

Committee on Development and Intellectual Property (CDIP)

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DESCRIPTION OF THE CONTRIBUTION OF THE RELEVANT WIPO BODIES TO THE IMPLEMENTATION OF THE RESPECTIVE DEVELOPMENT AGENDA RECOMMENDATIONS

prepared by the Secretariat

1. The WIPO General Assembly in its forty-first session held in Geneva, from October 1 to 9, 2012, considered the document WO/GA/41/13 on “Description of the contribution of the relevant WIPO Bodies to the implementation of the respective Development Agenda Recommendations”.
2. The WIPO General Assembly took note of the contents of the above-mentioned document and decide to forward the relevant paragraphs from the reports of the various bodies to the Committee on Development and Intellectual Property (CDIP).
3. Accordingly, the description of the contribution of the following relevant WIPO bodies to the implementation of the respective Development Agenda Recommendations is reproduced below from their reports to the WIPO General Assemblies:
 - (a) Report on the Work of the Standing Committee on Copyright and Related Rights (SCCR), document WO/GA/41/14, paragraph 25:

Further to the 2010 WIPO General Assembly decision “to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda recommendations,” the following declarations extracted from the draft Report of the 24th session of the SCCR (document SCCR/24/11) are reproduced hereafter:

Item 8 Contribution of the SCCR to the implementation of the respective Development Agenda recommendations:

The Delegation of Brazil on behalf of the Development Agenda Group (DAG) expressed its satisfaction with the progress made in all areas of the SCCR during the session, and in particular the progress achieved in the agenda of limitations and exceptions. The work program adopted in SCCR/21 could be considered one of the most important contributions of the SCCR to the implementation of the 45 Development Agenda recommendations. The SCCR was on the right path and should be seen as a model to other bodies in terms of implementation of the coordination mechanism and the attention given to Cluster B of the Development Agenda recommendations. The work program represented a very important contribution to the mainstreaming of the Development Agenda recommendations, because it provided a norm-setting mandate taking into account the development needs and contributions to a more balanced Intellectual Property system in a very pragmatic way. The DAG highlighted the value of copyright in encouraging creative cultural developments; at the same time it also recognized the need to establish limitations and exceptions in key areas, with a view to strike the necessary balance in the IP system to ensure that those rights do not adversely affect access to knowledge and culture to disadvantaged segments of the population, especially those in developing countries. The Group was encouraged by the progress made during the session towards the conclusion of a Treaty for the benefit of visually impaired persons and it was ready to engage in negotiations on international instruments for libraries and archives, teaching and research institutions and persons with all disabilities with the same enthusiasm and commitment. Those areas also demanded effective and concrete results. The DAG was convinced that appropriate limitations and exceptions for those beneficiaries played an important role in the promotion of cultural and economic development, not only for developing countries but for all WIPO Member States. One of the key lessons learned during the negotiations was that all WIPO membership could benefit from the results arising from a balanced and fair copyright system. The DAG also commended the efforts being made towards the conclusion of a treaty on the protection of broadcasting organizations. Progress had been made and further work still remained to be done on substantive issues, taking into account the 2007 WIPO General Assembly mandate and the Development Agenda. In terms of process, the need to conduct the discussions formally was emphasized, even though informal consultations were also needed. In that regard, it recalled Recommendation 44 which dealt with the need to consult formally and informally in an inclusive and transparent manner. Because that session had been conducted mainly in an informal manner, it considered that such Recommendation should be observed when conducting discussions within the SCCR. The successful conclusion of the Diplomatic Conference of Beijing, which resulted in a new Treaty on audiovisual performances, was made possible due to the constructive engagement and productive efforts of all Member States. The DAG was satisfied by the inclusion of a clause in the preamble in the treaty referring to the importance of the Development Agenda recommendations adopted in 2007 by the General Assembly. It was meaningful that the first international instrument to be created after the adoption of the Development Agenda recommendations contained such a reference. It hoped that future WIPO instruments would also be fully consistent with the 45 Development Agenda recommendations, especially those provided by its Cluster B.

The Delegation of the Islamic Republic of Iran associated itself with the statement of Brazil on behalf of the Development Agenda Group. Development objectives lie at the heart of the SCCR and the 45 recommendations of WIPO Development Agenda were immediately relevant to its ongoing work and already integrated therein. It was

pleased to see the valuable work of the SCCR taking into account various Development Agenda recommendations especially in the area of norm setting as stipulated in Cluster B. WIPO norm setting activities on all aspects related to exceptions and limitations, namely visually impaired persons, libraries and archives, and educational and research institutions, could be supportive of the development goals of Member States and had direct linkages with their development. Therefore, it welcomed the commitment of the SCCR to develop a comprehensive and inclusive framework in its work plan agreed upon at the 21st session of the SCCR. The approach should be continued to reach tangible results in all areas. While acknowledging the importance of copyright for creativity, the Delegation attached great importance to the issue of exceptions and limitations to copyright and related rights which had an outstanding role in upholding the public interest and essentially contributed towards achievement of the development goals. Exceptions and limitations allowed governments to strike the necessary balance in their Intellectual Property systems to ensure that those goals did not affect access to science and knowledge for their population. In that context, the Delegation attached great importance to the limitations and exceptions for people with disabilities including the visually impaired. It committed to establish a strong Treaty to ensure sustainable accessibility for blind persons to copyrighted works and was happy to see significant progress in the text and towards holding the diplomatic conference; it looked forward to similar progress being made with regard to libraries, archives and education and research institutions as outlined in the SCCR work program. It hoped that the Development Agenda recommendations, especially those pertaining to norm setting in Cluster B, would be fully taken into account while negotiating various treaties in that Committee. Broadcasting also played an important role in the social, cultural and economic development of all countries, but particularly in developing countries. The protection of rights of broadcasting organizations could help broadcasters in developing countries to rely on their national or local TV programs and audiovisual productions; that could assist the industry in the developing country to produce original TV and radio programs compatible with their local, traditional and cultural values. If the industry was not supported sufficiently by updating their existing rights in the platforms, only powerful broadcasting organizations could continue to survive. It was confident that the new treaty on protection of broadcasting organizations as it was decided by the WIPO General Assembly in 2007 would be a balanced approach to help promotion of cultural diversity in that leading world industry. It invited the Secretariat to enhance its technical assistance activities for developing countries to assist them in using appropriate limitations and exceptions in favor of the public interest, including making appropriate amendments in their national laws. It also requested the CDIP to come up with projects on the best practices on the effectiveness of limitations and exceptions in developing countries with the view of enhancing the capacity of Member States to benefit from limitations and exceptions.

The Delegation of Egypt on behalf of the African Group said that the implementation and mainstreaming of the Development Agenda recommendations in all areas in WIPO was of great importance. The SCCR made significant progress in the past year in addressing the three main substantive agenda items, including limitations and exceptions, audiovisual performances and protection for broadcasting organizations. The group was pleased to see the work of the Committee continuing to be guided by the Development Agenda principles, especially regarding innovation, creativity, public domain and norm setting. The Beijing Treaty on Audiovisual Performances was the first treaty to be concluded after the adoption of the WIPO Development Agenda and had clearly recognized the importance of its recommendations as an integral part of WIPO's work. Negotiations on copyright exceptions and limitations were also progressing, especially towards a Treaty for

VIP. In that regard it supported the statement made by the WBU. It was crucial that the SCCR continued to work in accordance with the Development Agenda recommendations so that norm setting activities were inclusive, member-driven, took into account different levels of development, and were aligned with the principle of WIPO neutrality. The international copyright system was making contributions to important public policy objectives such as education, especially to support the development goals agreed within the United Nations system in accordance with Recommendation 22, as well as to preserving the human rights of visually impaired persons' access to information and knowledge. Most importantly the international copyright system was contributing to the preservation of human heritage and knowledge through supporting the role of libraries and archives. The African Group believed that SCCR future work should be guided by Recommendation 21 to ensure that WIPO shall conduct informal open and balanced consultations prior to any norm setting activities through a member-driven process, while promoting the participation of experts from Member States, particularly developing countries. In addition, its collective objective should remain seeking to achieve the right balance between the protection of moral and economic rights of writers, creators and innovators and the need that their works are accessible so that they could contribute to overall human development, progress, and accumulation of knowledge.

The Delegation of South Africa associated itself with the statements made by Egypt on behalf of African Group and Brazil on behalf of the Development Agenda Group. South Africa attached great importance to the WIPO Development Agenda and was interested in promoting the mainstreaming of the Development Agenda recommendations in all WIPO activities. It was pleased that the Committee was going to be reporting to the General Assembly for the second time on its contribution towards implementation of the Development Agenda. However, it reiterated its preference to have the issue as a standing agenda item in the SCCR sessions preceding the General Assembly. The SCCR was currently engaged in norm-setting activities pertaining to limitations and exceptions for libraries and archives, educational and research institutions, and for visually impaired persons as well as for the protection of broadcasting organizations. It attached significance to the implementation of Cluster B recommendations on norm setting in relation to the work of the Committee, especially the principles outlined in Recommendation 15. The work of the Committee on limitations and exceptions should be viewed within a broader international development agenda. There were three years until the review of the Millennium Development Goals, and the work of the Committee could provide clarity on the potential role Intellectual Property could play in advancing the MDGs related to education. Although the Committee would not be in a position at that stage to submit recommendations, at least for its Delegation achieving a legally binding international instrument on all limitations and exceptions was important. South Africa noted that significant progress had been made especially on the issue of visually impaired persons. South Africa was pleased that the 23rd and the 24th session of the Committee advanced work on limitations and exceptions and it urged the conclusion of all instruments at the earliest possible time. It would be prudent for the Committee to convene a diplomatic conference in 2013 to develop a Treaty on limitations and exceptions for visually impaired persons. For South Africa the pursuit of the protection of broadcasting organizations was a national imperative central to the development of the creative industry, in particular the cultural industry. It realized that the Treaty on the protection of broadcasting organizations had been a challenging endeavor, but one that eventually needed to be accomplished in order to curb the scourge of signal piracy and its associated socioeconomic impact. It welcomed the progress that had been made in terms of expediting the progress towards the completion of the treaty, particularly the informal consultations held in November 2011 aiming at reviving interest on that issue. The Delegation had

benefited substantially from interacting with interested Member States and other stakeholders on the issue in the spirit of the Development Agenda. It was ready to continue to work in close cooperation with a range of stakeholders for the successful conclusion of the treaty on protecting broadcasting organizations in the near future. Its preference was to have a diplomatic conference convened in 2014 to adopt the treaty. South Africa recognized that the Committee was able after a decade to resolve issues that stalled the adoption of the Treaty for the protection of audiovisual performances. It was pleased that the Treaty was eventually adopted in Beijing in June 2012. It was worth noting that it encompassed provisions striking a balance between the interests of right holders and the public interest. It noted that the outcomes of Beijing were already having a positive impact on the remaining issues being discussed in the Committee. To make sure that the Beijing spirit did indeed affect the work of the Committee, a clear and shared vision of the scope and expected outcomes was needed. Therefore, a work program providing clear guidelines on the future of the Committee was highly desirable. The program must be guided by the principle of equal treatment of issues, taking into account their different levels of maturity. The Delegation of South Africa was ready to engage proactively and constructively in ensuring that the development issues in the agenda of the Committee received the priority and attention they deserved.

The Delegation of India joined the distinguished Delegations of Iran, Egypt and South Africa in supporting the statement of the Development Agenda Group. The Development Agenda recommendations had achieved recent success in the Beijing spirit when Member States included the paragraph on the Development Agenda in the preamble of the new Treaty. It recalled the importance of the success of the United Nations Millennium Development Goals (MDGs) and linked it to limitations and exceptions for educational institutions and research organizations. Similarly it supported another reference made about the human rights issues in reference to the adoption of a treaty for limitations and exceptions for the visually impaired and other print disabled. Without any conditions, the Diplomatic Conference on that issue was to be convened in the year 2013. Overall limitations and exceptions were not creating any imbalance in the international copyright system. Also the Berne Convention, the WCT, the WPPT and the TRIPS agreement recognized the importance of the balance of rights. Equal treatment for those treaties was very important. It reminded the Committee of the importance of contributing to the development of the knowledge economy and the progress of the knowledge society because access to knowledge was essential.

The Delegation of the European Union and its Member States noted that some recommendations of the Development Agenda were relevant to the SCCR. In particular, Recommendation 15 which mentioned *inter alia*, the importance of taking into consideration a balance between costs and benefits for norm setting activities. Such an approach was particularly relevant when discussing new topics in the Committee for which instruments in whatever form were envisaged, like limitations and exceptions for libraries and archives or limitations and exceptions for educational and research institutions. Taking into account also the different levels of development, the Committee should carefully look into the socioeconomic dimension and potential impact of such possible instruments. The EU and its Member States were satisfied with the progress made in the Committee in the previous year, including first and foremost, the conclusion and adoption of the Beijing Treaty on the Audiovisual Performances. Important tasks remained on the agenda, including as regards VIP and broadcasters. The Committee should strive to adopt a balanced and inclusive work program. In that respect the European Union and its Member States stood ready to make concrete and constructive proposals.

The Delegation of Algeria supported the statements of the Development Agenda Group and of the African Group. The mechanism approved by the Assembly in 2011 made it possible for all Committees of WIPO to determine how the work undertaken by the organization could improve the Intellectual Property system and make it more efficient and ensure that knowledge and information was available and accessible to all Member States. Concrete proposals should be made in order to better integrate the development issues in WIPO's program. First of all, the very spirit of those recommendations implied an examination of the work of the Committee to create a balanced Intellectual Property system. Therefore, through an agenda to achieve international instruments on exceptions and limitations, the SCCR contributed in a notable manner to the Development Agenda. On the other hand, there was consideration of the restrictions. It believed that the SCCR was on the right path when it talked about Cluster B on norm setting. Furthermore, the Delegation also shared the views of the declaration made regarding Recommendation 44, as it believed that the process of debate should be inclusive and transparent. However, it believed that only once its work program had been concluded would the SCCR have formally and substantively contributed to the spirit of the recommendations. That was why it urged Member States to work together in order to adopt a Treaty on exceptions and limitations for visually impaired persons, for libraries, archives, educational and research institutions, and finally a treaty on broadcasting.

The Delegation of Indonesia associated itself with the statement of the Development Agenda Group and of the African Group. It also recognized progress achieved in the SCCR. Although certainly more work was still needed it was important to take into account the Development Agenda recommendations to ensure all WIPO members could benefit from the outcomes.

The Delegation of Nigeria supported the statement of the Development Agenda Group and informed the Committee that the first copyright act for Africa was 100 years old. That copyright act extended to 11 countries, all of which remained independent countries in the African continent. Looking back at developments in international relations but also in particular in international copyright law, it was clear that is a system that would always need adjustments. It was important to note that the accomplishments today were only the first steps in a very long journey with regard to the treaty for the visually impaired. When they were addressing the needs of the visually impaired, there could be no question that the responses must be law, and not only sentiment. They must be a commitment, not just an ideal. Copyright law was government policy, not private policy. It was not the entitlement of users, consumers, authors or intermediaries. Member States must have the leadership and the moral courage to establish principles that were sustainable, fair, and implemented at the highest levels of integrity. Nigeria was proud to have produced the first blind physiotherapist and the first blind professor on the continent, and to have established the first organization to train and teach the blind and the visually impaired. The exceptions and limitations agenda was a reflection of a long history and commitment to ensure that the copyright system and indeed all other systems supported the full integration of individuals into a meaningful and productive life. It was time to convene a Diplomatic Conference in 2013. Regarding the WIPO Development Agenda, it was clear that the legal, social, and political reality was that an international copyright system that did not work for all would not work at all.

The Chair declared that the Committee took note of the statements on Agenda Item 8 and announced that they would be recorded in the report of the SCCR to be submitted to the WIPO General Assembly.

(b) Matters Concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), document WO/GA/41/15, paragraphs 7 and 8:

Further to the 2010 WIPO General Assembly decision “to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda Recommendations”, IGC 22 also discussed the contribution of the IGC to the implementation of the Development Agenda Recommendations.

In this regard, the following statements were made at IGC 22. These will also appear in the initial draft report of IGC 22 (WIPO/GRTKF/IC/22/6 Prov.), which will be made available, as requested by the IGC, by September 30, 2012:

The Delegation of Brazil, speaking on behalf of the Development Agenda Group (DAG), noted that the Development Agenda was expected to guide activities, not only of the IGC, but of WIPO as a whole. With particular reference to the IGC, the Group recalled recommendation 18 which urged the Committee to accelerate the process on the protection of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs). It also recalled the importance of recommendation 15 with respect to norm-setting activities as a general guideline for the negotiations being carried out. It pointed out that since 2007, the IGC had engaged in meaningful work towards the attainment of its objectives. The Committee had produced working texts covering the three areas of its negotiation, and the General Assembly had given ambitious mandates in 2009 and 2011. As a result of the mandate given by the General Assembly in 2011, the IGC had convened three times in 2012, to focus thematically on negotiations on GRs, TK and TCEs, respectively. The meetings provided an opportunity for Member States to further share their views and make progress on the working texts. The Group, however, expressed its concerns over the pace of negotiations and noted that despite the progress made in the three areas of work, it was time to endeavor to strengthen efforts with a view to concluding the negotiations and fulfilling the mandate of the General Assembly. The Group explained that the adoption of a binding treaty or treaties was important in providing effective protection against the misappropriation of GRs, TK and TCEs. It was of the view that the protection and sustainable use of GRs, TK and TCEs could only be adequately addressed through the establishment of international rules and obligations that guaranteed the implementation of principles and objectives of the Convention on Biological Diversity (CBD), and of 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 (Nagoya Protocol). It noted that the lack of commitment by WIPO Member States to the negotiations was unacceptable if an effective outcome was to be reached. It pointed out that the IGC had been working on the three issues for over a decade, and stressed that it could not wait another decade before an agreement that fulfilled the mandate of the Development Agenda was reached. In order to achieve a truly inclusive intellectual property (IP) system, the Group stressed the importance of identifying solutions from which all Member States could benefit. It further pointed out that the issues and negotiations in the Committee were of special relevance to developing countries and least developed countries (LDCs) and, therefore, urged Member States to pursue the speedy conclusion of the negotiations for the benefit of developing countries and LDCs in line with the principles and objectives of the Development Agenda.

The Delegation of South Africa, speaking on behalf of the African Group, provided an assessment of the contribution of the IGC to the implementation of the respective Development Agenda recommendations. It noted that the IGC, under the Development Agenda, was requested to accelerate the process on the protection of GRs, TK and TCEs. It recalled that the 2011 WIPO General Assembly mandate of the IGC, in the biennium 2012-2013, was to “expedite its work on text-based negotiations with the objective of reaching agreement on a text or texts of an international legal instrument or instruments which will ensure the effective protection of genetic resources, traditional knowledge and traditional cultural expressions”. To aid the work of the IGC, it explained that three thematic sessions for GRs, TK and TCEs were agreed to be held in the first half of 2012. The Group expressed its appreciation for the progress made in the work of the Committee this year and noted, in particular, the efforts of the Committee in developing a draft legal text for GRs. It pointed out that it had wished for the thematic sessions to accelerate the negotiations with a view to completing the legally binding instruments. It further welcomed the fact that the 2012 WIPO General Assembly would have the opportunity to assess the progress on the text of the international legal binding instrument(s) on GRs, TK and TCEs as transmitted to it by the Committee, with a view to agreeing on the way forward, especially regarding the convening of a Diplomatic Conference. It expressed its expectation that, in taking stock of the text on the three instruments, the General Assembly would make a landmark decision to ensure that the Committee completed its work towards the effective protection of GRs, TK and TCEs. It noted that a lot of technical work and discussions had already taken place over the past decades, and expressed the view that what remained was the political will of all Member States to conclude the work of the IGC. It urged all Member States to commit to the conclusion of the work of the IGC. In conclusion, the Delegation stated that it expected the Committee to adhere to implementing the relevant Development Agenda recommendations and also to adhere to the mandate given to it by the General Assembly which, it noted, was the highest decision-making body in WIPO.

The Delegation of the European Union, speaking on behalf of the European Union and its Member States, recalled that a number of recommendations of the Development Agenda were relevant to the IGC, in particular Recommendation 18, which emphasized that the work of the IGC on GRs, TK and TCEs was without prejudice to any outcome. The Delegation was of the view that any instrument agreed upon should be flexible, sufficiently clear, and non-binding. It similarly reaffirmed its preference for separate texts. It expressed satisfaction that the IGC had witnessed continued progress in its negotiations over the last semester. It, however, believed that further substantive work on the texts was required so as to fulfill the mandate of the Committee. It noted that the norm-setting activities within the IGC had been member-driven and involved a participatory process which took into consideration the interests and priorities of all IGC members and the viewpoints of other stakeholders, including accredited intergovernmental organizations and non-governmental organizations (NGOs), in line with Recommendation 15. The norm-setting process, according to the Delegation, had considered the boundaries, roles and contours of the public domain as required in Recommendations 16 and 20, and had taken into account flexibilities in international IP agreements, as required in Recommendation 17. It further noted that the WIPO Voluntary Fund for Accredited Indigenous and Local Communities, which had facilitated participation of the observers in the IGC sessions, as well as activities of the Indigenous Consultative Forum and the IGC Indigenous Panel, should be mentioned in the context of Recommendation 42, which referred to the wide participation of civil societies at large in WIPO activities, in accordance with its criteria regarding NGO acceptance and accreditation, keeping the issue under review. With respect to Recommendation 42, the Delegation also referred to the discussions held in plenary

on the participation of observers which, it noted, had led to a number of decisions at IGC 20. The Delegation noted that it looked forward to another productive year for the IGC in 2013.

The Delegation of Italy, speaking on behalf of Group B, made reference to Recommendations 15, 16, 17, 18 and 20, noting that the IGC had accomplished important progress in the present year in its work on GRs, TK and TCEs. Further work, however, remained to be done in order to fulfill the mandate of the Committee. The Group considered it essential that such work remained member-driven, inclusive, participatory, and took into account the interests and priorities of all WIPO Member States, and the viewpoints of other stakeholders, including accredited intergovernmental organizations and NGOs. It said that it was also important that the Committee continued to consider the preservation of a robust, rich and accessible public domain, and the obligations and flexibilities in international IP agreements as they may be relevant.

The Delegation of Iran (Islamic Republic of), speaking on behalf of the Asian Group, was of the view that development objectives were at the heart of the IGC, and the 45 recommendations of WIPO Development Agenda were immediately relevant to its on-going work. It was happy to see that the Committee had implemented the various Development Agenda recommendations, especially in the area of norm-setting as stipulated in cluster B. It believed that WIPO's norm-setting activities in this area could be supportive of the development goals in countries, and could have a direct linkage with their development. It observed that, at the moment, there was no binding rule or convention to preserve the moral and economic rights of the beneficiaries of TK, TCEs and GRs. In the absence of internationally binding rules for the effective protection of TK, TCEs and GRs, bio-piracy and misappropriation of GRTKF for commercial benefit had become a prevalent phenomena all over the world, particularly in developing countries. This rather unfortunate and rampant situation continued to deprive developing countries of greater leverage over the use of their potential resources resulting in undermining their sustainable development and competitiveness in the international market. It advised that the only way to remedy this unfair situation was by establishing new international norms and binding rules to help developing countries protect their potential resources in order to utilize and commercialize them at the international level for the benefit of their people. The new mandate of the IGC provided a new momentum to the fulfillment of a long-standing aspiration of developing countries in pursuing a binding instrument on GRTKF. The constructive engagement of Member States had led to the drafting of three consolidated texts which reflected all views and opinions. It noted that it would be important that the Committee kept the momentum and tried to solve the remaining divergences, with a view to holding a Diplomatic Conference in the near future. It stressed that the adoption of a new treaty in this area would send a clear message to developing countries that their needs and requirements in the IP system had been taken into account. Such a trend could move IP rights towards a more balanced direction, and would increase the interests of developing countries in the IP system, provide an enabling environment for development in these countries and play an outstanding role in enhancing their economies through the use of IP. Consequently, it would increase the contribution of the developing countries in the global economy and global cultural partnership. It also said that although most of the developing countries were rich in TCEs, TK and GRs, they needed technical assistance in terms of developing coherent national systems to preserve their resources at the national and international level. The WIPO Secretariat was invited to provide technical assistance to developing countries, in order to enable them to formulate their national law protection systems, as well as develop strategies for commercialization of TK and TCEs for the benefit of their beneficiaries, in parallel with on-going

negotiations in IGC. It also invited the Committee on Development and Intellectual Property (CDIP) to build on the South-South corporation project to assist different countries in formulating their national strategies in accordance with their needs and requirements.

The Delegation of the United States of America, in expressing its support for the intervention made by the Delegation of Italy, speaking on behalf of Group B, said that it supported the adoption of a non-binding international instrument pursuant to the current mandate of the WIPO General Assembly - one that was faithful to the WIPO Development Agenda, and recommendation 18, and that did not prejudice any outcome. In particular, it believed the Committee must respect those recommendations that call on WIPO to consider both costs and benefits to maintaining a rich and accessible public domain, and to take into account flexibilities in the international instruments. It thought that was necessary in order to preserve the policy space of Members on these complicated topics. It further stressed that one of the fundamental underpinnings of the WIPO Development Agenda, the notion that one-size-fits-all, was not the desired approach, and that policy space must be preserved. Just as existing norms on IP preserved such policy space by respecting a robust public domain and flexibilities, it believed that the Committee's work on TCEs, TK and GRs must also avoid movement towards a one-size-fits-all system.

The Delegation of India associated itself with the statements made by the Delegations of Brazil, speaking on behalf of the DAG and Iran (Islamic Republic of), speaking on behalf of the Asian Group, and expressed its support of the implementation of the mainstreaming of the Development Agenda recommendations, adopted by the WIPO General Assembly in 2007, in all areas of WIPO. It emphasized that the recommendations of the Development Agenda must guide the activities of the IGC as such. It further recalled Recommendation 18, which required the IGC to accelerate the process in the protection of GRs, TK and TCEs without prejudice to any specific outcome, including the possible development of an international instrument(s). It looked forward to an early and positive conclusion of a binding international legal instrument on all the three on-going norm-setting initiatives in the IGC, as mandated by the 2011 WIPO General Assembly. It finally affirmed its Delegation's continued commitment to engaging in the forthcoming discussions in the Committee, and looked forward to substantive progress.

[Note from the Secretariat: The following statements were submitted in writing form and not delivered orally].

The Delegation of Argentina noted that the work of the IGC, as well as that of all the competent bodies of WIPO, needed to take into account the Development Agenda recommendations, in particular, through the mechanism approved at the 2010 General Assembly. It noted that the matter being addressed by the IGC was closely related to the general principles of the WIPO Development Agenda and, more specifically, to Recommendation 18, which urged that the process on the protection of GRs, TK and TCEs be accelerated, without prejudice to any specific outcome, including the possible development of an international instrument(s). The Delegation expressed its interest in the progress made in terms of the work carried out and the substantive endeavors of the Committee, which were aimed at producing greater agreement on what was a multi-faceted issue. It noted that the negotiations within WIPO were a positive development, given that there was need for a debate concerning a reference framework within which IP rights could be deemed to be linked to TCEs, and which allowed the users and providers of such

expressions to receive greater legal reassurance concerning access to and distribution of the benefits arising from their use.

The Delegation of Algeria expressed its support for the statements made by the Delegations of South Africa and Brazil, speaking on behalf of the African Group and DAG, respectively. It said that its Delegation took positive note of the fact that the 2010 General Assembly's decision on the implementation of the monitoring and reporting mechanism of the WIPO Development Agenda was being applied by the Committee. It looked forward to seeing all the relevant WIPO bodies reporting substantially on their contribution towards the implementation of the Development Agenda recommendations. It believed that this was the best tool that would ensure that the "development dimension" was fully integrated in the work of WIPO. More particularly, it was pleased that the IGC was currently undertaking text-based negotiations with the objective of concluding an appropriate international legal instrument(s) for the protection of TK, TCEs and GRs, adding that the three thematic sessions of the Committee had been very useful in expediting the work of the IGC, as mandated by the 2011 General Assembly. It was, therefore, of the view that the current negotiation process was, to a certain extent, in line with the Development Agenda Recommendation 18, that urged the IGC "to accelerate the process on the protection of genetic resources, traditional knowledge and folklore, without prejudice to any outcome, including the possible development of an international instrument or instruments." It, however, believed that a strong commitment from all delegations was still needed to achieve the spirit of the Development Agenda recommendations, especially Recommendations 18, 15 and 21. In conclusion, it said that the Committee could count on the Delegation commitment.

(c) Report on the Work of the Standing Committee on the Law of Patents (SCP), document WO/GA/41/16, entitled "Reports on other WIPO Committees", paragraph 16:

Further to the 2010 WIPO General Assembly decision "to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda Recommendations", the following statements extracted from the preliminary draft report¹ of the eighteenth session of the SCP (document SCP/18/12 Prov1., paragraphs 190 to 212), are reproduced hereafter:

The Secretariat informed the delegations that, in connection with agenda item 12, the following text had been agreed by the Committee at its sixteenth session, and was recorded in the Summary by the Chair as well as the Report of that session: "A number of Delegations made statements on the contribution of the SCP to the implementation of the respective development agenda recommendations. The Chair stated that all statements would be recorded in the report for the sixteenth session of the SCP, and that they would be transmitted to the WIPO General Assembly in line with the decision taken by the 2010 WIPO General Assembly relating to the development agenda coordination mechanism."

The Delegation of Algeria, speaking on behalf of the DAG, stated that it attached great importance to agenda item 12, and expressed its pleasure in noting that the Committee was taking stock of how it had so far contributed to the mainstreaming of the Development Agenda in its area of work in keeping with the decision of the

¹ In accordance with the procedure agreed by the SCP at its fourth session (see document SCP/4/6, paragraph 11), the preliminary draft report of the eighteenth session of the SCP has been made available on the SCP Electronic Forum to the members of the SCP to comment on it, prior to its submission to the nineteenth session.

General Assembly. The Delegation noted that the patent system was a key element in the intellectual property framework, which impacted directly on national socio-economic development and societal welfare. In its view, the fundamental premise of the patent system was that a country conferred an artificial and temporary monopoly to the inventor, in exchange for disclosing the invention to benefit the larger interests of society. The Delegation observed that there was a growing acknowledgement that the current IP system focused heavily on ensuring rights to IP title holders, without adequately ensuring that the other side of the trade-off was taking place as it should, consequently leading to the concern that the patent system was not working as it had been originally intended. The Delegation considered that if the IP system had to thrive and encourage innovation and growth – a goal that was shared and supported by all, that could only happen if its shortcomings were effectively addressed. While the Delegation noted with satisfaction that there had been a tentative initiation of discussions in the Committee on some of those aspects, it was of the view that the Committee should have a more open and frank discussion about some of the current deficiencies in the patent system and try to recover the essential balance that ought to be inherent in the patent system. In its opinion, that could only happen if there was a willingness and a commitment to improve the system, where needed, both for the benefit of Member States and for the future viability of the system itself. To that end, the Delegation welcomed the discussions that had taken place during the previous sessions of the SCP on a wide range of issues, including exceptions and limitations to patent rights, anti-competitive practices, other models of innovation, etc. The Delegation considered that they had actually contributed to a more balanced and comprehensive approach taken on many complex aspects of the international patent system. The Delegation, however, expressed the opinion that the Committee must go beyond the theoretical debate and address the actual practices – what actually happened in the outside world on the issues that were the subject of intense debates outside of WIPO but had not yet been addressed in the context of the Committee. In its view, the Committee should not be afraid of discussing and better understanding how patents were used in the market, and how those uses promoted or hindered innovation, technological growth and development. The Delegation observed that it was only through such frank discussion Member States could expect to generate the collective will and actions needed to improve the system. The Delegation noted that the issue of patent quality was one such key issue to be addressed, if Member States sought an effective and credible international patent system. The Delegation, however, considered that the Committee should have a shared and common understanding of what was meant by ‘patent quality’ before it would proceed to discuss and finalize a work program in that regard. The Delegation further noted that another critical area was the issue of patents and health, which had seen animated discussions in the public realm and had led to many concrete actions in other organizations, such as the WTO and WHO. In its view, WIPO had been conspicuously silent and continued to do so. The Delegation expressed its hope that the delay by WIPO in the treatment of that issue would be filled by taking concrete and useful steps in the work program of the SCP, on the basis of the joint proposal of the DAG and the African Group. The Delegation explained that that proposal intended to develop a work program aimed at strengthening the capacities of Member States, especially developing countries and LDCs, to adopt a patent system that took full advantage of the flexibilities provided by the international system of patents in order to promote the priorities of public health policy. The Delegation considered that that proposal was broadly in line with Development Agenda Recommendation 22 which stated that WIPO’s norm-setting activities should be supportive of the development goals agreed within the UN system, including those contained in the Millennium Declaration. Similarly, the Delegation was of the opinion that more tangible discussions were needed in the

SCP on how patents could contribute to better addressing the key challenges facing humanity today - in areas such as food and energy security, environment, disaster management, climate change and education. The Delegation expressed its hope that in the days ahead, there would be open and constructive engagement on those important issues. In its view, the long prevalent and naïve assumption that providing patent holders with stronger rights would, by itself, foster innovation and attract investments had been rejected in the light of global economic realities and experiences. The Delegation observed that how countries could optimally calibrate the level of IPR protection using exceptions and limitations and other tools as well as flexibilities had so far been an academic discussion in the Committee. It considered that the establishment of an analysis on exceptions and limitations and how to use them as a step towards establishing a non-exhaustive manual on exceptions and limitations that would serve as reference to Member States, would allow WIPO to play its due role in assisting countries in evolving tailor-made IPR policies. The Delegation stated that, finally, and most importantly, the issue of transfer of technology was at the heart of the fundamental trade-off inherent in the patent system. The Delegation considered that an objective assessment of how the patent system had so far enabled or impeded technology transfer and identification of ways by which WIPO could help the patent system contribute to that goal, was at the heart of the work of the Committee. Noting that the SCP had not yet taken concrete actions in that regard, the Delegation stated that Development Agenda recommendation 25 (which called on WIPO to study the policies and initiatives related to the IP necessary to promote the transfer and dissemination of technology) required more effort by the SCP for its implementation. The Delegation looked forward to translating those discussions into useful elements of the SCP's work program. In conclusion, the Delegation stated that the SCP had started an important and necessary discussion on various development-related aspects of the patent system, which had been hitherto not addressed, and welcomed that positive step. It also expressed the hope that many critical issues that had not yet been addressed in the Committee would become the subject of honest and constructive consideration, leading to their integration in a holistic, development-oriented and balanced work program for the SCP.

The Delegation of Egypt, speaking on behalf of the African Group, shared the views expressed by the Delegation of Algeria on behalf of the DAG. The Delegation expressed its belief that it was their task, within the Committee as well as in other WIPO fora, to ensure the implementation and mainstreaming of the Development Agenda and to ensure coherence and coordination of the relevant activities within the respective mandates of WIPO bodies. The Delegation stated that, against that backdrop and in line with the decision made by the WIPO General Assembly to institutionalize the coordination mechanism of monitoring, reporting and assessing to the WIPO General Assembly by the other WIPO bodies, it had supported the inclusion of that agenda item. The Delegation expressed the opinion that not to include that agenda item as a standing item on the agenda of the SCP was inconsistent with the decision of the WIPO General Assembly, which was the mother body that governed the work of the SCP. The Delegation expressed its belief that it was necessary to assess how discussions within the Committee contributed to and were consistent with the relevant Development Agenda recommendations in order to ensure, in the international system, balance and equilibrium between IP holders and public interests at large. The Delegation observed that the relevant agenda items discussed until that moment reflected more or less specific recommendations of the Development Agenda. The Delegation noted that a cross-cutting recommendation would be the one to mandate WIPO, upon the request of Member States, to undertake studies and impact assessment studies and evaluation, which came under Cluster D of the Development Agenda and, specifically, its

recommendation 35, providing for an impact assessment to evaluate the economic, social and cultural impact of the use of the intellectual property system. Considering that the SCP was the Committee specialized on patents, the Delegation was requesting such impact assessments in various areas. The Delegation specified that, in particular, such assessments related to the question of exceptions and limitations and how the exceptions and limitations presented in the existing international patent system helped development and the public policy consideration within the respective Member State as well how those countries could be assisted in incorporating and implementing exceptions and limitations in their national systems. The Delegation recalled that it was also within WIPO's mandate to provide the States with technical assistance, capacity building and advice in that area, taking into consideration its agreement of cooperation with the WTO in order to implement the TRIPS Agreement. In its view, that was in line with the proposal by the African Group and the DAG that had been put forward on patents and public health. The Delegation explained that the joint proposal concerned how the existing patent system impacted the public health considerations of States and how to assist States in raising their capacities, including the implementation and incorporation of flexibilities, in order to achieve their public health policy objectives or to face the national public health challenges. Furthermore, the Delegation pointed out that transfer of technology was another cross-cutting issue, and in the field of patents, they were requesting within the Committee, impact assessment studies in order to individuate what provided an incentive to and what constituted an obstacle to technology transfer. The Delegation, to conclude, stated that the development perspective had to be taken into account by the Committee, and that the African Group were focusing on impact assessment studies and its request for capacity building as a final goal in all of those areas in order for it to make use of the patent system for the favor of development.

The Delegation of the United States of America, speaking on behalf of Group B, expressed its pleasure to contribute to the discussion on the SCP's implementation of the respective Development Agenda recommendations. The Delegation believed that the five topics that formed the balanced work program had the potential to make a meaningful contribution to the Development Agenda recommendations. The Delegation, however, observed that, unfortunately, the Committee had made little progress with its work. The Delegation reiterated its position that agenda Item 12 should not be a standing or permanent item. The Delegation considered that, unfortunately, at that stage, due to disagreement within the Committee, there had been little progress to report both respective implementation of the Development Agenda and more generally. It expressed the wish of Group B to progress in the SCP in line with the mandate of the Committee, which was to serve as a forum to discuss issues, facilitate coordination and provide guidance concerning progressive international development of patent law, including the harmonization of national laws and procedures.

The Delegation of South Africa aligned itself with the statements made by the Delegations of Egypt on behalf of the African Group and Algeria on behalf of the DAG. The Delegation expressed its concern and disappointment that the reporting of the SCP to the WIPO General Assembly about the implementation of the Development Agenda recommendations, which was inherent to its work, was subject to discussions and disclaimer by some Member States. The Delegation recalled that the WIPO General Assembly adopted a decision instructing relevant WIPO bodies to include, in their annual reports to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda recommendations. In its view, according to that decision, there should be a standing agenda item in every session of the Committee preceding the WIPO

General Assembly. The Delegation recalled that the WIPO Development Agenda, including its coordination mechanism, was adopted by the WIPO General Assembly, the highest decision making body in WIPO. The Delegation therefore expressed its belief that it was fundamental for all Member States to demonstrate political will and adhere to the decision of the WIPO General Assembly. The Delegation highlighted the importance of a balanced intellectual property system which would take into account public policy issues and public interests. The Delegation observed that the Development Agenda provided for that balance should be pursued. It considered that the impact of the patent system on development, particularly on industrial development, could not be overemphasized. In its opinion, innovation could play a central role in addressing some of the key global challenges, such as health, food security and climate change, and the Delegation recognized the role the Committee could play in enhancing the understanding and adoption of a patent law suited to a Member State in respect to the different levels of development of the countries. In relation to the issue of enhancing the capacity to innovate, the Delegation was pleased that the Committee was undertaking work on patents and health, technology transfer, exceptions and limitations and opposition systems. The Delegation pointed out that those issues related to a number of Development Agenda recommendations related to flexibilities, transfer and dissemination of technology, access to knowledge, access to information, technical assistance and capacity building. The Delegation recognized the significant progress made by the Committee in addressing exceptions and limitations, opposition systems and transfer of technology, and appreciated all the activities undertaken by the Committee on the issues to that moment. The Delegation, however, expressed its belief that more work was still needed to be undertaken on those issues, especially in the area of transfer and dissemination of technology and flexibilities. The Delegation was of the opinion that more interactive engagement involving relevant stakeholders was desirable at that field of intellectual property. The Delegation considered that innovative and practical solutions to overcome technologies partialities were needed for the Committee to fulfill the Development Agenda recommendations, particularly those under Cluster C, as a means to ensure the long-term preservation of and continued access to information. Regarding the topic of patents and health, the Delegation recalled that three sessions had been held since the joint proposal of the African Group and the DAG on patents and health had been formally submitted to the Committee. The Delegation explained that that proposal aimed to address challenges faced by developing countries in utilizing patent flexibilities. Contrary to the arguments that the SCP should not address that issue, the Delegation expressed its belief that the Committee was the appropriate place to address that issue. The Delegation encouraged the Committee to expedite its work and adopt a work program on patents and health. The Delegation expressed its appreciation for the interactive briefing and discussions on the trilateral cooperation between WIPO, the WHO and the WTO on matters of health. The Delegation proposed to the Committee to have a standing agenda item on the trilateral cooperation between WIPO, the WHO and the WTO on issues related to health in order to facilitate the implementation by the SCP of the Development Agenda recommendations, especially Recommendation 40. To conclude, the Delegation expressed its hope that the Committee would continue to work on the basis of the balanced existing program to advance the development of the international patent system in a balanced manner for the benefit of all Member States, especially developing countries and LDCs, giving consideration to the Development Agenda recommendations.

The Delegation of Brazil expressed its support to the statements made by the Delegations of Algeria on behalf of the DAG and Egypt on behalf of the African Group, as well as the statement made by the Delegation of South Africa. The

Delegation stated that it attached great importance to the coordination mechanism of the Development Agenda approved in 2010. According to that decision, in its view, the SCP was one of the relevant bodies to report to the WIPO General Assembly and had proceeded accordingly in 2011. The Delegation therefore stated its understanding that such agenda item should be made permanent in order to implement correctly the decision of the WIPO General Assembly. The Delegation observed that the SCP had diversified its work program since the Development Agenda had been approved. The Delegation pointed out that the agendas of the sessions were not one sided and aimed at involving subjects of interest of all members. The Delegation expressed its belief that such balance was necessary to ensure that the Committee did not pursue in a single-minded way, the interest of ever higher level of protection of patent rights and harmonization, because that would leave aside development needs, while welcoming a one-size-fits-all approach. The Delegation considered that the adoption by the Committee of the work program put forward by Brazil in document SCP/14/7 regarding exceptions and limitations to patent rights would be in line with recommendation 17 of the Development Agenda which stated that WIPO's activities should take into account the flexibilities contained in international intellectual property agreements. The Delegation noted that the discussions on quality of patents might relate to Recommendations 8 and 10, if it would bring to light the need for providing access to patent databases and assistance to Member States to improve their national intellectual property institutional capacity through further development of their infrastructure, thus stimulating an efficiency which in turn played an important role in quality of patents. The Delegation pointed out that much was to be done in other areas. It considered that Cluster C on transfer of technology still demanded further work, since the obstacles and initiatives necessary to promote the transfer and dissemination of technology continued to be unclear to some Member States. Furthermore, the Delegation stated that Recommendation 17 did not appear to be implemented within the subject of patents and health, which had among its goals to explore the flexibilities which were useful to improve the policies with regard to health. In its opinion, the adoption of the proposal by the African Group and the DAG was a good step towards such implementation. The Delegation expressed its hope to see the work of the Committee continuing with a balanced agenda that took into account the needs of all Member States, while supporting the goals of the Development Agenda.

The Delegation of Denmark, on behalf of the European Union and its 27 Member States, recalled that the SCP, according to document SCP/1/2, page 2, paragraph 3, had been established to serve as a forum to discuss issues, facilitate coordination and provide guidance, concerning the progressive international development of patent law, including patent law harmonization. The Delegation pointed out that in fulfilling its mandate, the Committee could serve the well-functioning of the patent system and the promotion of innovation and technology transfer, and also contribute to the implementation of a number of recommendations of the Development Agenda. In its opinion, since relatively little progress had been made on the different items on the agenda of the Committee due to divergent views on how to move forward, it might be difficult to give a full picture at that stage of the implementation of the relevant Development Agenda recommendations. The Delegation, from a procedural perspective, underscored that in reporting to the WIPO General Assembly on its contribution to the implementation of the respective recommendations of the Development Agenda, the SCP should follow the modalities already agreed in the form of reporting. The Delegation expressed its belief that, according to the established WIPO practice, agenda Item 12 should not be a permanent item on the agenda of the Committee. The Delegation pointed out that, when implementing a balanced work program of the SCP, the duplication of

work with other WIPO Committees and other international organizations should be avoided.

The Delegation of Egypt, speaking on behalf of the African Group, expressed its wish to react to some views expressed on the topic in order to make sure that the Committee was in line with the decision of the WIPO General Assembly. The Delegation considered that any step taken within the Committee should be a step forward. It pointed out that, when a study was proposed, it was in order to reach the final goals of the SCP, among which there was also the implementation of the recommendations of the Development Agenda relevant to the Committee. In its opinion, delegations should be working in line with the established mandate of the Committee, but keeping in mind that the Development Agenda, when it had been established through a long process of negotiations within WIPO, was meant to be a transcending issue. The Delegation therefore considered that whatever came from the Development Agenda into the Committee would be in line with the decision made by WIPO in its large and comprehensive constituency. It expressed its belief that the Development Agenda should be mainstreamed in all WIPO bodies and activities, and thus tailored to the original mandate of the SCP. The Delegation noted that when some delegations made some proposals, as the one advanced by the African Group, for example, they had kept in mind to achieve, or striving to achieve the goals of implementing the Development Agenda in line with the respective mandates of each WIPO body. The Delegation drew attention to the fact that the Committee should be reporting to the General Assembly on any kind of progress, and regretted that some delegations had the impression to have had no progress. The Delegation considered that the discussion in itself, whether achieving a consensus or not, would be a step forward, because it would allow delegations to discuss and explore the issues that were present on the non-exhaustive list of issues that should form the work program of the Committee. The Delegation considered that the issue should remain open for discussion in order to improve the international patent system not only for the purpose of making the patent system to be more efficient, but also making it operating well for the purpose of development.

The Delegation of Hungary, speaking on behalf of the CEBS, supported the statement made by the Delegations of Denmark on behalf of the European Union and its 27 Member States and the United States of America on behalf of Group B. The Delegation pointed out that, within the work program concerning patent law and the international patent system, there should be a balance between the fulfillment of the SCP mandate to serve the well-functioning of the patent system, promotion of innovation and technology transfer, on the one hand, and the contribution to the implementation of a number of recommendations of the Development Agenda, on the other hand. The Delegation observed that, looking at the discussions which had taken place within the Committee during the last sessions, the Committee was following WIPO's General Assembly decision in relation to development goals. The Delegation pointed out that the Committee's work program was still under deliberation, and therefore, the exact evaluation of its contribution to the Development Agenda could not be carried out at this stage.

The Delegation of South Africa observed that some delegations had quoted the rules of procedure of the Committee. The Delegation recalled that in 2009, the Committee was coming from a hiatus because an agreement on the work program had not been reached. The Delegation noted that the non-exhaustive list should be the starting point. It drew the attention of the Committee to the fact that the Development Agenda had been adopted in 2007 and that the decision of the WIPO General Assembly concerning the implementation of the Development Agenda recommendations within other WIPO's bodies had been taken in 2010. Looking at

the work that the Committee had undertaken, the Delegation was of the view that the SCP had done some substantial work, such as commissioning studies. The Delegation observed that, for example, the studies on transfer of technology and opposition systems provided a good overview. In its opinion, no agreement on an issue, such as quality of patents, did not mean that there was no progress in terms of realizing the Development Agenda recommendations. The Delegation stated that, looking at the five issues on the work program, it appreciated all the studies prepared by the Secretariat in the past years. The Delegation noted that the trilateral coordination between WIPO, the WHO and the WTO should also be taken into consideration. The Delegation observed positive outcomes during the last twelve months, and expressed its belief that when there was something positive, there was room for improvement. The Delegation stated that it was not sharing the view that there was no or slow progress in the Committee.

The Delegation of Spain supported the statement made by the Delegation of Denmark on behalf of the European Union and its 27 Member States. The Delegation expressed its wish to contribute to striking a balance in relation to the Committee's contribution to the implementation of the WIPO Development Agenda. The Delegation was of the opinion that the discussion had been enriched through the consideration of the particular circumstances of the different Member States, and that the resulting approach was reasonably satisfactory. The Delegation observed that the agenda for the SCP sessions held since the last session of the Assemblies included matters such as exceptions and limitations, patents and health, transfer of technology, quality of patents. In its view, within a relatively short period of time, efforts had been made to include development aspects into the discussions on patents. The Delegation deemed that the SCP had been enriched by the consideration of a great number of aspects of the social and international reality. The Delegation expressed its regret that because of the lack of progress within the Committee caused by the failure to agree on how to move forward, at that moment, it was not able to provide a more detailed overview of the implementation of the Development Agenda within the Committee. The Delegation pointed out that such an intensive process had given rise to a number of questions to be addressed in the near future: for example, the distribution of tasks between committees in order to better use the resources of the organization and enable a smoother progress on substantive patent-related matters. Furthermore, the Delegation considered that the development perspective should not impede the discussions of the Committee on other issues, since the loss of the balance in the discussion might result in the Committee becoming an unnecessary replica of other committees.

The Delegation of Venezuela (Bolivarian Republic of) supported the statement made by the Delegation of Algeria on behalf of the DAG. The Delegation stated that since the inclusion of the matter in the agenda was very important for them, it should be maintained on the agenda. The Delegation considered that maintaining that item was in the mandate of the WIPO General Assembly, and supported by the coordination mechanism of the Development Agenda decided by the General Assembly. The Delegation was of the opinion that much still remained to be done in the area of patents, because in its view, patents were closely connected with mankind's challenges affecting not only developing, but also developed, countries. The Delegation expressed its belief that issues such as food security and climate change were important not only at present, but also for the future. Concerning climate change, the Delegation stated that the enterprises that were responsible for the current ecological disaster were the ones holding the patents that were able to provide the solution to that problem. It pointed out that the inclusion of the item in the agenda was of vital importance not only for developing countries, but also for developed countries, if the latter wished to look forward to the future. The

Delegation expressed its belief that the Committee needed to continue its work with a mandate which implied obligations for all Member States.

The Delegation of Djibouti supported and endorsed the statements made by the Delegations of Algeria on behalf of the DAG and Egypt on behalf of the African Group. The Delegation expressed its belief that the inclusion of the item in the agenda of the Committee was in line with the decision of the WIPO General Assembly which had called for the mainstreaming of the implementation of the Development Agenda in all WIPO bodies. The Delegation stressed the importance of the report by the SCP to the General Assembly, in view of its mandate given by the WIPO General Assembly. The Delegation, therefore, supported the retainment of the item on the agenda of the Committee.

The Delegation of the United Republic of Tanzania supported the statements made by the Delegations of South Africa and Egypt on behalf of the African Group. The Delegation observed that although discussions were unavoidable within a larger group such as the SCP, the importance of the topics addressed in the Committee made delegations gather in the meeting room. The Delegation expressed its belief that the agenda item under consideration was crucial, and that the SCP could not avoid the item of the implementation of the Development Agenda for the impact it had on everyone. In its view, having a larger discussion and detailed information in order to reach a consensus on concrete actions were very important. The Delegation considered that the Committee had a complementary role to play in the implementation of the Development Agenda recommendations. It invited delegations to iron out the emerged impediments and obstacles through the discussion rather than depending on the actions of other bodies. In its view, there was no duplication of work. The Delegation supported the Committee to continue doing its work, considering other WIPO bodies complementary to, and not in contradiction with, the SCP.

The Delegation of Indonesia supported the statements made by the Delegations of Egypt on behalf of the African Group and Algeria on behalf of the DAG in relation to the fact that the issue should remain a standing agenda item in the Committee. The Delegation observed that during the current session of the SCP, some problems that needed to be addressed in relation to patents and health had emerged. It expressed its belief that that item should remain in the agenda of the Committee.

The Delegation of Ghana aligned itself with the statements made by the Delegations of Egypt on behalf of the African Group and Algeria on behalf of the DAG. The Delegation deemed the topic of the implementation of the Development Agenda crucial in relation to other topics discussed within the Committee. The Delegation expressed its belief that the issues raised by the above Groups presented some aspects related to the Development Agenda, such as technical assistance and capacity building, linked to other aspects such as the quality of patents. For that reason, the Delegation expressed its opinion that it was important to keep those items on the agenda, together with the other topics that were being discussed within the Committee.

The Delegation of Peru, in view of continuing to protect intellectual property rights, expressed its appreciation for the Secretariat's effort in compiling information on important subjects such as exceptions and limitations, opposition systems, quality of patents and, above all, the effort to bring within the discussion of the Committee public health issues that were connected with patents. As the Delegation of Spain, the Delegation expressed its belief that those issues were very important, but that they presented many nuances with respect to the interests of governments of

Member States. Furthermore, the Delegation observed how difficult it was to reach harmonized conclusions or results. The Delegation suggested that the Committee continue its efforts to keep those items, such as technology transfer and quality of patents, on the agenda of future meetings.

The Delegation of El Salvador expressed its wish to deal with two topics, public health and transfer of technology, addressed in the Committee the previous day, given their involvement in Development Agenda issues and the importance the Delegation was attributing to them. The Delegation emphasized the importance of continuing discussion on public health as part of the work of the Committee. Noting that its statement was general and far from being exhaustive, the Delegation stated that Member States should adopt legal provisions that fully used the flexibilities available in the international patent system in order to resolve possible public health issues related to patents. The Delegation considered that Member States should have focused more on how those legal provisions could have been implemented in order to meet public health needs. The Delegation proposed to start exploring in a practical way what those real needs were in order to allow developing countries to use more frequently those flexibilities. The Delegation was of the opinion that attention should be drawn to the difficulties that developing countries were facing in the effective implementation, for instance lack of information, technical capacity or trade measures, in order to help those countries improve their systems. The Delegation expressed its belief that a positive experience to be taken into account was the one of Rwanda, which availed itself of the flexibility concerning a compulsory license to export pharmaceuticals produced under a compulsory license under the TRIPS Agreement. The Delegation noted that it was the first case that a WTO member used the system of compulsory licenses established by the decision of the General Council of August 30, 2003, to export pharmaceuticals to a requiring country. The Delegation, in particular, mentioned that Canada was the first country to notify the WTO its request for authorization to produce and export to Rwanda the generic version of a patented medicine. The Delegation thanked the African Group and the DAG for their proposal, and welcomed the submission of more contributions in order to intensify the work of the Committee. The Delegation considered that continuing the work of the SCP using studies on topics such as the obstacles that countries were facing in implementing flexibilities was very relevant to its country. In relation to Item 10 of the agenda on technology transfer, the Delegation considered that topic very important and necessary to address dissemination of patented inventions as a first means of transferring technology in areas such as the pharmaceutical sector. The Delegation noted that since generic drugs were produced in El Salvador, it was interested in knowing how good manufacturing practices were applied and how the critical pharmaceutical production criteria in the production of pharmaceuticals required by WHO might be resolved. The Delegation stressed the importance of the work of the Committee in seeking to promote transfer of technology so that developing countries would be able to meet their main needs.

The Delegation of India fully aligned itself with the statements made by the Delegations of Algeria on behalf of the DAG, Egypt on behalf of the African Group and South Africa. The Delegation considered that issues such as patents and public health, exceptions and limitations, transfer of technology and opposition systems were very important for all Member States. In its view, all the proposals submitted by the DAG, the African Group and South Africa should be carried forward. The Delegation expressed its belief that those issues were important not only for developing countries but for all Member States.

The Delegation of Congo supported the statement made by the Delegation of Egypt on behalf of the African Group. The Delegation encouraged the Committee to

handle all questions associated with development, notably, the issues of patents and health, technology transfer and opposition systems.

The Delegation of Zambia supported the statement made by the Delegation of Egypt on behalf of the African Group. The Delegation stated that the decision of the General Assembly on the coordination mechanism was very clear with regard to the contributions to the implementation of the respective Development Agenda recommendations expected from relevant WIPO bodies, of which the SCP was one. In its opinion, the SCP had important contributions to make to the implementation of the Development Agenda, and should therefore have a firm position and present its agenda to facilitate the representation of its achievements.

The Delegation of Iran (Islamic Republic of) stressed the importance of agreeing on the ways and modalities for reporting, and of making the coordination mechanism functional. In its view, that would be imperative in complying with the decision of the General Assembly and realizing the mandate of the CDIP. The Delegation considered that the SCP could play an important role in bringing balance to the IP system and mainstreaming of the Development Agenda in the work of all WIPO bodies. It noted that while one of the objectives of the patent system was to assist transfer of technology, the actual patent system did not work properly as was originally intended. Therefore, in its opinion, the Committee should analyze that aspect in its work. The Delegation further stated that the Committee should have an open discussion about all the issues in respect of global challenges, such as food security, climate change and health. It considered that those issues were of paramount importance for developing countries, and should be incorporated in the work program of the Committee. Furthermore, the Delegation stated that, at one point, the Committee should go beyond theoretical discussions and begin a norm-setting process in those areas in order to properly address the existing challenges. The Delegation observed that the patent system was the result of a long-term process, which was not fully perfect. In its opinion, Member States should utilize its advantages and try to solve its associated implications for the benefit of public policy.

The Chair stated that all statements would be recorded in the report for the eighteenth session of the SCP and that they would be transmitted to the WIPO General Assembly in line with the decision taken by the 2010 WIPO General Assembly relating to the Development Agenda Coordination Mechanism.

(d) Report on the Work of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), document WO/GA/41/16 Add., paragraph 7:

Further to the 2010 WIPO General Assembly decision “to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda Recommendations”, the following statements made to that effect by delegations at the twenty-seventh session of the SCT are reproduced hereafter²:

Speaking on behalf of the Development Agenda Group (DAG), the Delegation of Brazil drew the SCT's attention to Clusters A (technical assistance and capacity building) and B (norm-setting activities) of the Recommendations approved by the General Assembly in 2007, and their relation with the SCT's work on industrial designs. It highlighted that Recommendation 15, in Cluster B, called for norm-

² At the time of the publication of this document, the draft report of the twenty-seventh session of the SCT was not yet available.

setting activities that take into account different levels of development and that take into consideration a balance between costs and benefits and recalled that the DAG and many delegations had expressed, in their earlier interventions, the need to observe those principles. One of the objectives of the Development Agenda Recommendations was to make norm-setting activities more transparent and inclusive. The Delegation recognized that improvements had been made in this direction, mainly due to efforts made by Developing Countries. It was of the view that the discussions regarding industrial design law during the twenty-sixth session of the SCT seemed more adequate to the above-mentioned Recommendation. The study prepared by the Secretariat at the request of the SCT had aimed at analyzing the potential benefits, constraints and costs for SCT members, particularly developing countries, least developed countries (LDCs) and countries in transition, of the application of the draft articles and rules in the area of industrial design law and practice. The DAG welcomed the study and recommended further elaboration on items mentioned in the terms of reference and not sufficiently addressed in the study as well as an extension of time for offices and applicants to answer the questionnaire. The study had also had the goal of evaluating which flexibilities would be available for Member States. The Delegation underlined that flexibilities were a necessary part of a balanced intellectual property system, as proposed in the Development Agenda. It stated that some other points of the Development Agenda, however, remained to be incorporated to WIPO's activities and that there was a clear need, as had been raised by many Member States, to discuss technical assistance and capacity building. From the existing draft texts, it seemed that developing countries were the ones that would need to promote more internal changes, both legal and technical, in order to implement the proposed new rules. The DAG took the view that this process should enable all members, in particular developing countries, to make a conscious decision on whether the proposed norm-setting activity would meet their national interests and needs. In conclusion, the Development Agenda Group was of the opinion that the item of the Agenda under consideration should become a permanent Agenda item.

The Delegation of South Africa, providing its assessment of how the SCT had contributed to implementing the development agenda recommendation, underscored that it was important for this issue to be a standing item in the SCT sessions preceding the General Assemblies. South Africa had participated actively in the two sessions of the SCT under evaluation. With regard to norm-setting, the Delegation was pleased that the request of the African Group and the Development Agenda Group was taken up by the SCT to commission the study on the potential impact of the work of the SCT on industrial design law and practice in line with Cluster B of the Development Agenda, particularly Recommendation 15. The study, as it was presented during that session, proved very insightful. The Delegation thanked and commended the Secretariat and the external consultant and pointed out that the study provided some clarity pertaining to costs and benefits of the draft design law articles. It was particularly pleased with the information on flexibilities, although it was contextualized within the current activities that had been undertaken with the design law treaty. However, there had also been limitations in gathering some of the information requested in the terms of reference, owing to the fact that the study was the first of its kind. The Delegation was therefore of the view that the study should be improved as appropriate in accordance with the comments made by Member States, especially regarding the classification of countries, provisions on technical cooperation, and linkages with the Hague Agreement. The Delegation believed that the study could further enhance the provisions of the envisaged design law treaty. The Information Meeting on the Role and Responsibility of Internet Intermediaries in the Field of Trademarks as sanctioned by the SCT had been very useful and had shed some light on the complexities of this subject matter. Given

that the Internet was a global resource, the Delegation would have appreciated hearing the experiences of the African continent on the issue. Nevertheless the discussions had been informative and useful indeed. The Delegation believed that the SCT had embarked on a positive process in implementing the Development Agenda Recommendation and urged the SCT to continue improving its contribution towards their implementation.

Speaking on behalf of the African Group, the Delegation of Egypt appreciated that the SCT continued to be guided by the Development Agenda Recommendations and that its norm-setting activities in the area of industrial design law and practice had been guided by Clusters A and B of the Development Agenda Recommendations, in particular Recommendations 1, 2, 15 and 17. It thanked the Secretariat for preparing the impact study which emphasized the commitment of WIPO Member States to the Development Agenda Recommendations. The Delegation also noted that the study had equally covered the potential impact on developed and high-income countries, which proved that the Development Agenda Recommendations were in fact of benefit to all WIPO Member States. It hoped that the study could be further improved so as to address all terms of reference as approved by Member States and in particular the impact of the draft articles and rules on developing countries' and LDC's needs for capacity building, investment in infrastructure and technical assistance as well as on fostering creativity, innovation and economic development and efficiency in developing countries. It hoped to continue to see the SCT's contribution to the Development Agenda Recommendations and said that the item under consideration should be a permanent item on the Agenda of the SCT.

The Delegation of Algeria aligned itself with the statements made by the Delegations of Brazil and Egypt. It also wished to add its voice to those who had said that the contribution of the SCT to the Implementation of the respective WIPO Development Agenda Recommendations ought to be a permanent agenda item within the SCT and indeed all WIPO Committees. Any standard-setting exercise within the SCT needed to take into account the Development Agenda Recommendations, particularly Recommendation 4 on technical cooperation and capacity building. With regard to the evaluation of the contribution of the SCT to the implementation of the Development Agenda, the Delegation was particularly satisfied with the work done by the SCT in relation to the study that the Secretariat had carried out on the impact of the draft articles and rules. It believed that any standard-setting exercise within WIPO ought to be preceded by such exercise so that the impact of the establishment of legal norms on all WIPO Member States could be assessed. Of course, the SCT could do a lot more in order to be an example for other committees. In attempting to improve the study and respond genuinely to the needs of developing countries, the SCT could be recognized as being the only committee having started out by an impact study before moving on with the draft articles and rules. In the view of the Delegation, this should be the approach within WIPO. The SCT could also strengthen its technical cooperation and capacity building activities for development.

The Delegation of the United States of America, speaking on behalf of Group B, stated that it objected to the suggestion that the item under consideration should become a standing item on the Agenda of the SCT.

The Delegation of Italy said that it supported the statement by the Delegation of the United States of America.

The Delegation of Hungary, speaking on behalf of the Group of Central European and Baltic States, expressed its support for the statement made by the United States on behalf of Group B.

The Chair noted that a number of delegations made declarations on the contribution of the SCT to the implementation of the respective WIPO Development Agenda Recommendations. He stated that all declarations would be recorded in the report for the twenty-seventh session of the SCT and that they would be transmitted to the WIPO General Assembly in line with the decision taken by the 2010 WIPO General Assembly relating to the Development Agenda Coordination Mechanism.

(e) Report on the Work of the Advisory Committee on Enforcement (ACE), document WO/GA/41/16, entitled "Report on Other WIPO Committees", paragraph 39:

Under agenda item 8, the Chair invited views by Delegations on the contribution of the ACE to the implementation of the WIPO Development Agenda. Further to the 2010 WIPO General Assembly decision "to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda Recommendations", the following statements extracted from the draft Summary of the Chair of the seventh session of the ACE, (document WIPO/ACE/7/11 Prov., paragraphs 22 to 26) are reproduced hereafter.³

The Delegation of South Africa underscored the importance of the implementation of the monitoring, assessing, discussing and reporting mechanism (Coordination Mechanism). The 2010 WIPO General Assemblies had approved that mechanism requiring all relevant WIPO bodies to report on their contribution towards the implementation of the Development Agenda Recommendations. If properly applied, the Coordination Mechanism would facilitate scrutinizing within the Organization cross-cutting issues and activities so as to avoid duplication. The ACE was dealing with cross-cutting issues addressed in other WIPO bodies. In that regard, it was prudent that an agreement had been reached on a standing agenda item on the contribution of the ACE to the implementation of the relevant Development Agenda Recommendations. The Delegation appreciated that the ACE would submit its second report to the WIPO General Assembly. The Delegation recalled the commitment to mainstream the Development Agenda across all WIPO activities, and welcomed that the activities of the ACE were primarily premised on Development Agenda Recommendation 45. The Committee's mandate was Building Respect for IP which should be addressed through studies, demand-/country-driven technical assistance, activities aimed at raising awareness, and interactive activities to share experiences. The Delegation welcomed the Committee's commitment to undertake studies aimed at Building Respect for IP with a view to unpacking the underlying causes and impacts of counterfeiting and piracy whilst taking into account the development dimension. At the same time, the Delegation indicated that there was room for improvement, especially on the quality of the studies undertaken. Document WIPO/ACE/7/2 entitled "Recent Activities of WIPO in the Field of Building Respect for IP" provided a good basis for assessing the contribution of the Committee to implementing the Development Agenda. From a cursory point of view, the legislative advice, training and awareness-raising assistance provided by the Secretariat as reported in paragraphs 4 and 5 of that document was consistent with Development Agenda Recommendations 13 and 14. However, there was a need to provide additional details on consumer motivations and attitudes in regard to counterfeiting and piracy as outlined in paragraph 6 of the document. Consumer motivations and attitudes were fundamental issues not only

³ Paragraphs 22 to 26 of document WIPO/ACE/7/11 Prov.

for developing countries but for all countries. Concerning international coordination and cooperation, the Delegation noted the importance of WIPO's engagement with other Intergovernmental Organizations and other relevant stakeholders in the field of IP. Paragraph 6 of document WIPO/ACE/7/2 showed that WIPO included the development-oriented approach to Building Respect for IP in other forums and that this approach was fully reflected in collaborative efforts. The Delegation welcomed that statement and requested further substantiation by evidence. The Delegation further noted with interest some of the suggestions made at the Sixth Global Congress on Combating Counterfeiting and Piracy. Some participants of the Congress had recognized the importance of WIPO and had thus encouraged WIPO to work towards producing empirical studies on enforcement issues. That had been prompted by the realization that there was little empirical evidence-based data, especially statistical data, to assess the extent and impact of counterfeiting and piracy in various countries. Policy makers needed to consider available empirical evidence before addressing the challenges relating to counterfeiting and piracy. The Delegation valued suggestions concerning the need to address enforcement on the basis of a value chain of all agents involved, with due regard to the interface between competition and enforcement. Those were certainly issues that could be looked at by the Committee. The Congress could be further improved by widening the scope of participation by consumer organizations, civil society, and academia so as to broaden the dialogue and deepen the understanding in promoting respect for IP. While understanding that the Congress was organized in cooperation with various stakeholders, it was advisable for the Secretariat to consult Member States in the preparation for the Congress so that it would become an inclusive and transparent process. The Delegation supported activities aimed at exchanging information on Building Respect for IP. It was through the exchange of experiences among Member States that coordination could be fostered to this end. The Delegation concluded that there was a need for a balanced approach between enforcement and development in the work undertaken by the Committee in line with Recommendation 45 of the Development Agenda.

The Delegation of Algeria, speaking on behalf of the Development Agenda Group (DAG), welcomed the adoption of agenda item 8 which referred to the contribution of the ACE to the implementation of the Development Agenda Recommendations. DAG recalled that Recommendation 45, which emphasizes the need to place the enforcement of IP rights in the broader context of the interests and concerns of development, would directly relate to the mandate and competence of the Committee. The principles contained in that Recommendation should guide the activities of WIPO in the field of enforcement. The Committee should reflect that approach in its activities and focus its program on the development dimension while ensuring that enforcement laws respected rights and obligations. DAG underscored that the thematic approach of the Committee was very useful because it offered Member States a framework to conduct discussions on various aspects of enforcement of IP rights. The debates that had been conducted confirmed the reality of a complex environment in this area. The various presentations reflected the fact that the Committee should understand the issue of enforcement in a holistic manner and no longer see it only from the perspective of right holders. Within that framework, DAG believed that the Committee made progress in implementing Recommendation 45. At the same time, DAG felt that further efforts were still needed to fully achieve implementation of Recommendation 45. On some important issues more work needed to be done. That included the contribution of IP rights to the transfer of technology, and the contribution of enforcement in the establishment of a strong network of SMEs in developing countries. Those questions deserved the Committee's attention.

The Delegation of Brazil welcomed the opportunity to comment on the Committee's contribution to the implementation of the Development Agenda Recommendations, especially Recommendation 45. The Delegation stated that Recommendation 45 was directly related to the competences of the ACE. It defined WIPO's approach to IP enforcement in the context of broader societal interests and especially development-oriented concerns. The principles contained in that Recommendation should orient WIPO's activities regarding enforcement. The Delegation recalled that there was a reference to Article 7 of the TRIPS Agreement. The Delegation further noted that WIPO had been making progress in the implementation of Recommendation 45 since the adoption of the Development Agenda. The work program approved at the fifth session of the ACE was a milestone in that process. It provided various pertinent elements for discussion in future meetings that corresponded to different views and objectives of Member States on issues of enforcement. The results of the work program could be perceived in the documents submitted during the last and the present sessions of the ACE. They reflected WIPO's efforts to develop an inclusive approach in its activities relating to Building Respect for IP. They took into account specific views and opinions on enforcement issues and were a good basis to promote a balanced discussion on Building Respect for IP. The Delegation hoped that the future sessions would promote such debate based on balanced documents. The Delegation further observed that despite these achievements there still was a long way to fully implement Recommendation 45. For example, the contribution of the protection and enforcement of IP rights to the transfer and dissemination of technology remained to be addressed. Improving and consolidating WIPO's enforcement-related technical assistance would be a good way to move forward. As proposed by the DAG at the last session of the ACE, the Committee should evaluate how WIPO had been promoting the concept of Building Respect for IP in its technical and legislative assistance activities. The Delegation concluded that WIPO, as a specialized agency of the UN, should be consolidated as the main forum to provide guidance in the cooperation on enforcement of IP rights, and that the work of the ACE could contribute to this end.

The Delegation of Pakistan welcomed the opportunity to express its views on the contribution of the ACE to the implementation of the Development Agenda. The Delegation noted that the Development Agenda Recommendations, especially Recommendation 45, had a direct link with the work that the Committee was undertaking. In that context, the Committee needed to align its work with the Development Agenda Recommendations. The Delegation observed that over the past several years, there had been an increasing demand on developing countries to do more on IP enforcement. They were expected to enforce higher levels of IP rights, regardless of the socio-economic conditions and challenges. Moreover, trade and investment decisions were usually linked to stronger inputs of the TRIPS-plus enforcement criteria. That was accompanied by a very limited approach to combating infringement of IP rights in which, in essence, stricter laws and capacity building of enforcement agencies were seen as a primary means to ensure enforcement. Such an approach could temporarily reduce IP infringement levels, but could not address the challenge in a sustainable manner. A broader strategy would have to be followed to allow the establishment of conditions in which all countries would have a shared understanding of the socio-economic implications of enforcement measures and of the direct economic interests in taking such measures. In such an environment, countries' trials to enforce IP rights would be derived from internal and external factors. The Delegation stressed that the present meeting needed to work towards identifying the key reasons behind IP rights infringement. That, keeping in view the different socio-economic conditions of the countries, would lead to understanding the issues of IP infringement in a better

manner. The Delegation concluded that there were measures that needed to be taken in the interest of creating an enabling environment, and that it was looking forward to the work of the Committee in that direction.

The Representative of the Third World Network observed that the Development Agenda should underpin and guide the work of the Committee, and welcomed the Committee's work on statistical information relating to IP infringement as well as on understanding consumer behavior and motivations that lead to IP infringement. That work should be continued to address the issue of IP infringement more effectively. The Representative further referred to concerns relating to transparency, balance and WIPO's partnerships with industry-related stakeholders, and stated that more could be done to fully implement and realize the spirit behind the Development Agenda.

(f) Report on the fifth session of the PCT Working Group, document PCT/A/43/1, paragraph 4:

At its fifth session, the Working Group discussed, *inter alia*, its contribution to the implementation of the respective Development Agenda Recommendations (see paragraph 70 of the Summary by the Chair, document PCT/WG/5/21, reproduced in Annex I of this document). Further to the 2010 WIPO General Assembly decision "to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies a description of their contribution to the implementation of the respective Development Agenda Recommendations", and pending the adoption of report of the fifth session of the Working Group by correspondence, an excerpt from the draft report, containing the statements made by delegations on this matter (in Annex II of the document), is reproduced below:

The Delegation of Algeria, speaking on behalf of the Development Agenda Group, thanked all delegations for their cooperation and flexibility with respect of the inclusion in the agenda of the item "Contribution of the Working Group to the Implementation of the Respective Development Agenda Recommendations". The inclusion of this agenda item was important for the Development Agenda Group since it allowed PCT Contracting Parties and other Members to express their views on this matter to the Working Group, and for the Working Group to report to the WIPO General Assembly. The Development Agenda Group therefore hoped that this item would become a standing item on the agenda of the Working Group.

The Delegation of Algeria stated that the PCT was an important Treaty, essentially concerning the cooperation between Contracting States in the area of patents. For this reason, the PCT gave due importance to the special needs and interests of developing and least developed countries in its provisions and the system established. The preamble of the PCT included, as one of its aims, the desire to "foster and accelerate the economic development of developing countries". Article 51 specifically mandated the establishment of a Committee for Technical Assistance to organize and supervise technical assistance for developing countries. The negotiating history and records of the Washington Diplomatic Conference on the PCT envisaged deep and meaningful assistance for the development of developing countries, such as strengthening their domestic innovation capacities and assisting them in ensuring the award of high quality patents through meaningful examination of the technical aspects of inventions.

The Delegation of Algeria further stated that the Development Agenda Group had noted that the International Bureau was providing some of the mandated technical assistance to developing countries through projects overseen by the Committee on Development and Intellectual Property (CDIP). As had been requested by the

Development Agenda Group under agenda item 6(c), the Committee for Technical Assistance needed to be reconvened, with its meetings being held immediately preceding sessions of the Working Group. The reactivation of the Committee for Technical Assistance would allow all PCT-related technical assistance activities to be coordinated and supervised, making sure that duplication and overlap with similar activities being undertaken in other WIPO bodies is avoided. In addition, the Development Agenda Group believed that the activities of the Committee for Technical Assistance should be inspired by the “Joint Proposal by the Development Agenda Group and the Africa Group on WIPO’s Technical Assistance in the Area of Cooperation for Development” as presented to the ninth session of the CDIP (document CDIP/9/16), which identified and elaborated on specific proposals from the External Review of WIPO Technical Assistance in the Area of Cooperation for Development (CDIP/8/INF/1), aimed at improving WIPO’s development cooperation activities. In conclusion, the Development Agenda Group hoped that the discussions of the Working Group will continue to be inspired by the Development Agenda.

The Delegation of the United States of America, speaking on behalf of Group B, stated that it was pleased to offer its views on the contribution of the PCT Working Group to the implementation of the respective Development Agenda Recommendations. Group B noted the comprehensive PCT-related programming information provided by the Secretariat in Annex II of document PCT/WG/5/5, and expressed the view that it was clearly evident that the technical assistance and capacity building provided by the International Bureau contributed to the pertinent recommendations of the WIPO Development Agenda, namely, those recommendations in Cluster A relating to work currently undertaken by the PCT Working Group. The Delegation further stated that Group B wished to reiterate its position that this item should not be a standing or permanent item on the agenda of the PCT Working Group, and to reiterate its position expressed under agenda item 6(c) that there was no need to convene the Committee for Technical Assistance, considering that work in this area was already undertaken sufficiently by the International Bureau.

The Delegation of South Africa stated that it aligned itself with the statement made by the Delegation of Algeria speaking on behalf of the Development Agenda Group. The Delegation expressed its concern that the Development Agenda Coordination Mechanism was not included as a standing item on the agenda of the PCT Working Group, noting that the Working Group was a relevant WIPO body required to report on its contribution to the implementation of the respective Development Agenda Recommendations and that it had previously reported to the WIPO General Assembly in this respect. The Delegation recalled that the preamble of the PCT included, as one of its aims, the desire to “foster and accelerate the economic development of developing countries through the adoption of measures designed to increase the efficiency of their legal systems, whether national or regional, instituted for the protection of inventions by providing easily accessible information on the availability of technical solutions applicable to their special needs and facilitating access to the ever expanding volume of modern technology”. Furthermore, Article 51 elaborated on the activities towards realizing this objective. The Delegation expressed the view that these provisions reinforced the need for a mechanism to evaluate the performance of the PCT in realizing these overall objectives and commitments made to its Member States, especially developing countries.

The Delegation of South Africa stated that it was pleased with the work of the Working Group in exploring ways to improve the PCT system, understanding that the improvements should be based upon and take into account the interest of applicants, users and the public. The Delegation further stated that it appreciated

the study by the Chief Economist investigating the surge in worldwide patent applications. The study provided an insight of the complexities involved in data collection related to trends in patent filings and illustrated the need for further investigations with the view to understanding the filing of low quality patent applications not meeting the legal patentability requirements. The Delegation noted that it was intrigued by the findings of the study that pointed to the ongoing debate on the effects of patent thickets on innovation and the proven adverse effects this had on small and medium-sized enterprises. The Delegation therefore wished to underline the importance of further work in this area, especially in resolving the reasons behind patent backlogs and quality of patents, adding that this had a direct and indirect impact on the Development Agenda Recommendations as a whole, in particular recommendations 4, 8, 10, 35 and 37.

The Delegation of South Africa further stated that it welcomed the work of the Working Group with respect to the coordination of technical assistance and financing of technical assistance projects for developing countries under Article 51 of the PCT. The Delegation acknowledged the PCT-related activities carried out within projects supervised by the Committee on Development and Intellectual Property (CDIP). However, the Delegation expressed the view that discussing PCT-related technical assistance activities in the framework of the CDIP had its limitations, for example, due to time constraints, the absence of appropriate experts and the lack of specific analysis of the impact of activities on the PCT. Given that PCT activities were often specific and nuanced, the Delegation believed it appropriate to centralize these activities under one platform, as had been envisaged by the drafters of the PCT, by establishing the Committee for Technical Assistance. This would enable all PCT-related technical assistance activities to be identified and properly assessed, avoiding overlap or duplication with other technical assistance activities undertaken within WIPO.

The Delegation of South Africa further stated that it had noted the work of the Working Group on assessing how well the PCT system has been functioning in terms of realizing its aim of organizing technical assistance for developing countries, disseminating technical information and facilitating access to technology. The Delegation acknowledged the close link to the External Review of WIPO Technical Assistance in the Area of Cooperation for Development (document CDIP/8/INF/1) being discussed in the Committee on Development and Intellectual Property and expressed the view that it would be useful for the next session of the Working Group to discuss the findings and recommendations of the External Review, in line with Recommendation 41 of the Development Agenda. The Delegation added that South Africa had benefited significantly from technical assistance and capacity building activities rendered by WIPO, such as the training of staff in the Companies and Intellectual Property Commission (CIPC), focusing on its role as a receiving and designated/elected Office under the PCT, and the training of universities covering the use of patents and the PCT system and the role of the patent system in promoting research and development and stimulating the transfer of technology. The Delegation also appreciated the worldwide access to patent collections from South Africa made possible through PATENTSCOPE. In concluding, the Delegation stated that it was pleased with how the Working Group had been able to take into account some of the activities from the Development Agenda, but believed that there was room for improvement, especially with regard to bringing Article 51 into effect.

The Delegation of Brazil stated that it wished to align itself with the statement made by the Delegation of Algeria on behalf of the Development Agenda Group. The Delegation considered the PCT Working Group as a relevant body in the context of the Development Agenda Coordination Mechanism and stressed that this agenda item should be made a standing item. The Delegation further stated that the PCT

Working Group was not only a technical body, as its decisions affect all members of the Organization. The Delegation noted the importance of the discussions on improvements to the PCT in allowing Offices involved in substantive examination to expedite their work in the national phase and, at the same time, being conducive to patents of higher quality. In this regard, the Delegation highlighted Cluster A of the Development Agenda as being relevant, considering Article 51 of the PCT. The Delegation further stated that it wished to point out recommendation 15, covering norm-setting activities, recommendation 19 on further facilitating access to knowledge and technology, and recommendation 35 in connection with the work on the surge in worldwide patent applications.

4. *The Committee is invited to take note of the information contained in this document.*

[End of document]