The Chief Ethics Officer is a recurring guest at IAOC and she regularly updates us on ethics-related matters. The Internal Oversight Division (IOD) recently concluded an audit of the ethics framework. The Committee was pleased that the design and the structure of WIPO's ethics framework was assessed as adequate, but we noted that more efforts are required to enhance the implementation of this framework by setting priorities and defining milestones.

“In terms of internal oversight and IOD, the Committee is pleased with the high quality work that IOD delivered during the period and we would like to thank the Director for his efforts to lead the function. The Committee noted with satisfaction that the activities of the Division were in line with the approved internal oversight plan and the Committee is satisfied that the IOD used the resources available to achieve an accurate oversight coverage and we acknowledge the quality of the oversight reports we reviewed.

“As for the special projects that the Committee undertook during the period, we reviewed and commented on the investigation policy and the investigation manual. You will recall that, recently, there were changes in the internal oversight charter and those changes triggered certain changes in the investigation policy and the investigation manual.

“We reviewed the policy for publication of oversight reports. We had an advisory role in the selection of the External Auditor. We reviewed the procurement and the Financial Regulations and Rules recently approved by the previous PBC. We reviewed other amendments to the FRR, we proposed amendments to the Staff Regulations and Rules that will be discussed later by the Coordination Committee. We reviewed cases of potential conflict of interests, a task that is given by the internal oversight charter. Very recently, we reviewed the whistleblower protection policy and then in our next session we will deal with the financial disclosure and declaration of interest policy. As you will see, as you have seen, there is a certain shift in how the Committee works and what kind of tasks we have to undertake. This shift changes from recurring activities to non recurring ad hoc activities. Sometimes these are on very short notice which will require the Committee to change how we work and also may require additional support from the Secretariat.

“Overall, the Committee is pleased to report to Member States that the oversight system within WIPO works effectively and is capable of safeguarding the operations of the Organization. On behalf of the Committee, I would like to take this opportunity to thank those who have helped with the work of the Committee, the Director General, the Director of Internal Oversight and Management in general.”

41. The WIPO General Assembly took note of the “Report by the WIPO Independent Advisory Oversight Committee (IAOC)” (document WO/GA/49/2).

(iii) Report by the Director of the Internal Oversight Division (IOD)

42. Discussions were based on documents WO/GA/49/3 and A/57/5.

43. The Director, IOD, reported that in line with paragraph 44 of the Internal Oversight Charter, he was pleased to present an overview of the oversight activities undertaken by IOD during the reporting period, July 1, 2016, through June 30, 2017. The annual report was included in the documents presented to the WIPO General Assembly. IOD continued to enhance its policies and procedures by revising them, to align them with good practices. Following the revision of the Internal Oversight Charter, in October 2016, the Investigation Policy and Manual were revised, following consultations with the IAOC and WIPO Management, so that they are aligned with the amended Charter. Both documents were adopted in February of 2017, further to the consideration of comments from Member States. The IOD Report

Publication Policy was published on June 7, 2017, also after consideration of comments from Member States. The IOD Oversight Plan for 2017 had been prepared taking into consideration a number of factors including: risk ratings; relevance; country impact; the oversight cycle; and feedback received from WIPO Management, Member States and available resources. In line with paragraph 26(a) of the Charter, prior to its finalization, the draft Oversight Plan was also submitted to the IAOC for its review and advice. At the reporting date, IOD had fully implemented the 2016 Oversight Plan and the implementation of the 2017 Work Plan was on track. During the reporting period, IOD audits and evaluations covered the following key operational areas: WIPO Lex; Project Management; Enterprise Risk Management; the Ethics Framework; the Madrid Registry; Payroll; Procurement processes, policies and procedures; the International Union for the Protection of New Varieties of Plants (UPOV); Program 13 on WIPO Global Databases; and Program 12 on International Classification and Standards. During the reporting period, IOD recorded 24 new investigation cases and 27 cases were closed. As of June 30, 2017, there were 14 open cases. IOD issued five Investigation Reports and three Management Implication Reports. Complaints of insubordination and other inappropriate behavior, alleged harassment, abuse of work time, unauthorized outside activities, as well as benefits and entitlements fraud, constituted 62 per cent of the investigative cases. The average time to complete an investigation was 6.3 months. As part of the ongoing efforts to better explain and advocate for the internal oversight function, IOD had continued to reach out to colleagues within WIPO through: presentations given to new staff in the induction training; the IOD newsletter; the IOD dashboard; and presentations to Directors and Senior Managers as and when required. IOD had continued to seek feedback from colleagues on the quality of its oversight work through client satisfaction surveys after each assignment. The analysis of consolidated survey results indicated an average satisfaction rate of 86 per cent for post assignment surveys and 85 per cent for after one year surveys. The survey results gave IOD the opportunity to assess the impact of its work on improvements in systems, policies, procedures and processes. The additional comments sent by the audited/evaluated units through the surveys helped IOD identify opportunities for improvement. IOD continued to manage and report on recommendations using the web based TeamCentral system, which enabled interactive dialogue with Program Managers and their delegates for an effective follow up of the implementation of open recommendations. This was a very interactive process and constant dialogue took place throughout the year, since TeamCentral was accessible by IOD, WIPO colleagues, and the External Auditor. At the date of the report, there were 193 open recommendations including 99 of high priority and 94 of medium priority. IOD recommendations constituted 75 per cent of all open oversight recommendations. During the reporting period, 91 new recommendations were added and 59 recommendations were verified and closed as implemented. The Director, IOD, further mentioned that IOD had initiated a project for enhancing reporting on recommendations, and had provided Management with relevant information on recommendations through the Business Intelligence dashboards. As a result, Management would have access to both high level overviews and drill down information on recommendations for which it was responsible, and it would be able to generate reports on the status of recommendations. In addition to its planned oversight work, IOD continued to provide professional advice on organizational policy and procedures, risk management and internal controls. IOD had provided advice and comments on new or revised policies and procedures and business processes to Management, which had helped establish key controls to mitigate potential risks before final implementation of any policy or system. Annex II of the Annual Report provided the list of policies and procedures in nine areas for which IOD had provided advice. To discharge its mandate, IOD had been provided with a budget of 5.45 million Swiss Francs, which represented 0.77 per cent of WIPO's budget. Overall, the level of human and financial resources had been adequate for IOD to effectively cover the high priority areas as identified in its Work Plans. Exchange of oversight plans and continuous coordination of oversight activities with the External Auditor, as well as effective use of IT tools, had also helped to achieve more efficiency and effective coverage of risk areas. Changes in IOD staffing had been effectively managed with a view to minimizing their impact on planned oversight activities. The recruitment process for the Head of the Evaluation Section and an Internal Auditor had

been completed and the selected incumbents had taken up their duties in September and August this year. Following the movement of the Head of the Internal Audit Section to another International Organization as Director of Internal Oversight, the recruitment process for that post had been initiated. IOD had maintained an excellent working relationship with the External Auditor by having regular meetings on audit, internal control and risk management issues. The External Auditor and IOD had shared strategies, annual plans and individual reports with a view to ensuring efficient oversight coverage while avoiding potential duplication and oversight fatigue. IOD had cooperated closely with the Ombudsperson and the Chief Ethics Officer to ensure good coordination and complementary support. IOD had further continued its interaction with the IAOC, discussing oversight results. IOD had benefited greatly from the IAOC's valuable advice and support, which had helped to improve IOD's overall functioning and the quality of its work. The Director, IOD, thanked delegations and stated that he was available to answer questions or receive comments.

44. The WIPO General Assembly took note of the "Annual Report by the Director of the Internal Oversight Division (IOD)" (document WO/GA/49/3).

ITEM 11 OF THE CONSOLIDATED AGENDA

APPOINTMENT OF THE EXTERNAL AUDITOR

45. Discussions were based on document WO/GA/49/4.

46. Ms. Chichi Umesi (Nigeria), President of the Selection Panel for the Appointment of the External Auditor introduced the item. The President of the Selection Panel reminded Member States that the mandate of the current External Auditor of WIPO, the Comptroller and Auditor General of India, would expire on December 31 of the current year and that this mandate was non-renewable in a consecutive manner. In accordance with the selection process approved by the 2009 session of the WIPO General Assembly, this information was provided in document WO/GA/38/20. The President of the Panel informed that the selection process had been launched for the appointment of the WIPO External Auditor for the period January 1, 2018 to December 31, 2023. The selection process had been launched through Circular C.N. 3676 dated April 29, 2016, from WIPO, announcing the vacancy to Member States. Two expressions of interest had been received, from the United Kingdom and from Canada. The Selection Panel, comprised of the Regional Coordinators or alternates of the seven Regional Groups of WIPO, had been appointed to conduct the selection process. The panel had worked together with the appointed Secretary to the Panel, representatives of the Finance Division, and the WIPO IAOC, for their evaluation. In terms of the selection criteria, the following had been agreed on: independence; qualifications of the officials and staff; training and experience; audit approach and strategy; quality of audit reports; and cost of the services. The Panel had met in a series of meetings from September 2016 to May 2017, when the selection was concluded. The Panel had considered the submitted proposals of the candidates and held interviews with the candidates consisting of presentations and a question and answer session. Upon completion of the interview exercise, the Panel had deliberated upon its recommendations, taking into account the proposals received and the information gathered in the course of the interview process. The Panel was confident that both candidates were solid, thorough, compelling and fit to fulfill the duties of an External Auditor of WIPO, and that they would both provide high quality service to the Organization. Following the subsequent deliberation process, the Panel reached consensus and recommended to the WIPO General Assembly the appointment of the Comptroller and Auditor General of the United Kingdom as External Auditor of WIPO for a six-year period beginning January 1, 2018. The Panel had requested that the WIPO General Assembly be informed that the selection process was conducted in a thorough, fair and comprehensive manner. The outcome of the process was

provided in the report as contained in document WO/GA/49/4 in which the recommendation of the Panel was being submitted for the consideration and approval of Member States.

47. The Delegation of China supported the appointment of the Comptroller and Auditor General of the United Kingdom as the next WIPO External Auditor. The Delegation expressed its appreciation and thanks to the outgoing External Auditor, namely the Comptroller and Auditor General of India, and his team for their dedication and hard work over the years. The Delegation was of the view that strengthening audit and oversight in WIPO would contribute to enhancing the effective operations of the Organization. The Delegation expected a new External Auditor to continue close collaborations with the Secretariat and all WIPO sectors as well as with the IAOC so as to uphold the spirit of justice, objectivity and professionalism when providing opinions on WIPO's financial matters and its internal management and to promote an even more steady and efficient running of the Organization.

48. The WIPO General Assembly appointed the Comptroller and Auditor General of the United Kingdom as the WIPO External Auditor for a period of six years to begin on January 1, 2018.

ITEM 13 OF THE CONSOLIDATED AGENDA

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

49. Discussions were based on document WO/GA/49/5. Reference was made to document A/57/INF/7 Rev.

50. The Secretariat stated that two SCCR sessions had taken place since the previous WIPO General Assembly, and that during the previous session of the Committee, it had elected new officers. Mr. Daren Tang, Chief Executive, Intellectual Property Office of Singapore (IPOS) was elected as Chair, and the two Vice-Chairs elected were Mr. Abdul Aziz Dieng, Advisor to the Minister of Culture of Senegal, and Mr. Karol Kościński, Director, Intellectual Property and Media Department, Poland. The Secretariat explained that it would deal with each of the issues of document WO/GA/49/5 separately. In relation to the protection of broadcasting organizations, over the previous year the Committee had made significant progress toward agreeing on common ground. For all countries, broadcasting is an important economic and cultural sector, which strengthens social cohesion, promotes cultural diversity and promotes exchange and transmission of knowledge. The treaty was the last element needed to update the international copyright system to the digital environment, a process that was started by the 1996 WIPO Internet Treaties. Following the discussions held during previous sessions of the SCCR, the Committee was currently working on a consolidated text. That text reflected a common vision and had a strong foundation, thanks to the new spirit of cooperation showed by Member States, and to the support offered by non-governmental organizations. Despite the progress achieved, the Committee still had a few open issues to clarify before presenting a recommendation to the WIPO General Assembly with a view towards convening a diplomatic conference. The expectation was for discussions to continue at the following sessions of the Committee. With respect to limitations and exceptions, the Committee was focused on three categories of beneficiaries, namely, libraries and archives, educational and research institutions, and persons with other disabilities; and museums were also added as part of the discussions. The Secretariat noted that it was undertaking several approaches, with the first one being an examination of the local context and the legislative framework. The Committee had requested a study on libraries and archives, which had been prepared by Professor Kenneth Crews, and had also requested a study on research and educational institutions, which had been prepared by Dr. Daniel Seng. The two studies discussed the legal frameworks of Member States and examined them in an exhaustive and analytical manner. The final version of the Reid-Ncube

scoping study on limitations and exceptions for persons with other disabilities was almost finished and the Secretariat continued to collect data and information on the topic of limitations and exceptions regarding museums. The next approach to the Committee's work involved reflections, discussions, and planning followed by concrete advances with a specific calendar. For each and every subject, there was a plan of action, and at the next Committee meeting, the Secretariat would introduce and submit a proposal to Member States. Among various projects commenced by the Secretariat, there were specific initiatives underway related to the SCCR. The Secretariat was undertaking a project on Facilitating Access to Educational Materials and Learning Modules, which was presented at the previous Committee meeting. The Secretariat was preparing a conference, in cooperation with the Government of Cameroon, on educational publishing, which would take place in November 2017 in Yaoundé. All African countries were invited, including government representatives responsible for the education and publishing sectors, professionals from the national publishing industries, and experts including publishers from other countries. The Secretariat stressed that the objective of the conference was twofold. The first objective was to identify factors that would enable the Secretariat, through a long term commitment, to support the development of the publishing industry throughout the African continent. In the short term, through collaborative means, the goal was to find ways to facilitate access to high quality educational content for African countries, including in digital formats. Public-private partnerships would be established to launch pilot projects, with the hope that in a few months, the projects would start to take hold, and could be extended to other parts of the world. The Secretariat drew attention to a questionnaire that had been sent out to Member States, with the objective to better understand the educational publishing industries in the respective markets so as to begin the implementation and operational phase of the project. To move into the practical phase of the project, it was important for the Secretariat to receive a sufficient number of answers to the questionnaire. Under the topic "Other Matters" on the SCCR agenda, there were emerging copyright topics, one of which was the artist's resale right, about which discussions had made some progress. As regards the artist's resale right, an increasing number of Member States were calling for an extension of the current legal international framework, in order to cover resale rights. No decision had yet been taken as to the inclusion of that item on the Committee's agenda. The Secretariat had been requested to organize an international conference on artist's resale rights, which had been held ahead of the 34th session of the SCCR and had brought together many participants, including visual artists and professionals in the field. According to the feedback received, the conference had been welcomed with interest and satisfaction. Artists from various parts of the world shared their experiences, including indigenous artists from the aboriginal and Inuit communities. This sharing both enriched the discussion and highlighted the benefits such artists derive from resale rights. The Secretariat stated that the results of the study on the economic impact of resale rights would be presented at the 35th session of the SCCR in November 2017. Another emerging topic stemmed from an earlier initiative of GRULAC, which in 2015 made a proposal for an analysis of copyright related to the digital environment. A scoping study on the impact of digital developments on the evolution of national legal frameworks over the last 10 years would be presented at the 35th session of the SCCR. As regards the Beijing Treaty, the Secretariat congratulated all countries that had ratified or acceded to it over the previous year, and in particular congratulated the Delegation of Nigeria which had just deposited the instruments to join four treaties at one time. Document A/57/INF/7 Rev. reported the increasing number of Member States that were joining the Beijing Treaty. As of that morning, 19 countries had acceded to the Treaty and many other Member States were taking concrete measures in that direction. The Secretariat noted that 30 ratifications or accessions were necessary for the Treaty to enter into force. At the request of Member States, since September 2016 the Secretariat had organized regional, sub-regional and national events to raise awareness among stakeholders and to facilitate the implementation of the necessary structures surrounding the Treaty. The Secretariat had also been engaged in a number of other activities to assist Member States who wanted to join the Treaty, particularly through legislative assistance. The Secretariat looked forward to working with Member States over the following year, so that in 2018 it would be able to announce the good news that the Treaty had entered into force.

51. The Delegation of Singapore thanked Member States for their support in the election of the Chair of the SCCR. The Delegation highlighted the unique nature of the SCCR in WIPO's agenda, as its subject matter had an impact on the lives of all citizens. The issues that the Committee dealt with were meaningful and challenging, and made a great impact on the creative industries. As the Secretariat had highlighted, the work in the Committee was making good progress and the Delegation looked forward to working with all the Member States, the Secretariat, and the non-governmental organizations (NGOs) to advance the Committee's agenda and to produce something that would impact stakeholders.

52. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, was delighted to have a member from its Group chairing the SCCR. The Delegation stressed that the SCCR was an important Committee of WIPO dealing with three issues of critical importance to Member States and to the Group: limitations and exceptions for libraries and archives, limitations and exceptions for educational and research institutions and for persons with other disabilities, and the protection of broadcasting organizations. The Delegation noted that the SCCR was facing some difficulties in finding agreement on how to proceed in its work on these agenda items. The Group believed that in order to further its work, the Committee had to refer to the 2012 WIPO General Assembly guidance to the SCCR, and the work plan on those three issues. It wanted to see the finalization of a balanced treaty on protection of broadcasting organizations based on the mandate of the 2007 WIPO General Assembly to provide protection using the signal-based approach in the traditional sense. The Delegation wanted to actively engage with other Member States in discussing limitations and exceptions for educational, teaching and research institutions and persons with other disabilities, and limitations and exceptions for libraries and archives. Emerging issues within the Committee were of equal importance: the artist's resale right and copyright in the digital environment. The Delegation congratulated the Secretariat on the successful convening of the international conference on the artist's resale right, which had proven to be very useful in informing all Member States about the international development of the market and the importance of the resale right for artists. The Delegation called on the WIPO General Assembly to direct the SCCR to continue its work on the issues discussed in document WO/GA/49/5 and to provide the Committee with guidance concerning future actions on those issues.

53. The Delegation of Japan, speaking on behalf of Group B, stated that the SCCR had made some progress in substantive discussions on the protection of broadcasting organizations. The Delegation reiterated its support for the negotiations on a treaty for the protection of broadcasting organizations. To maintain its relevance, the Committee had to continue to listen to the voices of stakeholders and had to respond accordingly based on intellectual property (IP) needs and realities. As a result of the significant economic value of broadcasting, and the appropriate protection that it demanded, WIPO had to respond. In the discussion, the Committee needed to avoid pursuing outdated objectives and had to focus on present and future challenges including the advancement of technologies. Group B thanked the Chair of the Committee for his proposal contained in document SCCR/34/4, and stated that the Group stood ready to continue to work on that subject. In relation to limitations and exception, Group B looked forward to the studies and stood ready to continue the discussions on that subject.

54. The Delegation of Senegal, speaking on behalf of the African Group, took note of the SCCR report contained in document WO/GA/49/5. The Group continued to attach great importance to two main items on the agenda, the protection of broadcasting organizations and exceptions and limitations, in addition to the issues of copyright in the digital environment and the resale right dealt with under "Other Matters". The Group was particularly interested in the issue of exceptions and limitations, which would ensure that the protection of copyright was more balanced and would help Member States to deal with that matter for the general public interest. The issue of exceptions and limitations had to be dealt with in an appropriate and balanced way within the agenda of the SCCR, so that the Committee could move toward adding other items to the agenda. It was regrettable that since 2004, the Committee had failed to

develop clear guidelines on the type of instrument to be adopted and had not introduced a formal working document to serve as a basis for negotiations. The Delegation proposed that the Secretariat consider drawing up draft articles on exceptions and limitations, based on the studies submitted by the Secretariat, on the informal charts written by the previous Chair, and on the text reflected in document SCCR/26/3 from the African Group and the Delegations of Brazil, Ecuador and Uruguay. The Group noted the project on access to educational materials and looked forward to its results.

55. The Delegation of Georgia, speaking on behalf of the CEBS Group, took note of the SCCR report and reiterated the utmost importance the Group attached to the work of the Committee, and particularly to the treaty on the protection of broadcasting organizations. The treaty had to be adapted to 21st century realities. A treaty that did not take into consideration technological developments and current needs of broadcasting organizations would not provide the expected level of protection and therefore would already be outdated at the moment of its adoption. The Delegation looked forward to advancing the Committee's work towards developing an adequate and effective legal instrument that not only protected broadcasting organizations in the traditional sense, but that also took into account the rapidly evolving digital environment. The CEBS Group believed that a clear common vision of the aim of the treaty had to be defined in order to understand where it was heading and to enable Member States to have a realistic vision of the achievable results. Regarding limitations and exceptions for libraries and archives and limitations and exceptions for educational and research institutions and for persons with other disabilities, the Group was of the view that the existing international legal framework already enabled the implementation of adequate limitations and exceptions at the national level. Work on a legally binding instrument would not be an appropriate outcome of the work of the Committee. The Delegation was ready to continue to have evidence-based discussions and to exchange best practices. The Group favored the inclusion of the resale right in the agenda of the SCCR.

56. The Delegation of China took note of the SCCR report and stated that it would continue to support the SCCR in further discussing the topics on protection of broadcasting organizations, limitations and exceptions for libraries and archives, and limitations and exceptions for research and educational institutions and persons with other disabilities. The Delegation hoped to have an agreement on a treaty on broadcasting as soon as possible. The Delegation supported the comprehensive surveys and studies that would move forward the Committee's substantive discussions and negotiations. The Marrakesh and Beijing Treaties were the two major achievements of the SCCR in recent years. The Delegation was pleased that the Marrakesh Treaty had marked its one year anniversary of entry into force, and expressed its appreciation. Its national government was accelerating the approval process and looked forward to ratifying the Treaty. The Delegation noted that with the deposit of an instrument by Nigeria, 19 countries had now joined the Beijing Treaty. Given the Beijing Treaty's significant role in protecting the rights of audiovisual performers, the Delegation called on more countries to work towards its early entry into force.

57. The Delegation of the European Union, speaking on behalf of the European Union and its member states, had been actively involved in the discussions on the treaty for the protection of broadcasting organizations. Those discussions were of great importance to the Union and they should ultimately respond to the current and future needs of broadcasting organizations. The Delegation thanked the outgoing Chair of the SCCR for preparing document SCCR/34/3 on definitions, object of protection, rights to be granted, and other issues, and hoped that the document would enable the Committee to advance its discussions. The Delegation hoped that a roadmap could be established to lead to the convening of a diplomatic conference as soon as practicably possible and expected the decision of the WIPO General Assembly to reflect that position. The European Union was committed to discussing limitations and exceptions for libraries and archives, for educational and research institutions, and for persons with other disabilities, and stated that the current international copyright framework already empowered

Member States to introduce, maintain, and update limitations and the exceptions that could meaningfully respond to their local needs and traditions, while continuing to ensure that copyright was an incentive and a reward to creativity. The European Union believed that WIPO Member States should take responsibility for their own legal frameworks, supported by an exchange of ideas, guidelines and best practices, and that the work in the SCCR should not be dedicated to the normative track with the aim of achieving a legally binding instrument since that approach did not have the consensus of the Committee. The Delegation furthermore took note that some of the agenda items of the SCCR had been discussed for a substantial period of time without tangible outcome, whereas at the same time proposals to reflect upon the future agenda of the Committee were made. In that context, it supported including the resale right on the agenda of the Committee. Issues of common interest needed to be identified in a concrete manner so as to ensure the best chances for success. At the previous WIPO General Assembly, the Delegation had announced that the European Commission had just proposed a Directive and a Regulation aimed at ensuring the compliance of European Union legislation with the obligations under the Marrakesh Treaty. The Delegation announced that those legislative proposals had been adopted by the European Parliament and the Council of the European Union on September 13, 2017.

58. The Delegation of Ecuador took note of the SCCR report and stated that millions of persons with disabilities, hundreds of thousands of teaching institutions and millions of libraries were following the discussions in the SCCR. The Delegation stated that there were important matters such as broadcasting over the Internet that were being discussed in the Committee, and as such, there was need for flexibility so that the Committee could move forward in its discussions. The Committee had a number of proposals that required a balanced framework and an agreement on exceptions and limitations. The Delegation expressed that such an agreement would go toward guaranteeing fundamental rights.

59. The Delegation of Iran (Islamic Republic of) stated that the work of the SCCR in developing a legal framework for the protection of broadcasting organizations against signal piracy was of critical importance to all Member States. With respect to broadcasting, how IP laws were applied was a developmental issue that required careful consideration and that had to be drafted in a manner to be enjoyed by all stakeholders in society. Consistent with the 2007 WIPO General Assembly mandate towards developing a legal framework for protection, it was evident that the scope of the treaty would be confined to signal-based protection in the traditional sense. As such, it was essential to reach agreement on the definition of broadcasting and cablecasting organizations in the traditional sense. With regard to the issue of exceptions and limitations for libraries and archives, the Delegation was of the view that such institutions made essential contributions in the attainment of the right to education and to access to knowledge and that such institutions encouraged creativity, increased educational opportunities, and promoted cultural works. Based on the mandate given to the Committee by the WIPO General Assembly, and keeping in mind the notable progress achieved during the discussions on these subjects, the Delegation favored establishing a legally binding instrument for libraries and archives. The object of that instrument would be to strengthen the capacity of libraries and archives to carry out their public service role in the development of society. The expectation for the Committee was that it would accelerate negotiations and make progress on text-based work and would engage in substantive discussions in full conformity with that mandate. The importance of the fair use of the copyright system, and the need for relevant regulations on exceptions and limitations for education and research institutions and persons with disabilities other than print disabilities could not be overemphasized. The Delegation supported the initiative to draft an appropriate international legally binding instrument on limitations and exceptions for education and research institutions and persons with disabilities.

60. The Delegation of Chile believed that the work of the SCCR had been very successful over the previous years and had demonstrated the capacity of Member States to reach agreements on various issues. The Marrakesh and the Beijing Treaties were demonstrations of

the capacity of the multilateral IP system to move the global normative framework forward and of Member States' commitment to that framework. The Delegation hoped that the Committee could continue to work in that spirit, showing equal attention to all of the agenda items, including limitations and exceptions, broadcasting organizations, and other issues. The Delegation thanked the WIPO divisions of copyright law and development for having helped it organize the first international seminar on copyright and creative economy. The seminar aimed to raise awareness on the importance of those issues.

61. The Delegation of Nigeria welcomed the report on the work of the SCCR. Nigeria aligned itself with the statement of the African Group. The Delegation stated that it had just deposited its instruments of ratification for four important WIPO instruments during that WIPO General Assembly: The WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT), the Beijing Treaty and the Marrakesh Treaty. That action was a testament to Nigeria's efforts to strengthen its IP engagement and further support the country's transformation into an innovation-generated economy. The Delegation urged Member States and all other stakeholders to work together, in goodwill and flexibility, to enable the SCCR and WIPO to advance work on the protection of broadcasting organizations from signal piracy, and to address the consistent and justified call to enhance access to information and knowledge through the exceptions and limitations agenda of the SCCR.

62. The Delegation of the Russian Federation expressed its appreciation of the work done by the SCCR and supported the continuation of the work within the mandate. Concerning broadcasting organizations, the Delegation believed that the Committee had to focus on treaty text as well as to develop a road map that would circumvent not reaching a consensus. The Delegation was confident of the need to convene a diplomatic conference. The Delegation underlined that exceptions and limitations were a very important element and that considering the great number of published materials, all countries should be able to access such material. The Delegation highlighted the need for a threefold model on copyright law rights for authors, and expressed the need for more studies on that topic. There was a proposal in the Committee on the protection of artists' rights, which the Delegation supported. The Delegation was in favor of ensuring the rights of artists, visual artists, sculptors, and so on and supported the resale right. The Delegation stated that the Russian Federation was working on joining the Marrakesh Treaty and that it would likely join that agreement soon.

63. The Delegation of South Africa aligned itself with the statement made by the Delegation of Senegal on behalf of the African Group. The Delegation expressed its commitment to working constructively on all three topical issues in the Committee: broadcasting, exceptions and limitations for libraries and archives, and exceptions and limitations for educational and research institutions and persons with other disabilities. The Delegation stated that South Africa has a vibrant and competitive film industry with commercial, cultural and artistic success. Local production and content were growing as South Africans were eager to share their stories with the world. However, that industry was confronted by the threat of signal piracy which, if it was not urgently addressed, had the potential to seriously damage the broadcasting and content industries, which had become engines of growth, generating employment opportunities and socio-cultural introspection. The Delegation was of the view that the SCCR had made significant progress, drawing closer to a shared common understanding on the scope and object of the treaty. In line with the 2007 WIPO General Assembly mandate, the Delegation wished to see the work of the Committee expedited through the adoption of a broadcasting treaty, using a signal-based approach, while it remained cognizant of the fact that the treaty needed to be consistent with the development agenda (DA) in terms of access to information, education and research. The Delegation recognized that discussions in recent Committee meetings had strayed away from the 2007 mandate, which had mandated the SCCR to approach the broadcasting discussion from a signal-based principle. That shift had misdirected and delayed the Committee's work. The Delegation wanted to see discussions in future Committee meetings respect the 2007 WIPO General Assembly decision. As a developing country, South Africa

appreciated the importance of access to education and information, integral elements to development and socio-economic growth. Libraries and educational research institutions played a critical role in providing access to information and in the dissemination of knowledge, empowering individuals to make well-informed decisions. Restrictive copyright laws often hampered the work of libraries, creating unnecessary hurdles in the path of learning. That was further complicated in the world of rapidly evolving technologies where the current copyright regime was outdated and legislative reform was required to keep pace with the digital world. The Delegation indicated that previous studies were useful in providing a holistic view of current practices in the (previously) 189 WIPO Member States, while also identifying fundamental gaps, such as cross-border exchange, that only a multilateral treaty could fill. It would not suffice to only have exchanges of information on national practices, or to only promote the creation of domestic exceptions and limitations which did not address cross-border exchange issues.

64. The Delegation of Argentina noted the SCCR report contained in document WO/GA/49/5. The Delegation was interested in all of the agenda items of the Committee and supported continuing discussions on all of those issues. An issue of particular importance to the Delegation was updating the protection of broadcasting organizations. In response to technical progress, the Committee needed to conclude its work on a basic treaty proposal that would provide effective protection to broadcasting organizations, with a view to convening a diplomatic conference in 2018.

65. The Delegation of Brazil believed that to achieve the adoption of an appropriate legal instrument on limitations and exceptions for libraries and archives that would facilitate their role of disseminating knowledge and culture, Member States had to approve a work plan with a meeting schedule. The Committee had been working in the matrix of eleven topics, as had been proposed by the Chair, and the Delegation was confident that that would provide important input for Member States. The Delegation was pleased that other Member States were concluding their process of ratifying the Marrakesh Treaty, and that others were moving towards adoption. The Delegation stated that Brazil was near the end of its own regulatory process on that matter and that Brazil looked forward to cooperating with other Portuguese speaking countries to promote broad access to books for segments of their populations which had been deprived of many learning opportunities. The Delegation noted that there was a fruitful exchange on broadcasting during the previous session of the Committee, and that taking into account the 2007 WIPO General Assembly mandate it would continue its engagement on that matter. The Delegation stated that recent developments related to the interaction of copyright with the digital environment were a matter of utmost importance for the system. New digital business models made it ever more difficult for regulators to strike the right balance in the system, in order to guarantee fair remuneration for authors and creators. As was discussed by Professor Sirinelli during the previous SCCR session, it was important to put the author back at the center of the copyright system. The Delegation recalled GRULAC's proposal for analysis of copyright in the digital environment, which was presented at the 31st session of the SCCR, and affirmed its commitment to that proposal. The Delegation believed that issues involving copyright in the digital environment should become a permanent agenda item of the SCCR. The Delegation looked forward to the study on this topic, which would be circulated in the following session of the SCCR, and aligned itself with the statement by the Delegation of Chile with regard to the role of the SCCR in ensuring the effectiveness and the health of the multilateral IP system.

66. The Delegation of Colombia noted that there had been some progress in the technical discussions of the Committee on broadcasting. That progress was reflected in the revised consolidated text on definitions, object of protection, rights to be granted and other issues contained in document SCCR/34/3. That document had enabled the Committee to clarify a number of issues and had helped enrich the discussions that had taken place. The Delegation stated that the WIPO General Assembly was the appropriate place to move forward in terms of the consolidation of the different agenda items. The Delegation supported the consolidation of

a legally binding instrument on the protection of broadcasting organizations, and wanted the work in the Committee to be done with the view to convening a diplomatic conference. Those points were reflected in document SCCR/33/5, proposal by the Delegations of Argentina, Colombia and Mexico. Many of the studies and presentations done by experts on broadcasting supported a possible legally binding instrument. Compared to the treaties that were currently available, the Rome Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), a new instrument would be a real step forward. Considering the digital age, there should also be improvements in the object of protection. With regard to exceptions and limitations for libraries and archives, research institutions, education institutions, and persons with other disabilities, the Delegation believed that it was important for countries to make the most of the flexibilities provided in the IP system. Initiatives in that regard should retain the balance that had been achieved through the Berne Convention and the Committee should continue its discussions on the exchange of best practices in that area. As regards other matters, the Delegation noted the study that was being conducted on the digital environment. That study, which was looking at the impact of technological developments on the evolution of national legal frameworks over the previous 10 years, was proposed by GRULAC in 2015. The Delegation looked forward to the final document which would be presented at the next meeting of the SCCR.

67. The Delegation of the United States of America aligned itself with the statement made by the Delegation of Japan, speaking on behalf of Group B. The Delegation supported updating the protection of broadcasting organizations, under the terms of the 2006/2007 WIPO General Assembly mandate, which called for a signal-based approach to provide protection for the activities of broadcasting organizations in the traditional sense. Consistent with that mandate, the Delegation believed that such protection should be narrow in scope, and that the unauthorized retransmission of the broadcast signal to the public over all platforms, including over the Internet, was one of the most significant problems facing broadcasting organizations. The Delegation was aware that rapid technological changes taking place in the broadcasting industry, which were having a profound impact on the very concept of broadcasting, presented significant challenges to establishing international norms. The Delegation noted that in 2015 the Committee had achieved consensus on the treaty's object of protection and on rights to be granted. The Delegation remained committed to working with other Member States to deepen its understanding of the issues and to narrow the treaty text in a manner consistent with the terms of the 2007 WIPO General Assembly mandate. The Delegation had played a leadership role in the diplomatic conference that resulted in the adoption of the Marrakesh Treaty. The Delegation did not however support further norm setting work that required countries to adopt copyright exceptions and limitations. The current international framework for copyright exceptions and limitations provided the appropriate flexibility consistent with well-established international standards for countries to enact exceptions and limitations to advance their own national, social, cultural and economic policies. The Delegation supported further work in the SCCR to develop high-level principles for improving national copyright exceptions and limitations for libraries and archives and educational activities. Once those principles were developed, Member States could work together to improve and update their national laws. The Delegation supported work aimed at deepening the understanding of the Committee about national copyright limitations and exceptions for persons with disabilities other than visual impairment, such as the commissioned study on that topic. The Delegation was opposed to any linkage between the drafting of the proposed broadcasting treaty and copyright exceptions and limitations. The work on the broadcasting treaty was considerably more advanced and should be considered in its own right. The Delegation opposed any claim that work on the broadcasting treaty could not move forward without work on copyright exceptions and limitations.

68. The Delegation of Japan stated that as regards the discussions on the protection of broadcasting organizations, some progress had been made by the Committee based on the consolidated text. Any further discussion on that topic should deepen the mutual understanding

among Member States, and lead to the convening of a diplomatic conference at the earliest opportunity. On the issue of exceptions and limitations, it was essential that the Committee achieve the appropriate balance between the interests of rightsholders and access to works, and that Member States establish balanced and suitable exceptions and limitations based on the respective social and cultural background in each country. The Delegation was of the view that discussions on that issue should focus on the sharing of national experiences and practices.

69. The Delegation of Senegal aligned itself with the statement of the African Group. The Delegation continued to attach great importance to the work of the SCCR, which recently experienced great progress on various agenda items: protection of broadcasting organizations, exceptions and limitations, copyright in the digital environment, and resale rights (the latter two under "Other Matters"). Given its impact and influence on the real-life conditions of the artistic community, the Delegation believed that the issue of resale rights, which it had proposed with the Delegation of the Congo, should be highlighted in the standing SCCR agenda. The Delegation appreciated the work related to access to educational materials and was happy to see it on the agenda.

70. The Delegation of Costa Rica was pleased to announce that the congress of Costa Rica had adopted the Marrakesh Treaty. The Delegation hoped that, with the help of the Secretariat, it would be able to implement the treaty. It was delighted to deposit the Marrakesh Treaty instrument during the 2017 Assemblies. The Delegation was also pleased to announce that the Beijing Treaty was currently being considered by the legislative assembly in Costa Rica for the purpose of ratification and subsequent implementation. Given the importance of both of those treaties, and their contribution in ensuring that copyright and related rights would be duly respected, the Delegation was committed to their implementation. The Copyright Office of Costa Rica continued to build and consolidate its copyright and related rights culture by facilitating the sharing of knowledge and providing information to anybody interested through a national register. The information was also shared with public and private universities that wished to have access. The Delegation stated that Costa Rica believed in building and consolidating a culture of respect for IP.

71. The Delegation of Mexico believed that the issue of the protection of broadcasting organizations was extremely important and called for Member States to increase their efforts in concluding a treaty in that area. Alongside the Delegations of Argentina and Colombia, the Delegation had been promoting a position that the protection of broadcasting organizations should be distinguished from other items on the SCCR agenda because of the level of maturity those discussions had reached then. The discussions needed to be concluded with a basic treaty proposal for the protection of broadcasting organizations, and a diplomatic conference should be convened in 2018.

72. The Delegation of India stated that the SCCR was important as a result of its dealings with three issues of critical importance to Member States: protection of broadcasting organizations, limitations and exceptions for libraries and archives, and limitations and exceptions for educational and research institutions and for persons with other disabilities. Those three issues were of great importance to the Delegation. Previous sessions of the SCCR showed that the SCCR was facing some difficulties in reaching agreement on how to proceed in its work on those agenda items. The Delegation believed that those three issues had not received equal levels of commitment and understanding commensurate to their importance, based on the differential socio-economic development of the Member States. The Delegation wished to see the finalization of a balanced treaty on the protection of broadcasting organizations, based on the mandate of the 2007 WIPO General Assembly. Exceptions and limitations were of critical importance for individuals and for the collective development of enlightened societies. Exceptions and limitations had an important role to play in the attainment of the right to education and access to knowledge, actualization of which in many developing countries was

hampered due to lack of access to relevant educational and research material. It was unfortunate that the absence of adequate will to discuss and develop those exceptions and limitations in the SCCR had resulted in a stalemate on all three important issues. Inclusiveness and mutual understanding of each other's priorities was essential for progress. In that spirit, the Delegation reaffirmed its commitment to engage constructively in negotiating a mutually acceptable outcome on all three issues before the SCCR.

73. The Delegation of the Republic of Korea attached great importance to the broadcasting treaty. The Delegation was in favor of the signal-based approach, which it believed required further discussion to achieve mutually beneficial outcomes for all Member States. The Delegation believed that in order to better respond to the development of technology and the marketplace in recent decades, it was critical to update the protection of broadcasting organizations. The Delegation was committed to actively engaging in dialogue to advance the work toward a broadcasting treaty.

74. The Delegation of Malawi aligned itself with the statement made by the Delegation of Senegal on behalf of the African Group. The Delegation considered copyright an important tool for economic development and for that reason the Government of Malawi had enacted a new law which came into force in May 2017. The law had taken into account the need for Malawi to comply with international treaties such as the WCT, WPPT, and the Beijing Treaty, as well as the Marrakesh Treaty. The Delegation stated that Malawi had deposited an instrument for ratification of the Marrakesh Treaty in June 2017. The Delegation looked forward to concluding negotiations on a broadcasting treaty, with the aim of convening a diplomatic conference for its adoption. The Delegation wished to see progress on negotiations regarding limitations and exceptions, without losing focus on balancing the rights of authors as well as the public interest. The Delegation looked forward to continued discussions on the resale right and hoped that the item would be maintained on the agenda for the SCCR meeting in November 2017.

75. The Delegation of the Philippines stated that copyright-based industries had been identified as a priority sector in the Philippines, and having a balanced and development-oriented copyright regime would be crucial to its progress and growth. The Philippines continued to follow with interest the discussions on the proposed broadcasting treaty. The Philippines had a robust broadcasting industry that was a significant influence in shaping national culture as well as in educating Filipinos. The Delegation recalled that the Philippines was the birth place of the discussions for a treaty on the protection of broadcasting organizations at the world symposium on phonograms, new communication technologies and IP held in 1997. The Delegation had amended its IP code to incorporate the substantive provisions of both the Marrakesh and Beijing Treaties. The Delegation was in the final stages of pursuing accession to the Marrakesh Treaty and conducting consultations with stakeholders on accession to the Beijing Treaty.

76. The Delegation of Uganda aligned itself with the statement made by the Delegation of Senegal, speaking on behalf of the African Group. The Delegation stated that it was deeply concerned by the rise in signal piracy and as such supported the conclusion of a treaty protecting broadcasting organizations that guaranteed a balance between creators and users of the information. The treaty had to ensure that access to information and knowledge remained accessible and affordable to all people, including those in remote geographical areas and the poorest, who could not pay for them. The Delegation cautioned against the inclusion of any provision in the proposed broadcast treaty which could lead to the granting of more intellectual property (IPRs) for broadcasters in works retransmitted via the broadcast signal. Broadcasters, already enjoyed rights under the copyright system to reward their innovation and should not be granted copyright control over the content of their broadcasts, or the extension of those rights to the Internet. Seeking to extend the protection under the proposed broadcasting treaty to the contents of broadcasts was not about preventing the theft of signals, it was about piracy and rent seeking. That possibility risked the introduction of a thicket of new rights that would harm

the Internet. The Delegation was not comfortable with the treaty provision that introduced new IPRs for mere packaging and distribution of works. The treaty scope had to therefore remain focused on traditional radio and television broadcasting, the two technologies covered by the 1961 Rome Convention, from which the proposed broadcast treaty was derived. The Convention covered the representation of images and sounds delivered by cable and satellite television. It was important to underline that the treaty had to follow one of the cardinal principles of IP, which was the provision of an incentive to the rightsholder rather than a reward for investment. The question needed to be answered as to whether the Committee wanted a rights-based approach or a signal-theft approach. Once that issue was resolved, it would be much easier to convene a successful diplomatic conference. As regards exceptions and limitations, the Delegation placed more importance on access to education materials and therefore supported the proposal by the African Group which sought to ensure a clear road map for negotiations. The Delegation supported the inclusion of resale rights as a standing item on the agenda of the SCCR.

77. The Delegation of Kenya aligned itself with the statement made by the Delegation of Senegal on behalf of the African Group. The Delegation wished a speedy conclusion to the discussions on the proposed broadcasting treaty, and believed that the text was very close to maturity and would be ready for a diplomatic conference in the next biennium. The Delegation wished to see the resale right and the study on the impact of copyright in the digital environment maintained on the SCCR agenda. As regards the Marrakesh Treaty, the Delegation recently deposited its instrument and was in the process of domesticating the Marrakesh Treaty into its legislation. The Delegation noted that many African countries, including some least developed countries (LDCs) and many developing countries, had difficulties ratifying and domesticating that treaty. The Delegation urged the Secretariat to support those countries.

78. The Representative of Knowledge Ecology International (KEI) recommended taking the broadcasting treaty off the agenda of the SCCR until the proponents of the treaty could explain what they expected the treaty would do in practical terms, how the treaty would impact copyright owners and persons who want access to information distributed by broadcasters, and if there was a realistic expectation of agreement on the substance of the treaty. To the extent that broadcasters faced some type of problem in protecting traditional broadcasts of sporting events or other live events, or faced unique challenges in addressing piracy that could not be solved under existing copyright and related rights regimes, and there were solutions that did not undermine legitimate user rights, such a treaty might be positive. The Representative stated that there were, however, versions of the treaty advocated by broadcaster lobbies and some Member States that would negatively impact the public in several ways. Post-fixation rights in broadcasts were the main problem area, and if broadcasters insisted on such rights, WIPO would have to address the need for robust exceptions to those rights. WIPO would also have to consider the consequences of creating new layers of rights over copyright every time information was transmitted over a broadcasting platform, creating new thickets of rights to clear and compensate, and forever extending rights. All of those problems would become far larger if the broadcasting treaty were extended to the Internet, as proponents in several countries demanded. It was highly unlikely that a new set of related rights for material transmitted over the Internet could be limited to only benefit traditional broadcasters, particularly if the broadcasters insisted on rights to material distributed over the Internet at a time and place of the audience's choosing. If Internet transmissions were included, it was highly likely that WIPO would be creating a right in third-party owned and created content, benefiting large United States of America companies streaming video, like Google, YouTube, Facebook, Netflix, Amazon and iTunes, and music streaming companies like Spotify. The Representative questioned whether WIPO really wanted to do that. There was confusion over how the broadcast treaty would work, and that was not something that should exist when pushing for a diplomatic conference. The public needed to know what WIPO was trying to do, and how it would impact them. What was simpler was for the delegations to do what was done in 2007 and remove the broadcasting treaty from the SCCR agenda, as it was clear that broadcasting

was a major distraction and the treaty was a confusing and flawed proposal. The Representative proposed that an impact study be done to address the following key questions: “How would the treaty change the distribution of incomes between copyright holders, listeners and broadcasters? How would the treaty change the distribution of incomes between countries, given the ownership of beneficiaries that ‘schedule’ rather than own content. Which companies play a particularly significant role in scheduling content, and who owns these companies? Does this differ significantly from the ownership of the content itself? If the treaty is extended to the Internet for streamed video or music, who will be the beneficiaries of the rights? For example, will Netflix, YouTube and Spotify obtain rights in third-party content? How will the treaty impact the exceptions to copyright now provided in the Berne Convention, such as the right to quotation and news-of-the-day, and exceptions for public affairs or education? How will the treaty impact the orphan works problem? (If the treaty creates new post-fixation rights for broadcasters) how will the treaty impact producers/creators of audiovisual content that use information obtained from a broadcast? How will the treaty impact of the use of information from broadcasts in social networks, such as Facebook, Twitter, etc.?”

79. The Representative of the International Federation of Library Associations and Institutions (IFLA) stated that the Marrakesh Treaty, adopted in 2013, was a notable example of how the SCCR could respond to the needs of citizens and make a meaningful change happen worldwide. Member States had recognized the need for the SCCR to get involved in exceptions and limitations for libraries, archives and museums by placing the topic on the agenda. There was an acknowledgement of the value that cultural heritage institutions brought to society, and of the ultimate goal of a system of IPRs: to boost creativity and innovation, and not to kidnap creation. Several steps had taken place since, such as the outgoing Chair’s informal chart on limitations and exceptions for libraries and archives, which the Representative wished to see included as a working document of the Committee, or the commission of the Kenneth Crews study and its later update, which showed the fragmentation of library exceptions all over the world. The Representative welcomed every step that would make an effective contribution to achieving the SCCR’s mission. The Representative encouraged Member States to engage in open discussions, without groundless fears, bearing in mind that it was not the excess, but the lack of exceptions in so many countries that was holding things back. It was a fact, as the Marrakesh Treaty had shown, that well-crafted actions in the SCCR could make a difference on the ground. The Representative welcomed new ideas and possibilities for the Committee’s work and particularly welcomed the sense of purpose and energy of the Secretariat. IFLA looked forward to the promised action plan, in the hope that it would contribute to moving towards effective international solutions for the activities of libraries, archives and museums.

80. The WIPO General Assembly:

- (i) took note of the “Report on the Standing Committee on Copyright and Related Rights” (document WO/GA/49/5); and
- (ii) directed the SCCR to continue its work regarding the issues reported on in document WO/GA/49/5.

ITEM 14 OF THE CONSOLIDATED AGENDA

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

81. Discussions were based on document WO/GA/49/6.

82. The Secretariat noted that the document described the progress of discussions at the twenty-fifth and the twenty-sixth sessions held from December 12 to 15, 2016, and from July 3 to 6, 2017, respectively. The Secretariat stated that during those two sessions, the Committee had continued to address the following five topics: (i) exceptions and limitations to patent rights; (ii) quality of patents, including opposition systems; (iii) patents and health; (iv) confidentiality of communications between clients and their patent advisors; and (v) transfer of technology. The Secretariat further invited the WIPO General Assembly to take note of the information contained in the document.

83. The Delegation of Senegal, speaking on behalf of the African Group, stated that the agenda of the SCP contained issues of vital importance for developing countries in general, and the African continent, in particular. The Delegation stated that its Group had a genuine interest for extensive discussions on the vital role of patents in the social, economic and technological development of Member States. Noting the importance of a balance between the private and public interest, the Delegation stated that clearly identified legal obstacles should be resolved to support the social and economic development of countries, in particular those that faced major barriers in that regard. The Delegation noted further that the DA Recommendations were the basic reference for the general policies of WIPO on development, and stated that the discussions within the SCP should contribute to the dissemination of information and the transfer of technology to stimulate access to knowledge. The Delegation stated that its Group also attached a great importance to the issue of exceptions and limitations to the rights, which was one of the flexibilities providing a balance in patent law. The Delegation further noted that the agenda item on patents and health was a matter of particular concern for its Group, because it was related to the issue of access to medicines and treatments which were vital to meet public health challenges in those countries. The Delegation expressed support to its proposal on a work program on patents and health, and looked forward to developing the activities within that framework.

84. The Delegation of Japan, speaking on behalf of Group B, thanked the Chair of the SCP for her organized chairing of those two sessions as well as the Secretariat for its hard work over the past year, including the preparation of this document for the WIPO General Assembly. Listing the five topics on the agenda of the SCP, the Delegation stated that its Group was interested in making progress on the topics of quality of patents, including opposition systems, as well as the confidentiality of communications between clients and their patent advisors. Noting that the SCP had to be a forum where all experts attending its sessions could benefit from its technical discussion, the Delegation expressed its regret that the Committee could not reach an agreement on future work during its twenty-fifth session. Nevertheless, the agreement on the future work reached at the twenty-sixth session had been a signal of what could be achieved when delegations engaged in discussions constructively. The Delegation expressed its belief that the SCP should be a venue for discussions on substantive patent law in a manner responding to the changing world. The Delegation continued that, for example, improving the quality of work products of the IP offices, work sharing and other technical cooperation to promote a healthy and innovative ecosystem, should be of practical benefit to all offices regardless of their size or experience. In conclusion, the Delegation stated that the objective of the SCP was to facilitate coordination and provide guidance concerning the progressive international development of patent law, including harmonization of national laws and procedures. The Delegation underscored that Group B continued to commit to the activities of the Committee, and appealed to all Member States to work together toward that objective.

85. The Delegation of Estonia, speaking on behalf of the European Union and its member states, noted the progress made by the Committee since the previous WIPO General Assembly. The Delegation welcomed the agreement that had been reached on future work at the twenty-sixth session of the SCP, which enabled the Committee to continue its work in a balanced and forward-looking manner. The Delegation noted that it attached considerable importance to advancing work on the topic of quality of patents and welcomed the sharing session which would be held at the forthcoming session of the SCP on examples and cases relating to the assessment of inventive step, giving particular attention to the topics suggested in the proposal by the Delegation of Spain and endorsed by other member states of the European Union. The Delegation expressed its belief that the sharing session could be helpful in preparing a study on inventive step to be submitted to the twenty-eighth session of the SCP. The European Union and its member states looked forward to making a contribution to that work. On the topic of patents and health, the Delegation looked at the evidence-based approach of the Committee. The Delegation considered that supplementing the existing studies, holding information and sharing sessions were an appropriate way to work on the topic, as it would enable the SCP to better understand the role of patents in health-related issues, including the benefits to innovation. The Delegation welcomed the decision of the SCP to discontinue discussions on a possible revision of the 1979 WIPO Model Law for Developing Countries on Inventions and opting for an alternative approach to address the problems raised by GRULAC. The Delegation noted that the European Union and its member states were convinced that individual and tailor-made legislative and technical assistance would take into account country-specific needs and thus would be more efficient than a one-size-fits-all approach. The Delegation expressed its hope that the informative session to be held during the twenty-seventh session of the SCP would help Member States to gain a better understanding of the assistance already provided by WIPO and how those measures could be used to address their needs. The Delegation stated that the European Union and its member states were committed to contributing to the work of the Committee in accordance with the agreed work plan. The Delegation stated that, although the European Union and its member states regarded all topics on the agenda as equally important, it reiterated its interest in enhancing international cooperation and improving the technical knowledge on patentability requirements, thus ensuring a more efficient, effective and higher quality patent system, as well as discussion on issues relevant to harmonization of substantive patent law. Finally, the Delegation highlighted that the European Union was working on the European patent with unitary effect and the Unified Patent Court, and expressed its hope that those two instruments would become effective rapidly. The Delegation stated that those instruments would help to attract and retain innovation, talent and investment.

86. The Delegation of the Russian Federation noted that the SCP had been very productive. The Delegation considered that the Committee should conduct studies, in particular, a study concerning the sufficiency of disclosure requirement and Markush claims. The Delegation also supported the suggestion to carry out a study on patentability of selection inventions. In that regard, the Delegation noted that the experience of other countries as regards selection inventions and the Markush claims was extremely important to it, as they were vital to the economy. The Delegation also expressed its support for the discussion on the topic of patents and health. However, it noted that while it was important to ensure access to medicines, a balance between the interests of the proprietors of the medicines and society as a whole should be maintained. As regards the quality of patents, the Delegation stressed that further discussions on the certification of offices according to international standards was important.

87. The Delegation of Iran (Islamic Republic of) stated that the activities of the Committee were of high importance, as it provided a multilateral forum for discussing patent-related issues and sharing of ideas and experiences in areas crucial to development. The Delegation expressed its belief that discussions on the topics of exceptions and limitations to patent rights, patents and health and technology transfer were important to balance the interest of patent holders with the public interest for making effective use of the flexibilities of the patent system

and for appreciating the social value of the system. The Delegation was pleased that the Committee in its twenty-sixth session had been in a position to reach an agreement on important elements to be included in its future work, elements which constituted the common concern of all Member States. Further, on the issue of patents and health, the Delegation highlighted that the issue of access to essential medicines at an affordable price was essential, and that it was an important component for fulfilling the right to health as fundamental and basic human right. The Delegation stressed that, WIPO, as one of the specialized agencies of the United Nations, should support countries in their efforts to address IP-related barriers impacting on availability, affordability and accessibility of medicines, treatments and related technologies, particularly in low- and middle-income countries. The Delegation was of the opinion that the SCP should identify specific constraints in relation to the flexibilities that could be used to address public health needs and discuss those constraints with a view to identifying action-oriented solutions. The Delegation looked forward to the work program on that issue being operationalized. On the issue of exceptions and limitations to patent rights, the Delegation stated that patent rights could not be absolute, since they carried the accompanying obligation to benefit the public at large. To that end, the Delegation was of the view that those rights and obligations should balance one another. The Delegation expected that a draft reference document on exceptions and limitations to patent rights, which the Secretariat would submit to the twenty-seventh session of the SCP, would include information on exceptions and limitations that had proven to be effective to address the development concerns. The Delegation noted that such a document should be the deliberation of exceptions and limitations in a non-exhaustive manner to serve as a reference for the Member States. Further, while noting the importance of the issue of quality of patents, the Delegation expressed its belief that the issue should be left to be discussed and decided by national authorities, taking into account the national priorities of each specific country. The Delegation continued to believe that the international harmonization of the patent law, given the variations in the level of social, economic and technological development of countries and significant differences between their priorities and objectives, would not benefit the Member States.

88. The Delegation of Georgia, speaking on behalf of the CEBS Group, welcomed the work of the SCP. The Delegation highlighted the importance of the SCP as a forum where the Member States could exchange the experiences and share the best practices in the area of patent law. The Delegation was pleased to note that an agreement on the future work had been reached in its previous session, thanks to the constructive engagement of all Member States. Furthermore, the Delegation stated that the areas of interest of the CEBS Group were on quality of patents and confidentiality of communications between clients and their patent advisors. The Delegation expressed its belief that it was crucial to continue the work on improving the quality of patents, as the whole patent system would gain from it. The Delegation also stated that the work of the Committee enhanced international cooperation and facilitated solution on cross-border challenges.

89. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, conveyed its appreciation to the Secretariat in facilitating progress on the discussion in the Committee so that all Member States were able to make a joint effort and engage constructively to reach a consensus on the future work plan of the Committee on the issues of particular relevance to their common interests. The Delegation also thanked the Chair of the SCP for her guidance in chairing the Committee. The Delegation stated that the Asia and the Pacific Group looked forward to the continuing discussion in the SCP on the non-exhaustive list of issues that would remain open for further deliberation and discussion in future sessions of the Committee, namely on exceptions and limitations to patent rights, quality of patents including opposition systems, patents and public health, the confidentiality of communications between clients and their patent advisors as well as the issue of transfer of technology. The Delegation also welcomed the agreement in the Committee without prejudice to the mandate of the SCP that the work for the future sessions should be confined to fact finding, sharing experiences and best practices and should not lead to harmonization. The Delegation stated that the Asia and Pacific

the Group was delighted to note that on the topic of exceptions and limitations to patent rights, the Committee had agreed that the Secretariat would prepare a draft reference document on exceptions and limitation to patent rights in conjunction with patent protection. The Delegation also looked forward to receiving the updated summary of the responses to the Questionnaire on the Term “Quality of Patents” and Cooperation between Patent Offices in Search and Examinations. Regarding the topic of patents and health the Delegation expressed its eagerness to discuss the updated study on the constraints faced by developing countries and LDCs in making full use of patent flexibilities and their impact on the access to affordable, especially essential medicine for public health purposes in developing countries taking into account the inputs from the members of the SCP. The Delegation hoped that the discussion under the present agenda item would continue to address the subject in a balanced matter. The Delegation also stood ready to contribute actively in the sharing session on the experiences of Member States in implementing the confidentiality of communication between clients and their patent advisors through national legislation. The Delegation looked forward to fully participating in the sharing session on the topic of transfer of technology. The Delegation expressed its hope that the informative session on legislative assistance in the field of patents and related capacity building, which would be held at the twenty-seventh session of the SCP, would contribute fully to the deliberation of the proposal by GRULAC on the revision of the 1979 WIPO Model Law for Developing Countries on Inventions. In concluding, the Delegation expressed its hope that the constructive spirit would continue in future sessions of the SCP.

90. The Delegation of South Africa aligned itself with the statement made by the Delegation of Senegal on behalf of the African Group. The Delegation welcomed the agreed future work program of the SCP which provided a balanced approach and strove to cater to the interests of both developed and developing countries. The Delegation thanked the Chair of the SCP and the Secretariat for their tireless work in ensuring that the Committee’s future work program comprised of a consensus from all Member States. The Delegation noted that the work of the SCP was of paramount importance as it was the only multilateral platform where Member States could robustly discuss and debate on enhancing patent laws to benefit the society. The Delegation felt that on the one hand, it was important to protect the rights of innovators by providing incentives for their creativity and ingenuity. The Delegation however felt that on the other hand, it was equally important to provide access to knowledge, technology transfer and safe affordable medicines to benefit all in the national public interest. The Delegation was particularly pleased that the SCP had agreed to the compilation by the Secretariat of a reference document on the exceptions and limitations of patent rights, as their implementation remained one of the key challenges for developing countries and LDCs. The Delegation noted that it was highlighted in many platforms and in many studies that developing countries and LDCs had not made full use of the flexibilities currently afforded to them by the TRIPS Agreement. The Delegation looked forward to receiving the report from the Secretariat which would inform about the challenges experienced by Member States in the implementation of exceptions and limitations and the manner of addressing those challenges. Furthermore, the Delegation called upon WIPO to provide the necessary technical assistance in the implementation of the exceptions and limitations in order to address the socio-economic requirements of their populations. The Delegation noted that the intersection of patents and public health remained a key consideration for South Africa, in particular, the extent to which patents remained a barrier in access to essential medicines, which led to many poor people being denied lifesaving medicines. The Delegation observed that its experience, particularly since the case between the Pharmaceutical Manufacturers Association versus the President of South Africa (the late President Nelson Mandela) in 1998, had made it imperative to keep a closer look at that intersection. The Delegation stated that the Committee had the responsibility to ensure that patent laws did not unduly restrict access to medicines. The Delegation therefore expected a more ambitious work program on the topic of patents and health in the future sessions of the Committee.

91. The Delegation of China supported and appreciated the agreement on the SCP work plan reached at its twenty-sixth session and the effort deployed by the Committee and countries. The Delegation stated that it would continue to participate actively in the work of the SCP to share experiences, make proposals and contribute to the development of the international patent systems.

92. The Delegation of the United States of America aligned itself with the statement made by the Delegation of Japan on behalf of Group B. The Delegation thanked the Secretariat for its leadership and the SCP Chair for its guidance in the work of the Committee. The Delegation extended its appreciation to the Secretariat for their hard work in supporting the Committee, and stated that it continued to support a balanced work program for the SCP. The Delegation believed that the five topics addressed in the document provided a good basis for such discussions, as they were intended to reflect issues of interest to Member States at all levels of development. The Delegation felt that a further study of those issues in a balanced manner was a way to reach consensus on a work program that took into account the range of interests represented by the Member States. The Delegation stated that it was encouraged by the outcome of the twenty-sixth session of the SCP in July 2017. It welcomed the spirit of cooperation that had allowed all Member States to agree on a future work program which included activities on all five agenda topics. The Delegation looked forward to continuing discussions with the spirit of cooperation in future meetings.

93. The Delegation of Japan, speaking in its national capacity, welcomed the fact that the Committee had shared a lot of information on various issues through the discussions at its twenty-fifth and twenty-sixth sessions and that the SCP had been able to reach an agreement on its future work at the twenty-sixth session. The Delegation expressed its appreciation to the Secretariat for its efforts and to the Member States for their flexibility. The Delegation noted that quality of patents and confidentiality of communications between clients and their patent advisers were the most important topics. The Delegation expressed its belief that the quality of patents should be considered from a practical perspective, taking into account the patent granting procedures, including search and examination practices and opposition procedures, which were the factors that determined the quality of patents. The Delegation further observed that many countries shared a common understanding that work sharing activities contributed to improving the quality of patents. In that regard, the Delegation looked forward to the sharing session on further examples and cases relating to assessment of inventing step as well as to the information exchange session on cooperation between patent offices in search and examination, which would be held at the upcoming session of the SCP. With respect to the confidentiality of communications between client and their patent advisors, the Delegation was of the view that allowing patent advisors to preserve confidentiality of their communications with the clients would support the reliability and stability of the IP system. In its opinion, that contributed to protecting the interests of all the relevant parties, whether in developed countries or in developing countries. The Delegation hoped that the issue would be continued to be discussed at the SCP so that the importance of protecting confidentiality of communications between clients and their patent advisers would be shared among Member States. In that context, the Delegation looked forward to the sharing session on the experiences of Member States in implementing the confidentiality of communication between clients and their patent advisors through national legislation, which would be held at the twenty-seventh session of the SCP. Furthermore, the Delegation expressed its strong belief that the SCP should continue discussing global patent issues. The Delegation expressed its commitment to its continued, positive contributions to the discussions within the SCP on the important patent issues.

94. The Delegation of Kenya aligned itself to the statement made by the Delegation of Senegal on behalf of the African Group. The Delegation stated that Kenya continued to update its IP laws and policies in order to conform to international standards with respect to quality of patents. The Delegation noted that, in May 2017, the patent law of Kenya had been amended to make the process of patent applications more efficient. Regarding a revocation and

invalidation of patents, the Delegation informed other delegates that a specialized industrial property tribunal had been strengthened and transformed to a mainstream judiciary in compliance with the new Kenyan constitution. With respect to exceptions and limitations to patent rights, the Delegation observed that Kenya's patent law contained all the appropriate provisions.

95. The Delegation of Ghana aligned itself with the statement made by the Delegation of Senegal on behalf of the African Group. The Delegation noted that it had been following with keen interest the five issues under the discussions of the SCP, particularly in the area of patents and health, the discussion on which had resulted from the absence of making full use of the patent flexibilities to impact positively on access to medicines. The Delegation stated that Ghana had reviewed its Patents Act to fully incorporate the flexibilities in order to benefit the country by improving access to medicines. In addition, it welcomed the sharing session in which Member States would share experiences and best practices on inventive steps as well as on search and examination, which were aimed at improving the quality of patents in respective offices of Member States.

96. The Delegation of Brazil thanked the Secretariat for its continued efforts to accommodate a wide array of viewpoints expressed by Member States. The Delegation considered that it was not surprising that the discussions within the SCP had attracted a substantial interest from Member States as well as the larger public. In its opinion, the SCP dealt with matters of great complexity and importance, which had economic and social impacts with direct relevance to key issues of innovation as well as public health and welfare. The Delegation fully supported the balanced work program of the SCP and its implementation, which had taken into account the input from Member States of different regions and levels of development. The Delegation noted that, thanks to the able guidance of the SCP Chair, the Committee had been able to reach an agreement on future work at its twenty-sixth session, which included many items to which Brazil intended to bring its positive contribution. The Delegation looked forward to the work plan of the SCP regarding patents and health. The Delegation observed that providing access to essential medicines at affordable prices without compromising incentives to innovation was a delicate balancing act. In its view, it was a worthy goal for every country, without exception. The Delegation further stated that assuring access to medicines required solid, creative and sound actions from policy makers. It therefore was of the view that the issues concerning patents and health were central issues to be discussed by members, considering the wide and complex governmental actions required to guarantee its effectiveness. The Delegation further noted that transparency of patent information, patent status and data were also essential for reducing transaction costs of the system, improving general welfare and facilitating procurement of medicines. In that regard, the Delegation referred to a presentation by the Medicines Patent Pool (MPP) on its Medicines Patents and Licenses Database (MedsPaL) to be made during the twenty-seventh session of the SCP. The Delegation further stated that another subject that Brazil would follow with interest was that of exceptions and limitations to the patent rights, on which Brazil had made a proposal that had been discussed for years. The Delegation believed that drafting a non-exhaustive reference document would be useful for the Member States. The Delegation reaffirmed its belief in the full compatibility of those efforts to balancing patent systems with the UN Sustainable Development Goals (SDGs).

97. The Delegation of Gabon thanked the Chair for the able way in which he conducted the proceedings, and for the Secretariat for all the documents that had been made available to the delegates. The Delegation of Gabon associated itself with the statement made by the Delegation of Senegal on behalf of the African Group. It underscored the particular importance for the Delegation of the issues relating to patents and health. The Delegation observed that that was a matter of life and death for many developing countries. The Delegation expressed its belief that having an information sharing session in Geneva within the framework of the forthcoming session of the SCP was undoubtedly something to be welcomed. Nonetheless, the Delegation was of the opinion that training had to be focused on researchers. In its opinion, the

SCP had to focus on what could be done in the field where there would be the greatest impact on development.

98. The Delegation of India reaffirmed its earlier position that patent monopoly rights were granted for the disclosure of invention to the public and to foster innovation, industrial development and boost national economies. The Delegation believed that the fundamental objective of a patent office was to rightfully grant and improve the quality of the patent system as a whole, which would infuse the protection of public interest by filtering out frivolous patents. The Delegation firmly believed that the objective was to ensure that the global IP regime encouraged innovation and promoted the transfer of technology by fully utilizing the flexibilities provided under the TRIPS Agreement. The Delegation was of the view that the quality of examination needed to be improved substantially in conformity with the national policy objectives of a country so that the high social cost of granting patents to insignificant improvements could be eliminated to a large extent. The Delegation stated that the Indian patent office had recently joined WIPO CASE, which allowed access to the search and examination reports of various countries, and that very soon, India was going to become a depositing office which would facilitate access of Indian patent documents, including search and examination reports. The Delegation was pleased to inform that they would sign the agreement with WIPO on October 5, 2017, which would enable access to such information. However, the Delegation firmly believed that signing those agreements should not be made mandatory, and it should be left to individual members to take such a decision as per their national objectives. On the issue of transfer of technology, the Delegation felt that there should be a balance in the rights and obligations, and that patent protection should be based on technological content which was disclosed in patent specifications. The Delegation further observed that rights holders should promote the transfer of technology at the earliest, especially in the area of public health and nutrition, so as to promote socio-economic and technological development. The Delegation was of the view that ever-greening policies allowing patenting of incremental innovations without substantial improvement had an adverse impact on the delivery of health care services. The Delegation recalled that the UN Secretary General's High Level Panel on Access to Medicines (UNHLP) had specifically explored the policy incoherence between IP, trade and human rights and had made a number of recommendations in that regard. The Delegation noted that some of those recommendations were specifically addressed to WIPO and were directly relevant to the sharing sessions on patents and health in the SCP. The Delegation hoped to see a discussion on those recommendations in the SCP.

99. The Delegation of Chile welcomed the work carried out by the SCP on many different and balanced issues which allowed it to operate over the last few years, with an emphasis on technical dialogue and expert dialogue on the different points on the agenda. The Delegation stressed that the discussions on exceptions and limitations as well as on health was essential for IP and a balance was necessary to progress with that work. The Delegation stressed that the most recent discussions held in the international fora showed a renewed interest on those issues among Member States, particularly on the difficulties faced in ensuring the availability of medicines in a sustainable way. The Delegation felt that the completion of studies by WIPO, at the request of the Member States, was of special interest. The Delegation welcomed all aspects which required a greater transparency in granting patents, especially on medicines and medical devices. The Delegation welcomed the disclosure of the patents related to medicines by the pharmaceutical companies and relating them to International Nonproprietary Names (INN). The Delegation wished to see the best way of examining and using that information so as to avoid duplication of work and to have an active role as a national patent office. The Delegation hoped that that issue would be continued to be examined by the Committee in a coordinated fashion, together with the efforts of Unitaid and the World Health Organization (WHO) and especially with MPP. The Delegation stated that Chile and its patent office had been active promoters of increasing the transparency of the whole system, particularly through public domain work and also with regard to signing an agreement with MPP for its MedsPaL database. The Delegation noted that that was a precursor step, and that they

were interested in examining the link between the MedsPaL database to the database that was launched on October 3, 2017. The Delegation noted that MedsPaL required patent offices to be responsible for the information provided, and stated that that question of responsibility needed to be clarified for that database. The Delegation also noted that one of the main measures of the Chilean IP strategy of 2016 - launched with the help of WIPO – was to develop a mechanism that would allow people to know whether or not there was a patent covering the medicines and whether or not those patents were granted and maintained. On the issue of technology transfer, the Delegation thanked the Secretariat for the exchange of information on transfer of technology and patents and in particular, with regard to sufficiency of disclosure and its effect on the transfer of technology. The Delegation felt that those exchanges of information would allow the SCP to have an impact on a key element which was to disseminate information to developing countries.

100. The Delegation of Canada was pleased to note that Member States successfully agreed to a future work plan at the end of the twenty-sixth session of the SCP. The Delegation hoped to see that its proposal for reviewing and summarizing existing high quality research examining the relationship between patent rights and public health in a factual manner would move forward and that favorable consideration would be given by Member States at the next session of the SCP in December. The Delegation reiterated its offer to engage with delegations intersessionally on that important matter.

101. The Delegation of Uganda expressed its full support to the statement made by the Delegation of Senegal on behalf of the African Group. The Delegation stated that it placed great importance to the work of the Committee, particularly on the agenda items “patents and health”, “exceptions and limitations to patent rights” and “transfer of technology”. Noting that the twenty-fifth session had failed to agree on future work, the Delegation expressed its contentment that the twenty-sixth session was success. The Delegation expressed its hope that the work of the Committee would continue to contribute meaningfully to the implementation of the relevant DA recommendations. The Delegation noted that the agenda of the following session of the SCP contained elements of the proposal of the African Group and the Development Agenda Group (DAG) on patents and health, which aimed at enhancing the capacity of the developing countries and LDCs to adapt their patent regimes to make full use of flexibilities to address public policy priorities related to public health. The Delegation further expressed its concern that there had been proposals from some Member States to expand the work of the Committee to non-IP related issues that affected access to medicines. In that regard, the Delegation stated that it was important that the SCP remained focused on the issues over which WIPO had a mandate. In conclusion, the Delegation underlined the importance of a shared, coordinated and cooperative international response to emerging global health challenges to public health. Therefore, the Delegation recommended WIPO to strengthen its cooperation with other UN agencies, particularly the World Trade Organization (WTO), WHO, the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Development Programme (UNDP), to support governments and strengthen the capacities of patent examiners at national and regional levels to apply rigorous public health sensitive standards of patentability criteria.

102. The Delegation of Trinidad and Tobago commended the Secretariat on the work done by the SCP over the past nineteen years. Taking into account the labyrinth of matters that the Committee’s work had advanced, the Delegation also commended the Committee for working through those complex issues and its attempts to attain a consensus. The Delegation looked forward to receiving elaborations on the current working documents and proposals for future work. The Delegation also looked forward to the preparation of the document on commonly used exceptions and limitations to patent rights by Member States as well as discussions on their effectiveness and issues of implementation. The Delegation looked forward to the discussions on work sharing programs, as they related to the efficiency of the search and examination processes. The Delegation awaited a common definition of the term “quality of

patents”, and fully supported the use of the questionnaire discussed at the twenty-sixth session of the SCP, which was aimed at gathering information from WIPO Member States in order to achieve such a common definition. The Delegation also looked forward to future discussions on the proposal made by the Delegation of Canada at the twenty-sixth session of the SCP with respect to the topic of “patents and health”. The Delegation expressed its hope that the end result of those deliberations should be the genesis of an enabling environment which would seek to foster and encourage a more confident use of the patent system. The Delegation assured the Chair that it would continue to be a keen supporter of the work of the Committee.

103. The Representative of KEI welcomed the conclusions of the twenty-sixth session of the SCP, which requested the Secretariat to supplement the study on the constraints faced by developing countries and LDCs in making full use of patent flexibilities and their impacts on the access to affordable essential medicines with inputs from members and observers of the SCP. The Representative also welcomed the Committee’s decision to invite MPP to make a presentation on its MedsPaL, and noted in particular the value of the annotations to patents the MPP provided on such issues as licensing and patent oppositions. The Representative further proposed WIPO to establish an instrument that would create reciprocal rights in government-funded inventions, so that the countries that were members of such an agreement would agree to the terms and modalities under which they could share access to such inventions. The Representative stated that examples of drugs impacted by such an agreement included Zinbryta for MS, Xtandi for prostate cancer, expensive treatments like Spinraza for rare diseases, new CART treatments for cancer, or new vaccines for the Zika virus. The Delegation further urged the SCP to schedule a presentation by experts on the legal basis and experience of States in permitting the non-voluntary use of patents on medical inventions as a limitation on the remedies available in Part III of the TRIPS Agreement, including specifically cases of running royalties for infringement of medical devices and diagnostic tests, and the export of those products outside of the WTO 31*bis* framework. The Representative stated that, in addition, the Secretariat should undertake a study which would provide information about all of the cases where non-voluntary use had been allowed as a limitation on remedies, including, for example, recent limitations on remedies for infringement of patents on medical diagnostic tests and medical devices in the United States of America, the use of competition law in Italy, compulsory licensing of medical patents in Germany, and the use and impact of compulsory licensing of patents on drugs for HIV, cancer and heart disease in developing countries. The Representative also suggested that the Secretariat address issues relating to transparency as it related to patent landscapes on biomedical inventions, including biologic drugs and vaccines, the litigation over patent validity and scope, the growing state practice of limiting the grant of injunctions when infringement occurred, and the economic aspects of drug development and commercialization, including the costs of research and development (R&D) and the prices and revenues of products, as well as the gaps in access for new drugs.

104. The Representative of the Third World Network (TWN) thanked Member States for reaching a consensus on the future work at the previous session of the SCP. The Representative wished to draw attention of the Member States and the Secretariat on UNCTAD’s Trade and Development Report 2017 which stated “[t]wo regulatory developments in the area of IPRs have played an important role in promoting this trend towards their strategic, rather than productive use: the excessive strengthening of patent protection, such as evergreening of patents, and the expansion of IP protection to cover newer areas”, such as business model patents. The Representative stated that, according to the Report, the practice of patent thickets and patent fencing led to expanded patent protection over entire technological domains and guaranteed continuing economic advantages to incumbent firms in technology sectors. The Representative stated that the situation called for an urgent relook in the approach of the Member States and the Secretariat as regards the work program on patents and health. The Representative was of the view that the SCP needed to discuss the cases of abuse of patents and experience of Member States to deal with such abuses. The Representative stated that, for instance, the United States of America, the Republic of Korea and China had initiated

proceedings against QUALCOMM. The Representative continued that the Korean authorities had imposed a fine of 853 million US dollars for an abusive practice; and that the Chinese authorities had imposed 994 million US dollars as a penalty. The Representative stressed that it was important for the SCP to discuss those measures. The Representative recalled his statement made at the previous session of the SCP where he referred to the UNHLP recommendations which stated that WIPO, in collaboration with stakeholders to develop an international easily searchable database which should include: (i) standard international common names for biological products; (ii) INN for products, either as known at the time of application or after the granting of a patent; and (iii) dates of grant and expiry. The Representative noted that the purpose of the database was to promote access to medicines and not to create barriers. The Representative continued that they had concerns to promote the IFPMA and WIPO initiative on developing a database as a tool for the procurement of medicines, as such an approach would raise concerns of conflict of interest. The Representative stated that the primary interest, the promotion of access to medicines, could be compromised due to the secondary interests, which was commercial interests involving the patent and its potential use to block procurement of generic medicines. The Representative concluded that, therefore, protecting a database as a procurement tool should be avoided, and that Member States should discuss the issue in the upcoming session of the SCP and suggest measures to avoid conflict of interest.

105. The WIPO General Assembly took note of the "Report of the Standing Committee on the Law of Patents" (document WO/GA/49/6).

ITEM 15 OF THE CONSOLIDATED AGENDA

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

106. Discussions were based on document WO/GA/49/7.

107. The Delegation of Senegal, speaking on behalf of the African Group, took note of the report on the work of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and thanked the Chair and Vice-Chairs of the SCT, as well as the Secretariat, for their work. Considering that the work of the SCT was very important, the Group applauded the progress made since the last session of the Assemblies, in particular the holding of the information session on geographical indications. The Group underlined the importance of building IP systems for industrial designs, trademarks and geographical indications, stressing the fact that this was especially important for the countries in the region. Recognizing the prominence of the protection of icon, graphical user interface (GUI) and typeface/type font designs, especially in developing countries, the Group regretted the absence of discussions on the draft Design Law Treaty (DLT), following the decision taken by the Assemblies last year.

108. The Delegation of Georgia, speaking on behalf of the CEBS Group, recognized the importance of the work carried out by the SCT and took note of the report of the SCT. In relation to industrial designs, the Group regretted the inability to reach agreement on the convening of a diplomatic conference for the adoption of the DLT, the text of which had already been finalized a few years ago. In relation to geographical indications, the Group said that the work of the SCT should in no way interpret or review the provisions of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications. The Group was in favor of exchanging experiences and practices on the different geographical indication protection systems, as well as on the protection of geographical indications on the Internet and of geographical indications and country names in the Domain Name System (DNS). Expressing its appreciation for the efforts of the SCT to keep Member States informed of the developments

in the DNS, the Group looked forward to the possible extension of the WIPO Uniform Domain Name Dispute Resolution Policy (UDRP) to geographical indications.

109. The Delegation of Brazil thanked the Chair and the Vice-chairs of the SCT, as well as the Secretariat, for their work and considered that the discussions in the SCT covered very important issues. Noting the need to protect geographical indications against any type of abuse, the Delegation expressed its support for the protection of geographical indications and for the discussions on this item during the next session of the SCT.

110. The Delegation of Iran (Islamic Republic of) took note of the report, indicating that it attached great significance to IP as an important catalyst for social, economic and technological development. Expressing its attachment to an equitable and fair international IP regime, which not only promoted innovation, but at the same time was sensitive to the diverse developmental needs of Member States, the Delegation believed that the SCT should work towards maintaining the equilibrium between the interests of right holders and the larger public welfare. Concerning geographical indications, the Delegation expressed the view that the work of the SCT should not in any way interpret or review the provisions of the Lisbon Agreement or the Geneva Act of the Lisbon Agreement. Concerning the protection of country names, the Delegation looked forward to progressing towards a consensus, noting that the study undertaken by WIPO indicated that there was a need for stronger protection of country names against registration or use as trademarks. The Delegation encouraged international action to prevent the undue registration or use of country names as trademarks and held the view that the SCT should accelerate its work in that regard. Finally, the Delegation highlighted the importance for trademark offices and examiners to have access to the List of Recommended International Nonproprietary Names for Pharmaceutical Substances (INNs), to ensure that trademarks similar to INNs were not registered.

111. The Delegation of the European Union, speaking on behalf of the European Union and its member states, acknowledged the importance of the work carried out by the SCT, pointing out that it was important, not only to hold fruitful discussions in all key areas covered, but also to reach clear and tangible results with a positive impact on stakeholders. Concerning the protection of country names against registration and use as trademarks, the European Union and its member states shared the view that it was important to confer effective protection to country names. However, means to secure appropriate protection existed and the work carried out in the SCT had not revealed the need for additional action in that regard. At that stage, the Delegation remained convinced that no more needed to be done than awareness-raising, which should focus in particular on the availability of grounds for refusal or invalidation of trademarks containing country names and on the possibility of addressing the relevant issues in examination manuals. The Delegation noted a course for further work on that issue and remained open to paving the way for a greater transparency of national practices. In order to further explore the implications of diverging solutions currently in place and to mutually explain the various rationales, the Delegation proposed that the SCT consider organizing an information session dedicated to country names. The European Union and its member states appreciated the valuable updates regarding trademark related aspects of the DNS, as well as INNs. In relation to industrial designs, the Delegation recalled that the convening of a diplomatic conference for the adoption of the DLT had been on the table for a long time, but had reached a deadlock of political nature. The European Union and its member states reiterated the position that the DLT should not be discussed in the SCT and that the WIPO General Assembly should decide on the convening of a diplomatic conference for the adoption of the DLT on the basis of a draft text that could lead to consensus. With respect to geographical indications, the European Union and its member states considered that the future work program on this question should be based on the mandate of the SCT and ought not revise or interpret the Lisbon Agreement or the Geneva Act, nor duplicate any work completed by the SCT or covered by existing treaties and IP systems. The program should focus on acute topics which were relevant to stakeholders, such as geographical indications on the Internet and in the DNS. The

Delegation looked forward to continuing work in all three key areas of the SCT, as well as to reaching tangible results on the DLT.

112. The Delegation of the Russian Federation said that it had followed with great interest the discussions on the agenda items of the SCT, expressing particular interest in the possibility for national Offices to use the online resources available at the WHO concerning INNs. Noting that the SCT had worked on the question of Digital Access Service for Priority Documents (DAS) relating to trademarks and industrial designs, the Delegation believed that such a service could also be used in that matter. Expressing its satisfaction with the results of the information session on geographical indications, the Delegation welcomed the organization of a similar information session on industrial designs during the next session of the SCT, considering that this would be useful for the exchange of information among countries. The Delegation informed the WIPO General Assembly of the fact that the Russian Federation was drafting a bill to afford legal protection through registration for industrial designs.

113. The Delegation of Switzerland thanked other delegations for their cooperation in the framework of the SCT and welcomed the information session to be held on the practices of offices and users' experiences with regard to GUI, icon and typeface/type font designs, which would provide the SCT with useful information for future discussions. The Delegation also indicated that in the area of trademarks, Switzerland attached great importance to the protection of country names, pointing out that the experiences shared during the thirty seventh session of the SCT had shown that country names could be monopolized by private entities. With no harmonized rules at the international level, the risk that a third party could take ownership of a country name without consent of the concerned State was real. In particular in the DNS, the Delegation expressed concern for the protection of country names in the framework of the second wave of granting of generic top-level domains (gTLDs). Recalling that the rules for granting those new gTLDs were currently being discussed by the Internet Corporation for Assigned Names and Numbers (ICANN), the Delegation feared that the rules concerning the protection of geographical names, which had prevailed in the first extension in 2012, could be changed. The information session on geographical indications organized during SCT/37 had highlighted this problematic issue. Switzerland was willing to continue discussions on the protection of country names in the SCT and hoped that a consensus could be reached. In that framework, it believed that the protection on the Internet of country names, as well as of geographical names and other distinctive signs, in particular geographical indications, needed to be taken into account. The Delegation called for constructive discussions on national geographical indication protection systems on the basis of the proposal presented by the Chair at the last meeting of the SCT and believed that a consensus could be reached at the next meeting.

114. The Delegation of Jamaica noted that the work of the SCT was critical and said that, after the recent hurricanes, the only thing left to the countries in the region was their names. The Delegation considered that country names were a strong economic reality on which persons and small enterprises relied in the production of goods, contributing significantly to the gross domestic product. However, there were gaps in the existing trademark laws that facilitated the registration of country names. The Delegation called for a conclusion of the discussions that would recognize the importance of the protection of country names, hoping for an international instrument in that matter. The Delegation, while thanking other Member States for the work that had been done, expressed its support for the statement made by the Delegation of Switzerland.

115. The Delegation of Senegal, speaking in its national capacity, recalled that since 2009, proposals within the SCT recommended a more effective, consistent and appropriate protection for country names, since these were as important as flags and armorial bearings, already protected by the Paris Convention for the Protection of Industrial Property. The Delegation believed that the protection of country names was extremely important and was open to any form of negotiation so that a solution could be found. With respect to industrial designs, the

Delegation said that, according to the Bangui Agreement, which was the national IP law in Senegal, GUIs were protected both as industrial designs, if they consisted of graphic images, and as trademarks, if they distinguished goods or services to which they applied. The Delegation called for the continuation of the discussions on this matter, in order to allow other countries to provide their replies to the Questionnaire on GUI, icon and face/type font designs.

116. The Representative of the TWN said that the experience of countries such as Australia in the de-branding of tobacco products showed that transnational cooperation could threaten measures to protect public health. Pointing out that de-branding was also discussed as a measure to promote public policies in the context of medicines, food products and products targeting children, the Representative called upon Member States to initiate discussions on trademarks and their implication on public policies. The Representative believed that trademark issues relating to country names were important, as registration or use of country names as trademarks would result in misappropriation. It was therefore important that Member States addressed this issue effectively within the SCT. Concerning the proposal on design protection for new technological designs, the Representative considered that more information was needed regarding the implications of such protection, before any decision with regard to norm setting in this area, as mandated by the WIPO DA. The Representative said that it was important that the SCT discussed the role of trademarks in value chains and its implications for development, in order to enable Member States to come up with effective policy responses.

117. The Delegation of Barbados welcomed the report on the work of the SCT expressed its support for the statement made by the Delegation of Jamaica and noted the support from the Delegation of Switzerland in encouraging deliberations on the protection of country names. The Delegation strongly believed that there should be further deliberations in this regard, with a view to reaching an international instrument for the consistent protection of country names against their registration as trademarks.

118. The Delegation of Iceland emphasized the importance of continued discussions on country names and other issues already outlined by the Delegations of Jamaica and Switzerland. The Delegation considered that, as demonstrated by Iceland within the SCT, cases showed that the current legal framework had not proven to be sufficient to protect country names from solicitation. The Delegation therefore called for the continuation of that discussion thoroughly.

119. The WIPO General Assembly took note of the “Report on the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT)” (document WO/GA/49/7).

ITEM 16 OF THE CONSOLIDATED AGENDA

MATTERS CONCERNING THE CONVENING OF A DIPLOMATIC CONFERENCE FOR THE ADOPTION OF A DESIGN LAW TREATY (DLT)

120. Discussions were based on document WO/GA/49/8.

121. The Delegation of Japan, speaking on behalf of Group B, thanked the Chair of the SCT and the Secretariat for their hard work over the past year. The Delegation recalled the long history of the issue under discussion and expressed its regret that considerations falling outside of the treaty's scope were currently preventing users from benefitting from a simplification of formalities in the industrial design system. The Delegation also recalled that, at the 2014 WIPO General Assembly, Group B had stood ready to agree on sending document SCT/31/2 to a diplomatic conference in 2015. The Delegation reminded the Assembly that, at the thirty-fifth session of the SCT, Group B had also been ready to join a consensus to send the

Chair's proposal to a diplomatic conference, subject to the deletion of Note 3.08, as a framework for negotiation for the diplomatic conference. Longing for the restoration of a negotiation environment, based on the Chair's proposal, the Delegation expressed the hope that parties would find a mutually satisfactory solution, with the ultimate goal of finalizing the texts without a reference to a disclosure requirement.

122. The Delegation of Senegal, speaking on behalf of the African Group, thanked the Secretariat for document WO/GA/49/8 and the Chair and Vice-Chairs of the SCT for their tireless efforts. The Delegation reiterated its position on the issue of the DLT, which required, as any adoption of an international treaty, an inclusive approach, taking into account all parties' legitimate concerns. The Delegation recalled that, as stated at previous sessions of the SCT, it recognized the significant role of designs in innovation and in the IP system, as evidenced by the increasing number of design applications. The Delegation expressed its regret that the issue had not been discussed within the SCT over the past year, in accordance with the decision of the 2016 WIPO General Assembly, although negotiations at the thirty-seventh session of the SCT would have enabled delegations to reach a consensus on the outstanding issues. The Delegation stressed the importance of technical assistance to allow offices of LDCs and developing countries to fully benefit from the implementation of the DLT, taking account of the different levels of development of those countries. Underlining the significance of the disclosure requirement issue because of its close link with genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs), the Delegation recalled that the African Group, supported by several delegations, wished to include in the DLT, as an optional element, a disclosure requirement of those elements. In its view, such inclusion would provide contracting parties with room for manoeuvre since, as regards the registration of designs, the DLT limited the possibilities for Member States by not allowing them to require the disclosure of GRs, TK and TCEs incorporated in a design subject of an application. Considering that the proposed requirement would only be optional and left to the discretion of each contracting party according to its national context, the Delegation stated that it did not understand the hesitation aroused by its proposal, aiming at including a political flexibility in the formalities. Regretting the lack of agreement on those issues, the Delegation announced that it stayed in the logic of the 2015 WIPO General Assembly decision, which had stated that a diplomatic conference would only be convened where those elements of the texts would be finalized. In that context, the Delegation reiterated its proposal to include a disclosure requirement, under Article 3 of the DLT, as well as the need for a binding provision on technical assistance. Pointing out that its objective was not to prevent or delay negotiations on the possibility to convene a diplomatic conference, the Delegation invited delegations to appropriately consider the expressed concerns. Expecting fruitful discussions, the Delegation expressed its readiness to constructively contribute to the debate on the issues and its hope to find an appropriate solution to the concerns.

123. The Delegation of Costa Rica, speaking on behalf of GRULAC, thanked the Chair and Vice-Chairs of the SCT and expressed the hope to find a solution on the pending issues pertaining to the DLT text. Pointing out that technical assistance and capacity building, at the national level, were vitally important to allow effective cooperation for LDCs and developing countries, the Delegation lent its support to the inclusion in the treaty of a provision on technical assistance and capacity building. Underscoring its constructive position, the Delegation expressed its readiness to actively participate in the negotiations and the hope that the diplomatic conference be convened next year.

124. The Delegation of Iran (Islamic Republic of), while recognizing the endeavors of Member States over the past years in developing draft articles to be submitted to a diplomatic conference for the adoption of the DLT, highlighted the current gap in Member States' positions, in particular as to technical assistance and a mandatory disclosure requirement. The Delegation reiterated its position concerning the necessity to include those items in the treaty, as legally binding provisions. In its view, such inclusion within the main body of the instrument

would facilitate the accession of developing countries and LDCs to the new treaty and would help them to make effective use of it. Bearing in mind the decision of the 2016 WIPO General Assembly and expressing its readiness to engage in constructive discussions to overcome all remaining differences between members of WIPO, the Delegation looked forward to reaching consensus that would satisfy all Member States.

125. The Delegation of the European Union, speaking on behalf of the European Union and its member states, expressed regret that final progress on the DLT had been hindered for several years, while the basic text of the DLT had been stable since 2014 and ripe for the convening of a diplomatic conference for the adoption of the treaty. In view of the benefits of harmonizing and simplifying design registration procedures for users and members of WIPO across the spectrum of development, the Delegation considered that the current delay in the adoption of the treaty could be viewed as unreasonable and as a challenge to the credibility of WIPO's normative agenda. The Delegation said that it expected the WIPO General Assembly to make the decision to convene a diplomatic conference for the adoption of the DLT a priority. The Delegation added that, before taking such decision, a solution should be found to the two remaining open issues, namely the African Group's proposal for the inclusion of a disclosure requirement in Article 3 of the treaty and the specific nature of the instrument on technical assistance and capacity building to assist developing countries in implementing the treaty. As regards the proposal to include a mandatory disclosure requirement, the Delegation considered that it would not be possible to have a diplomatic conference if the question of inclusion of a disclosure requirement remained on the table. Convinced that such a requirement was not relevant to industrial designs, the Delegation believed that its inclusion in the treaty would work against the common aim of simplifying and harmonizing design registration procedures. In its opinion, the proposal moved the text further away from the common objective of simplification and alignment of design registration formalities. Instead of inserting it in the DLT, where it did not belong, the Delegation indicated that the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) was the appropriate forum to discuss the underlying issues in relation to a disclosure requirement and that it was looking forward to engaging on the subject in the IGC framework. The Delegation therefore called on the proponents to withdraw their proposal for a disclosure requirement in the DLT, considered as extraneous to the common purpose and without a place in the DLT. Concerning technical assistance, the Delegation indicated that it continued to support the effective delivery of technical assistance and capacity building in implementing the DLT and remained flexible with regard to the options on the table, noting that whichever form was agreed should be geared towards the requirements of end users. As the two outstanding matters had been discussed extensively and repeatedly in the SCT, without resolution, the Delegation believed that the WIPO General Assembly had a responsibility to take a decision on those issues and on the DLT future. Regretting that no decision to convene a diplomatic conference had been made at the 2016 WIPO General Assembly, the Delegation felt that it was mainly due to insufficient time devoted to the topic last year. For that reason, the Delegation invited the Chair of the WIPO General Assembly to treat the DLT as a matter of clear priority at the current year's Assembly and to dedicate enough time and resources to secure a successful outcome. At the same time, the Delegation invited all parties to engage in constructive discussions towards a successful conclusion of the DLT. In its opinion, such outcome would serve the interests of designers across the globe, contribute to a positive working atmosphere and promote cooperative spirit during the WIPO General Assembly.

126. The Delegation of Georgia, speaking on behalf of the CEBS Group, thanked the Chair of the SCT for his tireless efforts in facilitating the discussion on the issue. Noting the inability to reach an agreement on convening a diplomatic conference on the text of the treaty, which had been finalized long ago, the Delegation reminded the Assembly of its flexibility showed during years of negotiations and of its engagement in constructive discussions to find a mutually acceptable compromise for the convening of a diplomatic conference on the DLT. Expressing disappointment as to the issue, mostly because of the delay preventing users from benefitting

from a simplification of formalities in the industrial design system, the Delegation considered that such delay was unreasonable and questioned the credibility of WIPO's normative agenda. The Delegation reiterated its strong position against a mandatory disclosure requirement, viewed as irrelevant to industrial designs. Pointing out that such requirement rather constituted an element pertaining to the patent law system, the Delegation held the view - repeatedly stressed during previous deliberations - that the requirement was against simplifying current design registration procedures. Expressing the view that the IGC was the appropriate forum to discuss issues relating to GRs, TK and TCEs, the Delegation considered that it was needless to discuss the DLT within the SCT and expressed its readiness to engage in formal and informal discussions during the WIPO General Assembly with the aim to convene a diplomatic conference.

127. The Delegation of China stated that the DLT played a proactive role in countries to improve industrial design protection and to promote the development of relevant industries. Looking forward to an early conclusion of the treaty, the Delegation expressed the hope that parties would demonstrate a more positive attitude, pay utmost attention to each other's position and show understanding, so as to lay the ground for a diplomatic conference.

128. The Delegation of China, speaking on behalf of Brazil, Russian Federation, India, China and South Africa (BRICS), lent its support to the inclusion of an article relating to technical assistance and rooted for a successful resolution of discussions relating to disclosure of GRs, TK and TCEs. The Delegation added that it also expressed support for an early convening of a diplomatic conference for the DLT.

129. The Delegation of Ethiopia praised the Chair and Vice-Chairs of the SCT, aligned itself with the statement made by the Delegation of Senegal on behalf of the African Group. Given the practice in Ethiopia concerning the registration and protection of designs, the Delegation felt the need for the disclosure of the origin or source incorporated in an industrial design. In its opinion, such requirement would provide policy space to countries like Ethiopia and would be in line with the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore, to which Ethiopia wished to accede. The Delegation further highlighted the importance of including a provision on technical assistance in the DLT.

130. The Delegation of Brazil aligned itself with the statements made by the Delegation of China, on behalf of BRICS, and by the Delegation of Costa Rica, on behalf of GRULAC, and stated that the provisions on technical assistance should provide clear guidance and legal certainty to WIPO members, so that cooperation activities be carried out by the Secretariat in close dialogue with recipient countries. In its opinion, those provisions would facilitate the future accession of developing countries, which was a significant matter in line with the DA Recommendations. For those reasons, the Delegation held the view that the provisions would be better reflected in the form of an article, reinforcing the fact that the adaptation of national legal systems and practices to the DLT procedures could require technical assistance from WIPO. In that regard, the Delegation recalled that the Patent Cooperation Treaty (PCT), the most successful WIPO treaty of the last 50 years, contained a full article on technical assistance. The Delegation expressed the hope that an agreement on the outstanding issues be reached, allowing the approval of a diplomatic conference by the WIPO General Assembly.

131. The Delegation of Morocco aligned itself with the statement by the Delegation of Senegal, on behalf of the African Group and reiterated its attachment to the adoption of a Design Law Treaty, which should take into account the needs and requirements of beneficiaries, in order to allow users to fully benefit from the treaty's provisions. In its opinion, the DLT undoubtedly remained an instrument aiming at simplifying and streamlining applications and registration procedures, enabling right holders to obtain protection more easily. The Delegation pointed out that, in view of its stimulating character for creativity for designers throughout the world, the draft DLT would also constitute an economical tool and an added value, likely to contribute to the

achievement of development objectives of developing countries and LDCs. Reiterating its position regarding the necessity to incorporate technical assistance and capacity building within the draft DLT, the Delegation highlighted the significance of the matter for developing countries and LDCs and the need to achieve a reliable and balanced instrument. Considering that the draft DLT stood at the required level of maturity to convene a diplomatic conference, the Delegation held the opinion that it would require flexibility from Member States to overcome persistent divergent views, taking due account of all concerns, with a participatory and inclusive approach. Underlining the fact that such approach was the prerequisite to benefit from the diversity of proposals put forward, the Delegation expressed the hope that the WIPO General Assembly would succeed in convening a diplomatic conference.

132. The Delegation of the Russian Federation aligned itself with the statement made by the Delegation of China on behalf of BRICS and expressed the view that convening a diplomatic conference in 2018 - at a venue and time to be determined by the Preparatory Committee - was appropriate. Regretting the constant postponement of a decision on the issue, the Delegation stated that the adoption of the DLT would ensure a more foreseeable, user-friendly and reliable protection for industrial designs and would avoid loss of rights. The Delegation recognized the importance of technical assistance for developing countries to enable them to implement the provisions of the treaty after its signature. Stressing the need to bring together approaches taken by developed and developing countries within the SCT to bridge the gap as to technical assistance, the Delegation indicated that finding common ground and consensus were essential for the adoption of the treaty.

133. The Delegation of South Africa aligned itself with the statements by the Delegation of Senegal, on behalf of the African Group, and by the Delegation of China, on behalf of BRICS and expressed once again its willingness to move towards the convening of a diplomatic conference, once the two remaining issues on disclosure and technical assistance had been finalized. Referring to the statements it had made over the last few years, in favor of the inclusion of a disclosure requirement in Article 3 of the treaty, the Delegation held the view that the proposed provision aimed at allowing countries having provisions for the protection of GRs, TK and TCEs in their national design laws to comply with the filing requirements, in terms of such national legislation, as well as with international obligations when joining the DLT. Underlining the importance of the issue, taking into account the fact that Article 3 of the draft treaty contained a closed list of requirements for design registrations, the Delegation believed that it would be extremely difficult for South Africa to sign a treaty which would not contain such a provision. For the Delegation, members of WIPO, while engaging in discussions, should be mindful that disclosure was the bedrock of the modern IP system and an integral contributor to the *quid pro quo* principle. The Delegation further said that it would not only contribute to enhancing transparency and the integrity of the IP system, but it would also play a key role in national, regional and grass root innovation ecosystems, particularly as the world transitioned into a knowledge-based economy. Observing that ordinary people - men and women in South Africa, Africa and elsewhere in the world - engaged in the innovative exploitation of the abundance of GRs, TK and TCEs at their disposal to make traditional designs, and that that had become the means of survival for millions of people, the Delegation believed that careful and appropriate protection was required to foster further socio-economic advancement. In view of the arguments put forward for the disclosure of GRs, TK and TCEs in the draft DLT, the Delegation stressed the need for political will and understanding. Expressing its readiness to continue to negotiate in good faith, the Delegation said that it expected the same from the other delegations.

134. The Delegation of Indonesia pointed out that the implementation of the DLT should be accompanied by enhanced capacity by Member States to carry out the obligations arising from the treaty and stated that the provision on technical assistance had to be reflected in an article in the main body of the proposed DLT. Noting that countries should have the flexibility to include, as part of the design eligibility criteria in their jurisdiction, components that were

deemed important by them, the Delegation supported the principle of disclosure of source that had an impact on the appearance of an industrial design. The Delegation stated that Indonesia was ready to engage with the other groups to find a solution to the outstanding issues concerning Articles 3 and 22 of the draft DLT.

135. The Delegation of Chile echoed the intervention made by the Delegation of Costa Rica on behalf of GRULAC and said that the text of the DLT was sufficiently advanced. The Delegation considered that reaching an agreement on a provision on technical assistance was not only important for the future implementation of the DLT, but would also ensure the success of the treaty among members of WIPO. The Delegation hoped that the WIPO General Assembly would decide to convene a diplomatic conference in 2018.

136. The Delegation of Zimbabwe aligned itself with the statement made by the Delegation of Senegal on behalf of the African Group and said that it had great consideration for technical assistance and disclosure because industrial designs tended to overlap with other forms of IP, including arts and crafts. The Delegation pointed out that most of those crafts belonged to particular sections of society, which might not have the knowledge or the capacity to negotiate benefit sharing. Therefore, the Delegation considered that it would be reasonable that the DLT incorporate a disclosure requirement. The Delegation expressed its support for the position of the African Group to include provisions on technical assistance and disclosure in the treaty.

137. The Delegation of Botswana aligned itself with the statement made by the Delegation of Senegal on behalf of the African Group and said that it would be important to finalize the Design Law Treaty and to convene a diplomatic conference. The Delegation indicated, however, that the issue of mandatory disclosure was critical and was to be addressed before proceeding to the diplomatic conference. The Delegation was of the view that leaving out this aspect would compromise the protection of industrial designs, since industrial designs inspired by traditional practices would run the risk of being invalidated on the basis of a misappropriation of the rights of indigenous people. Finally, the Delegation invited delegations to consider the inclusion of an article on technical assistance in the DLT.

138. The Delegation of the United States of America aligned itself with the statement made by the Delegation of Japan on behalf of Group B and indicated that it had long supported the work to simplify the procedures and formalities for industrial design applicants pursuing protection in jurisdictions around the world. Recalling that design rights aided designers in commercializing their designs, the Delegation said that finding common best practices in those procedures helped design innovators, especially as individual designers navigated the complex filing procedures for pursuing protection for their designs. The Delegation noted a longstanding and widespread agreement in the SCT on the core provisions of the DLT and was therefore optimistic that those widely agreed provisions would be moved forward for the benefit of design applicants across the globe, especially small and medium-sized enterprises (SMEs) and individual designers who eagerly awaited their implementation. The Delegation supported the technical assistance that was necessary to implement the provisions of the DLT, pointing out that the United States of America were a frequent provider of technical assistance. However, consistent with its longstanding position on this topic, the Delegation said that it could not support the convening of a diplomatic conference with a precondition for an article on technical assistance. The Delegation believed that technical assistance was handled most effectively through a resolution, as it had been done in analogous treaties. In relation to the African Group's proposal concerning the inclusion of a disclosure requirement, the Delegation recalled that extensive time and discussion had been dedicated to finding a solution to the question and that the Chair had offered various proposals aimed at moving the draft DLT towards a diplomatic conference. The Delegation acknowledged that unfortunately the demanders of those new provisions were still not in a position to support moving forward to a diplomatic conference without the inclusion of the disclosure requirement provision. After extensive discussions, the Delegation continued to have significant concerns regarding the disclosure

requirement provisions. Specifically, the Delegation was concerned that those provisions lacked relation to the subject matter of industrial designs. For example, GRs were not a matter arising in the context of evaluating the ornamental appearance of articles of manufacture before IP Offices. Similarly, the origin of a wood used to make a chair was irrelevant to the design of that chair. The Delegation was concerned that those provisions also appeared to go well beyond the aim of the DLT, which was a draft agreement on procedural formalities in the context of industrial designs. Finally, the Delegation remained concerned as to the fact that those provisions undermined the goal of the DLT, which was that of simplifying and streamlining for the benefit of applicants, including SMEs and individual designers. The Delegation said that, instead of streamlining and simplifying design application procedures, the disclosure requirements added significant uncertainty and burdens on industrial design applicants. Such burdens would be felt mostly by SMEs and individual designers, who were the least likely applicants to have sophisticated legal counsel to fulfil the proposed additional requirements. The Delegation pointed out that many delegations throughout the discussions had highlighted that the African Group's disclosure provisions were contradictory to the DLT aim and undermined the commonly agreed objective of simplifying industrial design application procedures. Many other delegations had recognized that those procedures would hurt rather than help applicants, particularly SMEs. For those reasons, the Delegation stated that it could not support a DLT text that included those provisions, which significantly undermined the DLT to the detriment of design applicants.

139. The Delegation of Malaysia expressed its support for the statement made by the Delegation of Indonesia, particularly with respect to the principle of disclosure of source and the inclusion of technical assistance and capacity building in the main body of the proposed DLT. With respect to technical assistance and capacity building, the Delegation considered that the implementation of the DLT must be accompanied by an enhanced capacity of Member States to carry out the obligations arising from the new treaty. Concerning the principle of disclosure, the Delegation said that countries should have the flexibility to include components that were deemed important to complete the formalities for protection of industrial designs within their jurisdiction. The Delegation said that it stood ready to engage constructively with other members on the outstanding issues and to bridge the position gaps pertaining to Article 3 and Article 22 of the draft DLT.

140. The Delegation of Uganda expressed its support for the statement delivered by the Delegation of Senegal on behalf of the African Group. The Delegation indicated that it could generally support the convening of a diplomatic conference for the DLT. However, the Delegation was of the view that the draft text was not balanced and did not consider the interests of a broad section of the WIPO membership. Recalling Recommendation 15 of the WIPO DA, the Delegation said that the disclosure requirement and the substantive article on technical assistance were issues that would guarantee that the treaty be inclusive and take into account the different levels of development. The Delegation indicated that it was ready to engage constructively in discussions on all outstanding issues and remained confident about building consensus.

141. The Delegation of Sudan aligned itself with the statement made by the Delegation of Senegal, on behalf of the African Group. The Delegation believed that it was necessary to mention technical assistance and a disclosure requirement in the text of the DLT, so that all could benefit from a fair DLT.

142. The Delegation of Cameroon considered that a fair sharing of IP benefits was needed, expressed its support for the statement made by the Delegation of Senegal, on behalf of the African Group.

143. The Delegation of India aligned itself with the statement made by the Delegation of China on behalf of BRICS, and expressed its support for an early convening of a diplomatic conference for the DLT.

144. The Representative of TWN said that it was unfortunate that the Member States had not discussed the DLT during the last two sessions of the SCT, irrespective of the fact that proposals had been tabled years ago and had the support of a number of Member States. The Representative said that this went against the principle of an inclusive and participatory process as mandated under the WIPO DA. Expressing the view that there had been no clear mandate from the governing body to start the norm-setting activity related to the DLT, the Representative called upon Member States to respect the decision of the 2015 WIPO General Assembly and to take the discussions to the next two sessions of the SCT in order to reach a consensus.

145. The Representative of the International Federation of Intellectual Property Attorneys (FICPI) indicated that it had been involved in the work of the SCT on the harmonization of filing requirements for design registrations since 2005. The Representative specified that in 2008, FICPI had submitted to the SCT a list of key design issues, in which they had identified that the key formal issue for users was the ability to file one set of drawings for all applications globally. The Representative noted that this was still a key issue for users and hoped that it could be positively dealt with by any treaty resulting from a diplomatic conference. The Representative encouraged Member States to move the discussions on the harmonization of the formal requirements for the filing of designs from the SCT to a diplomatic conference.

146. The Representative of Health and Environment Program (HEP) said that the disclosure requirement was necessary, so that all could know where the design came from, and that technical assistance should be clearly and formally included in the treaty in a binding way.

147. The Chair noted the statements made by delegations, suggested holding informal consultations and asked the Chair of the SCT, to facilitate those consultations.

148. The Chair informed the plenary that considerable time had been devoted to discussions on the issue during the General Assembly and that a number of iterations of texts tabled by the Chair of the SCT had been discussed during informal consultations. He indicated that, despite the feeling that a consensual decision had been very close, the different proposals had finally not gathered consensus. The Chair proposed the following decision paragraph, which was adopted:

149. The WIPO General Assembly decided that, at its next session in 2018, it will continue considering the convening of a diplomatic conference on the Design Law Treaty, to take place at the end of the first half of 2019.

ITEM 17 OF THE CONSOLIDATED AGENDA

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

150. Discussions were based on documents WO/GA/49/9, WO/GA/49/10 and WO/GA/49/16.

151. The Secretariat stated that there were three documents for consideration under the agenda item namely, the "Report of the Committee on Development and Intellectual Property (CDIP) and the Review of the Implementation of the Development Agenda Recommendations" (document WO/GA/49/9), the "Decision on the Committee on Development and Intellectual Property (CDIP) Related Matters" (document WO/GA/49/10) and the

“Contribution of the Relevant WIPO Bodies to the Implementation of the Respective Development Agenda Recommendations” (document WO/GA/49/16). Concerning the first document, the Secretariat stated that the CDIP met twice since the 48th session of the WIPO General Assembly, held in October 2016. It recalled that the eighteenth session and the nineteenth session of the Committee took place from October 31 to November 4, 2016 and in May of the current year, respectively. As agreed by the Committee, the document contained the Summary by the Chair of those two sessions. It also contained the eighth Report by the Director General on the Implementation of the DA, discussed by the Committee at its nineteenth session. It further stated that a number of important activities related to the DA took place during that period such as: the Report on the Independent Review of the Implementation of the DA Recommendations; the Proposal of the African Group Concerning the Biennial Organization of an International Conference on Intellectual Property and Development; discussions on the way to address the SDGs in future CDIP session; the Roundtable on Technical Assistance and Capacity Building: Sharing Experiences, Tools and Methodologies, held on May 12, 2017. The second document addressed the implementation of the CDIP mandate and the implementation of the Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities (hereinafter “the Coordination Mechanisms”). The previous WIPO General Assembly allowed the CDIP to continue the discussion on these two matters during its eighteenth and nineteenth sessions and to report back to the current WIPO General Assembly. The CDIP at its nineteenth session agreed to submit a proposed decision, contained in document WO/GA/49/10, paragraph 3, for consideration and adoption by the WIPO General Assembly. The third document also addressed the implementation of the Coordination Mechanisms. It included the Report on the IGC, document WO/GA/49/11, paragraphs 13 and 14. The WIPO General Assembly was requested to take note of the information contained in document WO/GA/49/16 and forward it to the CDIP.

152. The Delegation of Senegal, speaking on behalf of the African Group, highlighted the tangible progress made by the CDIP on its agenda items. This would allow developing and LDCs, particularly in Africa, to use the best potential of their IP systems. The African Group played an active role in the CDIP and enriched the discussions on elements such as technical assistance, capacity building, and transfer of technology. The Group commended Member States for approving the Project on IP Management and Transfer of Technology: Promoting the Effective Use of IP in Developing Countries, LDCs and Countries with Economies in Transition Proposed by South Africa (document CDIP/19/11 Rev.). It would allow the use of technology transfer as a tool for creativity. It also referred to its Proposal Concerning the Biennial Organization of an International Conference on Intellectual Property and Development (document CDIP/19/7), to facilitate discussion on new issues and raise awareness among Member States on the catalyst role of IP in benefit of development. A revised proposal would be presented to the twentieth session of the CDIP which would include comments made by different delegations. Moreover, the Group stressed that the proposed decision on CDIP related matters contained in document WO/GA/49/10 would allow the CDIP to fulfill its mandate. It highlighted Member States political willingness and collective awareness on the importance of the SDGs implementation and in that context, on the socio-economic dimension of IP. Therefore, the Group encouraged WIPO to work as part of the UN System in the achievement of the SDGs. The inclusion of a new agenda item in the CDIP would allow Member States to discuss those important issues.

153. The Delegation of Estonia, speaking on behalf of the European Union and its member states, acknowledged the progress made over the past eight years in implementing and mainstreaming the DA. The Group welcomed the 34 projects developed and executed with the aim of operationalizing the DA Recommendations. Whilst there were a number of recommendations, which the EU and its member states fully supported, there were also those which required further discussion. Nevertheless, the Group remained committed to working towards the implementation of the DA Recommendations in an appropriate and consensus driven manner and expected progress in this regard. The European Union and its member

states reiterated their commitment to achieving the SDGs. They saw the potential of WIPO to contribute to their achievement with its specific know-how. However, in order to ensure that work was effective and result oriented, WIPO should focus on the SDGs of greatest relevance to its work and general aim of promoting IP protection. The European Union and its member states acknowledged the vast amount of work of the CDIP. They remained committed to contributing to further progress in all areas relevant to the Committee, bearing in mind the objectives of the Organization, as set out in its establishing the Convention namely, to promote the protection of IP throughout the world through cooperation among States (reflected in article 3).

154. The Delegation of Costa Rica, speaking on behalf of GRULAC, stated that the CDIP was essential for developing countries. The development dimension should be fully reflected in WIPO's work. The Group referred to the SDGs and stated that they reflected the efforts of the international community to establish a plan of action for the following 15 years. In view of the 1974 Agreement between the UN and WIPO and the Resolution A/RES/70/1, WIPO should be actively involved in the discussions related to the SDGs. The Group believed that the implementation of the 2030 Development Agenda was of great importance and it would devote great attention to WIPO's contributions to its implementation.

155. The Delegation of China underlined the positive results achieved by the CDIP the previous year. It considered that the proposed decision approved at the nineteenth session of the CDIP (contained in document WO/GA/49/10, paragraph 3) fully reflected the discussion of the CDIP on the matter. The text was balanced and in line with the interests of all parties. The new agenda item on IP and Development would provide a good space for discussing the third pillar of the CDIP mandate. Therefore, the Delegation fully supported the adoption of the decision text. The CDIP should also continue its work on technical assistance in the area of cooperation for development, based on the six-point proposal contained in Appendix I of the Summary by the Chair of its seventeenth session. The implementation of the said proposal required participation of all Member States. The Delegation expressed its commitment to continue collaborating in a comprehensive and open manner in this regard.

156. The Delegation of Georgia, speaking on behalf of the CEBS, recognized the importance of the work carried out by the CDIP and considered that the DA had become an integral part of WIPO's work. The Group appreciated WIPO's efforts to implement the 45 DA Recommendations and to discuss IP and Development issues. It remained committed to working towards implementing the DA Recommendations in an appropriate manner and recognized progress made in that regard. Finally, the Group supported WIPO activities linked to the implementation of the SDGs.

157. The Delegation of Japan, speaking on behalf of Group B, stated that WIPO should continue leading a balanced and effective international IP system that enabled innovation and creativity for the benefit of all. In that context, it recalled WIPO's objectives to promote the protection on IP throughout the world. The Group noted that development considerations were an integral part of the Organization's work in order for Member States to use IP as a positive tool for development. The Group stated that the debates on the CDIP mandate and the implementation of the Coordination Mechanisms concluded at the nineteenth session of the Committee. It appreciated the efforts of the Committee to reach a compromise outcome on that long standing issue.

158. The Delegation of the United States of America aligned itself with the statements made by the Delegation of Japan on behalf of Group B. The Delegation noted that the CDIP had made significant progress since it was created in 2007. It had approved 34 projects implementing 34 DA Recommendations with a budget of over 30 million Swiss francs. WIPO made great progress in implementing the DA Recommendations. Its activities had a positive impact in the countries benefitting from them. WIPO should continue its efforts to promote the positive role of

IP for development by enabling access to patent information, supporting Technology and Innovation Support Centers (TISCs), national IP academies, national IP offices, SMEs and creative industries. It should also build capacities in the areas of IP protection, management and commercialization in developing countries, LDCs and countries in transition. The Delegation commended the last session of the CDIP for completing the discussion on the Coordination Mechanisms. The Delegation expected the adoption by the WIPO General Assembly of the decision contained in document WO/GA/49/10.

159. The Delegation of the Russian Federation noted the great achievements made in implementing the DA Recommendations. The DA as a whole was intrinsically linked to the work done by the substantive WIPO bodies. That was confirmed by many positive assessments from independent experts who have looked at the results of various DA projects. A number of those projects were successfully implemented and remained useful in practice. The Delegation supported WIPO's efforts to intensify practical work on various DA projects and to improve its implementation methodologies. The Delegation further supported the decision on CDIP related matters contained in document WO/GA/49/10.

160. The Delegation of Iran (Islamic Republic of) stated that development was an important issue for all Member States. It was undisputed that development considerations formed an integral part of WIPO's work. The effective implementation of the DA Recommendations, including their mainstreaming into WIPO's substantive programs, was a key priority to be pursued. It also referred to the Independent Review of the implementation of the DA Recommendations. In that regard, the Delegation appreciated that the CDIP adopted most of the recommendations contained in the said Review. It was ready to continue discussing on the remaining recommendations and to negotiate constructively the implementation strategies for the adopted recommendations. The Delegation further highlighted the importance of WIPO in contributing to the implementation of the SDGs and its associated targets. It was important that WIPO retained its constituency and remained engaged with other relevant international organizations in implementing the SDGs. The Delegation welcomed the decision made by the CDIP at its nineteenth session to establish a new agenda item on IP and Development. After 10 years of discussions on DA Recommendations, such a decision would allow the CDIP to move to a higher level of debate to address its mandate. It further stressed that the WIPO technical assistance webpage was a tool which could benefit all countries, in particular developing countries and LDCs. In that regard, the Delegation looked forward to seeing the improvement of the WIPO technical assistance webpage, in accordance to the proposal adopted by the Committee, as contained in the Summary by the Chair, Appendix I of the seventeenth session.

161. The Delegation of South Africa aligned itself with the statement delivered by the Delegation of Senegal on behalf of the African Group. Life in the developed and developing world was inextricably linked requiring creative and innovative solutions for fostering sustainable growth, securing jobs and increasing competitive abilities. South Africa is a country with a population of 55 million where most people were inherently innovative, searching for local solutions to local problems using innovation in all its forms. There was no doubt that IP in all its forms, whether registered or not, was an important catalyst in innovation. In 2017, South Africa celebrated the 10th anniversary of the adoption of the WIPO DA. This adoption confirmed that IP and its associated rights functioned in a global economy which was dependent on full inclusive participation by all nations. The recent Independent Review on the implementation of the DA Recommendations had reflected the progress made. However, there was continued lack of effective coordination, monitoring, reporting, evaluation and mainstreaming of the implementation of the WIPO DA Recommendations especially with regard to the role of the PBC and the Committee on WIPO Standards (CWS). The Delegation commended all delegations for their support on the approved Project on IP Management and Transfer of Technology: Promoting the Effective Use of IP in Developing Countries, LDCs and Countries with Economies in Transition Proposed by South Africa (document CDIP/19/11 Rev.), and WIPO for the

inclusion of the project in the proposed Program and Budget for 2018/19 biennium (document WO/PBC/27/8). The Delegation looked forward to seeing the recommendations coming out of the project as envisaged in Article 10 (titled technology transfer) of the 1974 Agreement between the UN and WIPO. The Delegation concluded by encouraging all delegations to ensure that the mandate of the CDIP was effectively applied, thereby creating a platform for a meaningful, technical and practical discussion on IP and development.

162. The Delegation of Malaysia reiterated the holistic and indivisible nature of the SDGs. All 17 SDGs should be considered as a whole in all development discussions within WIPO. Shortlisting only specific SDGs as relevant to WIPO's work would prevent the holistic approach towards addressing the realization of SDGs aim. The Delegation emphasized the importance of aligning the work of WIPO to all SDGs and reiterated the need for a standing agenda item on their implementation within the CDIP. The Delegation of Malaysia commended the CDIP on the inclusion of a standing agenda item on IP and Development. It looked forward to concrete discussions under that item. As a specialized UN agency, WIPO programs should reflect and consider development related activities with other UN agencies.

163. The Delegation of Nigeria aligned itself with the statement of the African Group. It placed high priority in the work of the CDIP as it offered a platform for monitoring and evaluating WIPO's implementation on issues in relation to IP and Development. The CDIP also provided technical assistance and capacity building to Member States in their quest to improve their IP regimes. It noted and commended the successful Roundtable on Technical Assistance and Capacity Building: Sharing Experiences, Tools and Methodologies, held on May 12, 2017. The Delegation highlighted that the event provided helpful information on Member States experiences, clarity on WIPO's engagement mechanisms in the field, as well as useful ideas for future activities. The Delegation reiterated its support for the institution of a periodic International Conference on IP and Development. This would enhance the dialogue between stakeholders towards generating ideas to enrich the work of the CDIP. The Delegation recalled that Nigeria was one of the four beneficiary countries for the DA project on Cooperation on Development and IP Rights Education and Professional Training with Judicial Training Institutions in Developing and Least Developed Countries (document CDIP/16/7 Rev.2). It reported that the implementation of the project had commenced in Nigeria and progress was made in terms of the preliminary engagements. Nigeria placed high priority on this project, to enhance the application of the IP rules by judicial offices in order to facilitate fair, efficient and well informed decisions concerning IP disputes in a larger context of protection and enforcement of rights. The Delegation expressed its willingness to continuing its participation in the CDIP and maintaining its cooperation with WIPO on areas of common interest.

164. The Delegation of Brazil mentioned that the CDIP followed the footsteps of the DA. In that regard, the implementation of the DA Recommendations was essential for the Organization. The principle of fair remuneration for the creations of the human spirit was connected to the imperative of ensuring the right to health, culture, knowledge, information and education. This contributed to more innovation and growth. After years of discussions, the CDIP agreed on the creation of a permanent agenda item on IP and Development. It would facilitate the implementation of the third pillar of the CDIP, giving greater transparency to the discussions and allowing Member States to increase their accountability and monitoring of initiatives of the Secretariat. It also reinforced the need for WIPO to take action regarding its role in implementing the SDGs. The Delegation believed that, as a specialized UN agency, WIPO should have a substantive contribution to the SDGs implementation. The CDIP mandate brought the topic under its scope but without prejudice to their discussion in other WIPO Committees. The Delegation was also of the view that the implementation of the SDGs should be reflected in WIPO's Program and Budget. The first report on WIPO's contribution to the implementation on the SDGs was circulated at the last session of the CDIP. It was a step in the right direction for bringing the SDGs to the center of the discussions in WIPO. Nevertheless, more details were required on the nature of the Secretariat's contribution to the UN Inter-Agency

work. Member States needed to know more about the assistance that WIPO could provide in that regard, to enable them to formulate proper requests. The Delegation further noted that WIPO should not restrict its role to the SDG 9. IP was a vast subject. The importance of innovation was undisputed. Brazil was taking important efforts to foster innovation as a key to overcoming the economic crisis. In that context, WIPO could and must provide relevant inputs as regards all remaining SDGs. The integrated approach was the linchpin of the 2030 Development Agenda and should lead to a crosscutting understanding of the significant inter-linkages across the 17 SDGs and its associated targets. WIPO must play an active role to support their implementation. The Delegation expected CDIP to spur the appropriate and comprehensive treatment the topic deserved in WIPO. It would benefit all its Members. The Delegation therefore urged Member States to join and engage in the discussion in that debate.

165. The Delegation of Mexico noted the importance of the CDIP as a platform for presenting proposals and projects that addressed IP and development. The Delegation acknowledged the positive work done in WIPO since the DA was adopted to ensure that IP issues were used for the benefit of countries' development. WIPO's work was successful in transmitting the message that IP permitted creativity and innovation in societies. The Delegation stated that the DA as well as the SDGs should continue to be operationalized in WIPO's work, and it encouraged WIPO to continue in that direction.

166. The Delegation of Canada expressed its commitment to continue supporting the work of the CDIP. It fully favored the exchange of best practices when dealing with technical assistance activities. It noted that around 21 per cent of WIPO's budget for the biennium was dedicated to development related activities. Furthermore, it appreciated that more details would be provided in future reports on cooperation activities with other agencies. It also underscored the agreement reached as regards the WIPO General Assembly decision on CDIP related matters and the standing agenda item on IP and Development.

167. The Delegation of Ecuador supported the statement delivered by the Delegation of Costa Rica on behalf of GRULAC. It pointed out the achievements made by the CDIP in its eighteenth and nineteenth sessions. Development was a key and crosscutting matter that needed to guide the work of Member States. Therefore, it reiterated its support to the initiatives that promoted the full implementation of the 45 DA Recommendations. It also stated that the CDIP provided an ideal but not exclusive forum for considering progress on the Organization's efforts to support Member States in the SDGs attainment. In that respect, Ecuador has approved its National Development Plan for 2017-2021 integrating the SDGs issue. Furthermore, it referred to the Independent Review of the implementation of the DA Recommendations. It highlighted the implementation of some recommendations emanating from the said Review and urged Member States to continue to pool their efforts in order to implement the remaining recommendations. The Delegation also welcomed the decision adopted by the CDIP at its last session to establish a standing agenda item on IP and Development. This demonstrated the commitment of the Member States to meet the CDIP mandate. Finally, the Delegation referred to the implementation of the project on IP, Tourism and Culture: Supporting Development Objectives and Promoting Cultural Heritage in Egypt and Other Developing Countries (document CDIP/15/7 Rev.). It underlined the common efforts by the government, private sector, local communities and state agencies for a successful implementation of that project.

168. The Delegation of Chile supported the statement delivered by the Delegation of Costa Rica on behalf of GRULAC. It recalled that Chile was a strong advocate for adopting the DA 10 years ago. It commended the efforts deployed by the CDIP to implement the 45 DA Recommendations and encouraged it to continue in that direction through initiatives, projects, specific activities and the mainstreaming of a number of principles within WIPO's work. It referred to the experience of Chile as a beneficiary of a number of DA projects and to its cooperation with other countries in the Latin American and the Caribbean region. It recognized

the comprehensive and indivisible nature of the SDGs and stressed the importance of including them within the work of the Organization. The Delegation welcomed the new standing agenda item on IP and Development and considered it the most suitable framework for dealing with crosscutting issues such as the SDGs.

169. The Delegation of Ethiopia aligned itself with the statement made by the Delegation of Senegal on behalf of the African Group. WIPO should continue to focus on providing technical assistance to Member States in the development and implementation of their national IP and innovation strategies. Moreover, it underscored that in the current year the World IP Day explored how innovation improved lives. The Delegation also referred to the organization of different meetings conducted on development related issues. This reflected WIPO's engagement to the attainment of the SDGs. Finally, the Delegation reiterated its commitment to work closely with WIPO to achieve Ethiopia's developmental objectives.

170. The Delegation of Colombia supported the statement delivered by the Delegation of Costa Rica on behalf of GRULAC. It considered the implementation of the DA Recommendations vital within WIPO's activities. The SDGs should be addressed by the Organization and other UN agencies with a comprehensive and indivisible approach, avoiding focusing on certain SDG to the detriment of others. The Delegation supported the projects which promoted activities in developing countries and LDCs. It referred to the Compilation of Member States Inputs on Activities Related to Technology Transfer (document CDIP/18/6 Rev.). In the framework of WIPO's technical assistance, the Delegation called on the CDIP to continue encouraging initiatives related to IP management and technology and knowledge transfer, among others. It underscored the study undertaken in Colombia as part of the Project on IP and Socio – Economic Development – Phase II (document CDIP/14/7), launched in September of the current year. This was a very useful exercise to build evidence-based public policies and to focus resources on using IP as a tool for achieving the SDGs. The study would be also an important input for the development of the national IP policy in the context of the Colombian National Development Plan 2018-2022.

171. The Delegation of Japan, speaking in its national capacity, attached great importance to development activities including technical assistance and capacity building. It mentioned the Japan Funds-In-Trust (FIT) administered by WIPO. Those funds served to support industrial property in Africa and LDCs, as well as in the Asia Pacific region. The FIT activities included the organization of regional, sub regional and national seminars and workshops, training courses, expert advisory missions and long-term fellowship programs. Through these channels, Japan had shared its experience in the use of IP to create wealth, enhance competitiveness and develop the economy. It considered that improving the IP system will drive the self-sustained economic progress of developing countries as well as contribute to the global economic growth.

172. The Delegation of Argentina aligned itself with the statement delivered by the Delegation of Costa Rica on behalf of GRULAC. It welcomed the progress made within the CDIP over the past year, in particular as regards the agreement reached on some long standing issues. This would allow the CDIP to focus on issues specifically related to IP and development. Likewise, it reiterated its commitment to the effective implementation of the DA Recommendations. It recognized and supported the efforts made by the Secretariat to incorporate development issues within the activities of the Organization. Development should continue to be a priority for WIPO. In that context, WIPO's technical assistance and capacity building activities were vital to facilitate the use of IP as a tool for development and innovation. Finally, it referred to the universal and indivisible nature of SDGs and to the important role WIPO could and should play for their attainment.

173. The Delegation of the Republic of Korea underlined that cooperation on development was essential in the IP field. In that context, it noted the budget devoted since 2004 to Korea FIT administered by WIPO. It called on the CDIP to frame its discussions on issues which could

lead to fruitful results and to bear in mind the ultimate objectives of the CDIP establishment and the DA adoption. Finally, it recalled that around 21 per cent of WIPO's budget is allocated to development activities.

174. The Delegation of Cuba stressed on the importance of the implementation of the DA Recommendations. It underlined the need to meet the CDIP's mandate on establishing a permanent dialogue on IP and development. It also stated that the DA should be instrumental to the achievement of the SDGs.

175. The Delegation of Indonesia pointed out the universal and indivisible character of the SDGs. Therefore, considering only a number of SDGs as relevant for the work of the Organization would not enable its active participation and contribution towards their achievement. Moreover, the Delegation called on the CDIP to consider the proposal for the establishment of a standing agenda item on SDGs. The Delegation commended the CDIP for its agreement on the inclusion of a standing agenda item on IP and Development, at its nineteenth session. WIPO would also be able to promote the full use of IP to address SDGs within that new standing agenda item.

176. The Representative of TWN noted the importance of the DA for WIPO as a UN specialized agency. The relevance of DA in WIPO had increased with the adoption of the SDGs. It also referred to the detrimental effects that excessive IP protection and enforcement had in countries' development and in their public interests. Therefore, WIPO should recalibrate its approach in that regard. It highlighted the inclusion of a CDIP standing agenda item on IP and Development after a long period of discussion. Moreover, it listed some elements that in its view were the weaknesses of the DA implementation. Firstly, that after the completion of CDIP projects, there was no mechanism to incorporate their outcomes into WIPO's activities. Secondly, that there was little mainstreaming of the development-oriented approach in WIPO's activities. Thirdly, that the current governance structure of WIPO slowed down the mainstreaming of the DA. On this latter point, it considered that a reform of WIPO's governance structure was critical for the effective implementation of the DA.

177. The WIPO General Assembly:

- (a) took note of the "Report on the Committee on Development and Intellectual Property (CDIP) and Review of the Implementation of the Development Agenda Recommendations" (document WO/GA/49/9)."
- (b) with respect to document WO/GA/49/10 entitled "Decision on the Committee on Development and Intellectual Property (CDIP) Related Matters":
 - (i) recalled its 2007 decision on Establishing the Committee on Development and Intellectual Property, contained in document A/43/13 Rev., and its decision on the Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities, contained in document WO/GA/39/7, and reaffirmed its commitment to their full implementation;
 - (ii) reaffirmed the principles contained in document WO/GA/39/7, Annex II;
 - (iii) reaffirmed the right of every Member State to express their views in all WIPO Committees;
 - (iv) took note of the conclusion of the debates that took place on the issues contained in the document CDIP/18/10; and

(v) decided to add new agenda item to the CDIP agenda, named IP and development to discuss IP and development-related issues as agreed by the Committee, as well as those decided by the General Assembly;

(c) took note of the information contained in the “Contribution of the Relevant WIPO Bodies to the Implementation of the Respective Development Agenda Recommendations” (document WO/GA/49/16); and forwarded to the CDIP the report referred in that document.”

ITEM 18 OF THE CONSOLIDATED AGENDA

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

178. Discussions were based on documents WO/GA/49/11, WO/GA/49/17, WO/GA/49/18, WO/GA/49/18 Add. and WO/GA/49/19.

179. The Secretariat stated that the WIPO General Assembly in October 2015 had renewed the mandate of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) for the 2016/2017 biennium, and agreed on a work program for the IGC. Pursuant to that mandate, the IGC had met three times between January 2016 and September 2016 to discuss the subject of GRs (IGCs 29 and 30) and the subject of TK (IGC 31). A factual report on those three sessions had been provided to the WIPO General Assembly in 2016. Since the WIPO General Assembly in 2016, the IGC had met three times to further discuss the subject of TK (IGC 32), and to discuss the subject of TCEs (IGCs 33 and 34). The results of its work on TK and TCEs were annexed as Annexes A and B to document WO/GA/49/11. The result of the IGC’s work on GRs was also annexed as Annex C to the document. In accordance with the work program, the last session within the current biennium, which was IGC 34 and which had taken place in July 2017, had taken stock of the progress made and made a recommendation to the 2017 WIPO General Assembly. The IGC had agreed that progress had been made, but that more work needed to be done. Affirming the importance of the IGC, it had recommended that the WIPO General Assembly in 2017 decide that the IGC should continue its work during the 2018/2019 biennium and that the Assembly decide on a mandate and a work program. The IGC’s positive recommendation had been “without prejudice to the elements of the mandate to be approved by the General Assembly”. Pursuant to the IGC’s mandate, since the WIPO General Assembly in 2016, two seminars had also been organized to build regional and cross-regional knowledge and consensus on issues related to IP and TK and TCEs, with a focus on unresolved issues. Document WO/GA/49/11 also contained a record of interventions made on the contribution of the IGC to the implementation of the DA Recommendations.

180. The Delegation of Senegal, speaking on behalf of the African Group, took note of the report on the IGC contained in document WO/GA/49/11 and thanked the Secretariat for having prepared it. It also thanked the IGC Chair and Vice-Chairs, as well as the facilitators, for their tireless efforts and their professionalism. It recalled the strong interest the Group had on the work of the IGC, which was extremely important. The IGC needed to speed up its work in order to fill the international legal vacuum and to satisfy the need of developing countries, LDCs and beneficiaries to protect their precious resources in a balanced and effective way. The mandate and work program adopted in 2015 by the WIPO General Assembly for the 2016/2017 biennium allowed the IGC to undertake some very interesting and comprehensive work on GRs, TK and TCEs, to make considerable progress in cleaning up the draft texts, and to speed up its work in order to overcome the remaining divergences. Six sessions of the IGC in this framework enabled it to go much further with some very fruitful discussions. In accordance with the

aforementioned mandate, the 2017 WIPO General Assembly was invited to take stock of progress made and decide on whether to convene a diplomatic conference or continue negotiations. The Group noted that the IGC had been given the responsibility of deciding on the establishment of one or more expert groups. Given the prospects for the IGC, the Group considered that it would be appropriate to adopt a strong mandate taking into account the DA Recommendations, recognizing the different levels of maturity of the three different texts, and acknowledging that progress had been made. It was necessary to carry out “text-based negotiations” and conduct intersessional work, as well as set up a preparatory committee for convening a diplomatic conference. The mandate should not exclude the idea of transforming the IGC into a standing committee in order to ensure its permanence. The mandate should also be accompanied by an ambitious work program for the IGC, indicating a clearly defined timeframe that could bring a tangible outcome, in particular one or more legally binding instruments which would ensure the balanced and effective protection of GRs, TK and TCEs. In that perspective, the Group had decided to submit the proposal contained in document WO/GA/49/17. It noted that the proposal was being submitted for a second time after having been initially submitted during the informal consultations at IGC 34. That proposal had now been submitted formally two months before in order to enhance transparency and show good faith. Recognizing the different levels of maturity of the three texts relating to GRs, TK and TCEs, the proposal requested the convening of a diplomatic conference in the first quarter of 2019 to conclude and adopt a legally binding instrument that would ensure the effective and balanced protection of GRs, without prejudice to the IGC’s work on TK and TCEs. The proposal underscored the general principle of the need and usefulness of intersessional work and proposed to establish an Expert Intersessional Working Group with facilitators, five representatives of each WIPO regional group and two representatives each from the European Union and the Indigenous Caucus. The proposed work program contained three sessions of the Expert Intersessional Working Group with three sessions of the IGC in 2018, as well as a meeting of a Preparatory Committee for a Diplomatic Conference on GRs and a diplomatic conference to be held in the first quarter of 2019. The Committee would report on its progress to the 2018 WIPO General Assembly, which would take stock of the progress also made on TK and TCEs. The Expert Intersessional Working Group would have its meetings in February, May and September of 2018, before each session of the IGC, to allow it to report the results of its work to the IGC. The Group hoped that all Member States would support its proposal, so that the IGC could explore an innovative way of moving forward its work in a very precise and carefully prepared way. The Group thanked Member States who had already indicated support for its proposal. It was looking forward to the document to be submitted by the facilitators and welcomed their efforts.

181. The Delegation of Tajikistan, speaking on behalf of CACEEC Group, thanked the IGC Chair for the work done in making progress. It supported the renewal of the mandate of the IGC for the next biennium. It noted the progress made in recent years and acknowledged that the issue of the protection of GRs, TK and TCEs was a burning issue. The CACEEC Group stood ready to play a constructive part in moving forward to achieve a balanced decision on this matter.

182. The Delegation of Indonesia, speaking on behalf of the Like-Minded Countries (LMCs), pointed out that the IGC had completed its work at the conclusion of IGC 34. In accordance with that mandate, the IGC had submitted to the 2017 WIPO General Assembly the results of its work on an international legal instrument(s) relating to IP, which would ensure the balanced and effective protection of GRs, TK and TCEs. The WIPO General Assembly in 2017 would take stock of progress made and decide on whether to convene a diplomatic conference or continue negotiations. It would also consider the need for additional meetings taking account of the budgetary process. In accordance with the mandate, the IGC might also consider the conversion of the IGC into a Standing Committee and, if so agreed, make a recommendation in that regard to the WIPO General Assembly. It highlighted that IGC 34 had recommended to the WIPO General Assembly a renewal of the mandate. It hoped that the WIPO General Assembly

would be able to come up with a guide for the future work of the IGC building on the significant progress made under the current mandate, which was reflected in the working documents. The three working documents reflected a focus on the IP system. Flexibilities, constructive spirit and practicality had been shown. Expectations in relation to the scope of protection relating to TK and TCEs had been narrowed, aided by the introduction of a more practical “tiered approach”. There had been a shift towards framework documents which established a set of standards or mechanisms which provided flexibility for implementation at the domestic level. Based on all of the progress made, it believed that the WIPO General Assembly should be able to deliver a mandate and work program that outlined priorities and key deliverables or outcomes for future work. Taking into account the different nature of the three equally important subject matters, as well as taking into account the different perspectives on the levels of maturity among the three working documents, discussions on future work should consider the question between parallel and incremental approaches, while also safeguarding the work on all three subject matters. It emphasized the urgent need to prevent the misuse and misappropriation of GRs and associated TK. It believed that a legally binding instrument could prevent and tackle transnational problems through a full compliance mechanism. Taking note of the progress made on the protection of GRs, the text provided clear options for Member States to consider. The text included a mandatory disclosure requirement. Only two or three issues needed to be resolved at a political level. The technical work had been done, and it was time to take the text forward and show political commitment. One text was ready for a decision, but there was still work that needed to be done on the other two texts. The normative agenda to conclude a legally binding instrument(s) could not be stalled without plausible and strong reasons. It was not possible to undo the process since 2001 when the IGC was established, and to ignore the progress made through the text-based negotiations since 2010. It fully and strongly supported the proposal submitted by the Delegation of Senegal, on behalf of the African Group, on the work program for the mandate of the IGC in the 2018/2019 biennium and hoped for a mutually acceptable outcome based on said proposal. It stressed that the text-based negotiations on GRS, TK and TCEs should be continued.

183. The Delegation of Georgia, speaking on behalf of the CEBS Group, took note of the report and welcomed the discussions in the IGC under the current mandate where some progress was observable. During the last IGC sessions, discussions on the core issues of the balanced and effective protection of GRs, TK and TCEs had started. Nevertheless, it was necessary to emphasize that common understanding had not been achieved on the central issues, such as objectives, subject matters and beneficiaries. The CEBS Group believed that a common understanding of the overarching objectives and on what was realistically achievable needed to be found, in order to have focused and productive text-based discussions. The CEBS Group continued to favor an evidence-based approach. It believed that lessons could be drawn from the experiences and the discussions that had taken place in various Member States while elaborating respective legislation protecting GRs, TK and TCEs at their national levels, and also from existing efforts for safeguarding them at the international level. The CEBS Group thanked the Delegation of the European Union, on behalf of the European Union and its member states, and the Delegation of Senegal, on behalf of the African Group, for putting forward proposals for the future IGC’s mandate. It also thanked the Delegations of the United States of America and Japan for tabling a new proposal. After closely following the discussions in the IGC during the last two years, the CEBS Group believed that there was a need for more focused discussions on the objectives of the IGC, and on the core and cross-cutting issues, before any meaningful progress could be made on the texts. For those reasons, the CEBS Group supported the proposal put forward by the Delegation of the European Union, on behalf of the European Union and its member states. It looked forward to engaging actively in the discussions on the work program for the IGC.

184. The Delegation of Japan, speaking on behalf of Group B, expressed its sincere appreciation to the IGC Chair, the Vice-Chairs and the facilitators for their tireless efforts. Group B recognized the importance of a balanced and effective protection of GRs, TK and

TCEs. It reiterated its firm belief that the protection relating to those subjects should be designed in a manner that supported innovation and creativity, and ensured legal certainty. It also recognized the importance of the subject for the beneficiaries. It encouraged the IGC to focus its efforts on reaching a common view on objectives and substance. Group B was hopeful that Member States would develop a common understanding on the core issues guided by an evidence-based approach, so that meaningful advancements could be achieved. That included studies and examples of national experiences, considering the practical implications, including domestic legislation and examples of protectable subject matter and subject matter that was not intended to be protected. It recognized the progress made in the last 18 months, and the recommendation of IGC 34 to the WIPO General Assembly that stated that the IGC should continue its work during the 2018/2019 biennium. It noted all Member States' contributions in line with the current mandate. Group B considered a broader range of possible outcomes to which one would arrive using an evidence-based approach, including during any text-based negotiations. It took note of the recent proposal made by the Delegation of the European Union, on behalf of the European Union and its member states, contained in document WO/GA/49/18, which contained elements that could be a good basis for discussions.

185. The Delegation of Costa Rica, speaking on behalf of GRULAC, thanked the Secretariat for the report, as well as the IGC Chair and the facilitators for their tireless efforts. GRULAC had been participating actively in the IGC. It believed that it was vital to remember that the starting point should be the work already done by the IGC in order to overcome the gaps that remained towards reaching a common understanding on the core issues. GRULAC believed that the renewal of the mandate should ensure sustainable progress with tangible outcomes. The mandate should keep the general objective of negotiations in order to reach an agreement on one or more legal instruments, without prejudging the nature of the outcome, relating to IP, which would ensure the effective and balanced protection of GRs, TK and TCEs. The new mandate must refer to text based negotiations, and it should not prejudice the outcome, including the possibility of convening a diplomatic conference. GRULAC was fully prepared to work constructively to try to achieve the desired outcome.

186. The Delegation of China welcomed the progress made during the last six IGC sessions, in particular the progress made on the GRs text. It underlined that moving forward towards legally binding instruments on GRs, TK and TCEs respectively would be of great significance to the establishment of a balanced and effective international IP system. The Delegation supported the orientations outlined in the proposal made by the Delegation of Senegal, on behalf of the African Group, in terms of expediting the IGC's work with a focus on narrowing existing gaps. It was willing to participate in discussions on a clear program for the next biennium.

187. The Delegation of the European Union, speaking on behalf of the European Union and its member states, recognized the importance of the work carried out by the IGC and acknowledged the recommendation of IGC 34 to the WIP General Assembly stating that the work of the IGC could continue during the 2018/2019 biennium, provided that the WIPO General Assembly could agree on a mandate. The Delegation noted that limited progress had been achieved in the 2016/2017 biennium in the three topics of GRs, TK and TCEs. It underlined that substantive differences on core issues between participants' positions remained and those differences continued to be reflected in gaps which lengthy and intensive discussions had not been able to considerably narrow. Based on the 2016/2017 biennium, the Delegation observed that advanced progress in the IGC was difficult to achieve without first reaching an agreement on the core issues, several of which were cross-cutting among the three topics and interlinked. The Delegation stressed that the IGC would need to first reach a common understanding of its objective, and to find central concepts regarding subject matter, beneficiaries and the meaning of protection/safeguarding, in order to achieve progress on the texts of the specific instruments. The Delegation indicated that unless those key issues were resolved, it was not possible to consider appropriate sanctions and exceptions and to have meaningful text-based negotiations. It emphasized that reaching a common ground on those core issues should be the aim and the

desired result of the work of the IGC during the next biennium. It did not support prioritization of one instrument as the topics were interlinked with several cross-cutting issues, and stated that progress could only be made on all three in parallel. The IGC should work on the issues of its objectives, definitions and subject matters across all three topics. It remained committed to achieving an efficient and reasonable work program for the IGC. The Delegation did not support the establishment of intersessional working groups, as it would harm the transparency of the negotiations and unduly limit the possibilities of Member States to participate in the discussions. It also underlined that any stock taking and decisions on further action should be done at the end of the mandate period, i.e. by the 2019 WIPO General Assembly, as the established practice of the IGC. It stressed the importance of evidence-based discussions and reliance on national experiences in the IGC, and it supported the conduct of seminars, colloquiums and expert panel discussions as an integral part of the IGC sessions to inform the discussions. The Delegation supported the updating of existing studies and called for the conduct of new studies on the important areas that had remained uncovered, and in particular, on the interaction of possible instruments on GRs, TK and TCEs with existing international and national instruments. The Delegation recalled its two proposals related to studies on TK and TCEs submitted during IGC 32 and IGC 33. It looked forward to participating actively in the discussions on a possible new mandate and work program for the IGC. The Delegation tabled a proposal for a new mandate for the 2018/2019 biennium to facilitate a successful outcome. It wished to highlight that its comprehensive and coherent proposal had real potential to achieve consensus and provide the framework for the IGC negotiations. It underlined the holistic approach of its proposal and the importance to take into account the common themes to GRs, TK and TCEs as well as their relationship with existing international and national legal regimes and instruments. To achieve the objectives of the IGC, progress should take place equally across all subjects as those three topics were interlinked in nature. The Delegation presented its proposal as a comprehensive solution encompassing GRs, TK and TCEs without prioritization and open to variable outcomes. It firmly believed that the IGC could not hold meaningful discussions unless the fundamental principles underlying its work had been agreed on. The Delegation proposed a working method for the next biennium composing of two stages where the IGC should first aim at reaching a common understanding on the objectives and the core issues pertinent to GRs, TK and TCEs, and then progress with text-based negotiations on the basis of mutually accepted baselines to reach shared objectives. It stressed that its approach would give the best chance for the IGC to succeed. It highlighted the importance of conducting the discussions by an evidence-based approach where the IGC should strive to reach agreement on the subject matter, the beneficiaries, the extent to which existing IP regimes were insufficient to ensure the necessary protection and on the nature of the measures taken to fill any possible gaps. The Delegation also indicated that once agreement had been reached on the core objectives and definitions, the different nature of the three issues should be recognized and the work of the IGC tailored accordingly. Regarding GRs, the Delegation proposed that the IGC would continue to work on the basis of document WIPO/GRTKF/IC/34/4, having in mind the EU 2005 proposal for a formality disclosure requirement. Regarding TK and TCEs, the Delegation proposed that the IGC would further explore the currently available protection regimes, including existing IP instruments and other relevant national and international instruments to identify possible gaps in the protection available for TK and TCEs and the possibilities of filling those gaps by amending or improving the existing protection regimes. The Delegation looked forward to discussions on its proposal and welcomed constructive comments and suggestions on how to further refine it if necessary. It noted that the proposal took into account the positions of many groups and it hoped that its proposal would prove to be an optimal basis for the IGC negotiations that could lead to a consensual outcome.

188. The Delegation of the United States of America supported the statement made by the Delegation of Japan, on behalf of Group B. The Delegation thanked the IGC Chair, the Vice-Chairs and the facilitators for their hard work and assistance during the past biennium. The Delegation supported the work of the IGC, and had been a constructive participant in the discussions since the IGC had been established. It stressed the wide range of stakeholders

present in the United States of America, a megadiverse country, where the stakeholders closely followed any work that could establish new international protections for TK and TCEs, and made use of the existing GRs, TK and TCEs to develop new creative works and new inventions, including new plants and medicines. It stressed the significant amount of the work which the IGC had to do in order to reach a common understanding on the objectives that supported its work. A common understanding on objectives would pave the way for a common understanding on core issues, such as beneficiaries. The Delegation welcomed the proposal made by the Delegation of the European Union, on behalf of the European Union and its member states, in document WO/GA/49/18, and considered that proposal as a constructive contribution to the IGC discussions. It valued the emphasis placed by the Delegation of the European Union, on behalf of the European Union and its member states, on first reaching a common understanding of objectives and core issues of the IGC's work as well as on taking an evidence-based approach which meant to base the IGC's work on studies, national experiences, domestic legislation and examples of currently available protection regimes, supplemented with examples of subject matter intended or not to be protected. It emphasized the importance of discussing GRs, TK and TCEs in tandem because of the overlap between all three issues. It expressed concerns with establishing a methodology that would differentiate between GRs, TK and TCEs. The Delegation also expressed concerns with the EU 2005 proposal on new patent disclosure requirements because that proposal focused on one mechanism and therefore might pre-judge the nature of the instrument at that stage. The Delegation thanked the Delegation of Senegal, on behalf of the African Group, for resubmitting its proposed work program for the IGC (document WO/GA/49/17) as previously discussed at IGC 34. It appreciated the willingness of the African Group to build upon the work that had been carried out by the IGC by using all WIPO working documents and other contributions of Member States including studies and national experiences. However, the Delegation noted that it would be premature for the IGC to consider a diplomatic conference as that would prejudge the outcome of the negotiations. It recalled that Member States had not agreed on the objectives of the work or core issues, including the scope of the instrument and beneficiaries, as evidenced by the heavily bracketed texts. The Delegation advocated for a step-by-step approach that would build a consensus on objectives and core issues and would yield a productive outcome. The Delegation made the following textual proposal: "The IGC will consider convening a diplomatic conference only after agreement on objectives, beneficiaries and scope, as well as the nature of the instrument, has been achieved." This approach would allow the IGC to make progress towards a meaningful outcome in a stepwise manner. It tabled together with the Delegation of Japan a new proposal reflecting those key elements (document WO/GA/49/19). It looked forward to having further discussions of those elements to yield a positive outcome.

189. The Delegation of India aligned itself with the statement made by the Delegation of Indonesia, speaking on behalf of the LMCs. The Delegation thanked the IGC Secretariat for providing a comprehensive report. The Delegation highlighted its rich heritage in GRs, TK and TCEs and especially in traditional systems of medicine with social, cultural, economic and commercial value. It stressed an urgent need to intervene and globally protect such knowledge from misappropriation while providing space and environment for the dynamic development of TK for the benefit of the custodians of such knowledge and other members of the society. The Delegation stated that India had developed the Traditional Knowledge Digital Library (TKDL), a pioneering initiative in providing defensive protection to the Indian traditional systems of Ayurveda, Unani, Siddha and Yoga, and that India had launched a visionary national IP policy laying special emphasis on expanding the ambit of the TKDL. The Delegation recalled that after the WIPO General Assembly in 2016, the IGC had held one session on TK and two sessions on TCEs, and two seminars were organized by the WIPO Secretariat, which provided more clarity and served as a platform to understand the different perspectives and gave an insight into various key issues currently debated in the IGC. It thanked the IGC Chair for having identified outstanding pending issues, which facilitated the structure and focused discussions. It observed with appreciation that the gaps in the texts had been narrowed down, and that a sincere effort had gone in to achieving consensus on the texts of TK and TCEs. The Delegation supported an

early finalization of the international legal instrument on GRs, TK and TCEs and it underlined that the absence of such legally binding instruments had allowed the continuous misappropriation and biopiracy of GRs and TK and had resulted in an imbalance of the global IP system against TK holders. It noted the report of the IGC and expressed its wish to see the mandate of the IGC for the next biennium strengthened. It underlined the need to continue text based negotiations ultimately paving the way for the convening of a diplomatic conference. To conclude, the Delegation thanked the IGC Chair and Vice-Chairs for their leadership and commitment to the work of the IGC.

190. The Delegation of Ethiopia expressed its appreciation for the work delivered by the Secretariat. It aligned itself with the statement made by the Delegation of Senegal, on behalf of the African Group. It recognized the importance of the IGC and welcomed the willingness expressed by a number of regional groups and Member States to extend the mandate of the IGC. While extending the mandate of the IGC was a very important step in the right direction, the Member States had to recognize that after two decades, and in light of the different levels of maturity of the three texts, these texts were split, and Member States had to ensure that the text concerning GRs, which was more mature, would lead to a diplomatic conference during the 2018/2019 biennium with the conclusion and adoption of a legally binding instrument that would ensure an effective and balanced protection. It emphasized that this proposal should be considered and accepted in light of the fact that it emanated from the group of demanders that were supportive of the three texts. In order to achieve this, the Delegation recognized the need to establish an expert intersessional working group, which would work on narrowing gaps in the GRs text. It asked Member States to provide this working group with the necessary resources. The creation of an intersessional working group would ensure continuity in the work of the IGC throughout its mandate, and the result would give impetus to the process which had been dragging for two decades. Many stakeholders were closely following the work of the IGC. They were keen to know how they might share in the benefits derived from GRs, TK and TCEs.

191. The Delegation of Colombia recognized the collective work that Member States had delivered during the present biennium. It paid tribute to the efforts made by the IGC Chair, Vice-Chairs and facilitators. All the work had enabled this important committee to come to the WIPO General Assembly with the recommendation to continue its work during the 2018/2019 biennium. Presently, the focus should be placed on formulating and deciding on a comprehensive and balanced work program, taking into account the progress made on the text-based discussions. The Delegation supported the statement made by the Delegation of Costa Rica, on behalf of GRULAC. It wished to reiterate what it had said in its opening statement, namely that it was vital for WIPO to be able to move forward with the IGC's normative negotiations, as a successful outcome would bring about sustainable growth and contribute to the implementation of the 2030 Agenda. In that context, the Delegation recalled that Colombia was recognized for its biodiversity and intangible cultural heritage and the granting of special protection to indigenous peoples and local communities. It believed that it was, therefore, very important to move forward towards adopting a legally binding instrument(s) providing a framework for the protection of GRs, TK and TCEs by convening a diplomatic conference. The Delegation expressed support for a discussion on the key issues relating to GRs, TK and TCEs and was confident that a constructive dialogue would help the IGC to overcome the divergence of views. It was of vital importance to ensure the participation of indigenous peoples and local communities whose input was so important to the negotiations. It was, therefore, vital to make a collective effort in providing resources to the Voluntary Fund. The Delegation hoped that on the basis of the proposals that had been submitted, the WIPO General Assembly would decide on a work program for the 2018/2019 biennium that would reflect the collective interests of the Member States in moving forward. Member States needed to focus on the common elements contained in these proposals in order to reach a consensus on this important issue.

192. The Delegation of Zimbabwe aligned itself with the statement made by the Delegation of Senegal, on behalf of the African Group. Its country continued to follow with keen interest the ongoing IGC negotiations. The Delegation acknowledged the work that had been done, with the hope that during the next biennium, with the support of an intersessional working group, there would be a diplomatic conference. Protection of GRs, TK and TCEs was very important to Zimbabwe. The Delegation assumed that any future negotiations would continue to be text-based negotiations. Zimbabwe, like many other countries, had a rich heritage of TK systems, TCEs and GRs which could become a source of livelihood for its several communities, provided that a proper legal framework was put in place. It was important to properly regulate the commercial benefits deriving from using GRs, TK and TCEs in order to plug any leakages and ensure sustainability through fair and equitable economic benefit-sharing with the owners of such resources. The Delegation shared the concerns expressed about continuous delay in reaching consensus on such important issue. It urged Member States to show more flexibility and tolerance and finalize work with the view to the adoption of international legally binding instrument(s).

193. The Delegation of Oman commended all the efforts made in the IGC. It recognized the importance of the work done and supported the extension of the mandate of the IGC. It called upon all Member States to show a constructive and positive spirit in order to bring divergent views closer together and move forward in accordance with the kind of impetus given to the IGC in the past by the WIPO General Assembly. It hoped that the work done in the IGC would result in legally binding instruments that would provide protection of GRs, TK and TCEs.

194. The Delegation of Iran (Islamic Republic of) extended its appreciation to the IGC Chair and Vice-Chairs for the hard work undertaken during the current mandate of the IGC. It supported the statement made by the Delegation of Indonesia, on behalf of the LMCs. It was of the view that the absence of a legally binding instrument in the modern international IP framework for the effective protection of GRs, TK and TCEs was a significant shortcoming. The international IP legal system should develop and evolve in a balanced manner to ensure its sustainability by providing necessary protection for GRs, TK and TCEs. Such a comprehensive approach would increase the interests of developing countries in the IP system and enhance their contribution to global knowledge and cultural partnership. In order to realize all those objectives, the establishment of international legally binding instruments to protect GRs, TK and TCEs was of paramount importance. The WIPO General Assembly should develop a mechanism which would ultimately bring comfort to the owners of those subject matters and protect their legitimate interests with a view to promoting creativity and innovation. A constructive approach was necessary. Flexibility shown at IGC 34 in discussing a recommendation on the IGC's mandate had led to a consensual outcome on the need to continue the work of the IGC during the next biennium. This significant development had illustrated that there was a common understanding among Member States on the importance of establishing a legal basis to protect those subject matters internationally. Based on the deliberations held during the IGC sessions, and the progress made on the draft instruments, the Delegation was of the view that the present texts contained major elements suitable to developing a legally binding instrument(s). The rationale behind the establishment of the IGC still existed and the objective of its work was clear for all. Therefore, the new mandate and work program should direct Member States towards operationalizing those objectives.

195. The Delegation of Benin supported the statement made by the Delegation of Senegal, on behalf of the African Group. It emphasized the positive impact of protecting GRs, TK and TCEs on the life of many communities in developing countries and LDCs. It was important that such communities should not be deprived of the use of their own resources and of the benefits that they could derive from that use. This was crucially important. The Delegation hoped that the work that had been undertaken in the IGC would result in a productive outcome for all Member States.

196. The Delegation of the Russian Federation endorsed the statement made by the Delegation of Tajikistan, on behalf of the CACEEC Group. It took note of the progress made. Work should continue in order to bring together divergent views on the issues that were being considered by the IGC and to try to find a balanced result. It noted that the seminars that had taken place during the current biennium had been very useful, and had offered an opportunity to exchange national experiences gained in different countries. The Delegation supported the recommendation made by the IGC that work be continued during the next biennium.

197. The Delegation of Ghana supported the statement made by the Delegation of Senegal, on behalf of the African Group. It noted the different levels of progress made during the 2016/2017 biennium. It recalled the long history in respect of the unresolved issues and was hopeful that Member States would continue to deliberate and do so in the spirit of compromise by considering the interests of all parties in narrowing gaps and considering options for a legally binding instrument(s) on GRs, TK and TCEs. The Delegation believed that considerable progress had been made and that the WIPO General Assembly would come up with a work program to ensure the convening of a diplomatic conference in the 2018/2019 biennium.

198. The Delegation of Australia commended the commitment from the IGC to continue its critical work on GRs, TK and TCEs for the next biennium. These were important subjects to Australia and Aboriginal and Torres Strait Islander Australians. The progress had been made by Member States through engaging constructively and in good faith. It encouraged Member States to continue this constructive spirit in agreeing on the details of the new mandate of the IGC for the 2018/2019 biennium. It took note of the three texts that had been transmitted to the WIPO General Assembly and supported the continuation of the work on those texts as a basis for the negotiations. The Delegation was encouraged by the progress that had been made on GRs in particular. It considered that the work of the IGC would benefit from continuing this momentum in order to resolve outstanding issues in this text. It recalled that the Government of Australia had been pleased to make a contribution to the WIPO Voluntary Fund for accredited indigenous and local communities. However, this contribution was not enough to sustain the Voluntary Fund. The Delegation recognized the importance of the contributions that indigenous peoples and local communities made to the IGC. It urged Member States to consider, therefore, contributing to the Voluntary Fund. Finally, it acknowledged the contribution that the IGC Chair, Ian Goss, had made through the current biennium through his chairmanship and leadership.

199. The Delegation of Chile endorsed the statement made by the Delegation of Costa Rica, on behalf of GRULAC. It welcomed the work done within the IGC under the current mandate. The commitment of Member States to coordinate positions had enabled Member States to move forward in the discussions and clarify the different issues regarding the three different themes. The WIPO General Assembly would be able to renew the mandate of the IGC for the next biennium. It recalled that the objective was to achieve an international instrument(s) that would provide effective and balanced protection for GRs, TK and TCEs. It was important to maintain the momentum of these negotiations, without losing all of the work and efforts that Member States had already put in. The Delegation was ready to participate actively in the discussion of a consensual work program for the IGC that would enable Member States to achieve the objectives stated in its mandate.

200. The Delegation of Japan expressed its appreciation to the IGC Chair and the Vice-Chairs for their tireless efforts. The Delegation observed that although definite progress had been made based on the outstanding efforts of all Member States, it was true that no consensus had been reached on fundamental issues such as objectives, definitions and disclosure requirements and that there were still huge differences among Member States on the main articles of the texts. To fill in those gaps, it believed that the IGC should not focus only on the text, but place more emphasis on Member States sharing their respective national experiences and practices and conducting factual studies. It firmly believed that given the current

circumstances, it was not appropriate to convene a diplomatic conference until all Member States had concluded exhaustive discussions about major provisions and reached an agreement. It emphasized that it was not appropriate to first set a deadline for the negotiations before the texts were completed. The IGC should continue discussions without prejudging the outcome, in order to ensure that the IGC thoroughly discussed all technical issues. With regard to deepening substantive discussions, Member States should focus on the quality of every single meeting by conducting intensive discussions and not unnecessarily extend or increase the meetings. In addition, the Delegation reiterated that the three texts should be dealt with on an equal footing. With regard to the mandate of the IGC for the 2018/2019 biennium, the Delegation pointed out that, together with the Delegation of the United States of America, it had submitted the joint proposal contained in document WO/GA/49/19. It thanked the Delegation of the European Union, on behalf of the European Union and its member states, for its proposal. With respect to disclosure requirements, the Delegation was not in a position to support such requirements regardless of whether or not they were a formality. It remained committed to contributing constructively.

201. The Delegation of Indonesia supported the statement made by the Delegation of Indonesia, on behalf of the LMCs. During the 2016/2017 biennium, the IGC had made significant progress in the negotiations concerning the protection of GRs, TK and TCEs. It believed that this progress had been achieved due to mutual understanding on the importance and urgency of such protection mechanisms. It observed that, although IGC 34 had recommended to the WIPO General Assembly the renewal of its mandate, Member States still needed to come up with a work plan to guide the IGC's future work. As a developing country, Indonesia was known for its abundant GRs. It was of utmost importance and urgency for Indonesia to protect those resources as valuable assets for the development of its economy and people. In this context, the Delegation believed that the WIPO General Assembly should be able to deliver a stronger mandate of the IGC for the next biennium that outlined priorities and key tangible outcomes for future work. A stronger mandate should include the need to have an international legal instrument(s) and text-based negotiations. A stronger mandate meant that Member States should move forward and not endlessly repeat all the processes and efforts that had been conducted since 2001. It believed that there should be no more questions on the objectives and Member States needed to continue the text-based negotiations. A stronger mandate meant that no conditionality should be applied on how the IGC could move forward. The Delegation reemphasized the need to prevent misuse and misappropriation of GRs and associated TK. The text on the protection of GRs provided clear options for Member States and was ready to be finalized. Member States were prepared to convene a diplomatic conference on GRs. The Delegation was confident that the GRs text could play a role as a locomotive and pull the texts on TK and TCEs to move even faster. The IGC issues did not only belong to Member States but more importantly to the traditional communities that had created and developed tradition-based knowledge and cultural expressions as well as innovation long before the modern IP system had been established. Traditional communities had the right to maintain, control, protect and develop IP, as well as benefit from their cultural heritage. It was the obligation of Member States to push for their recognition through international legal instruments of both moral and economic rights over GRs, TK and TCEs. The Delegation stood ready to discuss the future work of IGC in a constructive and flexible manner and encouraged other delegations to do the same.

202. The Delegation of Nigeria thanked the Secretariat for the report of the IGC and for its diligence and hard work in fulfilling its duties. It supported the statement made by the Delegation of Senegal, on behalf of the African Group, and also strongly supported document WO/GA/49/17 and thanked all the delegations that supported that document. The Delegation of Senegal, on behalf of the African Group, had eloquently iterated the points that it wished to see in the new mandate of the IGC. It wished to see recognition of the DA Recommendations, recognition of the progress made and the different levels of maturity of the three texts, continuation of text-based work with the focus on narrowing existing gaps, use

of intersessionals to further advance the work, and maintenance of the participation of indigenous peoples and local communities. The highlighted elements would be with the objective of reaching agreement on an international legal instrument(s) for the protection of GRs, TK and TCEs. In that regard, the Delegation would ideally want to see a diplomatic conference based on the maturity of the texts in 2019. It was within the limits of the international IP system to take this bold step in response to the call of a predominant number of the WIPO Member States, which was justified and would enable the inclusion and balance that was necessary for the international IP system to serve all its stakeholders equally. The Delegation concluded by echoing the sentiment expressed by the IGC Chair which was the optimism that Member States would be able to agree on a work program and a way forward. It looked forward to achieving that goal.

203. The Delegation of South Africa supported the statement made by the Delegation of Senegal, on behalf of the African Group, and the statement made by the Delegation of Indonesia, on behalf of the LMCs. It had been persistently enthusiastic about achieving the mandate of the IGC in the same way as it had been when the IGC was established in 2000. It reiterated the call for a balanced and equitable global IP system that accommodated all legitimate interests of the WIPO Member States, consistent with the DA of WIPO and the 2030 Agenda for Sustainable Development, including the SDGs. Enough facts and explanation as to why there was a need for an international legally binding instrument(s) for the protection of GRs, TK and TCEs had been put forward. The IGC had made considerable progress in the 2016/2017 biennium and particularly thanked the combined efforts of the Chair, the Secretariat, Member States and other stakeholders. The three texts had been refined, improved and consolidated, with clear options and variants, reflecting the different positions. There were largely two major approaches: the rights approach and the measures approach. The challenges were more political than technical, and with goodwill between the negotiators the two approaches, which were not exclusive, could be negotiated to a win-win situation for both parties. The proposal submitted by the Delegation of Senegal, on behalf of the African Group, would allow the IGC to deal with the political challenges and the outstanding technical issues on the three texts, leading Member States to a diplomatic conference on GRs in 2019, and, shortly after, on the other two texts.

204. The Delegation of the Dominican Republic supported the statement made by the Delegation of Costa Rica, on behalf of GRULAC. While GRs, TK and TCEs were equally important in terms of requiring protection, the Delegation wanted to underscore the growing important role of biotechnology in the development of innovative and valuable inputs to industrial property. Many of these were based on GRs and associated TK. There was great economic damage because of the delay and lack of consensus in adopting a legally binding instrument(s) to protect the rights of collective groups where these GRs originated. The Delegation called upon Member States and the IGC to move forward together with great care, so as to ensure that the economic damage stopped, GRs could be protected, and indigenous peoples and local communities could benefit from the use of GRs.

205. The Delegation of Mali thanked the Secretariat and the IGC Chair for their work. It endorsed the statement made by the Delegation of Senegal, on behalf of the African Group. It stated that the matters under consideration were matters of significant concern to African countries that had TK and TCEs that needed to be protected and to be promoted through specific legal instruments. Mali in particular had an immense asset that had been built up over the centuries of its civilization, and that should be safeguarded and protected. It hoped that significant progress would be made during the informal consultations.

206. The Delegation of Gambia supported the sentiments expressed by the Delegation of Senegal, on behalf of the African Group, regarding the mandate and work program of the IGC. GRs, TK and TCEs were crucial to the economic, cultural and social development of African countries and to Gambia in particular because of its rich treasure trove of GRs, TK and TCEs. If

WIPO was to live up to its mission statement of ensuring a balanced and effective international IP system for all countries around the world, the negotiations in the IGC should begin to bear tangible fruits. The Delegation reiterated its full support to the proposal submitted by the Delegation of Senegal, on behalf of the African Group, to accelerate the negotiations at the IGC, to facilitate consensus building and the drafting of an international legally binding instrument(s) and the subsequent convening of a diplomatic conference. Without prejudice to the outcome of the negotiations, the Delegation called on WIPO to accelerate capacity-building and technical assistance initiatives for potential beneficiaries in the various countries to ensure an effective protection mechanism for them in readiness for any eventual international legal instrument on GRs, TK and TCEs.

207. The Delegation of Ecuador said that the issue of GRs was very important and that it was an issue that had been worked on within the IGC for some time. The Delegation supported the statement made by the Delegation of Indonesia, on behalf of the LMCs, and in particular reiterated its position which was to stress the importance of continuing to discuss these matters so that Member States could ensure that they move forward towards convening a diplomatic conference. The Delegation had followed the discussions closely and welcomed the progress made. It believed that the mandate should be renewed so that Member States could achieve the objectives in the IGC's mandate. It was convinced that the progress made so far was reflected in the texts on the three issues and that negotiations should continue to be based on documents WIPO/GRTKF/IC/34/4, WIPO/GRTKF/IC/34/5 and WIPO/GRTKF/IC/34/8. The Delegation believed that the new mandate should contain a clearly defined work program so that Member States could agree on a legally binding instrument(s) providing effective protection for GRs, TK and TCEs. It was aware that there were issues which required further consideration, and it believed that setting up an expert group would be a useful way of streamlining the process. The work of the IGC should continue until Member States were in a position to convene a diplomatic conference. All of the work done by the IGC would not have been able to move forward without the participation of representatives of indigenous peoples and local communities. It was vital to continue to have their input. In that regard, the Delegation called upon all Member States to double their efforts to contribute to the Voluntary Fund. The Delegation was grateful for the proposals submitted by the Delegation of Senegal, on behalf of the African Group, the European Union, on behalf of the European Union and its member states, and the Delegations of the United States of America and Japan. It was certain that the contributions of all Member States would enable the IGC to reach its objectives.

208. The Delegation of Malaysia thanked the Secretariat and commended the IGC Chair and the two Vice-Chairs and facilitators for the efforts over the past biennium. It stressed the importance of the IGC and pointed out the progress made over the last biennium and believed that WIPO should not regress the work of the IGC. It recalled Recommendation 18 of the WIPO DA Recommendations. It urged all Member States to work towards an outcome to ensure that the beneficiaries and concerned communities received the social and economic benefits they deserved through the effective protection of GRs, TK and TCEs. Therefore, it believed that the mandate for the 2018/2019 biennium should ensure that the IGC continue to advance text-based negotiations with the aim of establishing an international instrument(s) for the effective protection of GRs, TK and TCEs. It also viewed the convening of a diplomatic conference for GRs as timely. To advance discussions and narrow the remaining gaps, it supported the convening of intersessional working groups. Considering those elements, it believed the African Group's proposal presented a way forward and was a good basis for the mandate of the IGC for the 2018/2019 biennium.

209. The Delegation of Rwanda aligned itself with the statement made by the Delegation of Senegal, on behalf of the African Group. It wished to support the renewal of the mandate and expected progress in achieving a diplomatic conference. Any debate that could better protect the concerned rights was welcome.

210. The Delegation of Côte d'Ivoire thanked the Secretariat and the IGC Chair for all the work done in seeking to move the negotiations under the auspices of the IGC forward and it recognized how difficult that was. Despite the fact that there were persistent divergences of views, progress had been made. It supported what had been said by the Delegation of Senegal, on behalf of the African Group. It believed that it was necessary to persuade Member States that there was a lot to gain by making progress in this process, and it, therefore, believed that it should support the path that led to a diplomatic conference. It counted on a constructive spirit in order to allow WIPO to live up to the trust that the world had placed in it. WIPO had previously proven many times that it indeed deserved that trust within the multilateral context.

211. The Delegation of Botswana aligned itself with the statement made by the Delegation of Senegal, on behalf of the African Group. It requested Member States to consider the maturity of the three texts and prioritize the protection of GRs and convene a diplomatic conference in 2019. Discussions on GRs, TK and TCEs had been an open file for quite some time, and it was appropriate that where progress had been made, the matter should be closed. It joined other delegations calling for expert intersessional working groups to address the outstanding matters.

212. The Delegation of Switzerland commended the progress made by the IGC in the 2016/2017 biennium. It wished to see the work of the IGC continued. It believed that more efforts needed to be made and more pragmatism needed to be shown within the IGC, if it was to reach agreement on one or several international legal instruments to provide balanced and effective protection for GR, TK and TCEs. The new mandate should make it possible for the IGC to focus more on substance and less on cosmetic tinkering with texts. A clear understanding of the proposed provisions was needed, in order to find appropriate solutions that could be supported by all Member States of WIPO. The Delegation believed that the 2016/2017 mandate was a good basis to move forward in crafting a further mandate for the 2018/2019 biennium. It had taken due note of the proposals from the Delegation of Senegal, on behalf of the African Group, the Delegation of the European Union, on behalf of the European Union and its member states, and the Delegations of the United States of America and Japan. It wished to flag a few points within those proposals which could allow the IGC to make progress. Firstly, looking at the African Group's proposal, it recognized the importance of the IGC for the African Group and it acknowledged that this was important also for other countries, where there were indigenous peoples and local communities that were holding a great diversity of GRs, TK and TCEs. On GRs in particular, it shared the view of the Delegation of Senegal, on behalf of the African Group, that more progress had been made than on the other topics. The new mandate should make it possible for more technical expertise to be integrated within the work in order to make further progress. This could be done by establishing an expert group. The Delegation was ready to discuss this in greater detail with the Delegation of the African Group and other Member States who were interested in the issue. Regarding convening a diplomatic conference, it believed that such a decision should be based on progress made on the draft texts. At the current stage, it believed that the provisions proposed in the three texts required more work before a well-founded decision could be taken on the diplomatic conference. The Delegation shared the view of the European Union, that it was indeed crucial to think carefully about core issues and objectives. However, it believed that discussions on core issues, including on objectives and definitions, should not be undertaken in isolation from looking at the substance of the texts. It, therefore, believed it was important to keep a general overview of the measures proposed within the texts. It was self-evident that nothing that could hinder progress should be included in the new mandate. On GRs, it recognized that there was a need to work on disclosure requirements at the appropriate time. It reminded the WIPO General Assembly that in the past, the Delegation had submitted a number of documents to the IGC dealing with this issue, among others. Those documents gave a detailed description of the approach Switzerland had taken domestically to disclosure requirements, and also suggested how that might be transposed to an international level. It thought that those documents should be part of future working documents, because these were in line with an evidence based approach. On

TK and TCEs, it supported the approach that had been proposed by the European Union, because this would allow the IGC to identify any gaps that might exist for the protection of TK and TCEs in the current regimes. All of these should be undertaken without prejudice to the possibility of crafting one or several protection instruments under the auspices of the IGC. It was ready to work with all regional groups in seeking to move forward to adopt a new mandate that would be acceptable to all parties.

213. The Delegation of Senegal expressed its support for the statement made by the Delegation of Senegal, on behalf of the African Group. It continued to attach considerable importance to the work of the IGC. It was in favor of text-based negotiations, and also in favor of setting up a preparatory committee with a view to a diplomatic conference at which one or more legally binding instruments would be adopted in order to provide effective and balanced protection for GRs, TK and TCEs. It recognized that the IGC needed to achieve consensus on moving forward with its work and it was delighted to rally to the spirit that seemed to be emerging to that end. It was ready to participate constructively in discussions on a mandate and a work program, and hoped that consensus could be reached.

214. The Delegation of Uganda aligned itself with the statement made by the Delegation of Senegal, on behalf of the African Group, and the statement made by the Delegation of Indonesia, on behalf of the LMCs. It appreciated the enduring dedication of the IGC Chairs and the facilitators towards the work of the IGC. It thanked the Secretariat for the preparation of the documents. Uganda had been the host of a regional workshop on GRs, TK and TCEs in July 2017. It expressed its appreciation to WIPO, specifically the Traditional Knowledge Division and the Regional Bureau for Africa, for the support. The workshop had served as a catalyst at national level for initiatives to protect GRs, TK and TCEs, and importantly served to highlight the great need for an international instrument to protect GRs, TK and TCEs. Misappropriation of GRs and TK was a real and ongoing concern for many local communities in Uganda. It was disappointed that Member States had failed to conclude the work of the IGC and to constrain the further development of the IP system, and WIPO neglected to protect the property rights of beneficiaries. It took note of the significant progress made on the negotiating texts at the IGC. In particular, the text on GRs was more mature, compared to the TK and TCEs texts. It believed that there was clarity with regard to the content and the nature of that text. There was a general argument on major principles and existing differences which seemed to require political decisions. It was optimistic that the WIPO General Assembly would come up with a specific decision with regard to holding a diplomatic conference on the legal text that had matured, without prejudicing the work on the other texts. In that regard, it supported the proposal made by the Delegation of Senegal, on behalf of the African Group, which sought to focus the work on GRs, which would culminate in a diplomatic conference.

215. The Delegation of the Republic of Korea thanked the IGC Chair, the Vice-Chairs, the facilitators and the Secretariat for their effort and hard work. It welcomed the recommendation made by the IGC that the IGC should continue its work during the next biennium. It aligned itself with the statements made by the Delegations of the United States of America and Japan, and the Delegation of the European Union, on behalf of the European Union and its member states. Regarding the future work of the IGC, it believed that the proposals made by the Delegations of the United States of America and Japan, and the Delegation of the European Union, on behalf of the European Union and its member states, were a good basis for discussion.

216. The Delegation of New Zealand thanked the Chair, the Vice-Chairs and the facilitators for their considerable effort. It acknowledged that the discussions on GRs, TK and TCEs were important to New Zealand and Maori, the indigenous people of New Zealand. It considered that progress had been made and strongly supported the work continuing in the next biennium. It was optimistic that Member States would be able to deliver a mandate and work program at the WIPO General Assembly that supported those discussions. The Delegation thanked those who

had submitted proposals for a new mandate and work program and considered that there were useful elements from those proposals and the existing mandate that could form the basis of a new mandate and work program. The Delegation advised that it would play a constructive role to ensure the new mandate and work program balanced the interests of Member States.

217. The Delegation of Morocco congratulated the Secretariat on the high quality of the documents presented and acknowledged the IGC Chair and the facilitators for the work they had done. It endorsed the statement made by the Delegation of Senegal, on behalf of the African Group, and considered that the African Group's proposal was an interesting basis to move forward in a constructive manner and to achieve an effective and well balanced outcome.

218. The Delegation of the Central African Republic endorsed the statement made by the Delegation of Senegal, on behalf of the African Group. It acknowledged that GRs, TK and TCEs were very important issues and required detailed attention. The Delegation fully endorsed the approach taken by the Delegation of Senegal, on behalf of the African Group. It noted that a diplomatic conference could only be held if Member States made progress on a number of matters including disclosure requirements and progress could only be made by text-based negotiations.

219. The Delegation of Namibia aligned itself with the statement made by the Delegation of Senegal, on behalf of the African Group. It called for the renewal of the mandate with the view to convene a diplomatic conference in 2019 to conclude a legally binding treaty on GRs. The Delegation also thanked the IGC Chair and the Secretariat for their work.

220. The Representative of the TWN stated that the IGC process was important to prevent the misappropriation of GRs, TK and TCEs through IP protection. He expressed regret that Member States had not yet reached consensus on the IGC's mandate and work program. He recounted that in 2015 the WIPO General Assembly provided a two-year exclusive mandate for text-based negotiations. He called upon the IGC Chair as well as Member States to adhere to the mandate of the IGC and focus on text-based negotiations notwithstanding certain doubts that persisted regarding the agreed objective. The objective of text-based negotiations was to reach consensus on an international legally binding instrument(s). He therefore favored the African Group's proposal, which offered a direction to move forward. The mandate should clearly mention the binding nature of the legal instrument. Regarding the work program, he agreed with the African Group's proposal for convening a diplomatic conference on GRs. He noted that the standard that "nothing was agreed if everything was not agreed" was not the established tradition at WIPO, and that this standard could impact other text-based negotiations in progress in other WIPO committees. He called upon Member States not to block the aspirations of the vast majority of Member States representing the vast majority of human kind.

221. The Representative of the International Federation of Pharmaceutical Manufacturers and Associations (IFPMA) expressed the position of the research-based pharmaceutical industry with regards to the negotiations on an international instrument relating to IP aiming to ensure the balanced and effective protection of GRs, TK and TCEs. Regarding GRs, he noted that when the IGC discussions had started in 2000, there had been no access and benefit-sharing (ABS) compliance regulatory frameworks in place. This had fundamentally changed in 2014 when the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (the Nagoya Protocol) had entered into force. IFPMA was of the view that the IGC should not endeavor to develop a new international ABS monitoring and compliance system as one already existed. IFPMA supported the objectives of the Convention on Biological Diversity (CBD) and the Nagoya Protocol, and had in the last two decades actively contributed to the discussions on the development of the Nagoya Protocol and its translation into national and international legislations. He believed that the achievements of the CBD and the Nagoya Protocol should not be replicated at the IGC and that the objectives of the CBD and the Nagoya

Protocol relating to the facilitation of access to GRs and the fair and equitable sharing of benefits should not be pursued through the patent system as this would lead to many unintended consequences. For example, the principles introduced by disclosure requirements were unclear in terminology, scope and applicability. Especially if linked to patent validity, disclosure requirements would create legal and commercial uncertainty. This would have a negative impact on investment. Reducing investment and discouraging R&D activities utilizing GRs would be directly contrary to the objectives of the CBD. The Nagoya Protocol required countries to implement an effective ABS compliance system to prevent misappropriation of GRs, but did not mention the disclosure obligation as a possible compliance mechanism. Potential disclosure requirements would not achieve the objectives of combating misappropriation, compliance with ABS systems or monitoring the use of GRs. For example, disclosure requirements would do nothing to assist in monitoring any use of GRs that did not involve patenting. Checking and monitoring disclosure requirements would be in the hands of patent officers that neither had the capacity, mandate or knowledge to perform such a task and would be exposed to an additional burden. Patent law or examination was not the right means to control requirements about the origin of GRs used in developing new products. TRIPS Agreement prohibited such additional conditions on patentability. In addition, the proposed requirements were specifically targeted to biotechnology and other life sciences using GRs and, therefore, would not be consistent with the principles in the TRIPS Agreement which states that patents be made available without discrimination in all technologies. The Representative noted that the issue that the IGC and the patent system could reasonably address was the erroneous grant of patents. This could be done through improved databases which would ensure access to appropriate information by patent officers and guidelines for the examination of patent applications directed to GRs and/or TK. He hoped that the IGC in the next biennium would take into account the existence of the ABS framework put into place through the adoption of the Nagoya Protocol and consider the abovementioned suggestions.

222. The Representative for the HEP noted that she had been involved in the IGC since 2002. The IGC had not advanced much and it was still far from the end of its mission. While it was true that this was a completely new topic and that it needed a lot of thinking and discussion, the issue was urgent. Each day precious TK was lost because it was taken without any compensation. In its view, it had not been able to express the position of HEP fully during IGC meetings, especially the informals, and it urged a review of the procedures of the IGC, particularly that there should be no informals. The Representative asked Member States to extend the mandate of the IGC.

223. The Delegation of Senegal, speaking on behalf of the African Group, thanked those delegations which had supported its proposal.

224. The Delegation of Trinidad and Tobago congratulated WIPO on the continuing efforts of the IGC during the past year in the series of meetings and seminars. It congratulated the IGC Chair for his steadfast leadership and guidance. The Delegation had several proposals under consideration regarding TCEs, most important of which was for the inclusion of the term “works of mas” under TCEs. As articulated at the IGC, it was of particular importance to protect indigenous carnival and a model provision titled “works of mas” was in the Copyright Act of Trinidad and Tobago. It was very pleased to announce that the Government of Trinidad and Tobago had declared October 13, 2017, to be a public holiday in recognition of the First Peoples. A tremendous amount of progress had been made, and the Delegation joined the other Members States in seeking an extension of the existing mandate of the IGC toward the convening of a diplomatic conference. Further, it hoped that the WIPO Voluntary Fund would continue to ensure the wide participation of indigenous groups whose views were invaluable.

225. The Chair proposed that more time was allowed for informal consultations.

226. The Chair reopened Agenda Item 18 after informal consultations, and invited Mr. Ian Goss, the IGC Chair, to report on the consultations and introduce the draft decision, copies of which had been provided to all delegations.

227. The IGC Chair stated that, at the last informal consultation, he had proposed a final draft decision and requested Member States to accept it as it was. There had been significant support and most Member States had shown their flexibility. Some Member States had raised a few issues which had prevented final consensus. He asked those Member States to review their positions and show flexibility, noting that he did not intend to reopen the text. He believed that the draft decision was a balanced mandate, which gave comfort to all Member States and took account of all Member States' interests. He thanked Mr. Jukka Liedes (Finland) and Ms. Marcela Paiva (Chile) for the professional and devoted way in which they had facilitated the informal consultations. He also thanked Member States for their flexible and respectful approach. He lastly reminded all Member States that they had given a commitment at IGC 34 to continue the IGC's work in the 2018-2019 biennium, and he hoped that Member States would honor that commitment.

228. The Chair thanked Mr. Goss, Mr. Liedes and Ms. Paiva for their work. He asked delegations whether they had consensus on the draft decision. There was no objection. The decision was approved (refer to paragraph 235).

229. The Delegation of Indonesia, speaking on behalf of the LMCs, thanked the Chair, the IGC Chair, the Vice-Chairs and the facilitators for their hard work. It also thanked all Member States and regional groups for the constructive discussion. Not all Member States were satisfied with the agreed new mandate, but all Member States had been willing to compromise so that the IGC could continue its work in the 2018-2019 biennium.

230. The Delegation of Senegal, speaking on behalf of the African Group, thanked the Chair, the facilitators and the Secretariat for their hard work to bring together the different positions. It knew that it had not been an easy task because the positions had been quite far from each other. It wished to express its great gratitude to Regional Coordinators and delegations who had shown the spirit of compromise and goodwill throughout the negotiations.

231. The Delegation of Brazil was very pleased with the decision. It wished to express its deep appreciation for the hard work by the IGC Chair, the Vice-Chairs and the facilitators. That was not a perfect mandate, but it was a possible mandate for the time being. It commended all delegations on their awareness of the importance of the issues at stake in the IGC. It also appreciated the flexibility of delegations. It looked forward to working constructively, taking into account everyone's requests and concerns, to reach agreement on an international legal instrument(s).

232. The Delegation of Estonia, speaking on behalf of the European Union and its member states, appreciated the facilitators for their efforts and availability during the lengthy and arduous negotiations. With the help of Member States, the negotiations had been constructive, detailed and fruitful. The positive discussions had led to a successful outcome. The Delegation was particularly pleased to note the new evidence-based approach and the need to narrow existing gaps on the core issues and objectives of the IGC. It reiterated the need to reach a common understanding of those issues before engaging in any meaningful text-based negotiations. In that regard, it considered the new mandate to be an improvement. It looked forward to using the various possibilities provided for in the mandate to examine more closely the many existing instruments and possibilities provided for IP regimes to address the needs of indigenous peoples and local communities in the safeguarding of their GRs, TK and TCEs.

233. The Delegation of Japan, speaking on behalf of Group B, extended its appreciation to the IGC Chair for his leadership. It also thanked the facilitators, Regional Coordinators and Member States for their tireless effort during the negotiations.

234. The Delegation of Georgia, speaking on behalf of the CEBS Group, thanked the IGC Chair, the Vice-Chair and the facilitators for their good work. Regarding the IGC, the Group had been very constructively engaged in order to reach agreement on the new mandate of the IGC and wished to stress the preference for the evidence-based approach in order to find a common understanding of the main objectives on what was realistically achievable.

235. Bearing in mind the Development Agenda recommendations, affirming the importance of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (Committee), noting the different nature of these issues and acknowledging the progress made, the WIPO General Assembly agrees that the mandate of the Committee be renewed, without prejudice to the work pursued in other fora, as follows:

(a) The Committee will, during the next budgetary biennium 2018/2019, continue to expedite its work, with the objective of reaching an agreement on an international legal instrument(s), without prejudging the nature of outcome(s), relating to intellectual property which will ensure the balanced and effective protection of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs).

(b) The Committee's work in the 2018/2019 biennium will build on the existing work carried out by the Committee, including text-based negotiations, with a primary focus on narrowing existing gaps and reaching a common understanding on core issues, including definitions, beneficiaries, subject matter, objectives, scope of protection, and what TK/TCEs subject matter is entitled to protection at an international level, including consideration of exceptions and limitations and the relationship with the public domain.

(c) The Committee will follow, as set out in the table below, a work program based on sound working methods for the 2018/2019 biennium, including an evidence-based approach as set out in paragraph (d). This work program will make provision for 6 sessions of the Committee in 2018/2019, including thematic, cross-cutting and stocktaking sessions. The Committee may establish *ad hoc* expert group(s) to address a specific legal, policy or technical issue¹. The results of the work of such group(s) will be submitted to the Committee for consideration.

(d) The Committee will use all WIPO working documents, including WIPO/GRTKF/IC/34/4, WIPO/GRTKF/IC/34/5 and WIPO/GRTKF/IC/34/8, as well as any other contributions of member states, such as conducting/updating studies covering, inter alia, examples of national experiences, including domestic legislation, impact assessments, databases, and examples of protectable subject matter and subject matter that is not intended to be protected; and outputs of any expert group(s) established by the Committee and related activities conducted under Program 4. The Secretariat is requested to update the 2008 gap analyses on the existing protection regimes related to TK and TCEs. The Secretariat is also requested to produce a report(s) compiling and updating studies, proposals and other materials relating to tools and activities on databases and on existing disclosure regimes relating to GR and associated TK, with a view to identify any

¹ The expert group(s) will have a balanced regional representation and use an efficient working methodology. The expert group(s) will work during the weeks of the sessions of the IGC.

gaps. However, studies or additional activities are not to delay progress or establish any preconditions for the negotiations.

(e) In 2018, the Committee is requested to provide to the General Assembly a factual report along with the most recent texts available of its work up to that time with recommendations, and in 2019, submit to the General Assembly the results of its work in accordance with the objective reflected in paragraph (a). The General Assembly in 2019 will take stock of progress made, and based on the maturity of the texts, including levels of agreement on objectives, scope and nature of the instrument(s), decide on whether to convene a diplomatic conference and/or continue negotiations.

(f) 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 for the IGC.

Work Program – 6 Sessions

Indicative Dates	Activity
February/March 2018	(IGC 35) Undertake negotiations on GRs with a focus on addressing unresolved issues and considering options for a draft legal instrument Duration 5 days.
May/June 2018	(IGC 36) Undertake negotiations on GRs with a focus on addressing unresolved issues and considering options for a draft legal instrument Expert group(s) Duration 5/6 days.
September 2018	(IGC 37) Undertake negotiations on TK/TCEs with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s) Possible recommendations as mentioned in paragraph (e) Duration 5 days.
October 2018	WIPO General Assembly Factual report and consider recommendations.
November/December 2018	(IGC 38) Undertake negotiations on TK/TCEs with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s) Expert group(s) Duration 5/6 days.
March/April 2019	(IGC 39) Undertake negotiations on TK/TCEs with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s) Duration 5 days.
June/July 2019	(IGC 40) Undertake negotiations on TK/TCEs with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s)

	Expert group(s) Stocktaking on GRs/TK/TCEs and making a recommendation Duration 5/6 days.
October 2019	WIPO General Assembly will take stock of the progress made, consider the text(s) and make the necessary decision(s).

ITEM 19 OF THE CONSOLIDATED AGENDA

REPORT ON THE COMMITTEE ON WIPO STANDARDS (CWS)

236. Discussions were based on document WO/GA/49/12.

237. The Secretariat reported that the fifth session of the Committee on WIPO Standards (CWS) had been held from May 29 to June 2, 2017. In between sessions, experts discussed and developed new technical Standards or revised existing Standards, using electronic communication means. The Secretariat highlighted that the CWS had received more work than before and had made significant progress, including the adoption of two new WIPO Standards. The first one, WIPO Standard ST.27, was on patent legal status data, which should assist IPOs in making publicly available the most recent legal status of patents with greater clarity and in a standardized manner; which meant that more accurate and updated information would facilitate technology transfer and partnerships based on the correct assessment of the freedom to operate and the validity of patents. The other new Standard adopted was ST.37, concerning the authority file of published patent documents. This Standard would allow IPOs to identify missing patent files and to ensure the completeness of the patent collection of a given country, which would be essential information for the integrity and quality of databases and to permit a high quality patent search. The Secretariat reported that the CWS had been also active in revising and updating the existing Standards. The Secretariat underlined that agreement had been reached on the revision of WIPO Standard ST.26 for biotech patent applications and also on the transition from the old Standard (ST.25) to the new Standard (ST.26), regarding presentation of nucleotide and amino acid sequence listings using XML, to be implemented in January 2022. The Secretariat mentioned that the implementation of WIPO Standards by IPOs had been also under consideration. One survey conducted last year contributed to the CWS discussions this year looking into any difficulties encountered by IPOs in developing countries with implementing WIPO Standards. The Secretariat emphasized that the CWS was looking forward to taking on board six more new tasks, including: “applicant name standardization”; “IP data exchange via machine to machine communications”; and “electronic visual representations of industrial designs”. Finally, the Secretariat stated that the fifth session of the CWS had made significant progress in its work of this year, and planned to undertake more work in the next year in the area of technical standardization of IP data, which was essential to WIPO’s strategic goal for enhancing knowledge as public good.

238. The Delegation of Japan, speaking on behalf of Group B, expressed its gratitude to the Chair of the fifth session of the CWS for her dedicated guidance during the session, the Vice-Chair, the Secretariat and Task Forces’ members for their work. The Delegation underlined the essential role of WIPO Standards in WIPO Global Protection Systems and the fact that Standards were implemented in various WIPO products and reiterated the technical nature of the CWS. The Delegation expressed its satisfaction with the fruitful manner of the discussion at the fifth session of the CWS and believed that the technical work would enhance the international exchange of IP information and documentation. The Delegation was looking forward to contributing to the discussions in a constructive manner during the following sessions of the CWS.

239. The Delegation of Senegal, speaking on behalf of the African Group, expressed its gratitude to the Secretariat for the preparation of the working document and its efforts in general, as well as the Chair and Vice-Chair of the fifth session of the CWS for their efforts. The Delegation emphasized the importance of the work of the CWS on the establishment of Standards, which were in the beginning and at the end of the global system of IP regulation and stated that this covered not only standard setting and improvement, but also putting in place adequate measures to allow the implementation of appropriate rules and regulations. The Delegation was interested in the results of the Survey on the use of WIPO Standards in IPOs, referred to in paragraph 5 of document WO/GA/49/12, in particular, how the reported problems with the implementation of WIPO Standards could be addressed. The Delegation also recalled that the Secretariat had been requested, during the fifth session of the CWS, to do everything possible to encourage the IPOs, who had not submitted their responses to the Survey, to intensify its efforts in the field of awareness raising and technical assistance. The Delegation enquired regarding the actions taken by the Secretariat in this regard.

240. The Delegation of Brazil expressed its satisfaction with the fact that the activities of the CWS were resumed in the current biennium and referred to the fact that the CWS was responsible for relevant subjects contributing to the attainment of the goals of the protection of the IPRs. The Delegation stated that many issues were due for discussion and agreement within the framework of the CWS and expressed its satisfaction that it had been possible to reach an agreement at its fifth session. The Delegation expressed its gratitude to the Secretariat for its professional work. The Delegation stated that the results of the Survey on the use of WIPO Standards showed the constant need of technical assistance for developing countries. The Delegation emphasized the importance of the implementation of the Development Agenda as an ongoing and non-exhaustive activity in WIPO and stated that its mainstreaming required the effort of all WIPO members. The Delegation also stated that it would continue contributing to the work of the CWS with these goals in mind.

241. The Delegation of the Republic of Korea thanked the Secretariat for its efforts in preparing the documents regarding the CWS. The Delegation welcomed that the CWS had accomplished great and significant progress during the last session of the Committee, especially the adoption of new WIPO Standard ST.27 on patent legal status data and the revision of WIPO Standard ST.26 on the presentation of nucleotide and amino acid sequence listings. Furthermore, the Delegation hoped that the International Bureau would successfully develop and deploy the new common ST.26 Software Tool to enable applicants to prepare patent applications containing sequence listings and to enhance the convenience of IP users as planned. The Delegation also stated that it fully supported the CWS' decision on the establishment of the new Task Force of Applicant Name Standardization. The Delegation also mentioned that, as a co-leader of this Task Force, it would remain fully committed to the responsibility of advancing the discussion by the Task Force as well as the CWS.

242. The Delegation of the United States of America endorsed the statement of Group B and supported the CWS in completing its work on the new WIPO Standard ST.27 on patent legal status and the new WIPO Standard ST.37 on authority files. The Delegation mentioned that the adoption of these Standards would enable work to move to the next phase to develop implementation plans. This work would be beneficial to all users of patent information. The work of the CWS would be essential to the planning and development of IT systems at IPOs and the International Bureau's efforts to improve, develop and implement WIPO Standards that should enable IP institutions to work and collaborate more effectively and to provide better services to all stakeholders.

243. The Secretariat responded to the question raised by the Delegation of Senegal, on behalf of the African Group, and confirmed that, as agreed at the fifth session of the CWS, the Secretariat should issue a Circular through *Note Verbale* as soon as possible, inviting IPOs to submit their responses to the Survey.

244. The WIPO General Assembly took note of the “Report on the Committee on WIPO Standards” (document WO/GA/49/12).

ITEM 20 OF THE CONSOLIDATED AGENDA

REPORT ON THE ADVISORY COMMITTEE ON ENFORCEMENT (ACE)

245. Discussions were based on document WO/GA/49/13.

246. The Secretariat introduced the document, which reported on the twelfth session of the Advisory Committee on Enforcement (ACE), which had taken place from September 4 to 6, 2017. The twelfth session had addressed: “Exchange of information on national experiences on awareness building activities and strategic campaigns as a means for building respect for IP among general public, especially the youth, in accordance with Member States’ educational or any other priorities; Exchange of information on national experiences relating to institutional arrangements concerning IP enforcement policies and regimes, including mechanism to resolve IP disputes in a balanced, holistic and effective manner; Exchange of information on national experiences in respect of WIPO legislative assistance, with a focus on drafting national laws of enforcement that take into account the flexibilities, the level of development, the difference in legal tradition and the possible abuse of enforcement procedures, bearing in mind the broader societal interest and in accordance with Member States’ priorities; and Exchange of success stories on capacity building and support from WIPO for training activities at national and regional levels for Agencies and national officials in line with relevant DA Recommendations and the ACE mandate”. The exchange of information was facilitated through 34 expert presentations, one Secretariat presentation and four panel discussions. At the twelfth session, the Committee had agreed to continue, at its thirteenth session, with the current work program.

247. The Delegation of Japan, speaking on behalf of Group B, thanked the Chair and the Vice-Chairs of the twelfth ACE session as well as the Secretariat for introducing the document. Group B continuously attached importance to the ACE and its subject matter, namely the enforcement of IPRs, and noted that without effective and balanced enforcement mechanisms, IPRs could not fulfil their central objective of promoting innovation and making a just contribution towards a striving and vibrant economy. In this regard, enforcement was a subject that all WIPO Member States should take seriously, remain sincerely engaged in and consider as an area of common interest, irrespective of the level of development. Group B also recognized that frequently the challenges of effective enforcement of IPRs existed in its application, rather than in laws and regulations per se. Therefore, it was very important to learn lessons from the experiences of others, and the ACE was a place where Member States could do so. Group B expressed its satisfaction with the balanced nature of the program of the twelfth ACE session. The long list of presentations was indicative of the interest expressed by Member States and signaled the positive spirit in which the ACE could operate. Group B therefore welcomed the opportunity to continue working on these topics.

248. The Delegation of the European Union, speaking on behalf of the European Union and its member states, welcomed the interesting and useful discussions of the ACE. The Delegation observed that the ACE was a highly important committee as IP infringements concerned all Member States and required a common approach. During the twelfth ACE session, the European Union had welcomed the balanced agenda. The Delegation believed that the state-centric agenda point complemented the issue-centric agenda points. The high number of contributions indicated the relevance of the state-centric agenda point for WIPO Member States. The Delegation believed that basing discussions on practical experiences of WIPO Member States enabled delegations to learn from other countries and build upon each other’s best practices. The Delegation therefore supported the ACE in continuing to place this item on future agendas. The European Union and its member states were confident that fruitful collaboration

would continue between delegations in order to combat more effectively IPR infringements which affected them all. Regarding the future work of the ACE, the Delegation expressed its interest in seeing more discussion under the current work program on the possibilities and effect of cooperation between the public and the private sector in IPR enforcement, in particular in the fight against commercial scale infringements. The European Union could also contribute to these discussions, as it had adopted several novel solutions in the context of the general follow-the-money approach to IPR enforcement. The Delegation believed that WIPO was the multilateral hub for all IP related issues and had an important role to play in coordinating enforcement activities across its Member States to ensure the long-term integrity of the global IP system.

249. The Delegation of the Philippines congratulated and thanked the Secretariat for the comprehensive report and its outstanding efforts in conducting the work of the ACE. The Delegation observed that its active participation within the ACE enabled it to share its experiences and to also learn from the various experiences of others. For the Philippines, establishing a culture that fostered respect for IPRs across all levels of society remained a crucial pillar and a priority initiative in its efforts to create an effective and balanced IP system. The ACE was therefore an important forum and the Delegation valued the work that had been undertaken thus far. It emphasized the need for a long-term socio-cultural approach to the enforcement of IPRs, one that built on a culture of education and awareness, targeting the youth, the family and all sectors of society. The Delegation noted that as a testament to its commitment, the Intellectual Property Office of the Philippines (IPOPHL), together with the twelve member agencies of the National Committee on IPRs, had formulated a holistic and integrated enforcement action plan for 2017-2022, which took off from the successes and gains of the previous enforcement action plan for 2012-2016. The Delegation noted that as a country champion for the initiatives on IPR enforcement in the Association of Southeast Asian Nations (ASEAN) Action Plan 2016-2025, it continued to work within the region to achieve the objectives of combating counterfeiting and piracy, fostering public education, undertaking national and regional training programs for all relevant sectors and promoting the exchange of information on enforcement issues.

250. The Delegation of Oman expressed its gratitude for the activities of the ACE, which allowed for the sharing of successful experiences in relation to awareness raising, capacity building as well as legislative assistance. The Delegation underlined its satisfaction with the work undertaken by the ACE during the ending biennium and the usefulness of the expert presentations. The Delegation also acknowledged the help Oman had received from the Secretariat in organizing a school students' competition on the theme of Tourism and Respect for IPRs. The competition had been jointly organized by the Ministry of Education, the Public Authority for Radio and Television, the Ministry of Commerce and Industry and the Ministry of Tourism, and the winners had been awarded their prizes on the World IP Day with the collaboration of the Secretariat. At the twelfth ACE session, the competition had been presented by the Ministry of Education under the topic Awareness-building Activities and Strategic Campaigns as a Means for Building Respect for IP.

251. The Delegation of the United States of America aligned itself with the statement given by the Delegation of Japan on behalf of Group B. It expressed its full commitment to working closely with WIPO, Member States and others in their shared commitment to improving the enforcement of IP and in fostering respect for IPRs. The ACE provided a valuable forum for exchanging information and best practices concerning the enforcement of IPRs, which was a value to all. The experiences of individual countries shared in prior ACE meetings had 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 congratulated WIPO's efforts to coordinate and enhance the enforcement aspects of its technical assistance efforts. It noted that it fully supported WIPO's work in reinforcing cooperation among enforcement authorities and relevant organizations in the field.

252. The Delegation of Brazil reiterated its belief in balance as a guiding principle for the protection and enforcement of IPRs. It noted that the dynamic character of IPRs required a sophisticated approach that combined not only repressive but also educational and economic actions, which would enable a more effective protection without focusing solely on one aspect of a complex phenomenon. A truly effective enforcement system enabled the legitimate protection of IPRs without curbing the dissemination of knowledge. As many complex issues were addressed, the Delegation was of the view that the main purpose of the enforcement of IPRs should not be forgotten, which was to promote transfer and dissemination of technological innovation, to the mutual advantage of producers and users of technological knowledge in a manner conducive to social and economic welfare and to a balance of right and obligations, as enshrined in Article 7 of the TRIPS Agreement and Recommendation 45 of the WIPO DA. In that sense, the mandate of the ACE – building respect for IP in a sustainable way – demanded the adoption of measures that not only helped to protect and enforce IPRs but also contributed to prevent their abuse by right holders to harm competition and innovation, the latter of which was the ultimate objective of the IP system. The Delegation reported that Brazil had committed itself at the twelfth ACE session to sharing its experience on enforcement measures to prevent the abuse of IPRs by right holders or other practices that restrained trade or adversely affected the international transfer of technology. The Delegation also stressed that discussions in the ACE should not lose sight of the fact that making legitimate choices affordable was an inseparable part of any effective IP enforcement strategy.

253. The Delegation of Mexico noted that the ACE had proven to be very useful for Member States as a platform for sharing experiences and learning from the practices of others in the area of enforcement. Mexico had played an active role in various ACE sessions because it was interested not only in learning of the good practices of others but also in sharing its own national experiences. The Delegation considered the topic of the environmentally safe disposal and destruction of IP infringing goods to be important; in particular the study by Dr. Martin Guard contained elements that were of great interest to Mexico. The Delegation explained that while there was no specific regulation under Mexican law that covered the destruction of IP infringing goods, a legal framework existed, laid down in different regulations, guaranteeing that certain dangerous products were destroyed in an environmentally safe manner, which also applied to measures to dispose of IPR infringing products. Most notable in this regard was the General Law on the Prevention and Integrated Management of Waste. In addition, the activities of companies that destroy products, such as products that infringe IPRs, were regulated, through technical decrees and the collaboration of different institutions, with a view to mitigating environmental harm as much as possible. The Delegation expressed its support for the important work carried out by the ACE and the consideration of the four work program items, under which a great many things could still be discussed and shared.

254. The Delegation of Trinidad and Tobago reported that Trinidad and Tobago, pursuing the approach of enhancing IP compliance through respect, had developed a project entitled Building Respect for IP. The project was multifaceted and consisted of a roving IP exhibition and a roving IP clinic funded by the Ministry of Finance Public Sector Investment Program and targeting various audiences: primary and secondary schools, universities, businesses, chambers of commerce, government authorities including municipal and city police units, research institutions, individual creators as well as inventors and the general public. The exhibition and clinic roved around the islands accessing these audiences at their places of business. The project also used both traditional and new media to communicate its anti-piracy and anti-counterfeit messages. The Delegation reported that Trinidad and Tobago was also organizing a poster competition on the theme of Building Respect for IP and Tourism for secondary school students on the isle of Tobago. The Intellectual Property Office had visited Tobago and introduced the competition and the subject of IP to school administrators, teachers and students. This activity would continue when schools reopened after the summer vacation. Other elements of the project included: the strengthening of the Ad Hoc Committee on Enforcement to include, in addition to the existing membership of representatives of the

Customs Division, the Central Police and the Bureau of Standards, other stakeholders, namely representatives from business, industry, research and inventive/creative communities; the raising of awareness of IP, IPRs and the IP system amongst the municipal and city police; the development of a partnership with the Public Service Academy, the Police Academy, the Customs Training Centre, the University of Trinidad and Tobago and the University of the West Indies to launch introductory IP courses to their employees and students; the establishment, through technical assistance provided with WIPO, of a National IP Academy, for which a needs assessment had been completed and the preliminary project proposals had been prepared; the development of strategies for increasing licensing opportunities for new technologies and creative works developed locally; and the development of a strategy to introduce IP into the curriculum of primary and secondary schools. The Delegation indicated that the Trinidad and Tobago Intellectual Property Office sought to continue its Building Respect for IP project in 2018.

255. The Representative of TWN noted that IP enforcement was often pushed in countries through propaganda without any verifiable evidence and that one of the best examples was the case of counterfeit medicines, where the issue of the quality of medicines was often conflated with IP protection to pursue the enforcement of private IPRs. As a result, scarce public resources had been deployed to enforce private rights. More than 25 years of propaganda promoted scare among people. The counterfeit campaign had often stated that counterfeit medicines killed patients. As a result, all infringements of trademark or IP had been attributed to the bad quality of medicines. Indirectly, it had conveyed a message that even generic medicines were counterfeit. At the peak of the campaign, nearly 17 medicine shipments in transit had been seized in various ports of the European Union. International organizations including WIPO had used inflated data provided by the pharmaceutical industry or associated entities. It had also given consumers the impression that there was a high prevalence of medicines produced by unlicensed manufacturers which carried the name of the licensed product. To put an end to this wrong approach, the last World Health Assembly in May 2017 had taken the decision to drop the term counterfeit from WHO's nomenclature to refer to medicines of compromised quality. The Representative called upon the Secretariat and the Member States to take note of this decision and stop conflating IP issues with the quality of medicines. The Secretariat should use the term counterfeit only to refer to those medicines which fall under the definition of counterfeit provided under the TRIPS Agreement and should stop using inflated data on counterfeit medicines. The Representative also noted that IP enforcement was not a black and white exercise and that excessive enforcement could result in the infringement of human rights, such as the right to use progress of science and its applications. The Representative therefore urged the Secretariat to convey this message in their capacity-building processes and workshops.

256. The WIPO General Assembly took note of the "Report on the Advisory Committee on Enforcement (ACE)" (document WO/GA/49/13).

ITEM 24 OF THE CONSOLIDATED AGENDA

WIPO ARBITRATION AND MEDIATION CENTER, INCLUDING DOMAIN NAMES

257. Discussions were based on document WO/GA/49/14.

258. The Secretariat noted that the document provides an update on the Center's activities as an international resource for time- and cost-efficient alternatives to court litigation of IP disputes. The Secretariat affirmed that the Center administers cases and provides legal and organizational expertise in alternative dispute resolution (ADR). The Secretariat noted that the document also provides an update on the domain name-related activities of WIPO. It covers the Center's administration of domain name disputes especially under the Uniform Domain Name

Dispute Resolution Policy (UDRP). It furthermore covers policy developments, including rights protection mechanisms for new domains, the review by the ICANN of the UDRP, and the status of the recommendations made by the Member States in the context of the Second WIPO Internet Domain Name Process. The Secretariat noted several additional developments since the document's August 2 publication. In the area of assistance to IPOs covered in paragraphs 5 to 9, the Center has established collaborations with the Register of Industrial Property of Costa Rica and the Patent Office of the Republic of Poland to promote the use of ADR options for IP and technology disputes. Also, in the area of country code top-level domains (ccTLDs) covered in paragraph 18, with the addition of the .SE domain (for Sweden), the Center now provides domain name dispute resolution services to 76 ccTLD registries.

259. The Delegation of the Russian Federation noted the conclusion by WIPO and the Federal Service for Intellectual Property (ROSPATENT) of a Memorandum of Understanding (MoU) on alternative dispute resolution to assist the operation of a national IP ADR center. This collaboration will support the integration of mediation in IP practice and dispute settlement, fostering a culture of mediation and professional knowledge to help prevent and resolve such disputes. The Delegation noted that ADR cases could include a wide range of rights to be protected. The Delegation further noted the importance of options for authenticating documents in such cases in accordance with applicable regulations.

260. The Delegation of China thanked the Secretariat for its report and noted the successful organization by WIPO and the State Intellectual Property Office (SIPO) in June 2017 of a seminar on mediation and arbitration. The Delegation expressed its conviction that the Center's rich experiences as well as its expertise in the operation of the administrative and legal framework will provide a sound basis for China to establish and regulate its IP ADR mechanisms.

261. The Delegation of the United States of America thanked the Secretariat and noted that any roll-out of new gTLDs requires appropriate mechanisms for protecting IP so as to avoid trademark abuse, consumer confusion, fraud, and the undermining of public trust in the Domain Name System. The Delegation noted that it continues to monitor the adequacy of available rights protection mechanisms for combatting cybersquatting in the new gTLD expansion. In this context, the Delegation expressed its support for periodic evaluation of the effectiveness of such mechanisms, including the review currently under way that will also include the UDRP.

262. The WIPO General Assembly took note of the document "WIPO Arbitration and Mediation Center, Including Domain Names" (document WO/GA/49/14).

ITEM 25 OF THE CONSOLIDATED AGENDA

PATENT LAW TREATY (PLT)

263. Discussions were based on document WO/GA/49/15.

264. The Secretariat introduced the document, which contained information on the activities of WIPO that had facilitated filing of communications in electronic form in developing countries, LDCs and countries in transition, reflecting item 4 of the Agreed Statements by the Diplomatic Conference for the Adoption of the PLT.

265. The WIPO General Assembly took note of the "Cooperation under the Agreed Statements by the Diplomatic Conference Regarding the Patent Law Treaty" (document WO/GA/49/15).

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