

# WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION  
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## INTER-SESSIONAL INTERGOVERNMENTAL MEETING ON A DEVELOPMENT AGENDA FOR WIPO

### Third Session Geneva, July 20 to 22, 2005

DRAFT REPORT

*Document prepared by the Secretariat*

1. The WIPO General Assembly, in its Thirty-First (15<sup>th</sup> Extraordinary) Session held at Geneva, from September 27 to October 5, 2004, decided to convene inter-sessional intergovernmental meetings to examine the proposals by Argentina and Brazil for the Establishment of a Development Agenda for WIPO (document WO/GA/31/11), as well as additional proposals by other Member States. The first session of the Inter-Sessional Intergovernmental Meeting (IIM) on a Development Agenda for WIPO was held from April 11 to 13, 2005. The second session was held from June 20 to 22, 2005, and the third session from July 20 to 22, 2005.

2. The following States were represented: Algeria, Argentina, Australia, Austria, Bahrain, Bangladesh, Barbados, Belarus, Benin, Bolivia, Botswana, Brazil, Bulgaria, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominican Republic, Egypt, El Salvador, Estonia, Ethiopia, France, Germany, Greece, Guatemala, Haiti, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Lebanon, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mauritius, Mexico, Morocco, Nepal, Netherlands, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Senegal, Sierra Leone, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, United Kingdom,

United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yemen and Zambia (89).

3. The following intergovernmental organizations (IGOs) took part as observers: African Intellectual Property Organization (OAPI), African, Caribbean and Pacific Group of States (ACP), Commission of the European Communities (ECE), Council of the European Union, Eurasian Patent Office (EAPO), European Patent Office (EPO), International Labour Office (ILO), South Centre, United Nations Conference on Trade and Development (UNCTAD) and the World Trade Organization (WTO) (10).

4. Representatives of the following international non-governmental organizations (NGOs) took part as observers: Biotechnology Industry Organization (BIO), Business Software Alliance (BSA), Centre for International Environment Law (CIEL), Civil Society Coalition (CSC), Computer Professionals for Social Responsibility (CPSR), Consumers International (CI)/Trans Atlantic Consumer Dialogue (TACD), eIFL.net, European Digital Rights (EDRI), Exchange and Cooperation Centre for Latin America (ECCLA), Free Software Foundation Europe (FSF), Friends World Committee for Consultation (FWCC), Institute for Policy Innovation (IPI), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Centre for Trade and Sustainable Development (ICTSD), International Chamber of Commerce (ICC), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Actors (FIA), International Federation of Film Producers Associations (FIAPF), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of Pharmaceutical Manufacturers Associations (IFPMA), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Literary and Artistic Association (ALAI), International Policy Network (IPN), International Publishers Association (IPA), International Video Federation (IVF), IP Justice, *Médecins Sans Frontières* (MSF), The World Conservation Union (IUCN), Third World Network (TWN) and Union for the Public Domain (33).

5. Representatives of Electronic Frontier Foundation (EFF), a national non-governmental organization (NGO) also took part as observers.

6. During the third session of the IIM from July 20 to 22, 2005, it was decided that representatives of the following non-accredited NGOs would attend the IIM meetings as *ad hoc* observers: British Music Rights (BMR), Association of 3-D Trade Human Rights Equitable Economy, Liberty Institute, and Public Interest Intellectual Property Advisors (4).

7. The list of participants is attached to this report as Annex I.

8. Discussions were based on the following documents and information papers:

- "Revised Draft Report of the Second Session of the Inter-Sessional Intergovernmental Meeting on a Development Agenda for WIPO" (IIM/2/10 Prov.2);
- "Proposal by Morocco on behalf of the African Group entitled The African Proposal for the Establishment of a Development Agenda for WIPO" (IIM/3/2)

Agenda Item 1: Opening of the Meeting

9. Ambassador Rigoberto Gauto Vielman, Permanent Representative of Paraguay and Ambassador Dimiter Tzantchev, Permanent Representative of Bulgaria, continued as Chair and Vice-chair for the Third Session of IIM.

10. The Chair welcomed the participants to the third session of the Inter-sessional Intergovernmental Meeting on Development Agenda for WIPO. He said that he was pleased that the process had reached this stage and hoped that they would be able to focus on the work and complete it satisfactorily. He said that he thought that in the previous two sessions, the participants would have familiarized themselves with the proposals and ideas on the table, and would now try to find solutions and agreements, that would enable them to continue with their work. The Chair said that some more NGOs had applied for accreditation and requested the Secretariat to provide the names of the applicants.

11. The Secretariat stated that since the Second Session of the IIM in June 2005, four NGOs had applied for accreditation, on an *ad hoc* basis, to attend the meetings of the IIM, namely the British Music Rights, London; the Association of 3-D Trade Human Rights Equitable Economy, Geneva, Switzerland; Liberty Institute, New Delhi, India and the Public Interest Intellectual Property Advisors, Washington, DC, United States of America.

12. The Chair then asked whether the four NGOs could be admitted to the meeting on the same basis as the others admitted in the earlier sessions. As there were no comments, the Chair declared that the four NGOs were admitted.

Agenda item 2: Adoption of the Agenda

13. The draft agenda (document IIM/3/1 Prov.), as there were no comments, was adopted.

Agenda Item 3: Adoption of the Report of the Second Session of the IIM  
(document IIM/2/10 Prov.2)

14. The Chair recalled that the Draft Report of the Second Session had been circulated by the Secretariat and comments received from the delegations incorporated in the Revised Draft Report. He asked delegations if they had any comments in relation to the draft report, which was now available for adoption.

15. The Delegation of Colombia stated that, at the appropriate time, it would provide clarification to paragraph 37 in the statement. It mentioned that there was a sentence, which had not been reflected in that paragraph, and that it would send the same in writing to the Secretariat.

16. The Delegation of Argentina stated that it had a number of proposals for amendments with regard to the different statements that it had made during the meeting. It said that it wanted to make sure that they reflected clearly what it had stated. It also stated that in the case of Spanish-speaking delegations, it would be important for them to have the text in Spanish as well, because that was the language in which their statements were made. It mentioned that it was difficult for them to write the text in English, when it had already been

translated once. The Delegation added that, when they look at the revision of the report, they would like to have a transcription of what they had said, so that those translations into other languages could be aligned with what had actually been said.

17. The Chair stated that he agreed with the statement of the Delegation of Argentina. He mentioned that he also had to review very briefly some of the statements which he saw in English because of the translation, so he would try and look into that matter with the Secretariat to see if there would be a way they could facilitate translation into Spanish as quickly as possible, or if they could somehow provide the means for delegations who would like to make those revisions in Spanish to enable them to do that.

18. The Delegation of the Islamic Republic of Iran stated that it had already sent its corrections regarding paragraphs 132 and 191 to the Secretariat and wanted them to be reflected in the report.

19. The Delegation of Bulgaria said that it had submitted a correction regarding paragraph 2, stating that that it requested that it be added to the list of States that were represented.

20. The Delegation of Brazil stated that it was the second time that the report had given them some work. He recalled that the report of the first IIM had required some rewriting with regard to the positions stated by Brazil. It mentioned that it knew that although English was not the Delegation's native language, it was of the opinion that certain paragraphs were not understandable. The Delegation mentioned that that was quite an additional job for missions in Geneva, to have to redraft their interventions every time one of those lengthy reports was put up by the Secretariat, and that many times they did not have the time to do that. Moreover, the reports were also made available shortly before the following meeting. The Delegation said that it had revised eleven pages of interventions from Brazil and that it would like to hand it to the Secretariat, so that those paragraphs could substitute the ones that were contained in the report. It added that there was no change in substance, and that those were just stylistic changes to make the reading understandable, to whoever read those reports, and that it would hand them over to the Secretariat through the Chair.

21. The Delegation of Jordan drew attention to the fact that Jordan was not listed in the second paragraph "the following states were represented" and that, since a Delegate from its country participated in the meeting, it would like to see its country's name listed there.

22. The Delegation of the United States of America stated that, similar to other delegations, it would have some comments in order to clarify and correct some drafting issues with respect to a number of statements made by its Delegation at the previous session and it intended to submit those in writing.

23. The Delegation of Bangladesh stated that it noted that Bangladesh had not been included among the states that were represented in the meeting and that it had sent a note to this effect. It requested that the name of Bangladesh be included in the second paragraph.

24. The Delegation of China stated that corrections in paragraph 191 are needed, and it would provide a written text to the Secretariat.

25. The Chair thanked all the delegations that had expressed their interest in providing modifications or amendments to the report and suggested that they provide their request to the Secretariat in writing. The Chair also requested that the delegations provide that as soon as possible, so that the adopted report could be circulated. The Report of the Second Session was then adopted.

Agenda Item 4: Consideration of proposals from Member States

26. The Chair stated that item 4 was one of the most important items on the agenda. He said that, as all the delegations would recall, there had been a series of proposals made by countries and groups of countries and that in the last meeting a proposal from the Delegation of Bahrain had been received. He mentioned that that proposal had been supported by a number of other countries and recalled that it had been requested that the presentation of that proposal not be made during that second session but during the third one. He stated that in the preceding week, a proposal had been received from Morocco, on behalf of the African group. The Chair thanked the African Group for its efforts, and added that he would first like to request the Delegation of Bahrain to present its proposal, followed by the Delegation of Morocco, which would present the proposal of the African Group.

27. The Delegation of Bahrain thanked the other participants who had reacted to its proposal in favor of assisting development in developing countries and LDCs. It said that it had received support from a number of countries. In order to clarify what was contained in its proposal, the Delegation recalled the following: first of all, with regard to the development dimension in WIPO, the idea behind that proposal was based on the fact that the work carried out by WIPO to assist development should respond to the needs and ambitions of developing countries and LDCs, and the Delegation recognized that WIPO had tried to keep a development element integrated in all the different aspects of its work, in a very broad way. The Delegation believed that its proposal fell in line with that spirit and was also consistent with the Doha Agenda. It added that paragraph (b) of Article 7 of the Doha Declaration specifically mentioned the development dimension in all programs and activities, including technical assistance in the legal context. It emphasized that its proposal certainly came in line with the Doha plan under paragraph 36 and 37 in trying to build and use communication networks in technology, services and development. The Delegation stated that that would also include the creation of a special network for centers of excellence for scientific and industrial research in developing countries. It also mentioned that it would like to strengthen technical and scientific resources in developing countries. The Delegation believed that WIPO could play an important role in this development aspect for developing countries and LDCs. It said that its proposal made a positive contribution in trying to improve the impact of the development activities carried out by WIPO. The Delegation mentioned that the financial resources for development represented some 14% of the WIPO budget, some 531,000 Swiss francs. The Delegation said that there was a need to ask oneself if that was sufficient, and that such a question should be dealt with by examining the Program and Budget of the WIPO, in the General Assembly. The Delegation stated that it supported the view that there would be a need to give priority to development in the program of WIPO. It added that financial resources should be provided to developing countries and LDCs, so that those countries could participate in the activities of WIPO. The Delegation, therefore, asked the Secretariat to increase their technical assistance to small and medium-sized enterprises

(SMEs), which were the backbone of the innovation being carried out in many countries. The Delegation added that intellectual property was still a notion, which was vague and not well known in many developing countries. That was an aspect, which should be taken into account by WIPO and by Member States. The Delegation mentioned that it was possible to find sectors of activity that should be specifically targeted by WIPO. It said that it believed that it was important to elaborate national strategies for intellectual property development, and mentioned that it would like to learn about the positive experiences of developing countries in that area. It added that it would also like to know what success stories had already come out of developing countries by integrating that into their development programs. The Delegation emphasized that it would also like to know what the obstacles were that needed to be overcome at the national level, so that intellectual property could be supported by the government. The Delegation recalled that it had also proposed that studies be carried out with regard to the impact on the social and cultural level of intellectual property. It said that it believed that that was necessary in order to see the proof that IP could play a positive role within the systems which were already set up for intellectual property, and which could in fact lead to the creation of an intellectual property culture itself. The Delegation also recalled that a proposal had been made, requesting WIPO to provide statistical information on technical assistance provided to developing countries and LDCs, not to compare one country with another, but simply to evaluate the extent of technical assistance which was available and which could be provided to developing countries and LDCs. The Delegation also recalled that it had proposed the creation of a voluntary fund and added that this was also mentioned in other proposals. The Delegation stated that development was vital for developing countries and stressed that it required cooperation, and that that was why in its proposal it had suggested that centers be created for research and development so that transfer of technology could take place, among the Member States of WIPO. The Delegation said that the last part of its proposal dealt with a plan of action for development within WIPO. It reported that although it had begun discussions on that issue, it had set no limits, though it believed that some of those areas did not come under the scope of WIPO. It said that some issues dealing with the structure and management of WIPO were part of the responsibility of the team, which had been elected or those different bodies, which had been mandated by Member States to deal with them. It stated that that was why it was proposed that time and energy should not be wasted on issues that in fact did not come under the scope of the work under consideration. The Delegation concluded by saying that it did not think there would be a need to adopt any resolutions. Such resolutions should not be adopted if they could not be followed through. The Delegation mentioned that it was also important not make WIPO responsible for commitments, which had been made by Member States in treaties that were not administered by WIPO. It stated that WIPO was not competent in all those areas. It explained that that was why many of those issues, which might be contentious, had to be dealt with in the framework, of the body which administered those treaties or conventions. Therefore, the entire burden should not be put on WIPO to carry out the work that needed to be done.

28. The Delegation of Morocco, speaking on behalf of the African Group, presented the proposal submitted by the African Group concerning development issues within WIPO and the role of intellectual property for development. The Delegation indicated that the proposal contained a number of targeted and specific suggestions adding that the objective of the proposal was to provide African support and cooperation for intellectual property rights. The Delegation stressed that by presenting a proposal, the African Group was trying to reinforce and elaborate its view points as already reflected in the Millennium Summit

Recommendations, NEPAD Plan of Action, the Monterrey Consensus on Financing for Development, the Johannesburg Declaration on Sustainable Development, the Marrakech High Level Conference on South-South Cooperation, the Recommendations of the First Phase of the World Summit on the Information Society, the Asian-African Summit, and the Doha Summit Meeting. The Delegation stated that the African Group believed that development should be a global and comprehensive program, which aimed at improving the living conditions of all peoples. For developing and least developed countries, development should mean the adoption of specific and integrated policy mechanisms, in order to harness their productive forces and natural resources, and to improve the living standards of their populations. The Delegation reiterated that the African Group proposal for a Development Agenda for WIPO aimed at reinforcing and elaborating their viewpoints, already expressed in earlier IIM meetings. The Group took note of the proposals, which were already submitted by other delegations, namely, the United Kingdom, the United States of America, Mexico and Bahrain and stressed that the proposal submitted by the “Group of Friends of Development” in particular, was a proposal that reflected largely the concerns and the interests of the African countries. In that respect, the African Group considered that intellectual property could play an important role in enhancing creativity, innovation and economic growth in developing countries. The Delegation pointed out that intellectual property was only one mechanism among others, which could help them to foster development and that it could be used to support and enhance the legitimate economic aspirations of all developing countries, including LDCs, specially in the development of their reproductive forces, both human and natural resources. The Delegation said that intellectual property should be complementary and not detrimental to various national efforts for development, so as to enable them to develop a veritable tool for economic growth. The Delegation added that in order to achieve that objective, the existing international intellectual property architecture should take into account the needs, priorities and aspirations of developing countries and LDCs, specially in areas that were vital for the welfare of their populations. The Delegation stated that the imperatives for development had never been as crucial and urgent for Africa as they were at present, in the third millennium. The Delegation stressed that in that regard, the African Group would like the following aspects to be taken into account in light of the important discussions on the establishment of an Agenda for Development for WIPO, namely: technical assistance, transfer of technology, reformation of the information sector in Africa, small and medium sized businesses, information and communication technology, human resources development and the brain drain, and use of flexibilities in international instruments. The Delegation added that the African Group’s contribution to the progressive development of intellectual property rights within the framework of the Agenda for Development was not limited to the submission of general proposals, but also in supporting efforts to associate all actors in norm setting, and to enhance, as far as possible, development programs of UN Specialized Agencies, including WIPO, for developing countries and LDCs. The Delegation emphasized that the African Group viewed the various proposals submitted to that process, including its own proposals, to be complementary to each other. The Delegation concluded that for that purpose, the African Group intended to enhance the implementation of the Agenda, in consultation and collaboration with other Groups, by formulating concrete recommendations at the WIPO General Assembly

29. The Delegation of Switzerland, speaking on behalf of the Group B, expressed the Group’s confidence that under the Chair’s guidance, they would be able to complete their constructive discussion and prepare a Report for the consideration of the next WIPO General

Assembly. The Delegation stated that the participants had the opportunity to begin a useful exchange of views on the basis of a list of issues derived from the written submissions from Member States and underlined that Group B Members welcomed the possibility of starting a closer examination of these proposals and that they would engage actively in the discussion. The Delegation said that the Group B was pleased that in that meeting they would continue an interesting exchange of views on the remaining issues and that they would prepare a report on the examination of the proposals submitted by Member States, as required by the General Assembly the previous year. The Delegation thanked the Members who had submitted new issues/proposals and expressed the opinion that the proposals would certainly enrich their debate, together with those already submitted in the previous two sessions. The Delegation said that, in order to facilitate the debate of the General Assembly on the possible way forward for the work on the Development Agenda in WIPO, it believed that procedural issues should also be addressed in the report of the IIM to the General Assembly. The Delegation suggested that a body should be identified within WIPO for the continuation of their work on IP and development, as such a forum would improve the effectiveness of their work. In that context, the Delegation expressed the belief of the Group B that a suitably strengthened and reinvigorated PCIPD would be an appropriate body for WIPO Members to exercise their responsibility in guiding and mainstreaming the development objectives in WIPO. The Delegation suggested that the report of the IIM could usefully highlight possible issues for inclusion in the initial work program of that body, taking into account the support they had received from WIPO Members. The Delegation stated that those were the preliminary views of the Group and informed that the Group's Vice-Chair was from the Netherlands, in the person of Ms. Barbara Rietbroek.

30. The Delegation of Lebanon stressed that Lebanon was always keen to strengthen its links with WIPO, through its interaction with Member States and other organizations. The Delegation said that in the light of the Millennium Declaration, which represented an important milestone in strengthening the world's human development, WIPO should strengthen its role in economic, social and cultural development, in partnership with developing and developed countries. The Delegation supported the proposal of Bahrain and underlined its readiness to cooperate with them, so that the proposal could be adopted and implemented in a balanced recommendation. The Delegation stressed that development was an extremely important issue for developing countries and the benefits of development should be shared with them, so that they no longer represented a burden for the rest of the world.

31. The Delegation of Jordan supported the proposal of Bahrain on the importance of intellectual property in development. The Delegation recognized that WIPO played a vital role in providing technical assistance to Member States, and added that much more could be done by it. The Delegation expressed the view that they still needed to further improve the work of WIPO in the area of development. However, in its opinion, WIPO should continue to extend its technical assistance in the areas of technical and innovation cooperation, in order to bridge the development divide. The Delegation supported what was said by the Group of 77 and China, when they asked WIPO to integrate development in all of its activities, reiterating its belief that the proposal of Bahrain was in that direction and that it would put into practice the expectations of the developing countries and LDCs. The Delegation requested that the principles of WIPO be translated into practice, and that the technical assistance and capacity building programs should be strengthened and enlarged, particularly those for SMEs, as a



practical way to enhance development of their countries. The Delegation recommended that WIPO could work closely with other international and NGOs, to identify strengths and weaknesses in the development field.

32. The Delegation of the United Arab Emirates supported the statement made by the Delegation of Bahrain. The Delegation stated that in the past WIPO had played a very effective role in establishing the basis of intellectual property, particularly as intellectual property played a vital role in social and economic development. The Delegation appreciated WIPO's efforts over the previous years in strengthening the protection of intellectual property at the global level, particularly in developing countries and LDCs. The Delegation emphasized that WIPO had always attached importance to providing technical and legal assistance to developing countries, so as to enable them to follow the development efforts at the global level. The Delegation explained that in their societies they thought that intellectual property could play a vital role in development. That was why they had stressed the fact that intellectual property had to be integrated as an inalienable part of their development structures and that it was the only way for further progress towards development. The Delegation stressed the fact that WIPO was not a development institution in itself, but it was a specialized institution of the UN, whose specific role was the protection and strengthening of intellectual property, by providing technical assistance to its Member States. The Delegation urged WIPO to strengthen its capacities and skills, with regard to all aspects of intellectual property. The Delegation requested that their gratitude to WIPO be put on record, as also the need to provide greater resources to the Organization, particularly for assistance to developing countries.

33. The Delegation of the Syrian Arab Republic underlined the interest of its country to strengthen relations with WIPO, so as to spread awareness of its main role. The Delegation stressed that all developing countries and LDCs needed WIPO's assistance, as one of the global institutions working with intellectual property and development. The Delegation supported the proposal of Bahrain, in particular the need to enhance assistance to developing countries and LDCs, and the idea of setting up the Voluntary Contributory Fund.

34. The Delegation of Honduras thanked the Secretariat for circulating the relevant documents for the final session, in preparation for the next session of the General Assembly. The Delegation took the opportunity to express their support for the proposals related to WIPO's Development Agenda, which tended to strengthen and provide dynamism to the Organization. It also supported the cooperation and technical assistance activities which met the various needs and realities of each country, and strengthened the economic and social development of the members of the Organization. The Delegation was of the opinion that although the debates which were taking place in the various bodies of WIPO were necessary and essential regarding the new role of WIPO, those debates should not be a barrier for the Organization and should not prevent it from continuing to provide the appropriate technical assistance and cooperation needed by developing countries.

35. The Delegation of Argentina said that it expected that they would have concrete results before the end of that meeting. With regard to the issues on the table, it did not want to repeat its views on the document introduced by Bahrain, as it had already done so in the previous meeting. In that context, the Delegation said that the issue of technical assistance had already been covered by a series of programs run by the Organization and stressed the importance of a

broader vision, proposed by it and other delegations, for the development agenda. It welcomed the proposal made by the African Group, as it had a very broad vision of public policies, and other concerns with regard to social and economic needs of developing countries. The Delegation stated that intellectual property issues were increasingly important for their societies and governments. Therefore, it was inevitable that when countries were developing their economic, social and industrial policies, they needed to integrate the question of intellectual property and to ensure that intellectual property should not be a barrier or restriction on social policies to be adopted by countries. The Delegation observed that in that context, there were some commendable ideas in the African proposal. The Delegation stressed that those were their preliminary comments and that it was fully committed to continuing the work, on the basis of that and other documents.

36. The Delegation of Algeria supported the African proposal introduced by Morocco. It said that the Delegation of Morocco had mentioned the relevant elements to integrate the development agenda, as an essential element in the programs and activities of WIPO, enabling African countries to implement their commitments. The Delegation stressed that WIPO and other relevant organizations needed to go hand in hand with their rights and obligations, in ensuring economic and social development at the national level. The Delegation recalled that the African proposal came in addition to other proposals previously made, which also asked for a greater integration of intellectual property, economic and social development in the activities of WIPO. The Delegation praised the excellent introduction made by the Delegation of Morocco which reflected the African concerns, and their desire as a continent to take an active part in the dynamics of the process, to enable WIPO to join initiatives launched in other fora, designed to facilitate development on the African continent.

37. The Delegation of Nigeria supported the statement read by the Delegation of Morocco, on behalf of the African group. The Delegation stated that that statement ushered in a new beginning in the annals of WIPO, by introducing a document containing proposals on the establishment of a development agenda for WIPO. The Delegation felt that it was important to reiterate that the African proposals were constructive, reasonable, attainable and above all, significantly relevant to the developmental needs and aspirations of African countries, and that they were neither academic in nature nor abstract concepts or proposals. The Delegation believed that the African proposals were firmly rooted in the reality of African countries, and reflected issues that confronted them on a daily basis. The issues raised in the African proposals were more importantly matters that had been addressed substantially by government leaders at various international fora, which should merit closer attention by the rest of the world. Crucial issues such as poverty and hunger, disease and illiteracy, unemployment and instability and a myriad of other ills were directly linked to under development. A proposal for development would mean for Africa, a proposal for overcoming all those ills and deficiencies. The Delegation stressed that to support the African proposal for a development agenda for WIPO, was to support an end to poverty and all other ills associated with the lack of development or the lack of opportunity to develop. African leaders had committed themselves to rejuvenating and revitalizing the continent, through a number of initiatives, that had been formerly adopted at meetings at the continental level and also at other international fora. The Delegation believed that it was important for the international community to support those initiatives, in order to translate them into reality. It was to that end, that the Delegation wished to call for the substantial support of the meeting and of WIPO, for the proposal that they, collectively as African countries, had submitted to the meeting and they

hoped that in the end, any recommendation or formal proposal that would go to the Assemblies of WIPO would reflect the contents of the proposal submitted by the African group. The Delegation concluded that it hoped to eventually see a concrete and firm development agenda for WIPO, encapsulating the very useful proposals that had been submitted by the African group.

38. The Delegation of Egypt thanked the Delegation of Bahrain for its comprehensive introduction of the proposal and also the distinguished Arab delegates, who had taken the floor as co-sponsors of the proposal, through their clarifications and assurances that the proposal followed the spirit of the Doha Plan of Action, made at the second South Summit, which they found very comforting. As emphasized in its statement presented at the previous meeting, the Delegation was of the view that many of the proposed elements in that document deserved to be given a careful consideration by the forum. The Delegation also believed that they had reached a significant stage, as it witnessed a solid and constructive contribution from the African group. The Delegation stated that the proposal clearly reflected interests and legitimate concerns, and revealed once again the determination of the African group to translate their debate into concrete and wide ranging results. The Delegation stated that, as comprehensively presented in the statement made by the Delegation of Morocco on behalf of the African group with which the delegation fully attached itself, the African submission spelled out a set of specific proposals, which the Delegation felt should be taken into consideration. With regard to the elements of the specific proposals submitted by the African group, and the elements introduced in the proposals of the group of the "Friends of Development", the Delegation was of the strong view that the two proposals were complementary and mutually supportive. The Delegation wished to stress that what had been stated in the African submission was guided by the strong call to WIPO, which emanated from the Second South Summit, which it believed had set the overall vision of the African and other developing countries in that endeavor. The Delegation expressed its satisfaction in seeing more concrete contributions from the Arab countries in that process, which was clearly realized through the proposal of Bahrain. The Delegation hailed the contributions from Algeria, Djibouti, Mauritania, Morocco, Sudan and Tunisia, who were on board, within the submission of the African group.

39. The Delegation of Benin stated that setting up institutions was a cumulative process, and that intellectual property institutions worked in close cooperation with other institutions, which provide institutional support to LDCs. The Delegation said that under the direction of Dr. Kamil Idris, LDCs had benefited from assistance to set up institutions for intellectual property issues, and that the assistance was well defined and linked to the development of human resources, SMEs, ICTs, collective management and traditional knowledge. The Delegation stated that there were a series of enormous changes, which were linked to new technologies and new methods of management, which needed a redefinition of the way they linked with companies in the private sector, science and industry. In the context of a transformation in international economic relations, in terms of trade, comparative advantages, circulation of capital, techniques and persons, intellectual property had become even more important. The Delegation stressed that intellectual property in that context was needed to manage and maintain a necessary balance, in protecting inventions and creativity on the one hand, and disseminating those creations for the general interests of society. For developing countries and LDCs, the development agenda should be a complete program, that was designed to improve living conditions for human beings, which meant specific and integrated

mechanisms designed to strengthen the productive capacity of LDCs, to make the most of their natural resources and to raise the quality of life for their populations. The Delegation supported the African proposal for establishing a development agenda for WIPO. It stated that from the 50 least developed countries identified in the world today, 34 were in Africa and therefore the Delegation was representing the interests of LDCs, which had expressed their support for the proposal of the African group. The Delegation believed that the development situation in many African countries was similar to that of LDCs. On their behalf, the Delegation wished to urge WIPO, as in the past, to continue to provide special specific assistance by creating, in the framework of the agenda, a special Trust Fund for LDCs and wished to ask developed countries to provide financial assistance in order to set up this Fund.

40. The Delegation of Pakistan stated that the third session of IIM was faced with two important tasks. First, the consideration of proposals by Member States and second, the determination of the content of the report to be submitted to the General Assembly, and wished to make a few brief remarks on each of those areas. The Delegation welcomed the African proposal and reserved the right to make separate interventions on specific proposals, as they came up for discussion, but firstly it wished to underline three key points in regard to those proposals. One, the heart of the development agenda remained for them, as for many other developing countries, the issues relating to the impact of the intellectual property system on prices, access to educational material, software and pharmaceuticals, as well as to technology in general. The Delegation felt that those were complex issues and that they needed to be addressed carefully at two levels. First at the level of analysis, to collectively enrich their understanding of the manner in which intellectual property influenced price and access questions and secondly, to identify the various options that may be exercised in order to ensure equitable benefits from IP rules. The Delegation suggested that the options could range from clarifying and strengthening existing flexibilities within the IP system, wherever necessary, for considering appropriate changes in existing norms. The Delegation said that the process of analysis of issues and identification of options had, in effect, commenced from the second session of the IIM and would continue in the current session. The Delegation felt, however, that the process would be greatly facilitated if the Secretariat could furnish appropriate background documentation on specific issues, and suggested that the documentation include at the very least, short papers summarizing the current status of the debate and proposals on selected issues, such as the role of IP in access to technology. It referred to other organizations, which prepared such documentation as a matter of routine, in order to facilitate more informed discussions and fruitful negotiations, and suggested that WIPO, with its excellent human resources, be asked to do the same. The Delegation recalled that there were a number of proposals that related to the mandate, structure and organizational aspects of WIPO, and that in its view, those were secondary to the proposals pertaining to policy space, flexibilities and norm setting. However, the Delegation wished to caution that if policy issues were sought to be avoided or side-tracked, on the grounds of supposed incompatibility with the mandate and the procedures of WIPO, or for the lack of responsiveness in addressing core substantive issues, then the secondary issues would come to occupy centre stage and the result would be a protracted debate on non-substantive matters. The Delegation stressed that such a situation was best avoided, and stated that a major task before them was the nature of the recommendation that should be forwarded to the General Assembly. The Delegation suggested that they should strive for an early harvest of proposals, on which there appeared to be broad agreement, which could, for instance, include the proposal made at the last General Assembly by it, and supported by others, on the need for

development impact assessments of proposed norms. The Delegation felt that if that proposal proved to be too difficult at that stage, then at the very least, the forum could simply agree to continue their deliberations more intensively, and in a more focussed manner on clusters of related issues. The Delegation, however, felt that the IIM would be the best forum in which to continue their deliberations, and recalled that the alternative forum that had been suggested by some was the PCIPD, but that it suffered from having a narrower technical assistance focus, which would prevent proper consideration of the much broader issues that had been raised under the development agenda. It stated that a broadening of the mandate of the PCIPD, which had been suggested in a constructive spirit by the Delegation of the United Kingdom, was an option which may take an undue amount of time and effort, that could be better spent on addressing substantive issues. The Delegation also stated that in taking up the development agenda, WIPO had embarked on an important exercise. A wide range of issues, that were increasingly the subject of intense debate amongst policy makers and civil society in the countries was being seriously considered by WIPO, which reflected well on WIPO's ability to address issues of particular concern to its members. The delegation wished to ensure that the process unfolded in a constructive manner, and resulted in a positive outcome.

41. The Chair said that he had received a proposal from the Delegation of Brazil, on behalf of the "Group of Friends of Development", and that he had requested the Secretariat to have it distributed for consideration in the meeting.

42. The Delegation of the Islamic Republic of Iran welcomed all the positive proposals put before the IIM. It also welcomed the African Group's proposal, which contained positive points and principles, that were also its concerns, and expressed its readiness to discuss it constructively. The Delegation noted that various proposals, with differing approaches and suggestions, had been introduced in the three sessions of IIM, and that it was in the interest of Member States to examine the diverse dimensions of IP, its importance and implications. An in-depth discussion of the proposals was required to continue the thematic discussion, and provide more time and opportunities to examine it in greater depth. The Delegation referred to the proposal which the Delegation of Bahrain had made in the previous session of the IIM, and said that it had not had the opportunity to go through it and would like to comment on it now. It said that the provisional advice and technical assistance to SMEs was already part of WIPO's Agenda in the Eighth session of PBC and the Controller had clearly indicated that resources allocated to development could be sought under Program No. 3 which dealt with SMEs. The Delegation of Iran stated that regarding IP strategies, international organizations were places where Member States coordinated their positions for international achievements. It said that many countries may not have an IP strategy but they had a commitment to IP, therefore the implications of those commitments on their development should be addressed. The information and statistical data had already been prepared by WIPO on various occasions; for example, in every session of IGC, an updated paper in that regard had been presented. There were a considerable number of practical points that the Delegation was ready to discuss in the course of the Meeting. The Delegation said that it would come back to other issues in the course of the session.

43. The Delegation of the United Kingdom, speaking on behalf of the European Community, said that it had several comments to present on the issues, including a brief response to the African proposals, which it would give later. In response to the paper from the Delegation of Bahrain, it noted that the proposals had already been integrated in the list of

24 proposals. It was the Delegation's understanding that it would be able to work through the list and present the position of the European Community Member States later. It was therefore seeking a clarification before proceeding, whether it would have the opportunity to present the Community's position later or had to do so at that stage.

44. The Chair replied that the Delegation of the United Kingdom could make its comments, if it wished to do so.

45. The Delegation of the United Kingdom, speaking on behalf of the European Community, said it would refer to the paper of the Delegation of Bahrain at that time and would make detailed statements later. As far as the statement on behalf of the African Group was concerned, the Delegation, on behalf of the European Community and its 25 Member States, wished to thank the African Group for its contribution to the debate on establishing a development agenda for WIPO. It stated that the African Group's paper covered a wide range of topics and had made proposals concerning many different areas. The Delegation added that the EC Member States thought it would be appropriate to allow some time in the meeting to discuss proposals for future work, and that it would like to have the opportunity to do that at a later time, in the present meeting.

46. The Delegation of the United States of America supported the statement made by the Delegation of Switzerland, on behalf of Group B. The Delegation thanked the sponsors of the several proposals put before the Meeting for its consideration. It particularly thanked the sponsors of the new proposals from the second session, namely the Delegation of Bahrain and the 11 co-sponsors, for the constructive and pragmatic proposal, as well as the United Kingdom for its elaborate proposal on how to enhance WIPO's effectiveness in addressing IP and development issues. The Delegation also expressed its thanks to the African Group for its proposals, which it had just received and would carefully consider and provide further reactions in due course. Having studied the proposal of the Delegation of Bahrain more carefully, the Delegation said that it fully supported the thrust of the proposal, and shared the belief that WIPO should, within its existing mandate and competence, support the development objectives of its Member States and avoid duplication of activities and waste of financial resources. It also shared the view that development depended on many factors, one of which was intellectual property. It added that, in its view, the proposal made by the Delegation of Bahrain was based on the correct premise that intellectual property protection was a critical part of the economic infrastructure needed for development. The Delegation said that it strongly believed that the IP system encouraged domestic creativity and innovation, domestic and foreign investment and technology transfer. It fully shared the goal expressed in the proposal from the Delegation of Mexico that awareness of the intellectual property system should be promoted among the society at large, so that it could reap the benefits of intellectual property. The Delegation said that it would also offer detailed comments on the proposal of the Delegation of Bahrain, in due course, with the aim of finding constructive ways to strengthen WIPO's existing development agenda. At that point, however, it wished to note that it found the proposal of the Delegation of Bahrain, as well as those of the Delegations of Mexico and the United Kingdom, to be very practical and resource-oriented, and that in its view, they would promote real economic development using the IP system. The Delegation said that that was also the aim of its proposal for a partnership program and that, in its view, the proposals would help developing countries' artists, inventors and SMEs use the intellectual property system for economic gain and wealth

creation. It fully supported a more in-depth factual discussion of IP and development issues, as proposed by the Delegation of the United Kingdom and supported by Group B, in the Permanent Committee on Cooperation for Development Related to Intellectual Property. As confirmed by the International Bureau of WIPO during the April Session of the PCIPD, the mandate of the PCIPD was not limited to technical assistance and provided ample room to discuss development-related intellectual property issues. It added that the PCIPD was provided with resources, in the current WIPO Program and Budget, and also had a dedicated staff from the International Bureau. With regard to those who characterized the PCIPD as not useful, the Delegation said it would completely disagree and that, in that its view, any WIPO body was only as useful, as the Member States would make it. The Delegation assured the Meeting that, as it had said earlier, it was fully prepared to constructively engage in a substantive, fact-based discussion on intellectual property and development issues in the PCIPD. With regard to the proposal from the African Group, the Delegation expressed its appreciation and noted, among other things, that it re-stated a number of fundamental principles, with which it and several other delegations agreed, including the notion that intellectual property rights had to become a valuable tool for economic development. The Delegation also believed that the proposal reaffirmed the fundamental principles that development policies were ultimately contingent upon the policies and objectives of individual countries themselves. The Delegation believed in the principle that, at the end of the day, sovereign nations were themselves responsible for formulating their own national economic and cultural policies, consistent with the national obligations that they had voluntarily taken on. The Delegation said that as a truly member-driven organization, WIPO could assist but, of course, never displace Member States in discharging their sovereign duties, in formulating and implementing their national economic and cultural policies, including the important role that intellectual property played in meeting those objectives. The Delegation reiterated that it appreciated the proposal from the African Group, and that it was studying the details set forth in the proposal. It looked forward to reacting further to those proposals and other specific concerns in due course.

47. The Delegation of Tunisia believed that under the guidance of the Chair, the Meeting would be able to present the proposals already made in the form of recommendations to the General Assemblies of WIPO. It echoed the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation felt that the proposals fell within the efforts already made to draw up a plan of action for WIPO for development. It said that it was of the view that the Development Agenda adopted, should include a development dimension across the board, in all of its activities and should take into account and include the development imperatives that had been outlined in the African proposal. The Delegation said that the international community should review, as a matter of urgency, the objective and goals already laid out and announced in the United Nations summits and conferences, including the Millennium Development Goals. It added that it wanted specific elements from the African proposal to be included in Annex I, which was a list of proposals which was already before the Meeting. The Delegation said it hoped that it would then be the subject of scrutiny by that body.

48. The Delegation of Brazil believed that it was very positive to have further contributions from Member States to the discussions on a Development Agenda for WIPO. It said that with regard to the proposal of the Delegation of Bahrain, which it first saw at the second IIM meeting, and that had been further elaborated upon during the present meeting by the

Delegation of Bahrain and some other co-sponsors, it wished to express the view that the proposals contained in that document related mainly to the issue of technical assistance and technical cooperation. The Delegation added that it had also identified many of the proposals, if not all of them, under existing programs that were foreseen in the Program and Budget of the Organization, and that most of the initiatives were already covered by the Program and Budget. Therefore, it would be interesting to note to what extent that proposal contained additional elements, that went beyond what was already contained in the Program and Budget of WIPO. There was the issue of additional resources of which it had taken note. The Delegation pointed out that emphasis was being placed, and an attempt made to indicate that the role of WIPO was very limited with respect to development. There was also a mention that on the issue of the relationship between intellectual property and development, the onus should not fall on WIPO. The Delegation said that, in that regard, it understood that what was really behind the concept of a development agenda for WIPO, was not to place all the onus on WIPO, but to broaden WIPO's perspective on IP, to take on board development concerns of countries. It added that other organizations, including the WTO, had already gone through that process by adopting a development agenda. It thought that there was ample room in WIPO to do something similar, and even more thorough, as it belonged to the family of United Nations Agencies. The Delegation said it would not therefore define the role of WIPO in the narrow and limited fashion, as was done in the proposal from the Delegation of Bahrain. It added that there was ample room for a broader perspective on development, and also thought that there was a lot of support from Member States of WIPO, to take on the challenge of really applying a broader perspective to its intellectual property agenda. The Delegation referred to the final four points of the proposal from the Delegation of Bahrain and said that as far as the one which mentioned confusion between the role of the International Bureau of WIPO in facilitating negotiations on international treaties, etc. was concerned, Member States could make a sovereign decision to adhere or not to adhere to a specific treaty. The Delegation pointed out that there were some aspects related to norm-setting in the document for a WIPO Development Agenda put forth by the "Friends of Development" that elaborated on that proposal. It added that the issue was not really the choice, or the sovereign rights to adhere or not to a specific treaty, but the expectation that the Member States of the Organization should have the right to actually influence the substance of those treaties. The Delegation said it could not have only a passive role regarding treaty-making in WIPO, and would not really be open to the idea that developing countries should accept whatever kind of treaty was actually produced, and simply act towards taking a decision as to whether to subscribed to it or not. It felt that the idea of a member-driven organization meant that all countries should be equally entitled to put forth their views, and to influence the process itself of negotiating treaties, so that they could take all their concerns on board. It warmly welcomed the proposal put forth by the African Group, which it thought was very compatible with the concept of a Development Agenda, as put forth by the "Friends of Development". The Delegation said that, in that particular case, it was very happy to see that such a contribution was being made by such a relevant group of countries in the Organization. It said it was happy to note that the proposal by the African Group especially acknowledged and welcomed the proposal submitted by the "Group of Friends of Development", and that it supported that particular proposal in many respects. It was also very pleased to see the degree of compatibility and convergence between certain proposals that were submitted by the African Group, and proposals that had been supported by the Delegation of Brazil and the other co-sponsors of the document from the "Friends of Development" and other developing countries. The Delegation said that there were a few issues that seemed to be particularly



relevant with regard to the role of intellectual property in development, and that it was very important that the African Group recognized that IP should be used to support and enhance the legitimate economic aspirations of all developing countries. It was therefore an issue of actually using IP in favor of the economic national policies of developing countries. There was a great deal of reference to issues such as access to medicine, food and respect for human rights. The Delegation said that all those issues should be adequately addressed, when dealing with intellectual property rights. It was a part of the flexibility that developing countries should have, when enforcing or implementing rights, and that they should have the freedom to address all those issues. The Delegation added that there were many interesting proposals on technical assistance and transfer of technology. For example, relaxation of patent rules should be considered a policy option for developing and least-developed countries, to facilitate the drive towards technological and scientific development. It was a concept it fully agreed with, in addition to many others, and on which it would be happy to further elaborate during the course of the Meeting.

49. The Delegation of Botswana supported the statement made by the Delegation of Morocco on behalf of the African Group. It pointed out that the proposal clearly showed the point of departure of Africa in respect of the issue of development, and that it was for that reason that the proposal had recognized that WIPO should be empowered to live up to the initial strength it undertook to carry out its mandate. The Delegation believed that the time was right for the Organization to really push itself, within the resources at its disposal, to answer the calls of developing countries, in terms of incorporating a development dimension in its work. It said that it was the belief of the Delegation that the call was not just a truthful one, but something much more realistic, which could be achieved. If the proposal by the African Group were examined, it could be seen that among the issues it highlighted, was that the prerequisite for further development in any country was the development of scientific and intellectual capacity based on economic, social and environmental factors. It was for that reason that the group sought to achieve explicit recognition of the potential benefits, with WIPO's assistance, thereby enabling those countries to make adjustments and achieve a better life for their populations. That was why commitments made at several international meetings and fora were being looked at under the umbrella of the United Nations to try to gauge if they had been successful. It was also the reason for which the African Group was calling for a complementarity of policies and donor coordination, to harness the technical assistance the Continent seriously needed, which should be tailored to its needs and seen to enhance the capacity to facilitate a well-balanced development of IP. The Delegation said it would conclude by saying that it was the hope and belief of the Organization that whatever the list of issues to be discussed, the Chair should also try to incorporate the specific proposals contained in the African Group's proposal, as well as other positive ideas which were in other proposals, into the report of the present IIM session. It was the hope of the Delegation of Botswana, as mentioned by other delegations during the previous IIM, that the proposals would be submitted to the WIPO General Assemblies. The Delegation said it supported the proposals. It further stated that, in principle, it had already been agreed that WIPO would handle some aspects of development which would enable it to move beyond the General Assemblies and implement the very positive ideas contained in the proposals.

50. The Delegation of China said that it was very pleased to see that after the 2004 General Assembly and the two IIM meetings, the discussions on questions were progressing in depth. For this, it wanted to thank the Chairman and the Secretariat for the efforts they had made

towards the smooth progress of the Meeting. It noted that during this era of a knowledge economy, IP rights had become a tool to promote social, economic and scientific progress and that the reasonable use of IP protection to encourage technical innovation and develop economies was a very important subject. It felt IP protection should be adapted to the needs of societies and the economies, as well as to science and technology, and that it could also play an important role in promoting social development. But in the process of formulating international IP rules, the principles of balance between the rights and interests of the IP right-holders, and that of the public should be taken into consideration. The Delegation supported the proposal of the African Group, as well as the discussion on the relevant questions. It hoped that on the basis of consultation and through the joint efforts of all parties, the discussion on the development agenda would reach a consensus, acceptable to all parties.

51. The Delegation of Senegal strongly supported the statement made by Morocco on behalf of the African Group. It noted that the final objective of the African proposal was to facilitate the formulation of concrete recommendations to the WIPO General Assembly. In that context, the African Group's proposal contained in IIM/3/2 tried to adopt an approach which identified problems linked to development and then tried to come up with concrete proposals with regard to activities that could be carried out by WIPO. On the basis of that approach, which attempted to be as practical as possible, and as recommended in paragraph 8 of the Chair's summary, it had identified 8 areas of intervention. Those ranged from technical assistance, to the establishment of standards, technology transfer, reform of the informal sector to the use of flexibility and others. Those concrete proposals had been drawn up with a view to setting up an institutional framework within the United Nations, taking in the notions of privilege, synergy and harmonization. As per the procedure, the Delegation, as other African Delegations stated, would like the list of questions under discussion to be updated to include the concrete proposals made by the African Group. It hoped that the session could recommend to the General Assembly the continuation of the process under the current format.

52. The Delegation of Kenya considered the meeting of great importance in ensuring that the development needs of developing countries formed an integral part of the WIPO agenda. In that regard, Kenya associated itself fully with the comprehensive statement made by Morocco, on behalf of the African Group. It also supported the African proposal, as it identified concrete proposals and needs of African countries, and was of the view that intellectual property could play an important role in enhancing creativity, innovation and the economic growth of developing countries. The issues raised in the African proposal, namely technical assistance, transfer of technology, reforming of the informal sector in Africa, SMEs, human resource development, and the use of flexibilities in international instruments were key to enabling developing countries to make maximum use of intellectual property, as a tool for national development. In the area of technical assistance, while the Delegation recognized the role played by WIPO, it was important that WIPO strengthened and enlarged its role in that area to enable developing countries to acquire the necessary infrastructure and other facilities to be able to make full use of IP as a tool for their national economic development. The Delegation intended to fully participate in that session and looked forward to a positive outcome.

53. The Delegation of India thanked the Delegation of Bahrain and the Delegation of Morocco, who spoke on behalf of the African Group for the presentation of their proposals. It said that it joined the delegations that supported the African Group proposal and noted that it

was in fact complementary to the proposal made by the “Friends of Development” with which India associated itself. In addition to the earlier proposals, those had contributed to giving many action points, that needed to be called out while drawing up WIPO’s future work plan, in incorporating the development agenda in all its activities. It would comment on specific aspects of those proposals at the appropriate stage, but wanted to conclude its intervention with the hope that by the end of that session of the IIM, they could get on with the task of preparing tangible recommendations for the General Assembly.

54. The Chair said that with that statement they had concluded the list of statements concerning the new proposals. He then proposed that they move on to consider the proposals in operative language, and requested the Delegation of Morocco to elaborate a list on the basis of the African proposal, so that those items could be incorporated into the existing list. He would spend that day and the following day discussing the proposals and would leave the last day for consideration of the report. He also intended to complete consideration and examination of proposals by the following day, to provide an opportunity to IGOs and NGOs to make comments that they might have concerning the proposals. He then turned to the 24 items contained in the Chairman’s Summary and suggested that they should finish discussing proposals number 1, 2, 5 and 6 from the “Friends of Development” Group and then move on to proposal No. 10, followed by the proposals submitted by Bahrain and supported by the group of Arab States. He wanted to know if delegations thought this approach was appropriate. If so, he would appreciate it if the “Friends of Development” Group could introduce the proposals that would be discussed.

55. The Delegation of Argentina clarified that proposal No.10 on the “Friends of Development Group” list had already been discussed and that the remaining items they intended to address were first numbers 1, 5 and 6 together and then number 2 and 3 together.

56. The Chair agreed with the Delegation of Argentina for the clarification and suggested that they could now move on to address proposals 1, 5 and 6.

57. The Delegation of Argentina, on behalf of the “Friends of Development” began with proposal 1, which concerned WIPO’s Mandate and Role. This was linked to the proposal to set up an evaluation office, and part of the proposal related to the adoption of measures to ensure a broader participation of NGOs of public interest, and representatives of civil society in the work of the organization. In the document presented in April, the Group had addressed the first of those issues, the revision of WIPO’s mandate and the issue of governance within the organization. In part 2 of the document, they had set out some concepts and principles, which went over the basis for the development agenda submitted in September of last year, proposing specific measures, with a view to ensuring the full implementation of the mandate of the Organization, which came under the 1974 Agreement between WIPO and UN. In the document submitted in September, the Group considered that WIPO’s mandate could be clarified further, with an amendment to the Agreement, which described the development agenda as an essential component of the work of the organization. One of the options proposed was to amend the WIPO convention of 1967, and the Group had included this in the annex to the September document. Nevertheless, the Group thought that one of the problems preventing the implementation of the development agenda was the lack of governance from Members States, as to how this mandate should be carried out and how it should be incorporated into the activities and programs of the Organization. The Group believed that

principles and guidelines should be elaborated in order to incorporate the development agenda into the various programs. Among some of the specific measures they thought could be implemented to ensure the full implementation of this new mandate was their proposal to set up an independent evaluation and review office, the characteristics of which was described in 2a of the document submitted at the first IIM session. The Group considered that that kind of office would provide an objective, independent and transparent mechanism, through which the WIPO's programs and activities could be evaluated and assessed, with regard to the impact on development. Similar mechanisms could be seen in the World Bank, the IMF, the European Investment Bank, the UNDP and other international institutions, and in paragraph 30 of the document, one could see some of the activities that they had proposed for this office to carry out. The second measure proposed for setting up the office was adopting methods to ensure transparency and the participation of civil society and public interests groups, in the debates and activities of WIPO. The third measure was for the adoption of procedures to ensure that Members States determined the members and the functions of the Policy Advisory Commission and the Industry Advisory Commission, and also to re evaluate the role and relevance of those commissions.

58. The Delegation of the United Kingdom, speaking on behalf of the European Community, wished to comment on items 1, 2 and 5 and to reiterate that it shared the premise that development concerns should be better integrated in WIPO activities. It believed that that could be done, within the terms of the existing WIPO Convention and the 1974 Agreement with the United Nations. Concerning the proposal to establish an evaluation and research office for WIPO, the EC Member States believed that evaluation had an important role to play and should certainly be done in a professional and objective manner. In that respect, the Delegation could see merit in the idea of separating WIPO management functions from the evaluation aspects. However, it also said it had a number of concerns regarding the establishment of an evaluation and research office as proposed. Firstly, it needed to be sure that the benefits of such an office would clearly outweigh the possibly significant costs of establishing and operating it. Secondly, the establishment of such an office should not undermine the member-driven basis of the Organization. That, together with the apparent complexities of the structure and operation of the office, as well as its relationship with the WIPO International Bureau, meant that much further work would be required before such a proposal could be implemented. Before starting that process, it appeared to the EC Member States that it would be preferable to take into account the outcome of the ongoing work by the Joint Inspection Unit, including the results of the desk-to-desk review, as well as the results of the work being done to improve WIPO's audit functions.

59. Regarding the setting up of an evaluation and research office, the Delegation of Bahrain, referred to Article 17 of the statutes of the Organization, which required that the establishment of such office be done at the request of the Director General. In spite of that, they thought that during the following General Assembly, they should be able to reach a well-considered decision. For that purpose, they needed to find the appropriate mechanisms and organization. However, with regard to development, they thought that the activities that were essential already existed in certain WIPO mechanisms. The Delegation stated that they should not stop a process which was already under way, and which had worked well so far, and would lead them to their objectives. They should in fact examine future activities, especially as development programs covered several different aspects of people's lives.

60. On the participation of civil society in WIPO, the Delegation of the United Kingdom, commenting on behalf of the EC Member States, considered that the wide participation of interest groups was important to ensure that all of WIPO's work was fully informed. WIPO could look at the systems of participation of civil society, used by other UN organizations and bodies, and also investigate the possibility of organizing side events.

61. The Delegation of Canada thanked the delegations of Bahrain and Morocco for their proposal, which would certainly enrich the debate. With regard to item number 1, while it saw merit in addressing development issues at WIPO, it was still considering as to what extent amending the WIPO Convention, effectively achieve the proposed development goals. The Delegation was concerned that amending the WIPO Convention would take considerable time and require significant financial and human resources, therefore stalling progress on other issues of interest to WIPO Member States. The Delegation did not believe that developing countries were interested in a process that might be long and drawn out. It was concerned that the negotiation on amendments to the WIPO Convention could postpone progress on other aspects of development issues. On item number 5, the Delegation said that it was important that, any body created within WIPO, should have its own functions and contributed concretely to the ongoing work of WIPO, without overlapping with other existing WIPO committees. It remained unconvinced that, that should be a priority of WIPO and that resources should be devoted towards a new office at that point. The cost-effectiveness study of such an initiative should be undertaken, prior to agreeing to such an institution. It agreed, in principle, with item number 6, as long as civil society participants and public interest groups only provided advice. Canada had a long-standing practice of encouraging the participation of civil society and public interest groups in international organizations. That was something which should clearly be supported, as long as WIPO rules were respected and that the State-driven nature of WIPO preserved.

62. The Delegation of Colombia wished to make brief comments on the list of proposals before the meeting. Firstly, on the proposal to amend or reform the WIPO Convention, it considered that WIPO as a specialized agency of the United Nations was already committed to promoting development. In particular, it had already committed itself to promoting the Millennium Development Goals, which was something fundamental. The Delegation believed that trying to deal with that issue, by amending the WIPO Convention, would not enable WIPO to deal with development more effectively. The Delegation considered that that type of approach, i.e., trying to reform the WIPO Convention, might lead to some legal uncertainty because of other side effects. It also caused them concern that that would be a lengthy and costly process. It would require major inputs and resources, including financial resources, and so they believed that entering into this kind of process to make the small amendment was not really necessary. On item number five, the Delegation understood the spirit of the proposal of establishing an independent WIPO evaluation and research office. It believed that many of the elements in the proposal were positive, as it would introduce clearer mechanisms for guidance, evaluation and supervision. However, it believed that the initiative to establish a forum to discuss the management of WIPO should be designed to discuss management and operation. It thought that the issue was not directly connected with the theme and was really a question of control and management of the Organization. The proposal, in itself, had good elements, but it did not really see how it could be implemented in the context of a discussion on development in WIPO. Finally, on item number 6, it considered that the participation of many sectors was a valid point and they had to look at

more appropriate mechanisms to ensure that those sectors of civil society and public interest groups could more effectively participate in discussions. However, it did not want at any point to detract from the intergovernmental nature of the Organization. In other words, whenever discussions opened up to other sectors, there should be a guarantee that those sectors could participate so as to give guidance, but they should in no case replace Member States in the decision-making processes. The Delegation believed that WIPO should strengthen the participation of those sectors, but it should in no way allow them to take decisions due to the very nature of the Organization. It insisted that it was important that there should be broad and transparent participation of civil society, so that it could express its concerns and put forward its views. There were various ways for doing that, of which one was that every State could consult its sectors within its country.

63. The Delegation of the Russian Federation thanked the African States for the document that they had submitted a few days earlier and added that it would carefully study its contents and the proposals therein. In its view, the question of development had already been looked at by WIPO for years and it did form part of its mission. Much had been done in that direction and they welcomed the results achieved, though obviously there was room for improvement. In its view, the present wording of the WIPO Convention was in no way an obstacle to that work. Any amendment to the Convention would require a lot of time and work, and much effort on behalf of both the International Bureau and the Member States. It believed that that process should be initiated only if absolutely necessary, and at the present stage, they saw no need for that. With regard to the proposal to establish an evaluation and research office, it shared the view of a number of other delegations about the need for a cautious approach to the creation of new bodies within the Organization. It believed that they should pay attention to what the United Kingdom had said on behalf of the European Community, about the advisability of taking into account the future work of setting up an audit committee, and also the evaluation by the Joint Inspection Unit.

64. The Delegation of Japan stated that, as to item 1, in considering the role of WIPO in the context of development, what should not be forgotten was that there were other international organizations which dealt with development and that intellectual property was not the issue which brought about development by itself. Therefore, like other delegations, it fully recognized the importance of development and the necessity for it also in WIPO. It was for that reason that WIPO had several programs dedicated to development, which Japan had agreed to, in the Program and Budget Committee and in the General Assembly. It did not think that WIPO had disregarded development. Activities related to development had already been done in WIPO and that occurred even without the existence of the WIPO Development Agenda, irrespective of its form. Therefore, it did not think it was necessary to amend the WIPO Convention to include explicit language on the development dimension. As to item number 5, the Delegation did not believe that WIPO activities alone affected development, as many other activities of other organizations had an impact on development. Thus, if the intention of that new office was to evaluate only the development aspects of the activities in WIPO, it was of the view that it was not significant for Member States to evaluate each program through its impact on development as an index. Therefore, it did not think it was necessary to have a WIPO evaluation and research office, in order to evaluate each program. On item number six, the Delegation thought that it was necessary and important for Member States to allow observers to participate in meetings, as they provided valuable inputs. However, as WIPO was an organization which dealt with intellectual property, it considered

that the observers who participated in WIPO meetings should be organizations which were related to intellectual property. As to the participation of civil society and public interest groups, it was of the view that they did not have to change their current practice. With regard to the Policy Advisory Commission and the Industry Advisory Commission, as the meetings were not held frequently, it had no difficulty in reviewing the bodies.

65. The Delegation of Bulgaria wished to comment on items 1 and 5. It believed that WIPO, being part of the UN system, should further contribute to the achievement of the UN Millennium Goals, by using its own comparative advantage and specific mandate. As dissemination of technologies and knowledge was WIPO's particular contribution to the Millennium Goals, such Goals could be achieved through the international intellectual property system administered by WIPO. WIPO was gradually expanding the scope of its development-related activities, with regard, for instance, to the promotion of intellectual creativity, the provision of technical and training assistance, capacity-building, etc. Bulgaria, like other countries from Central and Eastern Europe, was a good example of how WIPO mechanisms for technical cooperation could significantly influence the rapid development and achievement of economic growth. It was its understanding that the Development Agenda went beyond the immediate interest of developing countries and involved the commitment of all Member States. Therefore, all Member States' views should be taken into consideration. In that respect, the Delegation would support the conclusion of their work, which would reflect a realistic and pragmatic approach towards an enhanced cooperation for development work in WIPO. It added that they did not need to create new bodies for that purpose or duplicate structures. Clearly, development work was very different from management issues and it strongly advised to leave those outside the scope of their discussions on development. Issues, which had a bearing on the substantive work on IP norms, and were carried out in other WIPO bodies, should be transferred to those bodies. Finally, the Delegation stated that their work needed to be oriented to a result, which would be constructive and ensure sufficient opportunities for moving the real development issues forward on WIPO's Agenda.

66. The Delegation of Senegal expressed its wish to comment on proposals 1 and 6. On proposal 1, it stated that if one looked at the WIPO Convention and in particular Articles 3 and 4, there was a mention or allusion to development. It further noted that Article 4 and 5 stated that WIPO "shall offer its cooperation to States requesting legal technical assistance in the field of intellectual property". The Delegation believed that the "Friends of Development" were right in drawing attention to the need to amend the Convention, which in its view was justified by two reasons. The first, since the Convention was adopted, many more developing countries had become members of WIPO and the demand for its services was greater than when the Convention was signed. The second, within the international context, development issues had taken on an unequalled importance and it would be necessary to ensure that the practices of WIPO were better reflected in the Convention. The Delegation noted that, given the nature of the action to be undertaken, detailed discussions were possible, but it did not need to elaborate further as the document distributed that morning contained sufficient detail. It reiterated that a declaration could be adopted, which would interpret the main provisions of the Convention, seeking to bring those into line with current WIPO practices. A statement or declaration had two advantages: first, flexibility in the negotiation and adoption of new text, which required the reinterpretation of the existing relevant articles; and, second, a sense of legitimacy as the document would be the result of an inclusive political process. Additionally, there were precedents in favor of such an approach, the most

immediate and relevant being the Doha Declaration, which had set out new objectives under the TRIPS Agreement. The Delegation believed that its approach and that of the African Group was to focus on matters of substance and not institutional arrangements. It emphasized the importance placed on action in the African document, as well as the need for constitutional amendment, where necessary, to achieve the stated goals. On proposal 6, the Delegation believed that measures should be taken to improve the participation by civil society as suggested by the "Friends of Development". It noted the need for further discussions on the content or nature of such participation. It also suggested the need for the Secretariat to provide documentation on the current status, as well as the decisions, which would be necessary to enlarge the present practice.

67. The Delegation of China, referring to the first item, emphasized that the IP system since it was closely connected to economic development, as well as science and technology, should be improved along with the development trend of societies, and as it was the case, the major international conventions in the IP field had all been improved and amended. For instance, the Paris Convention on the Protection of Industrial Rights, since its inception in 1883, had been amended seven times reflecting the developments in its the legal system. The WIPO Convention concerns the purpose, objectives and duties of WIPO, and if to be amended, it should adapt to the changes in the social, economic, scientific and technological arenas, and reflect a development perspective and levels among international economies, science, technology and culture, as well as the differences in the development levels of various Member States. The Delegation was of the view that amending the WIPO Convention might be an important measure in facing the new century's challenge, but the work would be very complex and important. It believed that as WIPO was the responsible organ within the UN family for IP issues, it should coordinate and guide the international IP issues.

68. The Delegation of Mexico, by way of preliminary comment, considered that the creation of new bodies within the Organization should be studied very carefully, taking into account the costs involved, but expressed a need to analyze in a very detailed way the possible functions of those bodies. Referring to the statement made on behalf of the United Kingdom, the Delegation considered the participation of NGOs and other interest groups, the multi-stakeholder approach, important, but wished to discuss the matter in greater detail, within capitals and within that forum. It wanted to link its statement to the document recently distributed by the "Friends of Development", as well as to the other issues that they had been discussing. It noted its support for item 1 of that document, which requested the General Assembly to hold more inter-sessional meetings on the terms described by the "Group of Friends of Development". Relating the rest of the Group's document, it was not prepared to take decisions, without in-depth discussions in the capital with all the sectors involved in intellectual property, as also without considering the financial implications on the various international organizations linked to WIPO. It also supported the interventions made by other delegations that reform of the Convention was not viable at this time. The proposals of the "Friends of Development" not only had implications on the Convention, but on other instruments such as the Paris and Berne Conventions. The Delegation reiterated that it did not think that necessary conditions existed to enter into a debate on amending the WIPO Convention. However, it thought it was useful to discuss the strategic plan distributed by the "Friends of Development" and that the International Bureau should relate the proposals put forward in these inter-sessional meetings with the comments made by it in document A/40/3.



69. The Delegation of Pakistan wished to comment on the three proposals of the “Friends of Development”, which were under consideration. On the proposal to amend the WIPO Convention, it had made its position clear starting from the WIPO Assembly, that it felt that the mandate of WIPO with regard to its responsibility towards development was unambiguous and clear. As such, there was no real need to amend the Convention. In fact, the Delegation had previously drawn attention and wished again to draw attention to the wording used in the WIPO-UN Agreement of 1974. That, incidentally, also appeared in the draft decision of the IIM circulated that morning by Brazil, on behalf of the “Friends of Development”, in which the organization had been assigned the responsibility of taking appropriate actions for promoting creative intellectual activity and for facilitating the transfer of technology, to developing countries, in order to accelerate economic, social and cultural development. To that extent, the mandate was clear. It would agree with the proposal of the “Friends of Development” to the extent that it was reflected in this draft decision, in view of the importance of a Development Agenda for the Organization. Under the present circumstances, this aspect of WIPO’s responsibility needed to be highlighted through the adoption of a declaration affirming WIPO’s mandate under the 1974 Agreement with the UN, and would not call for an amendment in the Convention, but just to recall and remind the membership of this Organization’s important developmental work. Also, flowing from this developmental responsibility of WIPO, it would support the establishment of an independent evaluation and research office, in view of its position based on the need to have development impact statements on the various activities being performed in the Organization. The Delegation believed the various proposals presented throughout the process, starting from the General Assembly to this meeting, reflected a concern of the membership and some minimum agreement on the need for a Development Agenda for the Organization. In its opinion, this further reflected a need to have a mechanism, a development conscience of the Organization, or a lens of development through which the various activities of the Organization needed to be viewed, in terms of their impact on countries at different levels of development. It believed that it would enhance the efficiency of the Organization, because while it had a specific mission, which was technical in nature, it needed to be viewed as being part of the UN family and governed by the overarching Millennium Development Goals. The questions raised were what was the impact of the Organization’s work on the larger development discourse, and how had that work impacted on the adoption or the prescription of IP regimes on countries, at different levels of development. Looking at those questions, the Delegation could support the idea of having an independent WIPO evaluation and research office. With regard to the sixth proposal on measures to ensure wider participation of civil society and public interest groups, the Delegation supported a more inclusive approach, which was being adopted elsewhere. It added that while the basic decision-making in an intergovernmental process was with the governments’ themselves, the adoption of a more inclusive approach would be helpful in having broad discussions and incorporating as many views as possible.

70. The Delegation of Switzerland, as already pointed out in the previous interventions, expressed the opinion that the current mandate of WIPO was already sufficient to take into account and implement the development objectives, which as a specialized agency of the United Nations, WIPO should be responsible for. Many activities in this area were already carried out by WIPO and could be strengthened, if necessary, under the current mandate. Looking at this proposal, it asked that each UN agency should carry out the tasks accorded to it while respecting the objectives of the UN, and development was clearly one of the objectives of the United Nations. It continued by stressing that activities of the other

organizations should not be duplicated, but should be complementary. That allowed for better use of available resources, and for the diversification of activities within the United Nations. As for proposal number 5, the Delegation did not think that it would be appropriate to set up an independent evaluation and research office. Although separating management and evaluation was important for the Delegation, mechanisms already existed which allowed one to achieve that objective. It suggested that Member States should wait for the results of evaluation activities already under way, in particular those of the Joint Inspection Unit. The adoption of a charter for internal audit was already being looked at and should also contribute towards achieving that objective. With regard to the participation of civil society, public interest groups and NGOs in the work of WIPO, the Delegation thought that the current rules already ensured wide participation. It pointed out that this participation was very positive because the statements made were undoubtedly very enriching for the debates. It suggested that seminars and electronic fora could be set up or developed to further strengthen this participation, but WIPO should remain an intergovernmental State driven organization, as other delegations had already pointed out.

71. The Delegation of Bangladesh, referring to proposal number 1 to amend the WIPO Convention, felt that it was prepared to examine that proposal. The Delegation also felt that the concept, which had been encapsulated in the “Friends of Development” proposal, could be a good basis for moving forward and that WIPO could take account of such an approach for the purpose of accelerating the process of economic development in developing countries. It reiterated its Delegation’s support for proactive initiatives and called upon WIPO not to play a reactive or passive role, by responding to the needs and concerns of the developing countries at the last stage, as this would leave scope for interpretations that the specific needs and concerns of countries were not taken into account. Therefore, the responsibilities of WIPO should be delineated in setting out objectives and guidelines for initiating norms and standards setting. When delegations asked to incorporate the development dimension into WIPO activities, one did not understand the objections from many countries. The Delegation had studied what countries, that were now developed, had done during the process of their own development. They had used IP in a very proactive and constructive manner to promote their interests and development, and had not worried about WIPO bodies. Developing countries would not want to repeat those mistakes, but would like to learn from those experiences and prefer to have the policy space, which would allow for their development.

72. The Delegation of the United States of America stated that it could not support the proposal to amend the WIPO Convention. Sharing the concerns of several delegations, the Delegation believed that the amendment of the WIPO Convention was not necessary, as it could be very costly and lengthy, and could have very serious unintended consequences. It was of the view that WIPO had already addressed development in all aspects of its work since it joined the United Nations system in 1974. Therefore, it did not see the need to embark on negotiations, either on an amendment to the WIPO Convention, or a political declaration on intellectual property and development. The Delegation believed that WIPO’s resources would be more prudently devoted to continuing work in promoting the intellectual property system, as a tool for economic growth. In that respect, it pointed out the experience of negotiating a high-level, political declaration for a WIPO IP Summit where, despite strenuous efforts to arrive at satisfactory language, the negotiations dragged on for several months with no resolution, consuming a great deal of time and resources. The Delegation added that embarking on negotiations for a political declaration or an amendment to the WIPO

Convention, would distract Member States from working together to maximize the benefits of intellectual property in a realistic manner. It added that focus should now be on making these efforts work to the benefit of developing and least developed countries. With regard to the proposal to establish an independent WIPO Evaluation and Research Office, the Delegation shared the concerns raised by several delegations and said that the WIPO secretariat could and had discharged the mandate of the General Assembly, with respect to overseeing development-related aspects of intellectual property. It further expressed its concerns that giving such a new body, broad, unfettered powers to design, implement or evaluate WIPO's technical assistance programs or evaluate norm-setting activities against unspecified criteria, might cripple WIPO's efforts, as opposed to advancing those efforts. It was also concerned about the cost effectiveness of the proposal, as the new body could be costly and duplicative, and would not contribute any identifiable benefits, but add to the financial burden of Member States. The Delegation also expressed concern about the level of transparency, independence and objectivity that such a body could bring to WIPO activities, and that it could also operate outside established rules and procedures. It agreed with the view of the United Kingdom and other delegations that WIPO, as a Member States-driven organization, should entrust oversight and evaluation functions to the Member States of WIPO and not to additional new bodies. Finally, with regard to the proposal on the participation of civil society and public interest group in WIPO, the Delegation said that it was in favor of the participation of NGOs in WIPO's work. However, it viewed the proposal that was under consideration, as a solution in search of a problem. It added that there were 180 accredited NGOs at WIPO, which equaled the number of Member States, representing a 100% increase over the last six years. The Delegation explained that the requirements and procedures for accreditation were simple, straight forward and transparent, and that NGOs in WIPO now comprised the full spectrum of interest groups, including public interest and consumer groups, rights holders, special interest groups, such as the visually impaired, intellectual property practitioners and associations, academic professionals and educational, cultural institutions. The Delegation stated that it could not support any proposal to change WIPO's terminology with respect to NGOs. In the view of the Delegation, the notion that so called user organizations were different than other NGOs was false as the users of the services of WIPO included individuals, companies, universities, governments, academics and other groups. The Delegation added that holders of IP rights were also interested in the interest of the public. If the purpose of the proposal was to discriminate against IP holders, the Delegation stressed that it would strongly oppose the proposal, as it believed that WIPO already admitted all relevant stakeholders. The Delegation also agreed with the statements made by the Delegation of Japan that the Industry Advisory Commission (IAC) and the Policy Advisory Commission (PAC) should meet more frequently and in that regard it would like to look into the possibility of convening those groups.

73. The Delegation of India said that it would address proposals no. 1, 5 and 6 which were under consideration. The Delegation explained that the proposal to amend the WIPO Convention by the Members of the "Friends of Development" was possibly based on the fact that the WIPO Agreement with the UN or the original WIPO Convention, had been interpreted so narrowly by the Organization as to see its role as serving only the rights of IP holders. As a result, it explained that a sense had emerged among some delegations that only the re-defining of the original mandate would persuade WIPO that its responsibility was in fact far wider than the narrow interpretation of its original convention or the 1974 Agreement with the UN. In the Delegation's view, the 1974 Agreement provided WIPO with a very

broad responsibility, and a major part of that responsibility was to uphold the larger public interest which included developing the framework of IP for developing countries. The Delegation felt that WIPO had failed in that responsibility and that was why some delegations were calling for an amendment of the WIPO Convention. It added that one way to address that concern might be to reaffirm the Development Agenda, as already being a part of WIPO's mandate, thus allowing the Organization to do all the things it had not done till now. The Delegation was of the opinion that the mandate did not prevent WIPO from setting norms that were more development friendly, rather than setting higher IP standards to enable IP rights holders to exploit their rights to the detriment often, of the public at large. It further stressed that an overall balance was required so that the maximum good was ensured for the maximum number of people and that IP rights were one of many ways of ensuring innovation, that it might not necessarily be, in every case, the most effective way of incentivising the community to innovate in different fields. Therefore, given the very broad mandate of WIPO, the Delegation stated that WIPO should fully exploit its mandate, which it had failed to do in the last 35 years and called for a declaration at the General Assembly to that effect. It further noted that in the coming decades, WIPO should engage very actively in the field of development, not just by providing technical assistance to countries to provide stronger protections to IP rights holders, but to foster creativity and innovation to enable the transfer of technology and to develop IP legislations that were best suited to the individual national requirements. On the question of the WIPO Evaluation and Research Office, the Delegation was dismayed to hear some delegations speaking in negative terms about such an office. By way of example, it noted that after almost 50 years in existence, multilateral institutions, international financial institutions had discovered that the way they had been doing things, the way they had been formulating their work programs, the advice that they had been providing to developing countries had not always served the best interest of those countries. In that connection, it cited such institution as the IMF which, some years back had set up an evaluation office after realizing the advice it had provided should have been a bit more relevant and more responsive to the needs of the developing countries. The Delegation further emphasized that such an evaluation office should have a true independence rather than an in-house evaluation and research office because otherwise, the office would fail to engage in the sort of evaluation and research that was needed to ensure its relevance and consistency with the dynamic nature of IP. The office should function on the basis of the notion that there were various ways of promoting innovation and, therefore, it was important to have such an evaluation and research office functioning outside of the secretariat of WIPO and reporting directly to the equivalent of the Board of Directors, for example to the Coordination Committee which was the closest that WIPO had to a board of directors, or to the Assembly directly. The Delegation further pointed out that it had also spoken in favor of independence in the context of the WIPO audit charter and the Audit Committee. It stated that the proposal to establish an independent evaluation and research office was a very good idea and called for the adoption of that proposal. The Delegation mentioned that until recently, WIPO was seen as essentially working in favor of IP rights holders and thus, it supported the proposal to widen the participation of the civil society in WIPO so that public concerns would be heard, taken note of and would guide activities in future.

74. The Delegation of Brazil stated that it would like to make some additional comments to those already made by the Delegations of India and Argentina, on behalf of the "Friends of Development". With regard to the proposal to amend the WIPO Convention, the Delegation noted that in the past, the WIPO Convention of 1967 was invoked as the basis for the upward

harmonization of patent law and when developing countries wished to include the consideration of developmental issues, arguments were heard that the WIPO Convention of 1967 would not allow for consideration of developmental issues. It expressed the concern of the proponents of the Development Agenda, that the Convention of WIPO of 1967 could again be invoked against the development interest of Member Countries. The Delegation was of the view that the Agreement of 1974 had not been enough to give a new guidance within WIPO in this regard, and that was the reason why amending the WIPO Convention was very important. As a first step, it proposed a political declaration, as contained in the proposal of the Group of "Friends of Development" as recommendations of the IIM, which, in the Delegation's view, was very timely and important. The Delegation agreed with the intervention made by the Delegation of China, on the importance of an evolutionary framework for WIPO, which was adaptable to the evolution of time and climate. Referring to the ongoing reform process in the United Nations, the Delegation said that there was no reason to shield WIPO from the evolutionary forces of moving towards a more democratic participation of stakeholders in its work, and towards a more development-friendly type of program. Regarding the proposal for setting up a WIPO Evaluation and Research Office, the Delegation argued against the notion that the proposal might run counter to the objective of a Member-driven organization, and said that the proposal was intended to strengthen the role of Member-driven structures, to ensure the effective implementation of WIPO's Development mandate. It added that the office would be Member-driven as it would report to, and be created by, the General Assembly. The analogy to a board of directors was made by the Delegation of India, which the Delegation thought was precise. The office would report to the members of the Organization, and would not obviously work in a void, nor be a satellite, or an entity that would be separate from the Members. It would be a part of the Organization, with a direct reporting relationship with the General Assembly and, therefore, directly accountable to the Members. With regard to the current practice of evaluation, the Delegation believed that the WIPO Secretariat was not adequately structured to provide real research and evaluation, in terms of impact assessment of WIPO agreements and activities. In its proposal, the Delegation had referred to the World Bank, the International Monetary Fund, the UNDP, and many other organizations that had this mechanism, which increased their accountability towards their members. Therefore, it would be an instrument for making WIPO more member-driven and not run counter to that objective. The Delegation indicated that the Organization should create the Unit in which it would need to include economists and people who would be qualified in development issues at large, and not experts in IP issues only. It believed that what was needed was to prepare the Organization to broaden its capacity to analyze and evaluate the impact, that its agreements had in different Member countries, particularly taking into account the fact the Member countries had different levels of development, access to technology, innovation, etc. The Delegation suggested that such an independent evaluation unit would have to be carefully examined and discussed by the Member States. The Delegation had noted the suggestion to entrust to Member States themselves the evaluation and research function, but pointed out that many Member States, particularly developing countries, would not have the wherewithal to actually carry this out. The Delegation believed that when negotiating agreements, the organization would be promoting international norms and standards. Therefore it should also have the capacity to evaluate the consequences on different Member countries, and not leave that for Member countries to do so individually. It said that there were also some references made by Member countries to leave certain issues aside, because they did not fall within the mandate, or was not within the functions of that particular body. The Delegation said that it would like to

point out that they worked under a mandate from the General Assembly, and that the IIM was at the same level as that of the General Assembly. In fact, it was the General Assembly itself that was meeting inter-sessionally, and therefore, it had the mandate to consider proposals made by all countries regarding a development agenda for WIPO. The Delegation felt that the body was competent to analyze all issues put forth by Member countries and that there was no limitation on this body for the consideration of any issue. That was, in fact, the reason why it insisted that the current format should be maintained for the continuation of the process to discuss the development agenda for WIPO. Finally, regarding civil society, the Delegation pointed out that, as stated by other delegations, the issue was to increase their influence in the work. Until now, what was traditionally seen in WIPO was that there had been quite a lot of participation from representatives of the business sectors, which represented mostly IP rightholder groups, and traditionally, very little participation had been seen from the public interest NGOs. The Delegation believed that a right balance should be achieved in this regard, and so it was very much in favor of increasing the level of participation of the public interest NGOs.

75. The Delegation of Nigeria stated that it would like to contribute to the debate on the substantial issues of the agenda, namely, the proposals on the list, Nos. 1, 2 and 6, comprising different elements of the discussion. It believed that amending the WIPO Convention would be a long term process and was the ultimate objective of Member States. The act of amending the WIPO Convention was not impossible nor a difficult one for that matter, bearing in mind that other treaties and charters had been successfully re-negotiated in other places. Re-examination of the Charter would contribute to the process of progressing the development of international law. However, such a process would still be in the future. It said that the immediate thing which needed to be done was to agree on the parameters of a Development Agenda for WIPO, spell out the essence of such an agenda and afterwards, if deemed necessary, resolve to amend the WIPO Convention. Before remodeling the Organization, in order to be able to carry out the tasks, it should be realized that the entire discussion on the concept of development and related mandate for WIPO was not a new thing. It had been extensively, and very competently, addressed in other places. The Delegation cited as examples, the report of the United Kingdom Commission on Intellectual Property Rights and the joint paper by UNCTAD and the International Center for Trade and Sustainable Development on Intellectual Property and Development. The Delegation proposed that all proposals that had so far been put before the IIM, be distilled and classified into the following three themes: (i) first of all, delineate specific development related programs, consisting of technical cooperation, transfer of technology, activities regarding small and medium enterprises, funding matters, and so forth; (ii) the second classification would be norm-setting, comprising of issues and proposals of a nature that would require the elaboration of new treaties, or the revision of existing ones, which could be carried out over a length of time, to be determined by Member States; and (iii) the third category or classification would be institutional mandate, which was related to the way and manner Member States desired to structure or re-structure WIPO in terms of the operation and function of its various bodies, with a view to efficient implementation of policies and programs. The Delegation stated that the three categories were simply proposed for the sake of clarity and ease of work in devising an effective work plan for the IIM, with definite objectives in view. Regarding measures to ensure the participation of the civil society in the activities of WIPO, the Delegation proposed that the next sessions of the IIM, if any, should be configured in such a way as to enable accredited Organizations to fully participate in

discussions, especially in the form of an interface with Member States and WIPO Secretariat. The Delegation further proposed that a day be set aside devoted to such an interface, in order to receive fuller and more extensive reports from NGOs and other stakeholders about their various activities in the field of IP and development, as well as get specific information about various country experiences. Interest groups could provide well researched papers on all aspects of IP and development, for the benefit and enrichment of discussions and to guide the body in its future deliberations. Regarding the body to be charged with the responsibility of implementing the development agenda for WIPO, the Delegation believed that it was too early for delegations to take positions. The issue was really not beyond solution if the ultimate objective of a development agenda was agreed upon. It should not be so difficult to decide upon which vehicle or vehicles should be used within WIPO as platform of delivery of these objectives. The Delegation used an expression from its place, stating that it was of no consequence, whether it came from a cow or an ox, so long as it was fresh milk.

76. Commenting on item 1 of the initiative of the group of “Friends of Development” to effect reforms in the operation and mandate of WIPO, the Delegation of Honduras stated that it was still engaged in consultations on the subject, but discussions and considerations on the issue should continue in an intensive way, in subsequent meetings of the IIM. Referring to the draft decision of the IIM, the document that was circulated by the “Friends of Development”, the Delegation welcomed the idea for improving WIPO’s efficiency and to play a more active role on the development agenda. As regards the proposal on the establishment of an independent evaluation office, the Delegation welcomed it because it pointed out that most world organizations had such mechanisms or independent assessment units. The Delegation therefore supported the measure, provided that it be monitored by Members of the Organization, as suggested in other proposals by the “Groups of Friends of Development” when they said that WIPO should be a member-driven Organization, guided by the interest of all its Members without exception. On item 6, about ensuring the participation of civil society and public interest groups in WIPO, the Delegation stated WIPO and its Member States could benefit from the knowledge and experience of those groups on issues where governments do not have the necessary information or skills. The Delegation said that without prejudice to what it had said, it believed that there should be some balance in the proposal because that participation should not affect the decision-making powers and the necessary space that governments should have when working out their decisions.

77. The Delegation of the Philippines commented on proposals 5 and 6. On proposal 5, it acknowledged that the idea, in principle, was a good one; however, as of that time, it could not give a categorical support to the creation of the proposed office, as more clarifications were needed. It also believed that those clarifications could be obtained only through a thorough discussion and deliberation on the details of the proposal. The Delegation would welcome further discussions on the proposal. On No. 6, the Delegation fully supported the proposal. It believed that civil society and public interest groups could provide useful inputs, that could advance the social and development functions of intellectual property.

78. The Delegation of Chile stated that on the first point, WIPO’s mandate was sufficient. However, there were different interpretations of that mandate even among developed countries. It said that some thought that WIPO was correctly following its development vocation, but as there were differences among the countries, it would welcome some clarifications. Amending the mandate would require expenditure in terms of time and

resources, but the Delegation believed that there was a good solution in the draft decision, that is, to have a political declaration to clarify WIPO's mandate. Regarding the establishment of the WIPO Evaluation and Research Office, the Delegation said that it agreed with the establishment of that office. It believed that it would require costs but that it would be worthwhile in view of what was at stake. Regarding measures to ensure the participation of civil society, the Delegation supported the comments that the inter-governmental nature of the Organization should be maintained. However, it did not think that would be an obstacle to increasing the participation, and that it would be useful to use new technologies, such as the Internet, which WIPO was already using for IP forums to involve civil society. The NGOs were highly specialized in areas that were vitally important to developing and developed countries, such as food security, health, human rights, privacy, and so their contributions were useful.

79. The Chair mentioned that the Delegation of the United States of America had distributed a paper in the meeting, which contained a draft report, proposed to be submitted to the General Assembly for its consideration. He then gave the floor to the Secretariat to introduce a document.

80. The Secretariat recalled that during the June 2005 session of the IIM, it had indicated that it would provide information on development cooperation activities carried out in recent years. A major part of that information had now been prepared and available in document WIPO/EDS/IMF/1 entitled 'Information on WIPO's Development Cooperation Activities' from January 2000 to June 2005. The Secretariat explained that the document briefly enumerated the aims of the development cooperation program of WIPO and discussed the major shift in the focus and priorities of those activities in the past few years. The two priority areas now were firstly, to help developing countries create intellectual property assets and realize real value from those assets, and secondly to provide legal and general advice on using flexibilities in the TRIPS Agreement and those in other WIPO treaties. That shift in direction had taken place mainly in response to the expressed needs and demands of Member States. The tables annexed to the document contained details on the various development cooperation activities taken up in accordance with the Program and Budget, approved by the Member States for the entire period. Annex I of the document provided information on meetings organized in different developing countries; projects for automation of intellectual property offices; expert missions to Member States for specific tasks, and study-visits of officials from developing countries. Depending on the nature of the specific activity, the information included the subject, names of the requesting authority, joint organizers, number of participants, countries represented and country of origin of the expert. For the automation projects, details were also provided on equipment supplied, software developed, and number of staff members trained. Annex II provided information on meetings organized at WIPO headquarters in Geneva. Those were mainly activities relating to norm-setting; information technology projects; genetic resources, traditional knowledge and folklore, and development cooperation. That included the number of officials financed to attend meetings of the Standing Committee on Patents; Standing Committee on Copyright and Related Rights; Standing Committee on Trademarks, Industrial Designs and Geographical Indications; Standing Committee on Information Technology; Inter-Governmental Committee on Genetic Resources, Traditional Knowledge and Folklore and the Permanent Committee on Cooperation for Development Related to Intellectual Property. Annex III provided information on activities, largely training programs, co-sponsored with, and implemented in,



industrialized countries. The costs for those programs were jointly shared with those countries, which also hosted the activities. Annex IV contained information on legislative advice provided to Member States which fell in four broad categories, namely: Submission of Draft Laws to Member States; Comments on Draft Laws prepared by Member States; Legal Advice in general, and Advisory Visits. The information included the names of the country and the nature and subject of advice. A few details relating to the names of the requesting authority, subject matter and the number of missions undertaken to provide the advice, were also contained in Annex I. That information was being further developed to make it more comprehensive. The Secretariat added that the information contained in the document, would be supplemented and revised as soon as possible, as not all activities that were implemented could be included due to time constraints. The future revised version would include information on WIPO's cooperation with Inter governmental Organizations and NGOs, human resource development activities, including those conducted by the WIPO Worldwide Academy, promotion of innovation, patent information services, and the provision of equipment and training materials to countries. That information would form part of a larger database, which would be accessible on the WIPO website.

81. The Delegation of Brazil appreciated the opportunity, on behalf of the "Group of Friends of Development", to introduce and address items 2 and 3 on the list of proposals, which were also addressed in documents, WIPO/GA/31/11 and IIM/1 /4. It wanted to point out that, in addition to the two proposals contained in that list, document IIM/1 /4 contained thirteen additional proposals, on the issue of transfer of technology. The Delegation wished to request that all those thirteen proposals be included in the listing of action oriented proposals, on which they had been working since the second IIM. The Delegation emphasized that it was widely acknowledged that the transfer and dissemination of technology was, and should be, a fundamental objective of the intellectual property system. It added that that objective had been enshrined in certain international treaties on intellectual property. Despite the fact that there was general agreement on that objective, the issue of transfer of technology and its interface with intellectual property, had remained a problematic issue on the international agenda. Even though it was widely recognized that access to technology and innovation, must be integrated with the development policies of all countries, there was a widespread concern that the international community had failed in coming up with concrete solutions for addressing the problems faced by developing countries and LDCs. Further, it had not helped that often times the issue of the relationship between intellectual property and transfer of technology had been dealt with by certain actors, as if it were governed by absolute truths. Some had also stated that the adoption of higher and more stringent standards of intellectual property protection, would necessarily and automatically lead to greater transfer of technology to developing countries and LDCs. In actual practice, however, the experience of developing countries, in implementing certain recent international agreements in the field of intellectual property, such as the TRIPS agreement which had established international minimum standards of protection of intellectual property, would seem to suggest that those assertions were unfounded. The higher standards of IP protection, established through treaties had not delivered the promised benefits, in terms of transfer and dissemination of technology and knowledge to developing countries and LDCs. In many cases, the new norms of protection were actually hindering, as opposed to facilitating, the transfer and dissemination of technology to developing countries and LDCs. It was often the case, for example, that large industrial enterprises chose to use and enforce, their government granted monopoly rights, in a manner that lead to the pursuit of restrictive licensing practices,

which had kept developing countries and LDCs from actually adapting those new technologies for their own specific national circumstances and needs. The Delegation said that its concerns were not limited to the TRIPS agreement. In fact, those concerns were exacerbated, in the context of certain TRIPS-plus norm-setting exercises, for example in the patent field, which certain members of the Organization were keen to promote, both in WIPO and in other fora. The Delegation thought that it was time that they went beyond the rather dogmatic approach on the issue of the relationship between intellectual property and the transfer of technology. The Delegation thought that there was clearly an understanding that it was an important issue, and that the IP system should be made to deliver on those objectives. In that regard, the Delegation said that their document sought to make a contribution to that debate and contained a number of proposals, as mentioned earlier. There was, in addition to the proposal on the elaboration of a treaty on access to knowledge and technology, a number of ideas which they believed the Organization should explore. Those ideas and proposals could be found on pages 26 to 28 of document IIM/1 /4. It included measures, such as, an undertaking by developed countries to provide fiscal benefits to firms transferring technologies to developing countries of the same type that were often available in the developed countries for firms, that transferred technologies to nationally less developed regions and tax advantages for R&D performed abroad as for R&D done at home. There was also an idea that developed countries could provide fiscal incentives, to encourage enterprises to train scientific engineering and management graduates from developing countries, with a view to using their knowledge for the development of technology in their countries of origin. The document also proposed certain multilateral supportive measures, which WIPO should look at. For example, there was the idea of establishing a special fee on applications deposited through the Patent Cooperation Treaty (PCT), the revenues of which would be earmarked for the promotion of research and development activities in developing and least-developed countries; adoption of commitments like those contained in Article 66.2 of the TRIPS Agreement expanded to benefit all developing countries and so on. The Delegation stated that it was not meant to be an exhaustive list of proposals, and that it was only trying to make a contribution to the debate. It was also under no illusions, that it was not a complex problem. While aware of the complexity of that issue, it thought that their acknowledgement of that complexity should not keep them from effectively addressing it, given its importance for the social, economic and environmental welfare of developing countries and LDCs. It was important to address that issue, for the sake of the credibility of the IP system. Basically, what they would be trying to do was to ensure that what was understood to be a fundamental objective of the intellectual property system, would actually materialize in a manner that would benefit all stake holders and countries, irrespective of their development levels. Therefore, the Delegation was interested in listening to what the other members of the Organization would have to say about its proposals, and looked forward to their views on how they believed that those ideas could be put into practice and improved.

82. The Delegation of the United Kingdom, speaking on behalf of the European Community and its Member States, said that it had comments on Items 2 and 3 on the list. Regarding Item 2, the proposal to establish a committee on technology transfer, the European Community and Member States noted that the agreement between WIPO and the UN was clear that WIPO should contribute, within its competence, to the UN's work on technology transfer. That work also involved the United Nations Conference on Trade and Development, United Nations Development Programme, and the United Nations Industrial Development Organization, as well as other agencies within the United Nations system. With that in mind,

the EC and its Member States agreed that WIPO should play its role, as far as the IP aspects of technology transfer were concerned, and looked forward to hearing more comments and discussing them, within existing WIPO structures. Regarding item 3, on the proposal for a treaty on access to knowledge, the EC and Member States noted that the proposal made by Argentina and Brazil included elements, which appeared to go beyond WIPO's competence, adding however, that the organization would have a role to play in the debate on such a proposal. The Delegation also noted that a proposal had already been made in the Standing Committee on Copyright and Related Rights, that the question of exceptions to copyright be debated in that body.

83. The Delegation of the Republic of Korea said that it agreed with items 1 and 6 of the proposal, for the draft decision of the IIM, from the "Group of Friends of Development". It believed that the renewal of the process of the IIM, was necessary for effectively addressing the issues raised in the proposals to establish a development agenda for WIPO. It also agreed with the idea of considering measures designed to improve the participation of civil society and public interest NGO's in WIPO activities. Concerning the development of a code of conduct for technical assistance provisions, the Delegation wished to see substantial progress made in that area. In that regard, it supported the main themes of the proposal by the United States, specifically with regard to making a partnership database and the establishment of a partnership office. The Delegation said that its government was actively supporting technical assistance activities for developing and least developed countries, with the Korea Funds-in-Trust, and looked forward to working towards improving the efficiency of technical assistance activities and building on the success already achieved. As already stated by the Ambassador of Benin, it was primarily through technical assistance from developed countries that developing countries would be able to fully take advantage of intellectual property in their development strategies. Therefore, it agreed with the Delegation of Benin that it would be useful if other developed countries also established similar funds-in-trust programs. The Delegation requested the Secretariat to indicate the kind of changes that had been made in the funding of technical assistance activities over the past three years, given the budgetary constraints faced by WIPO, and added that if the funding had decreased, it would call for it to be returned to normal levels and also increased. The Delegation said that it would like to see the restoration of the Innovation Division and the strengthening of the SMEs Division in WIPO, as they were important for technical assistance activities in developing countries.

84. The Delegation of South Africa said that it associated itself with the proposal on the development agenda for WIPO submitted by Morocco on behalf of the African Group and with a proposed possible draft decision for the IIM submitted by Brazil on behalf of the "Group of Friends of Development". It pointed out that it had been recognized, even by the UN that science and technology was the main source of development. Therefore, it was clear that the achievement of science and technology transfer constituted one of the key elements for the achievement of the millennium development goals. The Delegation stated that the TRIPS Agreement recognized precisely that the transfer and dissemination of technology, should be a fundamental objective of the global intellectual property system. It added that in Article 1 of the Agreement between WIPO and the United Nations, WIPO was recognized as a specialized agency, with the responsibility of taking up concrete measures for facilitating transfer of technologically related to industrial property to developing countries. It stated that in order to accelerate economic, social and cultural development, intellectual property protection would have to lead to transfer of technology from the highest levels of

concentration to the lowest levels of concentration. It added that in that regard, the evidence had pointed to the contrary. The Delegation mentioned that with regard to science and technology transfer, IP right holders chose to exercise the monopoly rights conferred by patents and other forms of intellectual property, in a manner that ran counter to the principles and objectives of the intellectual property system, including transfer and dissemination of technology. It added that the present system was contributing to the perpetuation of technology imbalance between developed and the developing countries. Policies were therefore needed to rectify the situation by removing impediments to the transfer and dissemination of knowledge. It stated that WIPO should look at adopting principles that could facilitate transfer of science and technology and that those principles were nicely summarized in the elaboration document, which was submitted by the “Group of the Friends of Development”- IIM/1/4.

85. The Delegation of Bangladesh stated that it had comments on proposals 2 and 3. It said that, with regard to the second proposal on the establishment of a WIPO Standing Committee on IP Transfer and Technology Transfer, it thought that it was a good proposal that needed to be actively pursued. It felt that WIPO had an obligation in Article 1 of the Agreement between WIPO and the United Nations, and that it was recognized as a specialized agency with the responsibility of taking appropriate measures for facilitating transfer of technology related to IP for developing countries in order to accelerate economic, social and cultural development. It also felt that transfer of technology was very important and consequently mechanisms should be devised for transferring technical information across borders and its effective diffusion into the host economy. The Delegation said that it had also gone through the papers submitted by the African Group, and could see that it was in synchronization with a paper by the “Group of the Friends of Development”. Regarding the transfer of technology, the paper said that WIPO should consider the creation of a new body for coordinating and implementing all transfer of technology policies and strategies, therefore, it felt that the issue needed to be addressed by WIPO. The Delegation mentioned that with regard to the third proposal, it felt that it needed to be pursued, because having access to knowledge and technology was very important, not only for the developing countries but also for LDCs. On aspects of norm-setting, it said that they had to elaborate mechanisms to facilitate access to knowledge and technology for developing and least-developed countries. It thought that those were good proposals that needed to be addressed.

86. The Delegation of Japan referred to Item no.2, namely, the establishment of the WIPO Standing Committee on Intellectual Property and Technology Transfer, and believed that WIPO had already acknowledged the importance of technology transfer, and that was the reason behind the agreement between WIPO and the UN regarding the transfer of technology. The Delegation stated that the discussion on technology transfer was not against the activities in WIPO, and they could discuss these issues in the PCIPD, in the context of intellectual property. It felt that the mandate of the PCIPD was broad enough to cover such new Items. The Delegation mentioned that with regard to item no. 3, namely, the elaboration of the treaty on the Access to Knowledge and Technology, it was not against the idea of discussing access to knowledge and technology in the context of intellectual property. However, it suggested that what they should do first was to identify the programs in the current situation concerning access to knowledge and transfer of technology. It was premature to consider the possibility to conclude the treaty on access to knowledge and technology.

87. The Delegation of Argentina stated that as a co-sponsor of the proposal, it was not going to go into more detail on the already comprehensive presentation made by Brazil on the issue. However, given the statements which had been made, it would like to comment on a number of aspects. It stated that it agreed with those delegations who had noted that there was a WIPO obligation in its mandate to take measures and actions in order to promote transfer of technology and in order to facilitate that transfer. The Delegation also recalled that one of the reasons behind intellectual property protection at an international level, one of the objectives of the TRIPS Agreement, was to increase and facilitate transfer of technology, which was the basis or one of the bases for the agreement. It believed that, along with other delegations who had made such statements, technology transfer was an issue which concerned all United Nations agencies, including WIPO. That was an issue which needed to be dealt with and incorporated in the negotiations underway on intellectual property standard setting, for example, and not merely in a committee, which would be set up specifically on technology transfer. For that reason, the Delegation found it somehow strange to hear some countries stating that the issue should be dealt with by the competent bodies or by a committee on technical cooperation. However, it was surprised that this would not be a body which would be competent to deal with that, because the negotiations on the SPLT were at a stand still as many delegations from developed countries refused to deal with issues such as technology transfer in those bodies. That was why the Delegation believed that it would be a step forward if they could deal with the issue of technology transfer. The Delegation did not think that there was any other body which was more competent.

88. The Delegation of Chile stated that they had no instructions from the capital regarding proposal 2 and would like to think about it a bit more. Therefore, it would like to refer to proposal 3 from the "Friends of Development" about the treaty on access to knowledge and technology. It thought that it was an interesting proposal and would like to explore it further. The Delegation had heard other delegations who said that some issues had already been dealt with in committees, such as limitations and exceptions in the copyright committee. It did not think that it had to be engraved in stone, that it had to remain in a particular committee. Many of the issues were cross-cutting in nature and not confined to the area of copyright or patents or trademarks. Issues relating to competition policies, Internet and IP were cross-cutting as well, and were regulated by different countries in different ways. Issues such as the protection of the public domain were interesting and could be examined. It thought it was a good idea to have a treaty on access to knowledge, and was open to discussions on that.

89. The Delegation of the United States stated that with regard to proposal number 2 on the establishment of a standing committee on Intellectual Property and Technology Transfer, it disagreed with the proposal to add a new WIPO Standing Committee, particularly in the light of WIPO's limited resources and given WIPO's long standing approach to finding the most cost effective approach to addressing such issues. The Delegation strongly believed that the issue could be adequately and fully addressed within the framework of existing WIPO bodies, including the main standing committees of WIPO that handle various types of intellectual property. For example, the Standing Committee on Information Technology was providing an excellent forum on how to access patent information. The WIPONET project had provided Internet connectivity to all WIPO Member States, so that they could access intellectual property digital libraries of IP information. For example, over seven million US patents, the vast bulk of which are now dedicated to the public domain, were freely available and served as technology blue-prints for society's use. In that regard, the Delegation believed

that WIPO was addressing its obligation under the 1974 WIPO-UN agreement through the dissemination of patent information including, through the WIPONET. Furthermore, as noted by the United Kingdom during the April session of the PCIPD, technology transfer issues had been discussed in that body in the past, and the Delegation saw no reason why it could not continue further discussions there. With regard to proposal number three, on the elaboration of a treaty on access to knowledge and technology, the Delegation said that it could not support the proposal. It strongly disagreed with the premises underlining the proposal, elaborated by the Delegation of Brazil as well as the “Friends of Development”. The Delegation strongly believed that intellectual property protection had proven to be the strongest driver rather than an impediment to technology transfer. The IP system had proven to be a powerful driver of scientific and technological information into the public domain, as even recognized in the “Friends of Development” proposal, and the Delegation quoted, “Information and Patent applications has increased the world store-house of knowledge, which is now available for use by all countries”. The Delegation believed that such a treaty was not necessary and remained concerned that the proposal could impede, rather than promote, access to technology, particularly in the light of the premises upon which it was based.

90. The Delegation of the Russian Federation stated that on the issue of creating a new committee, it would like to reiterate that it was not in favor of setting up a new body for that purpose and added that it might complicate the structure of the organization and create new financial obligations. The Delegation said that it would be more effective to adapt the existing mechanisms, to the new needs. In that connection, it would be preferable to adopt the proposal submitted at the last session by the United Kingdom, about strengthening the committee on development cooperation. The Delegation stated that it would be advisable to concentrate on all issues related to development for discussion in the PCIPD and if needed, they could adjust the mandate of that committee. As regards the transfer of technology proposal, it was very complicated and required careful work. Unfortunately, those proposals, with the exception of one, had not figured on the list on the basis which the delegations were working, and so it would find it difficult to give a final view on it.

91. The Delegation of Canada stated that it agreed with all the other members who had spoken that morning that technological innovation and dissemination were key objectives of intellectual property protection. Those were also recognized, as had been pointed out by other delegations that morning, in the WIPO agreement with the United Nations and in TRIPS Articles 7, 8 and 66.2. The Delegation also agreed that discussions on intellectual property and development should address issues of technology transfer. In its view, that should be done in a way that complemented and did not duplicate on-going discussions on technology transfer in other international fora, such as UNCTAD and the WTO working group on trade and technology transfer. It was pointed out by the Delegation that in the last meeting of the PCIPD, it had proposed that its successor body should organize its work around three themes, one of which could be “Innovation, Creativity and Economic Growth”. Under that theme, WIPO members could explore among other things, the practical use of IP rights to foster dissemination and absorption of technology. Discussing technology transfer issues in the same body in which members discussed other IP and development issues, would promote coherence, and help to prevent duplication. The Delegation added that it would also enable WIPO Members to explore synergies between questions of technology transfer, policy

development, innovation, creativity, capacity building, economic growth and the manner in which the work of all WIPO bodies should support those objectives.

92. The Delegation of Colombia referred to the two issues under discussion. First of all, the Delegation spoke about issue three, the proposal to consider the elaboration of a treaty on access to knowledge and technology. The Delegation firmly supported the proposal to elaborate a treaty on access to knowledge and technology, because it ensured commitments on access to knowledge and technology. Promotion of access by developing countries could be financed by public institutions in the developed countries. It added that there should be clear measures to guarantee access, and to eliminate any obstacles to access to knowledge and technology. The transfer of technology, as a strategic resource, was a basic building block of development. The spread of technology should go hand in hand with effective and practical mechanisms, that would generate the capacity to absorb such technologies, and lead to the use of those technologies for the promotion of well being. The Delegation said that in a globalized world, it could not consider development, without effective access to knowledge. Knowledge was considered as a resource, and hence, one of the basic pillars for human and cultural development of countries. Therefore, it supported the proposal submitted by the group of "Friends of Development". With regard to paragraph two, on establishing a new standing committee, the Delegation said that they should carefully consider the need for establishing new structures in WIPO, and starting a process that might lead to a duplication of efforts. At that point, the Delegation believed that the proposal needed further study to see whether it was suitable, and perhaps sometime in the future, it could adopt a decision. For the moment, it was premature to consider establishing a standing committee.

93. The Delegation of Brazil wanted to comment on the two issues that were raised by other delegations. One of them was the issue of the PCIPD as a forum that could debate transfer of technology issues. The Delegation said that its Mission had participated in one of those PCIPD meetings and had seen that it only discussed technical assistance, no more no less, and even that was done within a very limited and narrow frame of mind. The Delegation added that the PCIPD did not even have a mandate to get into the budgetary process, to actually determine how it could be adapted to meet the technical assistance needs of developing countries. That had surprised the Delegation, because it had imagined that the PCIPD would look at technical assistance in the light of the budgetary process, so that allocation of resources would be commensurate with the objectives and needs. Therefore, it added, that the PCIPD had very little influence in concrete terms, within the organization. It basically promoted a general discussion on technical assistance, that was not consequential on the budgetary process. In the meeting of the PBC, in spite of many complaints from developing countries that the resources allocated to technical assistance had decreased, nothing could be done. In-depth discussions in the PCIPD had also not been of any help. Therefore, the Delegation thought that the PCIPD was a body with a very limited and narrow focus, which traditionally discussed only technical assistance, and did not have influence on the budgetary process. Therefore, it did not see how the PCIPD could discuss issues of the magnitude of transfer of technology, or the development perspective of the international intellectual property system. Of course, the PCIPD could be improved, but firstly it had to improve what it was supposed to do, which was effectively to deal with technical assistance. Secondly, on the issue of the agreement on access to knowledge, the Delegation understood that it was a major issue relating to the future of the intellectual property system, be it in a developing

country or in a developed country. Brazil was following the discussions among academics, in many universities in the United States of America, Europe and other corners of the world, who were concerned with the fact that patents were being granted under terms, that did not promote full disclosure of inventions, and had lead to undue appropriation of information, meant to be in the public domain. Additionally, there was an encroachment, an appropriation by patent holders, of information related to basic science, which was not meant to occur in the patent system. As was known, often times, basic science was a result of research performed in universities, under the funding of the State. As the activity was subsidized from public funds, that information should be publicly available, for the benefit of human kind. Therefore, it was of great concern that there was a trend to include such information in patent claims, thereby making it the property of private corporations and removed from the public domain. Such information was no longer accessible to people, students, teachers, universities and researchers in the developing world. The Delegation was aware that legislation was being adopted in developed countries, for instance in the United States of America where there was an incentive for universities to pass on inventions that were produced within the academic world, under contract with the government and publicly funded. The results that may be patentable from such inventions, could then be transferred to the private sector of that particular country. That was worrisome, because it meant that there was an increase in the privatization of university and academic activities, and would not stimulate innovation worldwide. In fact, it could have the opposite effect, by removing knowledge from the general pool of information that was available to all. Therefore, the Delegation believed that action was needed to counter that trend, and that action could be along the lines of a treaty on access to knowledge, to protect the public domain from the encroachment of claims made by private individuals and private corporations, to ensure that the information would remain publicly available, feeding and nurturing, research, science and education all over the world. That was an issue that had also been looked at by UNESCO, and the Delegation said that WIPO could not remain unconcerned with this very wide ranging problem. In fact, it thought that a treaty on access to knowledge was the real power tool for development, that WIPO should pursue.

94. The Delegation of Canada noted the frustration expressed by the Delegation of Brazil with regard to the current workings of the PCIPD, and said that it was equally frustrated. The PCIPD's focus, solely on technical assistance and cooperation issues, was indeed rather narrow and as a result, that body was not as effective, as it could and should be. On the other point made by the Delegation of Brazil that the PCIPD had no mandate to discuss budget issues, the Delegation said it was not sure whether other WIPO bodies had the mandate to discuss budget issues, or that was solely the purview of the program and budget committee. The Delegation said that it would be prepared to explore the possibility of revising the PCIPD's mandate, and expanding it in whatever way necessary, to make it more effective.

95. The Delegation of Morocco stated that it had submitted, on behalf of the African Group, a number of proposals for consideration in the Meeting. Those proposals followed from the documents submitted the previous day by the Delegation, on behalf of the African Group. The Secretariat was requested to include those proposals in the official documents of the session, and circulated to all delegations. It also requested for time before opening the discussions on the African proposal, so that it could have inter-regional discussions with other groups.



96. The Delegation of India said it had already associated itself with proposals 2 and 3 in the past. In addition, the Delegation wished to express its views on the topic of access to knowledge, pointing out that there was no doubt that developing countries and LDCs had been contributing to the overall stock of human knowledge in the past and that their contribution to modern science and technology was on the increase. However, the Delegation added, for many reasons, including historical ones, their contributions were either not recognized or were not available to them as the knowledge became a part of a patent or sometimes was wrongly patented. The Delegation explained that there was no real return to such contributions. The Delegation added that publications, including technical journals, were becoming more expensive every day and that developing countries had difficulty in accessing them. It further noted that knowledge, especially in the context of prior art determination, was extremely important and that absence of such knowledge put the scientists from developing countries in a position of disadvantage when they went for patenting. In conclusion, the Delegation said that the issue of access to knowledge was extremely important and should be discussed at an appropriate time.

97. The Delegation of the United States of America said that it would like to briefly respond to two points that had been made by the Delegation of Brazil. With regard to the mandate of the PCIPD, as Canada had noted, in the recent past it had not been the most vigorous committee, but in 1999 there had been very extensive discussions on the issue of intellectual property and technology transfer. The Delegation pointed out that although the International Bureau had confirmed that the mandate of the PCIPD was not limited to technical assistance, and that there was no preclusion of discussion of development issues in that committee, some delegations still continued to state that the mandate of the PCIPD was limited to technical assistance. The Delegation suggested that the General Assembly might affirm the mandate of the PCIPD, in order to allow a full discussion of all the proposals that were on the table during the IIM process. With regard to the second point made by the Delegation of Brazil, the Delegation totally rejected the premise and the mischaracterization of US law with regard to patenting of government funded research. The Delegation explained that the United States of America, since the early 1980s, under the Bayh-Dole Act, had had a long tradition of using the intellectual property system to transfer publicly funded research to the private sector for the benefit of society as a whole. That had resulted in some US \$ 30 billion of economic activity, apart from the creation of new jobs and entire new industries. The patent system had provided incentives to private entrepreneurs to take the results of publicly-funded research to develop useful products and take them to the marketplace. Without those incentives, publicly funded research prior to that time had sat on a shelf and not developed for the benefit of society. The Delegation stated that it understood that several other countries, including perhaps Brazil, had adopted similar technology transfer statutes modeled in part on the Bayh-Dole statute and that it would be very interested in hearing from Brazil more about their domestic statute and the features that it had in common with that statute of the United States of America. The Delegation pointed out that discussions indicated that there were fundamental differences and misconceptions about the issues under discussion, and that it was for that reason that it thought that the PCIPD would be the most appropriate forum to help resolve those differences and have a full discussion.

98. Referring to the issue of elaborating a treaty on access to knowledge and technology, the Delegation of Honduras stated that it thought that it would very important for developing countries, as it would give the appropriate space to consider and discuss fundamental issues in

which delegations could engage. For instance, this could be the exploration of legal ways to access foreign patent information and technology; technical aspects relating to the assimilation of knowledge and exchange of information fundamental for national education and scientific research. It added that that process would consequently foster and generate innovation and creativity, by taking the breakthroughs of basic research into the next step of applied research in essential technology, that had to do with sensitive areas affecting developing countries, such as water, sanitation, health, agriculture, education, food and innovative applied technologies. The Delegation pointed out that the proposal of the African group regarding the transfer of technology was crucially important and that it supported it. Concerning item 2 of the list of proposals, the Delegation added that a constructive and positive debate could continue in the proper forum, which could be the continuation of the IIM Meetings after the next General Assembly.

99. In response to the comments of the Delegation of the United States of America, the Delegation of Brazil, said that it had the impression that the United States totally rejected any discussions regarding development in general. The Delegation thought that the United States totally rejected anything that might have brought about changes in the *modus operandi* of the Organization or in favor of developing countries, and added that it hoped that that was not the case. The Delegation said that it thought that there was no misconception, and while not pretending to be an expert on the Bayh-Dole Act, it understood that it was a means of promoting transfer of publicly-funded research in the universities to favor, not private entrepreneurs in general, but US private entrepreneurs, giving them a competitive advantage over entrepreneurs elsewhere. The Delegation further stated that the degree to which science was funded in the United States of America was really not comparable to funding of science in any developing country, and that that had to be taken into account. The Delegation added that there were other issues involved that it would not get into, such as that being, in its opinion, an indirect means of subsidization of private entrepreneurs through governments subsidies. The Delegation said that obviously that was not an issue that had to do with WIPO but with WTO's subsidies agreement and with possible trade distorting effects, and that was not what it was dealing with in that forum, but rather the consequence of those practices on the public domain. The Delegation pointed out that it was sure that many countries worldwide would be attempting to adopt legislation that would inject a bit more dynamism in research and innovation activities in the academic field, and that how successful they would be was a big question that was still in the air. Concerning the Brazilian legislation, the Delegation explained that it had legislation on innovation that was not comparable to the Bayh-Dole Act at all, but it did deal with some of those issues and gave university researchers a little bit more freedom to carry out their studies and eventually become entrepreneurs themselves. The Delegation further added that the whole idea of universities as incubators and promoting start-up companies was very dimly referred to in that legislation but that the legislation was not at all sophisticated as the one that was in force in the United States. Therefore, the Delegation said that it was not really a misperception but that it was just that countries had different mechanisms by which they protected their national entrepreneurial activities, and that what was of concern was that such mechanisms were working to the detriment of the public domain. Even though it may have been a global trend and all countries were going in that direction, that was only one more reason to consider adopting counter measures to defend the public domain. The Delegation said that Brazil could not just accept that that was a reality and not do something to defend the public domain. The

Delegation concluded that the access to knowledge agreement was perhaps more relevant in the face of those new trends.

100. The Delegation of the United States of America said that it had a brief response to the Delegation of Brazil, in order to assure him that in each of the IIMs, including the current one, the United States had expressed its willingness to engage in an in-depth discussion on the development issues. The Delegation added that the United States fully supported the development goals of the United Nations, including those expressed in the agreement between WIPO and the UN. The Delegation pointed out, however, that it disagreed with the premises upon which most of the proposals from the “Friends of Development” were based, which appeared to disregard the fact that WIPO had addressed the development dimension in all of its work, whether norm-setting, technical assistance or other activities, and the notion that intellectual property impeded or somehow acted against the development interests of developing countries. The Delegation added that the experience of numerous developing countries, who had successfully used the intellectual property system to develop industries, whether for aircrafts or other sectors, was testament to the powerful role that intellectual property could play in development. The Delegation stated that it thought that they were getting to the heart of the matter in the debate and that was why it supported a fuller discussion in the Permanent Committee on Development Cooperation whose mandate was not limited, as confirmed by the Secretariat.

101. The Representative of *Médecins sans Frontières* (MSF) explained that MSF was a medical organization that worked in over 80 countries around the world and in their projects they were confronted with the daily consequences of real life and death issues, regarding access to essential medical tools, when they were not available. The Representative explained that MSF was currently treating 40,000 patients with anti-retroviral drugs in 29 countries. The Representative stated that it had been able to start and scale-up such treatment because prices of first-line AIDS medicines had come down as a result of competition, but that it was confronted with a second wave of drug price crises and their patients needed access to second line AIDS medicines. The Representative affirmed that those new medicines were up to 12 times more expensive than the WHO recommended price and that it could no longer count on generic competition to bring those prices down, and that was the case because of the full implementation of the TRIPS Agreement. The Representative declared that others shared the concern and mentioned the comments made by UNAIDS Director, Peter Piot, the previous day in the *Financial Times*, calling for international action to increase the availability of generic medicines. The Representative added that medicines, vaccines and diagnostic tools were often not available for the simple reason that no one was investing in the research and development of those products. WIPO could and should play a more active role in addressing the access to medicines crisis. The Representative also believed that the WIPO development agenda would be a pre-requisite for WIPO to work more effectively to increase access to medical tools, by assisting countries in the use of the TRIPS flexibilities and the full implementation of the Doha Declaration on TRIPS and public health. The Representative further stated that WIPO should engage more effectively in the debate on how to stimulate health-needs-driven R&D, especially for neglected diseases, including mechanisms to make the fruits of medical innovation available to all who needed them.

102. The Representative of the International Federation of Reproduction Rights Organization (IFFRO) commented on some measures included in the African proposal, introduced the

previous day by Morocco. Such proposals listed some imperatives for development, more precisely items on (i) technical assistance; (ii) reforming the informal sector; and (iii) SMEs, taking into account the crucial role of knowledge and information and the importance of the book sector. The Representative stated that to achieve concrete measurable and sustainable developments, be it in Africa or in other continents, concerted efforts were needed. IFFRO, together with WIPO, had participated in such an initiative in Cameroon during the first part of the year. The Representative said that strategic importance of books for a nation would include, among others, the following elements: recognition of national writing and publishing as a strategic national treasure that needed to be cultivated; reduced VAT on books; establishment and government support for collective management in the form of reproduction rights organizations; promotion of literacy and reading early on; promotion of the use of books in education; promotion of books and reading in public service radio and television and book fairs; support for a library infrastructure and funding; support for libraries as a point of IT access; support for copyright education and enforcement; and support for local writers and publishers. The Representative added that in order to achieve a concerted action, cooperation was needed among governmental and non-governmental organizations. It informed that outside funding, as referred to in the African proposal, existed in many governments' development cooperation funds. The Representative further said that IFRRO had good experiences of combining such funding, for instance, in Norway through the activities of NORAD. It invited the meeting to consider if WIPO and its Member States would be interested in studying a pilot project for a concerted effort in that field. The Representative explained that the method would also give concrete evidence to the discussions and proposals on the Treaty on Access to Knowledge. It further added that reflection and research was needed in order to find out where the real obstacles were. The Representative highlighted that never had there been so much information available, so that the real obstacles might have been somewhere outside IP. The Representative concluded that that if there was an interest within the Organization in developing a concerted effort in that field, IFRRO and its constituencies, including the International Publishers Association (IPA), would have been willing to initiate concrete measures.

103. The Representative of International Federation of Film Producers Associations (FIAPF) noted that new proposals had been made, particularly the one from the African Group that contained a number of concrete proposals, which would need to be examined with the necessary care. The Representative stated its concern about the very theoretical nature of the discussions, for example, on the public domain exceptions and limitations and the role of technology to facilitate rights management. The Representative stated its conviction that copyright stimulated creativity, pointing out that there should be concrete replies to concrete questions. Such replies, according to the Representative, should be found in the context of increased cooperation between the dynamism and creativity found in developing countries and the structures for distribution, the talent and *savoir faire* that exist in developed countries. The Representative recalled that the previous day, FIAPF had shown the film *Red Dust*, a film from South Africa. The film had been greatly appreciated by those who had seen it the previous day. Apart from its aesthetic and thematic merits, which were widely recognized, the film was a very convincing example of the result of both informal and formal cooperation, between the resources and talents in South Africa and those in Europe. The Representative stated that the project was one that had been carried along by the enthusiasm of a local producer, who had found a very creative partnership with BBC Films, which was the film production unit of the BBC in London. The Representative pointed out that it could have

given many examples of that type of cooperation. The Representative explained that that type of cooperation offered developing countries, which were extraordinary reservoirs of sources of narration, to find ways of expression that go beyond the local audiences. *Red Dust*, which spoke about reconciliation and pardon after a political upheaval, had found a global audience and even gave rise to a global debate, which made people think about certain issues. The Representative went on to stress its concern about the ideological nature of the debates in the Meeting, which seemed to be ignoring the value and the power of that type of cooperation and which seemed to be weakening certain structures, that existed for the protection of intellectual property. Finally, the Representative wished to plead in favor of a harmonized approach to international IP norms. The Representative reminded other delegations that in order to have a creative vision, such as that of the film *Red Dust*, there was a need for a global context. Even a low budget film today had to be pre-bought by a number of distributors in a great number of countries. The Representative explained that if the standards were not the same, if the norms were not the same, if there was no common language for the protection of creative intellectual property, those mechanisms would just crumble and collapse and once that happened, then those original creative works from developing countries could no longer express themselves or be expressed; not only express themselves creatively, but also create incomes as *Red Dust* had done for the South African company and in that way set up a virtuous cycle. According to the Representative, such virtuous cycles could lead to more contacts with distributors overseas, thus encouraging exports, providing local employment and highly technical jobs. The African group's proposal was quite right to worry about the brain drain, which was a concern of many developing countries. The Representative explained that some of its partners, such as the music industry and publishers, were making very concrete proposals and it was important to come back to that and discuss concrete solutions to concrete problems. The political approach, the Representative concluded, would not be to change the need for minimum IP protection

104. As an association representing record producers of all sizes in countries around the world, the Representative of the International Federation of the Phonographic Industry (IFPI) took the floor to stress a few basic points. First, with respect to certain issues of balance in intellectual property systems and access to knowledge, both of which were clearly important and valuable goals and had been discussed that day, it was critical to recognize that those goals were a part of the international copyright framework. The Representative pointed out that the world was living in a time of unparalleled access to information and entertainment of all varieties. An effective and up-to-date copyright law, the Representative added, served to enhance the availability of creative products to members of the public in all countries. Existing copyright treaties were built on and incorporated a concept of balance. The Representative explained that they explicitly left ideas and facts free for public use, and by providing economic rewards to those who created expression, they provided the engine for disseminating those facts and ideas as widely as possible. The Representative stated that the international copyright treaties also provided flexibility to individual countries to determine the appropriate scope of protection by adopting exceptions and limitations that, fitted their own cultural and legal traditions. Therefore, the copyright field provided a fundamental framework of minimum common norms that were necessary to enable international dissemination of creative products while leaving considerable room for local diversity. The Representative explained that it was a system with sufficient harmonization to enable international business to move forward without a one-size-fits-all jacket. The Representative went on to add that development issues had always been an important part of WIPO's work

and that it could and should continue to be an important part, as the capability existed at WIPO to do so effectively in whatever manner the Meeting and the General Assemblies were determined to pursue. The Representative, however, urged other delegations not to divert too much valuable and limited time and resources to debates, over where and how decisions were to be made. Instead, it hoped that they could focus on achieving results, as quickly and as effectively as possible. The Representative noted the positive statements of the value of intellectual property and the concrete affirmative proposals that had been made in papers that had been tabled recently by governments, including by Bahrain, and by Morocco on behalf of the African group. It hoped that the discussions within the IIM would continue towards the goal of identifying actual real world projects that could be pursued in the short term. The Representative encouraged cooperation between governments, WIPO and the private sector to help creators and innovators in developing countries to realize the fruits of their intellectual activity and to further economic and cultural development in their countries. The international record industry repeated the offer it had made at the previous IIM to participate in any way it could, in particular to provide information and expertise from those actually engaged in those creative activities in different countries. For example, the Representative stated that it would be pleased to go under the aegis of WIPO to speak with governments, describe its real world experiences, answer any questions, and provide relevant facts about how the record business worked, how it used intellectual property and what it contributed to development. Most of all, it hoped it could move beyond theoretical arguments, to real world results and that that could extend well beyond what might be seen as mere technical assistance.

105. The Representative of the Electronic Frontier Foundation explained that it was an international civil society, non-profit organization with members worldwide, dedicated to promoting civil liberties, freedom of expression and the public interest in the digital environment. It believed that the issues being discussed at those meetings were crucial to the future of IP as a tool for fostering economic and social development in developing nations. As it had been noted, the 1974 Agreement with the UN required WIPO to facilitate the transfer of technology to developing countries, to accelerate social, economic and cultural development. The Representative explained that that broader perspective should inform WIPO's norm-setting activity and delivery of technical assistance to developing nations. The Representative supported the proposal of the group of "Friends of Development", in particular, it supported the idea of independent evidence-based development impact assessments, for existing and new WIPO norm-setting activities, the creation of an independent evaluation and research office that would undertake such assessments and evaluate the effectiveness of WIPO's work and report directly to the General Assembly, and the adoption of guidelines for provision of impartial balanced and individualized technical assistance. The Representative pointed out that WIPO's technical assistance to developing countries should not simply foster the creation of intellectual property laws as an end in themselves. Instead, that assistance should reflect the traditional balance between the public interest and rightholders interests in IPR systems, recognize the sovereign rights of Member States to implement IP regimes that accord with their national domestic priorities and level of economic development and take account of existing public interest flexibilities and international instruments, and preserve policy space for countries' existing national copyright law exceptions and limitations. The Representative stated that technical assistance should include the creation of new exceptions appropriate to the specific development needs of each Member State. In practice, over-broad legal protection for technical protection measures,

overridden exceptions and limitations in national law. It was, therefore, especially important that WIPO's technical assistance helped Member States to preserve their existing exceptions and limitations in the context of TPM protections. The Representative argued that countries could benefit economically by implementing WIPO treaties, that provided economic incentives for creativity and investment, but stated that careful calibration of IP laws, so that they benefit all members of society, was just as important. The Representative strongly supported the proposal for a treaty to protect access to knowledge. Access to knowledge was essential for development as was the proposal for exceptions for education, libraries and archives and the disabled that had been put forward by the Delegation of Chile at the last meeting of the Standing Committee on Copyright and Related Rights. The Representative also supported the proposals for increased NGO participation and transparency in WIPO's role and creation of new norms. Consultation and discussion with a wide range of stakeholders, including NGOs with particular expertise on relevant issues, was the most effective and appropriate way to create new intellectual property norms, that served the interest of all members of society and Member States. The Representative also supported concerns raised by various Member States about the recent trend of holding limited participation regional meetings on the creation of new treaties, such as those that had recently been held on the proposed Broadcasting Treaty in place of the regular summer meeting at the Standing Committee on Copyright and Related Rights in Geneva open to all accredited NGOs. Finally, as Member States considered the meeting's report to the WIPO General Assembly, the Representative respectfully recommended the creation of appropriate mechanisms to permit ongoing substantive discussions of the proposals identified by the Chair at the previous meeting. Given the crosscutting nature of those proposals, this required, at a minimum, that discussions took place within a plenary level committee that was securely funded for the duration of the work program and was unambiguously empowered to consider and implement the full range of proposals under discussion. In the light of the significant concerns expressed about the mandate and future of the Permanent Committee for Cooperation for Development Related to IP, the Representative believed that it would not be appropriate to transfer such important discussions to that forum. The Representative concluded stating that it believed that those proposals would strengthen WIPO's institutional capacity to meet the needs of its developing country members.

106. The Representative of the International Federation of Pharmaceutical Manufacturers' Association (IFPMA) stated that IFPMA and its members, as a representative of civil society, and as a public interest NGO, were innovators who developed products which prevented disease and saved lives. IFPMA served the public interest, and so it appreciated the many comments made by various delegations in support of the constructive role which public interest NGOs, such as IFPMA, played in the discussions. The Representative started by quoting a leading official of a developing country, Mr. Kamal Nath, Minister for Commerce and Industry of India, who said: "India recognizes that intellectual property would be the differentiator in the global economy driven by knowledge-based industries. India therefore also recognizes the need for a robust intellectual property regime. We are committed to delivering world class services to intellectual property owners." The Representative noted that much of the debate that day and the previous day focused on the issues of technology transfer and the flexibilities in actual agreements, and believed it would be useful to focus on what exactly was meant by the terms and the inherent contradiction between promoting technology transfer and undue focus on flexibilities alone. As the Delegation of Bangladesh had noted that day, technology transfer could be defined as a sharing of knowledge, and

pointed out that its industry, the research-based pharmaceutical industry, had been engaged in technology transfer all the time. As a global industry, active in developing country markets, it was a major player in terms of technology transfer to developing countries, which took place in many ways. One way was through companies working with local experts in carrying out clinical trials of medicines in developing countries, which had helped train and expand the scientific capacities of its researchers, collaborating in the trials. Another aspect had involved the construction of or contracting of many factory facilities in developing countries, in which local people had been trained in a skilled task associated with such manufacturing, thereby expanding the knowledge-base of a country where the factory operated. IFPMA had also conducted joint R&D projects in emerging markets to develop medicines, vaccines for global diseases, as well as for diseases, which particularly affected developing countries. Centers such as Novartis Tropical Diseases in Singapore and Astra Zeneca's R&D unit in Bangalore, India had focused on tropical diseases, two examples of how companies and its experts had worked with local experts in developing countries to develop new products to meet the countries' needs. The key and necessary element for the activities, however, had been respect in the effective use of IP because knowledge being transferred had often been very valuable. Experience had shown that voluntary and cooperative technology transfer had been the most effective and sustainable way of promoting technology transfer, and acknowledging development. Actively weakening IP, on the other hand, would send a strong signal that voluntary cooperation had not been wished for, and would chase away technology transfer. There had been an undue focus on flexibilities in national agreements, whereby a constructive role which IP could play in development had been buried and thus proved counter productive in achieving the goals, promoting technology transfer and technology development. The Representative stated that an undue focus on flexibilities would certainly be counter productive in developing countries, and gave as an example of parallel trade, which moved products from low-priced markets to high-priced markets, which had meant that parallel trade drags other needed products bought at poor countries and re-sold to richer ones; thus at the price of poor people needing medicines while enriching the parallel traders. Compulsory licensing and its effects thereof would also send a strong signal to potential and current investors in a country that their investment was not safe and was not welcome. It had not been surprising to note situations that such investors would soon reconsider their investment strategies and look at a global industry for more welcoming markets to invest and into which they could transfer technology. Again, it would not be for the benefit of the developing countries that would be seeking to promote technology transfer and development. Before concluding, the Representative announced that IFPMA had made available outside the room, CD-ROMs which described in detail the R&D process of pharmaceuticals and its charges/fees in developing treatments, cures and vaccines for all conditions, as well as CD-ROMs with a compilation of a series of documents examining the relationship between innovation and public health, and that it would deal directly with many questions raised by several delegations. It stated that the delegations would be welcome to pick up those CD-ROMs outside the room. IFPMA reconfirmed its willingness to work with WIPO and its members to find the solution that would strengthen WIPO and help its Members promote development, technology transfer and innovation.

107. The Representative of 3D: Trade, Human Rights and Equitable Economy, thanked WIPO and the Member States for granting accreditation to attend the third IIM on a Development Agenda for WIPO and for being allowed to speak. The Representative stated that it was a not-for profit organization based in Geneva, promoting collaboration amongst



trade, development and human rights professionals, which would ensure that trade rules were developed, and applied, in ways that supported an equitable economy. It encouraged an approach to intellectual property policy, which would promote development and be human rights-consistent. The Representative welcomed the proposals that the “Friends of Development” and the African Group had submitted to the IIM for a Development Agenda. As pointed out in the “Friends of Development” proposal (IIM/4), and by the Delegation of Brazil the previous morning, it was important that WIPO’s norm-setting activities were consistent with other international instruments, including the international human rights norms. The Representative, therefore, encouraged the Members of WIPO to respect their obligations under international human rights treaties, such as the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights, and the Convention on the Rights of the Child -- in all aspects of WIPO norm-setting activities. It encouraged further the Members of WIPO to ensure that WIPO activities were coherent with the development and human rights objectives of other international organizations, including the Office of the High Commissioner for Human Rights, UNICEF, WHO and UNAIDS. Furthermore, any independent evaluation of WIPO activities, or impact assessment of intellectual property policy should take into account human rights norms and be conducted in collaboration with relevant international organizations and stakeholders. Finally, the Representative encouraged the Members of WIPO to continue discussions on the Development Agenda for WIPO, particularly in the following year, in the format of IIM, ensuring continued transparency, access to information and participation of public interest groups in accordance with human rights obligations.

108. The Representative of the International Policy Network stated that it represented research institutes and academics from around the world, working together on creativity, innovation, technology and development issues. To each of these inter-sessional meetings regarding the Development Agenda for WIPO, the issue of sustainable economic, social and cultural development was of utmost importance to its activities. It was crucial to understand the role IP rights played in that matter. The Representative and its associates, understood that clearly defined and readily enforceable IP rights were among the institutions that enable development to progress. It believed that IP rights had provided economic incentives to develop creative works, innovative products and had enabled and encouraged an increasing number of entrepreneurs to satisfy an increasing differentiated and expanding consumer base. The Representative added that many distinguished delegates, including NGOs at the meetings, had appeared to believe that governments had been the primary drivers of development. It pointed out that this was misguided. Development had not resulted from government centrally implementing economic plans. Attempts to generate growth through subsidies, trade restrictions, import substitution policies and other forms of interference had been nearly always counterproductive. Development, however, was a process that developed and resulted from millions of individual actors, pursuing their goals in the context of the institutions of the free society. The process of competition, bounded by the institutions, incentivizes innovation and creation, as each person sought to provide goods and services that were better and/or cheaper than their competitors. The Representative pointed out that it was encouraging to hear more talk about the sustainable cultural, economic and social development, especially from representatives of poorer countries. However, in order for the talks to be constructive, it was important to have a more balanced perspective of the role that IP and other institutions of the free society played, especially the rule of law. A fundamental element of the rule of law was certainty. If there had been no certainty, discretion would be

applied by those who held power. The rule of man would replace the rule of law and the confidence of would-be entrepreneurs and investors would be undermined. In its place would be corruption, inefficiency and injustice. In the majority of poor countries, market distortions, including taxes and tariffs, had been the norm, acts of which would be barriers to entrepreneurship. Likewise, weak definition and enforcement of property rights, including intellectual property rights and the absence generally of the rule of law had prevented creators and innovators throughout the world, from utilizing their talents to their greatest effect. Meanwhile, government intervention had constantly failed to achieve its intended results. The Representative pointed out that the Development Agenda proposed by the so-called "Friends of Development" would be counter productive, since it promoted a view that discretion, rather than rules, should be the order of the day. Furthermore, it had not addressed the fundamental institutions of the free society, but rather one of its demands had been more transfer of technology. The transfer of know-how had indeed been an important way for competitive knowledge and intensive industries to develop in poorer countries, but the demand had implied that it should be administered by existing governmental bodies, or newly created ones, instead of the institution of a free society. Forcing those who have invested in the development of innovative technologies to give up their hard earned knowledge and increasing the amount of government intervention would undermine investment, creativity and innovation. That had been a recipe for disaster and not for development. If the so-called "Friends of Development" really were friends of development, those countries must maintain a strong commitment to upholding the institutions, which would be well recognized to foster development. The Representative concluded by stating that altering WIPO's core responsibilities in a way that would make the international body less effective at helping Member States foster better IP regimes, would not be a step toward development.

109. The Representative of the Union for the Public Domain believed that the matters that had been discussed at the meeting would be of lasting significance for the future of technology and economic development in the developing world. It said that it strongly supported the proposal of the "Group of Friends of Development" to amend the WIPO Convention, so as to include an express reference to the development dimension. The Representative further stated that it would like to echo the observations of some Member States at previous meetings that the patent, copyright and trademarks systems should cease to be viewed as ends in themselves and come to be understood as a means to an end - an end that needed to be justified by reference to WIPO's broader United Nations mandate of 'economic, social and cultural development' enumerated in Article 1 of the 1974 Agreement. It strongly disapproved of attempts made to over-simplify the content of the present discussions by portraying them as a choice between blanket support, and blanket opposition, for the diverse laws that had included copyright, patent, trademark and others. Mischaracterization such as those would obscure the true purpose of the discussions and would be inimical to constructive dialogue - critical to taking the present discussions forward. The Representative said that it supported the creation of an independent WIPO Research and Evaluation Office (WERO) to conduct development impact assessments of WIPO's activities and report directly to the General Assembly, and added further that it did not believe that the Permanent Committee on Cooperation for Development Related to Intellectual Property (PCIPD) would have either the capacity or independence to oversee such a task. It strongly supported the idea of an Access to Knowledge Treaty, because such a treaty would attempt to balance the interests of rights holders and the public at large, and at the same time, would pay adequate consideration to the needs of developing countries. In addition, it would seek to safeguard and promote the role of

the public domain in fostering innovation and creativity. The Representative pointed out that WIPO needed to be more open to civil society participation in its policy-making activities, specifically, the involvement of public interest groups from developing countries, which needed to be enhanced. WIPO should make an effort to actively solicit the views of different public interest groups working in the developing world, in its various policy-making bodies. It would need to be accompanied by a comprehensive attempt by WIPO to enhance public accountability and participation. Lastly, the Representative stated that it agreed that development should not be a 'pretext for diluting international intellectual property,' but instead it should be the very basis from which the patent, copyright and trademark systems should seek their ultimate justification. When systems impede socio-economic development, restrict access to essential educational tools, deny individuals life-saving drugs in the poorest parts of the world, intellectual property would be in danger of itself becoming the pretext under which systems would be distracted from the complicated task of promoting development.

110. The Representative of the International Chamber of Commerce (ICC), stated that it represented small and large businesses from all sectors worldwide, including many developing and least developed countries. It added that from its experience of working with businesses and entrepreneurs worldwide, it had seen that innovation and creativity were fundamental to all cultures and traditions, and were drivers of progress in most societies. Indeed, the ability to manage and exploit innovation and resulting intellectual property rights had been the key to success in the current world in which intellectual, rather than physical, assets had been one of the primary sources of wealth and competitive advantage. Intellectual property, therefore, should not be seen as an issue which would divide developed and developing countries, but should be a "veritable tool for economic growth", as described by the African Group, which could help, and had been indeed necessary at the present time, for all countries to create wealth, employment and progress. Many developing countries had recognized the fact and had increasingly used the protection of intellectual property to grow and expand local innovation-based industries. The Representative pointed out that in Brazil in 2002, 42% of the applications for patents, utility models, certificates of addition and design registration applications had been filed by local applicants. An average of 90,000 trademark applications had been filed per year in Brazil of which about 80% had been made by domestic applicants. The Brazilian government had also demonstrated the importance it placed on intellectual property within its country by initiatives such as the Inter-Ministerial Committee against Piracy set up in 2001, to coordinate anti-piracy strategies throughout Brazil, and its recent "Innovation Law", referred to earlier, which facilitated linkages between researchers in universities and private companies with the aim of developing new technologies. The Representative further stated that another example, China, had nearly 80% approved patent applications from within China in 2004, and a large majority of trademark registrations 82% - had been domestic in origin. Countries dependent on commodity exports had also used intellectual property rights to add value to their products in export markets, the best known example of which had been the Colombian coffee growers who had created the internationally-recognized Colombian coffee trademark which had allowed Colombian coffee growers to command premium prices for what had previously been a commodity product. The copyright system had also been an essential pillar of the vibrant cultural industries in many countries. Well-known examples had been the software, film, publishing and music industries in India. The excellent South African film which the delegations had been invited to view the previous evening had been a good example of how a developing country copyright

industry could produce a world class product. However, intellectual property protection had been a necessary pre-condition of development, growth and progress, unless individual governments could take positive measures to establish an effective infrastructure to process and could make use of intellectual property rights and support it with other appropriate policies. The Representative stated that a paper with some suggestions for such measures was available outside the room, which would go in the same direction as several of the proposals already made by national delegations, such as those of Bahrain and Mexico. Many of WIPO's current activities also already worked towards the same aims. In addition to the development of indigenous innovation, technology transfer would indeed be an important issue as expressed by several delegations that day, of which useful lessons in this respect could also be learnt from countries which had taken such a holistic and systematic approach to integrating intellectual property into their overall economic development strategies. The Representative further stated that in the 1960s, the Republic of Korea had been a poor agrarian economy with a per capita income of less than US\$100, similar to many LDCs today. Presently, it was a highly industrialized country, with a per capita income of US\$12,000 and internationally recognized brands and technologies. That transformation had been achieved, thanks to a systematic economic and trade development policy, which had included heavy investment in capacity building, human resource development, incentives for technological innovation and the development of domestic intellectual property assets. A paper, which had been presented at the WIPO conference for LDCs in Seoul, which described the policies leading to the Republic of Korea's transformation, was available outside the room. The Representative pointed out another good example, Singapore, which had put into place a strategy to build itself into an international intellectual property hub. As a result of the policy, it had begun to build up local technologies, brands and other intellectual property assets, a result of which had been shown by the growth in the number of patents, design rights and trademarks granted to Singaporeans, and the increase in licensing revenue from patents and new technologies developed in Singapore from SGD\$55 million to SGD\$132 million between 2001 and 2003. ICC believed that the main question, which should be addressed by WIPO and its Member States in the discussions, had been how to translate the intellectual property systems already in place in most countries into concrete benefits for their people. The Representative suggested that the discussions should focus on identifying practical and workable measures, which governments should take for their countries to benefit concretely from the intellectual property system, and on how WIPO could best help them do it. It stated that ICC would like to contribute constructively to the process by offering to conduct a survey to ascertain what developing country innovators, creators and entrepreneurs would need to help them develop and exploit their intellectual property assets, and access and use the intellectual property system. The Representative concluded that ICC, with its large network of small and large organizations from all sectors in over 130 countries, would be well-placed to gather such information, which it had hoped would be useful for WIPO's work in helping developing countries benefit from the intellectual property system.

111. The Representative of the Business Software Alliance (BSA) stated that BSA was a non-profit, NGOs representing the views of its members, large and small software and hardware companies active around the world, producing some of the most innovative technologies. Overall, it was one of the fastest growing industries, with huge potential for growth and employment creation in developing countries. In that regard, BSA seriously took its responsibility to promote policies in the public interest, and believed that effective intellectual property protection was a key component of public policies aimed at stimulating

development, through creativity, innovation and investment. Therefore, it shared the views of numerous delegations, recalling the importance of intellectual property protection for development. BSA further noted that WIPO's agenda, as determined by its Member States, had always included development considerations, including the balance reflected in existing WIPO treaties. WIPO's technical assistance to developing and LDCs was carried out at the request of, and in response to, the needs of the country requesting such assistance. It further added that whenever requested, WIPO had been providing guidance to its Members, not only with regard to their obligations in WIPO treaties and the TRIPS Agreement, but also in respect of the possibilities offered by those treaties for implementing legislation that responded to the individual country's policies and needs. Convinced of the importance of IP to stimulate innovation and development, and recognizing that WIPO had and should continue to play a vital role in helping developing and least developed countries, BSA stated that it was in the interest of all for WIPO to continue to enjoy the necessary support from the Member States in carrying out its activities, as defined in the WIPO Convention. In that connection, it did not see any need to revise nor to clarify the WIPO Convention. Likewise, BSA did not support the creation of a new body or new mechanisms, to supervise WIPO's development activities which might hamper rather than strengthen, WIPO's development work. Instead, it urged WIPO Member States to turn their attention to providing the Secretariat with the support and means required for carrying out its technical assistance activities. It believed that there was need to consider ways to further improve the quality of WIPO's services. In that respect, BSA welcomed the practical proposals put forward by a number of delegations including the United States of America, the United Kingdom, Mexico and Bahrain, to further strengthen WIPO's capacity to support developing and least developed countries, in enhancing their intellectual property systems. It added that the PCIPD was the appropriate forum to continue discussing these measures and reviewing their application. The Representative stated that BSA stood ready to act as a resource to WIPO Member States, as appropriate, to share the software industry's views and experience about policies promoting innovation, development and growth.

112. The Representative of Free Software Foundation Europe (FSF) addressed the meeting as the co-coordinator of the United Nations World Summit on the Information Society (WSIS) Patents, Copyrights and Trademarks (PCT) Working Group of Civil society, which was the thematic working group for issues of knowledge regulation, software and the Internet of the global civil society represented at the WSIS. The Representative pointed out that at the first WSIS summit in Geneva, the Member States of the United Nations formally agreed that knowledge dissemination and sharing were fundamental building blocks of a knowledge society. It further stated that patents, copyrights and trademarks, if applied wisely and with measure, could foster creativity and innovation, but if applied carelessly, their potential benefit for the progress of society would not be achieved. It added that the PCT Working Group strongly supported the proposal made by the "Group of Friends of Development" for a Development Agenda, from which the Working Group expected positive consequences, for the implementation of the WSIS plan of action. The Representative noted that in the past years, there was an increase in the term of copyright and hence, the time span for which the reservoir of knowledge of all peoples and communities remained subject to limited access. At the same time, the barriers to access had been raised by means of anti-circumvention policies and approaches to put violations under criminal law. It added that in the information society, knowledge was circulating and getting outdated faster, not slower, and to adapt to that fact, the duration of copyright should be shortened considerably. Referring to Article 26 of the

WSIS Declaration of Principles, the Representative stated that a rich public domain was an essential element for the growth of the Information Society, creating multiple benefits such as an educated public, new jobs, innovation, business opportunities, and the advancement of sciences. The Internet had not only paved the way for the knowledge age, it had represented the latest seminal, innovative step of humankind, which had been made at a time when the barriers to access had been much lower. The Representative said that a comparable breakthrough might have been made impossible by the increased barriers, in particular, the anti circumvention provisions and approaches at criminalizing copyright violations. It said that patents were another area in need of review, as it could be an excellent tool to promote innovation. The Representative noted that scientific studies showed that software was an area in which patents were harmful as they stifled innovation and posed a significant threat to competition. It added that evidence had been collected by several renowned institutions, including the Massachusetts Institute of Technology (MIT), the Boston University School of Law, Price Waterhouse Corporation, the US Federal Trade Commission and Deutsche Bank Research. It further noted that similar effects might exist in other areas and could serve to undermine the patent system. Therefore, the Representative urged Member States to start a dialogue with the goal of establishing clear and binding rules to limit the scope of the patent system, taking into account the full diversity of areas, so as to ensure the stability and functioning of the patent system, as a tool for innovation. Given the scope and significance of those issues, the Representative thought that only a few of them could be adequately dealt with at the committee level, and said that mainstreaming the development dimension into all of WIPO's activities required the continuation of the over-arching IIM process.

113. The Representative of IP Justice said that IP Justice was an international civil liberties organization, promoting balanced intellectual property law. The Representative added that IP Justice had coordinated a statement which had been endorsed by over 100 public interest NGOs to express their complete and united support for the "Friends of Development" proposal. Carrying the message of those NGOs, the Representative outlined their position on a number of issues. It stated that they fully supported the proposal to amend the WIPO Convention to include explicit language incorporating a development dimension. It further added that as a UN Specialized Agency, WIPO had an obligation to promote the application of intellectual property rights in a manner that promoted economic, social and cultural development in both developed and developing countries. The Representative said that they fully supported consideration of a Treaty on Access to Knowledge and Technology. It further stressed that a specification of user freedoms was crucial for establishing an appropriate balance between authors' rights and the public interest, that was critical for enabling development in disadvantaged countries and consumer rights. It noted that rightholders often curtailed user rights by applying Technological Protection Measures (TPMs) to copyrighted works, and therefore, a clear demarcation of user rights was necessary to maintain the traditional balance of rights. In addition, the Representative stated that their coalition of 119 public interest NGOs endorsed the reforms to WIPO's norms and practices and that WIPO should adopt norm-setting principles and guidelines that balance public access and competition against monopoly rights, with a unique evaluation for each country. It added that IP rights were not the ends in and of themselves, and as such, WIPO should carry out independent, evidence-based development impact assessments in developing countries, to ensure that application of those rights advanced public goals, by promoting innovation, creativity and technical development. The Representative also pointed out that, a one-size-fits-all approach did not foster development in all countries, and expansive

application of those rights favored developed countries, and maintained the current imbalance in access to knowledge and information. In that connection, WIPO should recognize the right of all countries to design development strategies, according to their own national values. The Representative further emphasized that IP laws must protect flexibilities and limitations in order to achieve important public benefits. In that regard, WIPO technical assistance should promote the full range of flexibilities provided by TRIPS. Lastly, WIPO should be more transparent and Member-driven, with ongoing public interest NGO participation and should embrace wider participation of public interest NGOs and hold public hearings before beginning norm-setting activities. In its view, this would help support developing countries that were the majority of WIPO constituents. The Representative further explained that representatives from public interest groups should be included in WIPO technical assistance and implementation programs which had historically been dominated by rightholders interests at WIPO. The Representative outlined the particular policy choices that WIPO could consider to achieve the public interest goals of the Development Agenda. It mentioned reversing the current trend of outlawing the circumvention of technological measures which restricted copyrighted works, chilled freedom of expression, eliminated user rights and prevented works from passing into the public domain. It also welcomed the need to reduce the term of copyright protection, or at the very least, reverse the trend of continuously extending the term of copyright and the need to reverse the trend of criminalizing intellectual property infringements, in cases that did not involve commercial or financial motivation or benefit. The Representative further stressed the need to consider clear limits on the scope of patents, particularly with respect to medicines, life forms, seeds and computer software, pointing out that countries should build upon the recent international trend of resisting software patents, which froze innovation and freedom of expression. Finally, the Representative mentioned the need to limit secondary liability of infringements so that providers of tools and services that were capable of substantial non-infringing uses were not held liable for the infringements of their users.

114. The Representative of the Civil Society Coalition (CSC) stated that CSC was a network of over 25 public interest NGOs of varying sizes and interests, and mentioned that the members of the CSC coalition were headquartered in more than 12 developed and developing countries, and included groups that were working in areas such as public health, agriculture, development of free software, trademarks and domain names, copyright policy, protection of non-copyrighted elements of data bases, traditional knowledge, folklore and access to genetic resources. The Representative said that CSC supported the proposals of the “Group of Friends of Development” to integrate the development dimension into WIPO’s mission and activities, consistent with its Agreement with the United Nations to accelerate economic, cultural and social development, by promoting creative intellectual activity and facilitating the transfer of technology related to industrial property, to developing countries. It noted that the original Development Agenda proposal, tabled in September 2004, had called for the establishment of a treaty on access to knowledge and technology as a possible mechanism to ensure an effective transfer of technology to developing countries. It further stated that the elaboration of the Development Agenda submitted by the “Friends of Development” on April 6, 2005, had emphasized that in order to ensure the credibility of the IP system, peoples all over the world must have access to knowledge and technology development. The Representative pointed out that the consensus among many nations on the need for new initiatives to promote access to knowledge, as recommended by 130 Heads of State and Governments of the G-77 countries and China, which had met recently at the Second South

Summit in Doha, in June 2005. It further stressed that that recommendation had called upon WIPO to include in all its future plans and activities, including legal advice, a development dimension to promote development and access to knowledge for all. The Representative stated that the broad constituency of stakeholders that supported the elaboration of a possible treaty on access to knowledge included groups representing librarians, educators, blind people and the visually impaired, scientists, academic scholars, development groups, consumer organizations, free software advocates, public interest civil society groups, governments and innovative corporations. An access to knowledge treaty should protect, enhance and expand access to knowledge, and facilitate the transfer of technology to developing countries. In the Representative's view, elaboration of possible elements of that treaty should focus on several issues, including provisions regarding limitations and exceptions to copyright and related rights, including, but not limited to minimum limitations and exceptions to copyrights, such as those related to distance education, rights of persons with disabilities, the first sale doctrine for library use, minimum limitations on liability for Internet service providers, regulation of digital rights management and measures regarding circumvention of technological protection measures in order to ensure traditional rights of consumers, educators and others, measures to provide access to orphan works, limitations on the term of protection of copyright and related rights, and updated version of the Berne Appendix that took into account new technologies. Another possible element was the provisions regarding initiatives to promote cooperation and investment in open access databases and scientific journals, free software, expanded access to government funded research, archives of public broadcasting, and other projects and expand the knowledge commons. A further element was measures to facilitate the development of open standards, including those that were essential for free software and essential knowledge goods. Agreements to ensure that patent rights did not inhibit certain research and experimental uses, practical measures to ensure the implementation of paragraph 4 of the Doha Declaration on TRIPS and Public Health could also be an element of the access to knowledge treaty. Finally, another area that could be a part of that treaty was cooperation to implement Article 40 of the TRIPS, concerning the control of anti-competitive practices. The Representative believed that the elements of a possible treaty on access to knowledge could be discussed in existing committees such as the Standing Committee on Copyright and Related Rights and the Standing Committee on the Law of Patents.

115. The Delegation of Bahrain expressed its appreciation to all those who supported their proposals for a look into the future. It said that because Bahrain believed in development and in the role of WIPO in supporting IP programs, it looked forward to detailed discussions. It requested the Chair to take up discussions on their proposals later to enable them to consult with the African Group to have a coordinated view on the proposals.

Agenda Item 5: Adoption of the Draft Report for the Third Session of the IIM/

Agenda Item 6: Adoption of the Draft IIM report to the General Assembly

116. The Chair proposed to move on to Agenda Item 6: Adoption of the Draft IIM report to the General Assembly. The Chair stated that the discussions till now had been very fruitful and it was important they developed a consensus to make a report to the General Assembly. He added that though they were subject to certain constraints, they must inform the General Assembly of their discussions for which there were various options. He said that he would like to thank the Delegation of Brazil who, on behalf of the group of the "Friends of Development" had introduced their proposal and the Delegation of the United States of



America who had given a proposal that allow them to proceed. The Chair said that he would ask those two delegations to introduce their proposals, following, which he would open the issue for discussions.

117. The Delegation of Brazil said that it would like to present the document on behalf of the Delegations of Argentina, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Egypt, Iran (Islamic Republic of), Kenya, Peru, Sierra Leone, South Africa, United Republic of Tanzania and Venezuela who comprised the “Friends of Development”. The Delegation stated that the document was a proposal for a decision of the third IIM to send a recommendation to the WIPO General Assembly and that it was self-explanatory. The Delegation indicated that the first element of that proposal was the extension of the current IIM process for consideration of all proposals to establish a development agenda for WIPO. The idea was to continue with the in-depth consideration of not only the proposals already made, but also additional ones that might be submitted by members. It said there were still many elements of the proposals that had not been fully considered, and that they thought the issue needed to mature. The Delegation stated that it was aware that they had received a proposal from the African Group, and that other countries might also submit additional proposals, so it was essential that the process would continue beyond the following General Assembly in its current format. The Delegation said that the second element in that draft decision of the IIM was the recommendation to the General Assembly for the adoption of a declaration which would affirm WIPO’s mandate under the 1974 Agreement with the UN. It added that it had been discussed in earlier meetings. The Delegation said that the third element would be the recommendation to the General Assembly to approve the establishment of a WIPO Evaluation and Research Office. The process would be initiated under the direction of the General Assembly to establish such an office by the end of 2006. The fourth element of the draft recommendation was the adoption, in the next session of the General Assembly, principles and guidelines on norm setting, as proposed in the annex to that document. The fifth item was the adoption of principles and guidelines on technical assistance, an issue that had been discussed in earlier IIM meetings. The sixth recommendation was to initiate a process to consider the measures that may be adopted in WIPO to improve the participation of civil society and public interest NGOs in all of WIPO’s activities. The Delegation said that the “Friends of Development” were interested to hear the reaction of other members to the proposed draft decision of the third IIM.

118. The Delegation of the United States of America said that it was pleased to offer its proposal for a recommendation, if one was to be included in the report of the IIM to the WIPO General Assembly, though it was not clear whether the report should include any recommendations. The Delegation stated that its proposal recognized that the IIM process established by the General Assembly the previous year called for an examination of all Member State proposals relating to WIPO’s development activities, and that the General Assembly also called for a report from the IIM. The Delegation said that they believed that such a report should note all the proposals submitted by WIPO Member States and the preliminary discussions that had taken place during the three IIM sessions. The Delegation indicated that it was quite surprised by the proposed decisions submitted by the “Friends of Development” the previous morning, which appeared to suggest the adoption or approval, by the WIPO General Assembly of only those proposals submitted by them. The Delegation would, however, wish to provide an opportunity for more in-depth discussions of their proposals and related issues and had therefore proposed that the General Assembly could refer

these issues to the PCIPD for further discussion. Further, the Delegation said that if some delegations thought that the mandate of the PCIPD was limited, despite the fact that the International Bureau had confirmed the wide mandate of that body, the third paragraph of its proposal was that the WIPO General Assembly be asked to confirm that the mandate of the PCIPD was sufficiently broad to consider IP and development issues, and also that the PCIPD be reinvigorated to meet up to twice every year, in line with the frequency of the meetings of most other WIPO Bodies. The Delegation believed that development was one of the most important and challenging priorities for the international community, and that it had and continued to support WIPO's role in promoting development through the use of the intellectual property system. The Delegation said that it had also noted that IP was only one part of the infrastructure necessary to stimulate investment, innovation, creativity and development and that rule of law, lack of corruption, stable macroeconomic policies, and many other factors were necessary to create the stable environment in which creators and innovators could flourish, create wealth and contribute to the development of their countries. The Delegation said that WIPO had and should continue its beneficial work on behalf of developing countries, as catalogued in the 300-plus page document prepared by the International Bureau and distributed that day for which they are thankful. The Delegation said that it believed WIPO should continue its cooperation with other partners in promoting development. The Delegation said that the PCIPD was a constitutionally mandated body, with a budget and dedicated staff, which had proven itself in the past to be an excellent forum for detailed fact-based discussions on both policy and technical matters. The Delegation said that it had submitted its proposal in the spirit of cooperation and constructive engagement and that it looked forward to hearing the views of other members on its proposal.

119. The Delegation of the Islamic Republic of Iran thought that they had had a good exchange of views during the IIM sessions and different approaches had been presented. The Delegation said that it knew that the proposal had been initiated in the last General Assembly and that the PCIPD was in existence at that time. The General Assembly was aware of the work of the PCIPD and so it had mandated the IIM to address the proposal that had been made in the General Assembly and also additional proposals. The Delegation added that it had positively reacted to all the proposals submitted and knew that more discussions were required. It said that there should be a strong argument to make a change in the middle and send it to a committee. It added that it did not want to reject the committee but wanted to continue the trend that started from the General Assembly. The Delegation added that they should present a clear picture to the General Assembly regarding what has been done during those three sessions, and that the work should be continued in the IIM. Regarding the proposal that has been presented by the "Group of Friends of Development", the Delegation said that the elements presented were in the declaration, which was not changing the mandate. The Delegation said that on norm-setting, different approaches had been reflected in the proposals and that these could be discussed. The Delegation added that they had recognized the proposal regarding technical assistance and that all the countries acknowledged the work that had been done by WIPO. The Delegation said that they had just received several documents and needed to work effectively to present a clear picture to the General Assembly.

120. The Delegation of Brazil said that it wanted to make a few clarifications. Regarding the mandate of the PCIPD, it said that it would like to read an explanation given by the International Bureau in the fourth session of the PCIPD. Quoting from the report of that session, the Delegation said "the decision which was taken by the WIPO Conference in 1998,

and the rules of procedures adopted by the first session of the PCIPD were entirely silent on the question of the PCIPD's mandate". Therefore, it appeared that the PCIPD had no mandate and so the whole idea behind addressing issues to the PCIPD was inappropriate. Regarding the issue of the draft decision that was put forward by the "Friends of Development", it said that it was an attempt at being constructive during that meeting and that it contained only those elements that were included in the "Friends of Development" document. The recommendations had been presented for negotiation with other members, and obviously it was open to considering issues that might be considered relevant to other members as well. The Delegation did, however, acknowledge that the broadest proposals were presented by the "Friends of Development" which touched upon the largest number of issues. The Delegation added that it had also included in that draft decision, certain elements that it thought should be put up for consideration beyond the next General Assembly. The Delegation said that they could negotiate, discuss and include proposals from other members also, if considered relevant by them.

121. The Delegation of Senegal said that, as stated by the Delegation of Morocco, the African Group was in the process of examining a draft decision, which was connected with the matter they were discussing. It said that for that reason its silence should not be interpreted as conveying lack of interest in that matter, and that it reserved its right to come back to the issue at the appropriate time the following day.

122. The Delegation of the United States of America said that it wanted to respond to the points made by the Delegation of Brazil. With regard to the mandate of PCIPD, it believed that it was true that the Deputy Director General indicated that at the time of the joining of the two permanent committees into one, they had adopted the general rules of procedure for WIPO with no mandate and that as indicated, that would be subject to clarification by the Legal Counsel, who had noted that because there was no mandate, there was indeed no limitation on what could be discussed in the PCIPD. The Delegation said that with regard to the proposal for a decision of the General Assembly put forward by the "Friends of Development", it noted that the first paragraph did call for further discussion about the proposals, but that it had indicated its surprise with regard to the following five paragraphs, which called for immediate action by the General Assembly to adopt and approve proposals put forward by the "Friends of Development". This included the establishment of WERO, about which they had heard significant concerns being expressed in the third session. Again, there was no call for immediate action on any of the other proposals put forward by the Member States of WIPO, and some of them were serious proposals. The Delegation said that it was surprised, and that some delegations might consider that as insulting, and that is why it wished to register its surprise for the draft decision put forward by the "Friends of Development".

123. The Delegation of Argentina said that it did not believe that the development agenda was within the mandate of the PCIPD, which was the way they saw the discussion going at the moment. The Delegation stated that the issue should not be the focus of discussions and it did not believe that it was a subject that they should debate much further. The issue was discussed in the meeting of the PCIPD and the Delegation of Brazil had just pointed out what the Secretariat had said at the time about its mandate. The Delegation indicated that the development agenda was not just about technical assistance and that if the PCIPD, at some point had to play a role depending on the decisions adopted either by the IIM or the General

Assembly, it should be considered that there would also be other bodies in the Organization, with significant roles to play. For instance, there was the Standing Committee on Patents that would have a role on the transfer of technology. Regarding the statement by the Delegation of the United States of America that they were surprised that the “Friends of Development” had submitted a draft decision calling for immediate action, it said that they had tried to reflect those issues or proposals that seemed to them to be the least complex and the easiest to adopt, and for which they had not perceived any strong opposition. The Delegation said that the list was not exhaustive and that it did not rule out the other issues, which were of greater complexity and needed further discussions. The Delegation said that it was an exaggeration to say that the proposal was an insulting one, and added that those were terms it found difficult to swallow as it thought that they were all participating in the discussions with goodwill. The Delegation said, for example, from that point of view, it might point out that the Delegation of the United States of America had included its own proposal and that, as it had been saying throughout the process, it was open and flexible to consider other issues. The Delegation said that if there were other delegations that considered that there were other things that could be included in that decision, it would have no objection in considering and including other elements for an immediate decision to be taken by the General Assembly. The Delegation indicated that the main point was not to confine the discussions to issues that were limited to the mandate of the PCIPD, as they should not lose sight of the crosscutting nature of the theme of development.

124. The Delegation of Chile said that while it was awaiting instructions from its capital on the two decisions proposed, it thought that at least item one in the development groups’ proposal seemed to be a good one. The Delegation stated that they had had intensive discussions during the three sessions of the IIM and it thought that it was a good idea to have three more three-day sessions of the IIM. The Delegation added that they had new proposals from Africa, Bahrain, Mexico and the United Kingdom and that they too would like to make a proposal in future meetings. It added that it was going to present new proposals on, *inter alia*, the protection and promotion of the public domain, in which it knew that other delegations were also interested. It added that it would give its views on the other proposals the following day. The Delegation added that it thought that paragraph one of the proposal by the “Friends of Development”, was rather ambiguous and that it might be interpreted as meaning that it was limited to proposals that had already been submitted. The Delegation concluded by saying that it was going to present proposals and that it would like the language to state clearly that future meetings would be open to all members of WIPO.

125. The Delegation of the United Kingdom, speaking on behalf of the EC and its 25 Member States, said that it had listened very carefully to those debates on proposals to establish a development agenda in WIPO and that it was pleased that progress had been made on a number of issues. The Delegation added that recognizing the diverse views expressed so far, the EC and Member States did acknowledge that further work and debate was still needed in order to achieve a positive outcome. For that, it thanked the Delegations of the United States of America and Brazil and the “Group of Friends of Development” for their contributions. With a view to reaching a consensus which would allow discussions to continue, the EC and Member States would like to propose the following: firstly, the IIM should make a report, recommending to the General Assemblies a renewal of the IIM process until July 2006; secondly, the IIM process be financed essentially by any funding assigned for the PCIPD in the 2006-2007 program and budget. With regard to the issues to be discussed,

the Delegation added that they should be placed in two categories: firstly, those might be regarded as “ripe for harvest”, that is, issues on which provisional agreement could be reached most rapidly and secondly, issues which would need to be considered first, in order to inform consideration of other proposals. The Delegation said that it had views on what items should be included in which list. On the first list, they should include items no. 4, 6, 9, 10, 11, 13, 14, 16, 17, 18, 20 and 21. The other proposals should be placed on a list, which would remain open, in other words, further items could be added to it. The Delegation added that the 2006 Assemblies should consider the report of the renewed IIM process.

126. The Delegation of Nigeria stated it was one of those that had a stake in WIPO and had a genuine interest in the establishment of a Development Agenda for that Organization. The Delegation added that it was therefore rather perplexed, to say the least, of the trend of the discussion in that meeting, especially that day. It said that it would strongly urge that the debate be steered towards the consideration of substantive issues on the Development Agenda, as outlined in various proposals before the IIM. The Delegation said that it, therefore, could not afford to see their progress affected by individual differences over the proper forum for discussions in future on the Development Agenda. It added that, it was in that connection that they welcomed the statement made by the Delegation of the United Kingdom, that the meeting considered issues that were ripe for harvest, harvested and dispensed with, and perhaps put in the granary, so that they would know that they had now finished their task in that respect, and needed to go back to the field to complete the unfinished work, like norm setting, institutional mandates and any other proposal tabled. The Delegation indicated that, that was the most constructive, mature and progressive way of making progress, rather than throwing the ball from each other’s court back and forth, which did not help matters and actually contributed to substantially delaying progress.

127. The Delegation of Colombia thanked the Delegation of Brazil, speaking of behalf of the “Friends of Development”, the Delegation of the United States of America for their proposals and the Delegation of the United Kingdom for giving a conciliatory formula, that included elements of both proposals. The Delegation said that in any case, as the Chair had said, it was useful to have a document where they could examine the proposals submitted by the Delegation of the United Kingdom, to see its scope and content. The Delegation said that having considered various development issues at three different sessions, it believed it was necessary to maintain or to set up a mechanism that enabled them to continue discussions and to engage in consensus building. The Delegation considered that the proposal in paragraph one of the “Group of Friends of Development”, which aimed to give a new mandate to the IIM, was very useful, as the IIM format had been very clear. It believed that postponing or broadening the mandate of the IIM for another year was a good idea and that as the Delegation of Chile had said, it was important for them to have an open door for new proposals, so that new contributions could come in which might be constructive for their discussions. With regard to paragraph 2 of the proposal by the “Group of Friends of Development”, the Delegation believed that it could share the spirit of that declaration and that the terms set out were suitable. However, they would have to discuss what mechanisms would be needed to adopt that declaration. It added that on the other paragraphs of that proposal, it would like to say that it had not had time to reach a consensus on each of the proposals, to take a recommendation to the Assembly. The Delegation said that having a document with the proposal of the Delegation of the United Kingdom, which might include a decision that would lead to that agreement would help them to achieve a consensus.

128. The Delegation of Japan thanked the Delegation of Brazil, the “Group of Friends of Development”, the Delegations of the United States of America and the United Kingdom for having submitted concrete proposals, and stated that it was clear to it that there were diverse opinions with regard to the IIM process. Therefore, the report to the General Assembly should be a neutral one, and that it should be based on facts. It had difficulties on issues in paragraphs two to six of the proposal made by the Delegation of Brazil, because they had not reached a consensus, on those issues. The Delegation indicated that it was premature for them to raise those issues in that report, and that it was pleased to continue discussions on the proposals related to development. The Delegation understood that the IIM was an *ad-hoc* body, which was established to examine the proposals related to development, so as to make a report for the consideration in the General Assemblies in 2005. As the IIM was not a permanent body, it was difficult for them to renew the IIM process and they might continue their discussion in the existing body, namely the PCIPD. It added that the Delegation of the United States had already suggested that the mandate of the PCIPD was broad enough to cover all the issues related to development.

129. The Delegation of the Russian Federation said that the main points in the two proposals that had been put forward were the need to continue their discussions on the issues raised. The Delegation agreed with that, and as for tangible proposals to the General Assembly on adopting certain measures, as a few other delegations had said, it believed that the discussions that had taken place over the past three sessions had been very important, and some substantial progress had been made. Nevertheless, it thought that those were only preliminary discussions and that at that stage, they did not yet have sufficient consensus to submit recommendations for tangible measures to the General Assembly. It added that they could continue their work on the basis of the current proposals.

130. The Chair said that he would like to give the floor to the remaining NGOs to make their comments on Agenda Item 4.

131. The Representative of the Institute of Policy Innovation (IPI), speaking on behalf of the members of IPI, a public interest NGO, said that its participation in the Meeting was a direct result of the Institute’s program of research and advocacy on the means of offering high levels of economic growth. Limiting his comments to the matters directly at hand, he stated that there had not been much discussion of the item regarding the suggestions that WIPO’s mission should be made compatible with, and supportive of, the objectives and provisions of other international agreements and instruments. IPI wished to assert that promoting intellectual property ownership, which was WIPO’s mission, was already compatible with several important international agreements and went on to quote from a few of them. The Representative pointed out that his first quotation, which was from Article 27 of the Universal Declaration of Human Rights, was very instructive and read: “Everyone has a right to the protection and material interest resulting from any scientific, literary or artistic production of which he is the author.” The Representative of IPI said that Article 27 clearly asserted that the right to intellectual property protection was a universal human right, and that it was interesting, because the Vienna Declaration in Program of Action, Part One, paragraph 10 read: “While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgment of internationally recognized human right.” He reminded the Meeting that the Universal Declaration had already

established that the right to intellectual property protection was a basic human right, and that the Vienna Declaration made it clear that the right to own intellectual property and the right to the protection of intellectual property, could not be abridged under the name of development. He then referred to Article 14 of the Universal Declaration on the Human Genome which stated that “States should take appropriate measures to foster intellectual and material conditions favorable to freedom in the conduct of research...” and pointed out that he had taken quotations from only three international agreements, which made it clear that intellectual property protection was completely consistent with human rights and that the Institute would therefore assert that it was clear that WIPO’s mission of promoting intellectual property ownership was fully compatible with other international agreements. Referring to the proposal from the “Friends of Development”, the Representative said that in previous interventions in April and June, they feared that the proposal would detract WIPO from its important mission and perhaps weaken WIPO’s effectiveness. The Representative added that it had been observed that much of the proposal represented extending WIPO’s mission into areas outside of its core competence, areas that were already within the core competence of other United Nations organizations. He said that rhetoric used to justify the proposal had represented a broadside attack on the very concept and value of intellectual property, and that much of the rhetoric had been inaccurate and devoid of any sound economic rationale. He said that to oppose the restructuring of WIPO’s mandate, to oppose the creation of new offices, to oppose the expansion of WIPO’s efforts into areas already served by other UN organizations, was not to oppose development. He declared that surely everyone in the room was a proponent of development. The Representative said that many of the nations represented in the room made extraordinary efforts to facilitate development, and that as important as intellectual property was, it was not nearly as important as other factors such as rule of law, an independent judiciary, protection of real property and participation in markets. He said that there had been discussion about what WIPO might do to facilitate the involvement of civil society groups in its deliberations and pointed out that WIPO had been quite generous by granting *ad hoc* accreditation to a number of groups, including his, which had enabled them to attend the Meeting, and even make interventions during the discussion on the development agenda. The Representative pointed out that WIPO has tolerated interventions, that in some cases had very little to do with the matters under discussion, and it therefore saw no need for improvement in that regard. With reference to the declaration by the Delegation of Brazil, the Representative said that it was unnecessary, and it was similarly unnecessary to change WIPO’s charter. He said that the existing IP system already allowed considerable national discretion in those matters and the flexibility to reflect the distinctive legal traditions and cultural norms; for instance, there was nothing preventing nations from pursuing an open source model software development and nothing stopping artists in developing nations from utilizing a creative commons license. He said that nothing prevented nations from using a prize fund or other alternatives to patents to incentivize innovation. He said that while the IPI would not suggest those models and was skeptical about their long term utility, it was unnecessary to modify WIPO’s charter, or pass the suggested declaration in order to make those alternatives to IP available. He said that WIPO was not the World Innovation Organization or the World Free Culture Organization or the World Public Domain Organization. He said that as a means of moving forward, the IPI found the proposal from several countries to reinvigorate the PCIPD, and to make it meet more frequently, a constructive suggestion for moving the discussions forward. He completed his intervention by inviting participants in the Meeting to comment on and discuss the intervention on the IP web blog which was located at [www.ipblog.org](http://www.ipblog.org).

132. The Representative of the International Federation of Library Associations (IFLA) said it was speaking on behalf of IFLA and the Electronic Information for Libraries (EIFL), both of which were not for profit, public interest membership-based organizations. Since 1927, IFLA had represented the world's major libraries and library associations and that through its 1,700 member organizations in 150 countries, it spoke for hundreds of thousands of professional librarians around the world. EIFL worked with libraries in 50 developing countries. The Representative said that because of the importance of the copyright exception for libraries, archives and educational establishment and for users, it would speak about item 3 on the list of specific actions under discussion by the IIM, the proposal for a treaty on "Access to Knowledge and Technology". EIFL said that access to copyright working for the purpose of education, research or private study usually took place in libraries, whether in person or remotely through virtual learning environments, or directly on the Internet. In the digital age, countries could not have viable modern economies and social development without fair access to and re-use of knowledge as expressed in copyright works; in that context, fairness required the pro active acceptance of agreed norms by both rightholders and users. The Representative said that all intellectual property initially arose from underlying ideas, which were usually first expressed in a format subject to copyright, and it should be recognized that all creators of IP were themselves users of copyright works and would have made use of the exceptions and limitations to copyright for the purposes of education, research or private study. Those exceptions were therefore crucial to assist developing countries and LDCs to catch up with developed countries. The Representative said that in the last 10 years, however, international treaties, supranational directives from the European Union (EU) and national legislation had worked to erode the information user's rights to enjoy and use the exceptions and limitations to copyright especially in the digital environment. The Representative said that the organizations agreed with the distinguished Delegation of Chile, that there was also a problem with unfair contractual licenses, whose terms were often very difficult for licensees, usually the weaker parties, to negotiate. Copyright was creating barriers to access and the fair use of knowledge, which was why an "Access to Knowledge" treaty was now needed to established a proper international framework, setting the norms by which copyright should be managed in a manner which ensured that users' rights were established and enshrined with respect to the digital age. The Representative stated that they agreed with the Delegation of Brazil that such a treaty would counter the trend towards the monopolization and privatization of information, by ensuring that information remained publicly available to nurture education and innovation. The Representative said that the Delegation of the United Kingdom referred to the existence of an agenda item on copyright exceptions and limitations before the Standing Committee on Copyright and Related Rights (SCCR). However, the Committee had not met since the motion was tabled in November 2004 and there was no date announced for its next meeting. Much to their surprise, the Delegation of the United Kingdom had also suggested that the scope of a treaty on access to knowledge might go beyond WIPO's competence. It believed that such a treaty, which had been proposed to deal solely with IP issues, related to access to knowledge and technology and appeared to be well within WIPO's brief and fundamental to its development agenda. The Representative agreed with the Delegation of Brazil that access to knowledge was not just an issue for developing countries, but also for developed countries. Knowledge was a universal tool and equal access was an important need for all, and so the issue should remain with the IIM in future sessions. It shared the vision expressed in the declaration of principles adopted by the World Summit on the Information Society in



November 2003, which promoted an inclusive society, based on the fundamental right of human beings, both to access and to express information without restrictions, and in which everyone would be able to create, access, use and share information and knowledge. To that end, the Representative supported the achievement of a true balance between the rights of owners and users of intellectual property.

133. The Representative of the International Publishers Association (IPA) said that it wished to make a few comments on the WIPO development agenda, from the perspective of publishers in the developing world, in particular in the Southeast Asia. Firstly, WIPO was important to them because intellectual property was very important, both for small and big local publishers in the developing world. In addition to licensing rights from foreign publishers, they also created local content, in local languages and with specific local expertise. The Representative stated that if those works were protected by IP, it meant not only the existence of appropriate norms, but also enforcement and that for publishers, enforcement was not a means in itself but an important tool to develop business ethics in the area of IP. Secondly, they supported the work of the WIPO Secretariat in developing countries and felt that WIPO had been right to assist, upon request, and to tailor its assistance to the specific needs and requirements of individual countries. While improvement could be made, they did not believe that it was in any way on the wrong track. Thirdly, the Representative wished to say that local publishers were victims of piracy, just like international publishers, but that the effect however was more devastating as those were their home markets. The Representative referred to some proposals made by WIPO member States, namely by the African Group and the "Friends of Development", implying that enforcement of copyright and the need for development were opposed. The Representative did not agree with those arguments as development and IP protection went hand in hand. Finally, the Representative recognized that the prices of books and the affordability for a broad public were an important issue and they shared those concerns. It was for that reason that they, as local publishers, had made great efforts to make books affordable for all and that was where local publishers could play an important role and needed the support of all those present. The publishers believed that there must be a real relation between the risk that publishers take and the reward they got, where the risk was high, the potential for higher returns must be greater, while where the risk was low, margins would be lower because of competition by other publishers. They also believed that there must be a relation between the volume of transaction that publishers made, and the margin they got. They stated that where the volume of transaction was huge, the margin was not necessarily high, but if the volume of transaction was low, it was necessary to have a high margin and that those conditions would avoid the incidence of piracy. Where it was economically impossible to make books less expensive, it was wrong to destroy the economy through copyright exceptions, as it would weaken the spirit and creativity of those publishers, who try to make books locally, at local prices. The Representative felt that it was where government action was needed as well as well-funded libraries, establishment of collecting societies and public programs which creatively addressed the issues of availability of books for all. To conclude, the Representative added that publishers' attitudes were changing with time, and that publishers were increasingly thinking about the long term, they understood that their books shaped their future customers and that literate, more educated customers would become more productive, have a higher purchasing power and have a further demand for books. Publishers and society as a whole would then benefit. The Representative called upon publishers and governments therefore to work as partners, to further their joint interest in supporting citizens to become

educated, literate, competent and productive members of society. The Representative reiterated the importance of WIPO's role in the process.

134. The Representative of the Computer Professionals for Social Responsibility (CPSR) said that Peru had a center for research related to information and communication technologies, which was founded in Lima in October 2002. Their mission was to promote the socially responsible use of information and communication technologies, which was also the Peruvian chapter of the CPSR. A non-lucrative organization based in California, it was one of the oldest organizations made up by scientific members, academics, researchers, wishing to study the impact of information and communication technologies on society as a whole. In the field of intellectual property rights, the CPSR in Peru was specifically working on copyright in the digital environment; as such, they fully supported the draft which was presented by the group of "Friends of Development". It was their view that the objective of development should be clearly stated in the founding charter of WIPO and not simply a mention, as it could give rights to different interpretations, which then could weaken the mandate of WIPO in that area. They therefore supported the elaboration of a treaty, which would facilitate access to basic information. The Representative suggested that the policies that guided the analysis of existing standards, as well as new standards, which may be proposed in the intellectual property area, should also look at the compatibility of those standards with existing legislation. They believed WIPO should give priority and importance and encourage Member States to use the exceptions to copyright in the digital environment, especially for non-commercial use, which implied a change of format for reproduction, for virtual libraries, for documentation centers and for archives amongst others. They also believed that it was important that those limitations and exceptions to copyright be recognized as indispensable standards. In their view, and placing the same emphasis on WIPO's efforts to have copyright respected, they believed there should be a priority placed on promoting those private initiatives which facilitated compliance with legislation, having open source or permissive licenses which enabled access, use or modification and distribution for consumers. The Representative believed it should be a priority for WIPO, in the short term, to have written standards and licensing contracts for copyright, which could be used as a basis to provide greater access for users. In that way, they could ensure the respect of licenses, avoid its distorted use and rights-holders could have their rights respected, rather than having to exercise their rights before the courts and tribunals. Finally, it believed that the debate on the development agenda for WIPO had not run its full course. Against that background, the Representative supported the proposal that was presented earlier by the Delegation of Brazil, that the debate should be continued in future international meetings.

135. The Representative of the Consumer International Trans-Atlantic Consumer Dialogue introduced the organization as representing leading consumer organizations in 115 countries. It welcomed WIPO's openness to allow interventions from NGOs, however, they wished to suggest that WIPO urged those who spoke in the public interest to be transparent when it concerned the interests they represented. CI along with the Trans-Atlantic Consumer Dialogue Network were among the signatories to the October 2004, Geneva Declaration on the Future of WIPO. They were encouraged and impressed by the efforts of the group of the "Friends of Development" to change WIPO so that it focused on the best policies to promote creative activity, innovation and development, rather than follow an un-analyzed free agenda of promoting the highest levels of intellectual property rights. The Representative stated that some of the most developed nations at the meeting had been less than supportive of the

initiative, fearing perhaps that it would undermine the global framework to support creative activity or that it would not be in the interest of those countries that export knowledge goods, which the delegation considered unfounded. They urged the most developed countries to examine the concrete proposal put forth by the “Friends of Development” with an open mind. They noted that the EU and the US were engaged in serious and important debates of their intellectual property rights policies and recalled that the EU recently required its members to implement mandatory compulsory licensing of patents and genetically modified seeds. The debates on the role of software patents sought to reach the appropriate balance between consumers and rights owners; copyright policy and researchers for effective mechanisms to control anti-competitive practices in the software sector. The United States of America considering a proposal by the Business Software Alliance (BSA) and others to greatly reduce the circumstances where patent owners could obtain objections, and to reduce royalty payments to patent owners and patent claims, only represented a small aspect of a larger complex software application. The Representative stated that the US government and several members of the EU were exploring mechanisms to expand the use of new open access publishing models for scholarly research and to support major public access databases such as the human genome projects and that a number of EU countries were advocating greater use of free software and proposing to use government procurement to promote open standards for critical software interfaces. The US, members of the EU and other developed countries were struggling to develop limitations and exceptions to copyright that would help educators, distance education programs and the blind and disabled. The Representative questioned the reason for so much resistance in addressing similar issues within WIPO, and asked why there was such a North-South divide on the core elements put forth in the “Friends of Development” agenda proposals. There was much anxiety in certain developed countries over the future of competitiveness, some trade negotiators apparently believed that policies that were anti-consumer, anti-competitive and anti-development were in their national interests, because they exported knowledge goods and faced declining market shares from manufactured goods and proposed protectionist standards for intellectual property protection, but that was short-sighted. What was important was to create a global framework that supported both innovation and access to knowledge goods and development everywhere. The Representative said that there was a need to learn more about those new corroborated efforts that supported open knowledge goods, and to look ahead and see how such efforts fitted into their economic system. The Representative stated that the “Friends of Development” had created an opportunity to re-invent WIPO as a UN body that would promote innovation and development everywhere in the North and South and that the fears that those changes would harm the wealthy countries, was based on a lack of information and understanding of the new economy. The Internet created innovation, jobs and wealth everywhere. The human genome project and open access publishing models were raising scientific progress everywhere; the free software movement had provided a much-needed mechanism to control anti-competitive practices in the software sector. The Representative stated that it was time to deepen the discussions on which approach was the best at achieving innovation and development and that the draft decision put forward by Brazil was a constructive proposal to ensure that the development agenda would be seriously addressed within WIPO, but expressed concern over the proposal put forward by the EC. While they welcomed point one of the proposals, they were of the opinion that the other points put forward did not ensure appropriate consideration of the development agenda and, therefore, wished to urge in particular the members of the EC to reconsider their proposal and urge all distinguished members to support Brazil’s draft decision.

136. The Representative of the Third World Network (TWN) referred to the statement of the Delegation of the United States of America the day before, saying that they were willing to engage in a development agenda discussion, but disagreed with all the proposals made by the “Friends of Development” because of the premises on which it was based, i.e., WIPO had not addressed development. In response, the Representative wished to evoke the many calls made by developing countries’ governments and public interest NGOs to reform WIPO and take into account development considerations. The Representative wished to first refer to the previous November, when 500 renowned economists, Nobel laureates, legal experts and academics, scientists and public citizen groups adopted a Geneva Declaration on the Future of WIPO and urged WIPO to embrace a more balanced agenda for promoting creativity and technology transfer in line with public interest. The Representative recalled that the Declaration called for a moratorium on new Treaties and harmonization of standards that expanded and strengthened monopolies, strangled policy space and further restricted access to knowledge, in which WIPO was asked to consider the creation of bodies to systematically address the control of anti-competitive practices, endorse the creation of working groups on technology transfer in development, supported Access to Knowledge Treaty and called for a fundamental reform of WIPO’s technical assistance program and amendment of WIPO’s convention. Second, the Representative wished to refer to the meeting called “the Future of WIPO” which was organized by a forum called Trans-Atlantic Consumer Dialogue and represented 65 consumer organizations from EU and US. Prior to the launch of the Geneva Declaration, they had raised concerns that WIPO’s activities were disseminating a dysfunctional IP system to the developing world, through WIPO Treaties. Third, the Representative referred to the more recently meeting, the second South Summit of the Group of 77 developing countries, which called for WIPO as a UN Agency, to include in all its future plans and activities, the development dimension. The Representative recalled that two days ago, 122 public interest NGOs from North and South, released a statement endorsing many principles in the “Friends of Development” proposal and recommending WIPO Member States to first amend the WIPO Convention to incorporate a development dimension. Secondly, to consider the elaboration of a Treaty on Access to Knowledge, thirdly, to establish a WIPO independent evaluation and research office, adopt principles and guidelines for the technical assistance program and finally, to reform WIPO’s norms and practices by adopting a work plan to formulate and adopt principles and guidelines for norm setting in WIPO and undertake an independent development impact assessment and ensure wider participation of public interest NGOs. The Representative stressed that those calls had been heard even in various WIPO committees and that there was nothing new and novel in the “Friends of Development’s” proposal, which barely concretized the numerous varied calls of government and public interest NGOs into specific action-oriented proposals that should be taken by the General Assembly. The Representative felt that all those events were evidence of the unequivocal support for the proposals put forward and strengthened the premise on which it was based. The Representative insisted that those calls should not simply be marginalized or ignored by developed countries and referred to what a group, under the guise of a public interest NGO had said, i.e., intellectual property rights had been recognized as a human right, which the Representative found to be a serious misreading of existing international conventions. The International Covenant on Economic, Social and Cultural rights does recognize rewarding intellectual contribution, but it did not specifically mention intellectual property rights. It, in fact, prioritized the protection of public domain by stating that everyone had the right to enjoy the benefits of scientific progress and take part in cultural

life. The Representative also referred to the statement of the International Library Association (ILA) that increased intellectual property rights were hampering those rights. The Representative considered that those statements by the group, in misreading international conventions and the mandate of WIPO, evidenced a deep lack of understanding and felt that it reinforced the urgent and immediate need to adopt a declaration to incorporate the development dimension to guide WIPO in its work. The EC and its 25 Member States had identified proposals that were ripe for harvest, the identified proposals mostly related to technical assistance and the wider participation of civil society. While at first sight, it found the proposal to be a step forward, they were concerned that by limiting the discussion in the IIM process to only a limited set of issues, other issues of equal or more importance would be marginalised and not given the immediate attention they deserved. They were quite perplexed as to why there was resistance and in some cases outright rejection of truly legitimate proposals put forward without any substantive reason. The Representative referred to those proposals as the formation of a bureau which was designed to increase transparency and enhance effectiveness of WIPO, the adoption of principals and guidelines for norm setting which would ensure that norm setting exercise was consistent with development needs and in the interest of the public, the adoption of a declaration to reform WIPO's mandate which included development and development impact assessment. The day before, a developed country's delegation had even rejected a treaty on access to knowledge and technology and the TWN found such outright rejection to be detestable. The Representative had to stress that failure by Member States to move forward on those proposals would mean that they had rejected legitimate objectives to increase transparency within WIPO, make it more member-driven, increase access to knowledge, improve and adopt assessment mechanisms, inject principles of neutrality and balance in WIPO activities and finally to cultivate a development culture in WIPO.

137. The Representative of the Biotechnology Industry Organization (BIO) introduced the organization by explaining that it was an international association that represented more than 1,000 companies, academic institutions and biotechnology centers in over 33 countries, including Argentina, Brazil and Egypt. Most of them were SMEs, that depended on effective intellectual property protection for their survival. A strong intellectual property system played an important role in the economic, social, and cultural development of a country, as it promoted domestic innovation, foreign investment and technology transfer. The Representative said that BIO members believed that there were several inaccurate assumptions in the proposal offered by the group of "Friends of Development" to establish a new development agenda for WIPO, especially with regard to its mandate. It was more than clear that WIPO had already integrated the development dimension in its activities. The Representative said that the primary responsibility for economic development of the developing and LDCs, was within the competence of other agencies of the United Nations, and that they therefore opposed the continuation of the discussions around an amendment to the WIPO Convention. BIO members supported WIPO's efforts to strengthen its assistance to developing and LDCs to see development becoming a reality, and that they believed that the work should continue. Many of the proposals by the Delegation of Bahrain, co-sponsored by other delegations, and other Member States such as Mexico and the United Kingdom to improve the efforts of WIPO, should be considered in the committee. The Representative added that, moreover, WIPO members supported the proposal of the Delegation of the United States of America for the establishment of a partnership program at WIPO, as it suggested feasible measures to be taken within their scope of work. They also supported the

recommendation to refer all the proposals made during the previous IIMs to the PCIPD. BIO members believed that WIPO's programs should continue to complement programs of individual WIPO members that improved the operation of intellectual property systems in their countries. Examples of such programs included the International Congress Against Piracy and Counterfeiting, which the Government of Brazil had hosted in collaboration with the World Customs Organization (WCO) and Interpol. The Representative said that those events seemed to support the need to continue the traditional and focussed efforts of WIPO, rather than to abandon them in favor of an approach that stressed economic development generally. BIO believed that the intellectual property system could only be effective as a tool for development, if there was a commitment to good governance and corrupt practices were not permitted in Member States. The Representative concluded by saying that BIO members commended the effort of the participants in the meeting, to engage in a consistent and constructive discussion about development. It also commended the measures that could be implemented, within the scope of work of WIPO, in an effort to assist the Member States, which sought to foster development by expanding, and not diluting its intellectual property expertise.

138. The Representative of the International Federation of Musicians (FIM) said that its statement was supported by the Representative of the International Federation of Actors (FIA). The FIM and the FIA were unions and professional associations, represented in more than 70 countries, representing hundreds of thousands of musicians and actors throughout the world. The Representative wanted to clarify a number of elements of the discussion, after many statements had been made by NGOs at the present session. References had been made, on several occasions, to right holders in undifferentiated ways. He said that putting all right holders in the same basket to deliver a general message did not take into account the very different contexts in which those right holders should be seen. From WIPO's view, it was an inappropriate generalization that weakened the debate. The Representative said it was not up to him to put forward an opinion on intellectual property matters or patents. On the other hand, using copyright or neighboring rights for musicians and actors was a priority for the two federations. The Representative said that performers and actors in many countries found it difficult to make a living from their professions and to have a recognized status. The protection of their intellectual property rights should be a way of protecting their income. Proper remuneration for their performances, was not only essential for performers themselves, but also contributed directly to the development of the whole sector and the economic actors depending on it. The production and distribution infrastructure, either did not exist or was too weak and the lack of a sufficient number of investors and weak legislation could be obstacles to growth. He said that legitimate economic spin-offs for performers and artists could be very small, or even non-existent, if they received unfair contracts. Organizations welcomed the support that WIPO had been able to give to their efforts to make the public more aware of their professions in developing countries, and that it had cooperated with copyright offices and collective rights management bodies. It had led to an improvement to the status of actors and musicians, which really meant effective implementation of neighboring rights. The Representative concluded by reminding the Meeting that from their point of view, the WIPO treaties that protected copyright and neighboring rights offered an essential international framework, and an important tool that should be promoted.

139. The Representative of the International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), speaking on behalf of their sister

Association, International Confederation of Societies of Authors and Composers (CISAC), wished to make a few observations about the framework of the proposals that had been tabled and were being discussed, and introduced BIEM as representing composers, literary artists and music publishers' collecting societies all over the world. The Representative wished to make two observations. The first was to deplore those who, in the course of the ongoing debate, had suggested that IPRs, such as copyright, should be weakened in developing countries or that the implementation of basic copyright principles ought to be blocked or tuned down. They feared that those thoughts also were being inspired by the ideas of the free flow of information supporters. The Representative felt that such an attitude was a threat to the creators in developing countries in the first place, and underscored that a good copyright legislation provided the creative community with the assets to derive income from their creative profession. Each creator deserved a proper protection of his or her intellectual creations, whether living and working in developing or developed countries, and that good copyright protection was a condition that benefited not only the creators, but also national culture and economies. The Representative acknowledged the important role of WIPO in that respect. The second observation was of a more general nature; referring to the proposals, and in particular to the documents that had been submitted by the strongest supporters of the Development Agenda, the Representative could not help but feel that those papers created, whether on purpose or not, a "good guys/bad guys" atmosphere and that the striking example of it was the suggestion made in the pivotal document of the "Friends of Development" that discussions about intellectual property development were usually being pursued in a vacuum, i.e., the bad guys among themselves, which the delegate found to be embarrassing, not only to professional organizations of rightholders, but to each and every governmental expert and legislator who, in good faith, and with great dedication, endeavored to create balanced laws. Those laws were balanced because they had taken into consideration views submitted by users of rights, consumer organizations, members of the scientific community, technology firms, libraries, educational institutions and many others and of course, rightholders. The Representative stated that BIEM and its member societies were witnesses of an open and conscious process of IP legislative activities in many countries all over the world. In conclusion, the Representative, on behalf of music copyright owners, wished to state that in the process and discussions, they might not always entirely agree with each other, but they were only "good guys".

140. The Representative of the International Literary and Artistic Association (ALAI) referred to the Association as an ancestor to the other organizations. They were one of the first NGOs to be accredited to WIPO. Around 130 years ago, under the auspices of Victor Hugo, who was the honorary president of their Association, they took an initiative with the Swiss authorities, which led to the birth of the Berne Convention. The Representative said that that was why they saw in front of them, someone with white hair, although the Representative could assure the forum that he did not take part in the negotiations to the Berne Convention at the time. The Association was in favor of intellectual property, and to use an expression which was current during the debate, they considered themselves to be the friends of intellectual property and copyright. However, the Representative acknowledged that being a friend of intellectual property did not mean being the enemy or the adversary of development, to the contrary, the two concepts were intricately linked, in that they belonged to the same camp and therefore the meeting could certainly reach an understanding. The Representative stated that intellectual property or copyright were the tools, and development the result. If there had not been any proper protection, films would not have been made,

music would not have been recorded, software would not have been disseminated and books would not have been published. The point was not whether intellectual property benefited development or not, the real question was how to use those tools and instruments to derive the most benefit from them. In order to achieve that, the Representative was of the opinion that it would not be necessary to change WIPO's mandate, or increase the number of committees. It seemed to them that the present mandate was sufficiently broad and flexible, and that the existing structures were sufficient to meet the needs, concerns and expectations. The Representative believed that WIPO was still useful and could contribute further, as it had already contributed effectively and substantially to the building of the system. The Representative felt that much had already been done but a lot still remained. The Representative cited a proverb, most probably an Arabic one, which said "you cannot clap with one hand". WIPO had considerable resources and their Association would like to associate itself and be prepared to contribute to the collective effort in the area of its expertise.

141. The Chair mentioned that during the informal consultations, all the delegations had agreed that the process should continue and the discussions were on the way in which this should be done. There were two proposals on how to continue the work in the future. One was to renew the mandate of the IIM and the other proposal was that it should be done in the framework of the PCIPD. He said that, in those circumstances, it was thought that, as a possible solution, the matter be left to the General Assembly to decide how the work should be carried out in the future. The Chair stated that a constructive debate had already taken place within the informal consultation framework, and that perhaps it was already possible to quickly make concluding remarks, and decide how to proceed further and in what format the report should be presented to the General Assembly.

142. The Delegation of Argentina stated that, on behalf of the "Group of the Friends of Development", it regretted that, although the majority of delegations had agreed, they had not been able to come out with a positive outcome from the consultation, because a few Delegations were against the proposal. The Delegation concurred with what the Chair had said, and stated that some delegations wanted the meeting to adopt a decision, where a recommendation could be made to the General Assembly. The Delegation mentioned that in their proposal made on the first day, together with other proposals which had been submitted in writing, most delegations had agreed that that process should be continued and that the IIM should have a renewed mandate. The Delegation pointed out that since the IIM had not finished examining all the proposals which had been submitted, and in fact it had been told that new proposals would be submitted to the meeting, it was of the opinion that it was important that the same conditions be maintained in order to examine those papers and carry out the debate for all the work that could not be finished that day. The Delegation emphasized that it had also explained that forwarding that work to the PCIPD would not be an acceptable solution, because entrusting different issues to the PCIPD, was just one of the proposals that had been on the table, on which there had been no agreement. The Delegation said that, as mentioned by the Chair, the "Group of the Friends of Development" had also seen the good will that most Members had expressed in the informal consultations. However, unfortunately, the only thing that could have been done so far had been to decide that the process was to be renewed. The Delegation explained that that was the reason why it wished to state that the "Group of the Friends of Development", with a spirit of maximum flexibility, would like to make a proposal that the IIM make a recommendation to the General Assembly, as follows:



“The IIM recommends that the WIPO General Assembly should renew the process of Inter-sessional Intergovernmental Meetings with the view to addressing effectively the issues raised, the existing and new proposals to establish a Development Agenda for WIPO. In this regard, three additional IIMs will be organized until July 2006, which shall report to the 2006 General Assembly on necessary and urgent actions to be taken with regard to the above mentioned proposals.”

143. The Delegation of Argentina insisted that that was a minimum proposal it could present to the IIM. It reiterated once again, that it regretted that the will had not been expressed by all Members to renew the process, which it felt would benefit all countries, including developing countries.

144. The Delegation of India said that the logical thing for it to do would of course be to continue, as the customary thing that had been done in the past, and that it had been surprised that there would have been a new objection to that procedure. The Delegation stated that it had been hoping that a process decision, rather than a substantive decision, would have been involved therein, and since there had been no substantive issue on which there had been differences, there would be no difficulty in proceeding further. The Delegation said that it had been surprised that, indeed, there had been one or two delegations that had felt that a point had been reached where effectively a substantive decision, could be reached and that that outcome had been the remittance of the issue to the PCIPD. The Delegation said that, as Argentina had pointed out, that had been one of the substantive proposals, that all those issues could have been discussed in the PCIPD. The refrain from certain delegations had been that there were no issues under the rubric of development that PCIPD could not address. The Delegation said that that point of view had clearly not been accepted by most developing countries. The Delegation said that it had been baffled, because it was of the opinion that that was a substantive decision that that no substantive agreement had been reached. The Delegation added that the question of leaving open the process for the future had again been baffling because it was not customary to change horses midstream. It said that it was not just changing horses midstream, it had been asked to change from a horse to a mule midstream, and that it clearly had not relished the prospect of doing that.

145. The Delegation of Sri Lanka expressed its appreciation for the strenuous efforts the Chair had made in the informal consultations to develop a consensus, which would have enabled the participants to move in a positive direction to the General Assembly. The Delegation said it felt sad to hear from the Chair's concluding remarks, that even when there had seemed to be a large majority of views converging on a recommendation to the General Assembly, to continue the IIM process into 2006, the full consensus had not been achieved. It said that it was perhaps the first time that a group of developing countries had sought to stimulate a comprehensive debate on the issues of development, with a view to encouraging WIPO to pursue development oriented results. The Delegation expressed its thanks to the “Friends of Development” for bringing the Development Agenda before WIPO, when a broad reform process for the UN system, at that very moment, was being negotiated by colleagues in New York. The Delegation wanted also to stress that each session of the IIM had brought new proposals from member states, which had enriched the debate and the understanding of how development considerations could be incorporated into different aspects of WIPO's work. The Delegation recalled that that was a year in which special attention had been given,

in many different UN and international fora, to an analysis of the special needs of developing countries. The Delegation expressed its thanks to the African Group for reminding everyone of the call by the Second South Summit held recently in Doha for WIPO to integrate a Development Agenda into all its various activities. The Delegation mentioned that it was in that context, that it fully supported the Brazilian proposal to organize three additional three day IIMs in 2006, which could report back to the General Assembly next year for appropriate action. The Delegation also expressed its appreciation for the Secretariat's recent efforts to respond to the concerns raised by the developing countries. It highlighted the preface to the document issued the previous day listing WIPO's development cooperation activities and stated that there had been a major shift in the focus and priorities of the development cooperation program of WIPO. The Delegation said that it had noted, for instance, WIPO's affirmation that it stood ready to provide general or specific advice on using the flexibilities in the TRIPS Agreement and WIPO treaties to enable developing countries to make informal decisions in their national policies and strategies. The Delegation recognized that such advice was particularly useful for developing countries in the field of public health, access to knowledge and education. The Delegation confirmed that it appreciated the leadership of Director General Idris in that regard and requested him to further pursue those efforts. The Delegation stated that the proposal for a draft decision of the IIM submitted by Brazil also referred to the establishment of an independent WIPO evaluation and research office. The delegation was of the opinion that that proposal was indeed in line with recent trends to establish similar structures in many UN and international organizations. The Delegation wanted to recall, for instance, that in the IMF, an independent evaluation office had been established since the last four years, which had the aim to provide objective analyses of various aspects of its work including technical assistance, had already enabled a greater degree of transparency on development issues. The Delegation assured that there was nothing to be afraid of in that. The Delegation recalled that, in a statement in an earlier session of the IIM, it had also supported the participation of civil society and public interest groups in the discussions in WIPO. It mentioned that their voices were particularly important on issues such as software patents, which was of interest to both developed and developing countries, and on which it appeared that there were many views as to the limits of harmonization of patents *vis-à-vis* the promotion of creativity. The Delegation stated that it would suggest that WIPO organize some interactive panel discussions pertaining to the use of PCT for development and IPR aspects of free and open source software as a contribution to the WSIS process. The Delegation concluded by saying that if all that could be achieved was a factual report, it trusted that the Chair would make it a very accurate one.

146. The Delegation of Pakistan stated that with regard to the briefing that the Chair had given on the informal consultations, which could not, unfortunately produce the desired result, it wished to briefly put a few things in perspective. The Delegation recalled that the organization in terms of its General Assembly decision, had given a mandate for Intergovernmental Inter-sessional Meetings on two accounts; one to examine the proposals, which had already been submitted by the "Friends of Development", and another to examine other proposals which may be submitted. The Delegation said that for the first half of those three IIMs, which had been until the first half of the Second Session of the IIM, there had been basically a procedural discussion on how to proceed. The Delegation mentioned that only midway through the Second Session, the Meeting embarked on substantive discussion in terms of a list that had been provided by the Delegation of Brazil and added on by the Secretariat to facilitate those discussions. The Delegation noted that the situation with regard

to that list was that it had grown and only preliminary exchange of views had taken place, which could in no way be considered as examination in terms of the mandate that had been given to the meeting. The Delegation maintained that it was a work in progress, and that the work had not ended.

The Delegation of Pakistan reiterated that even at that late stage in the deliberations, the Delegation hoped and really expected quite a few others among those present, who still had hope, that since the work was still in progress, it had not ended, and the mandate had not been discharged properly, it was of the opinion that it was only logical to let it continue. It added that the group had proceeded as far as it had been possible, as it was approaching the Assembly. The Delegation emphasized that a decision, a report, or a recommendation had to be passed on to the Assembly, and since the work had not ended and was still in progress, the only possibility was to continue with the work, and with the mandate that had not been fully discharged as yet. The Delegation insisted that it still requested that the work be allowed to continue and that at that stage, the Delegation was also speaking on behalf of the South Asian Association for Regional Cooperation (SAARC) countries, which represented one fifth of humanity, and supported the recommendation of continuation of IIM. The Delegation said that that was a minimum, and that that was only logical that the work, which had not ended, be continued with all the proposals including the African one, which had neither been considered nor presented properly.

147. The Delegation of the United States stressed its positive attitude towards the fact there was a broad agreement to continue discussion of all the proposals relating to the Development Agenda, as well as those that might be submitted by WIPO Member States in the future. The Delegation underlined its preference that those discussions be structured within an existing WIPO body, the Permanent Committee on Cooperation for Development, Related to Intellectual Property (PCIPD), as it believed there was no limit on its mandate, and if there was any doubt about the mandate, a new one could be provided. The Delegation stated that the IIM process, that they had been involved in, had proven very useful for a preliminary exchange of views, but that, unfortunately, it did not believe that IIM had provided for an in-depth examination of all proposals. The Delegation recalled that the IIM process, that had been agreed upon at the previous year's General Assembly, was a compromise and that at that time, the "Friends of Development" proposal had called for the establishment of a Working Group to discuss a WIPO Development Agenda. The Delegation added that at that time a large number of delegations, including those in Group B, had wished that the PCIPD be the forum for those discussions, and that as a compromise the General Assembly had agreed to an IIM process, that was time limited and called for a report to the General Assembly by the end of July of the year after. The Delegation further said that it believed that at that point, the discussions should continue, but that the report from the IIM should be a factual report and that it should be for the General Assembly to decide on how to proceed with the discussions that they had agreed to hold. The Delegation expressed lack of understanding on the reasons why the mandate of PCIPD would not be strengthened, and why that body would not serve as a good forum or be any different from a Working Group called for by the "Friends of Development". The Delegation added that during their informal consultations, the Delegation of Argentina mentioned the possibility that these discussions could continue for 20 years, as at that time they already had a number of proposals and additional ones would be received. The Delegation concluded that it simply did not believe that the IIM process would be the best way to continue the discussions. The Delegation believed that while the participants had had a fruitful exchange on the proposals, they had not reached the consensus to immediately

move forward with any of them at that stage, either on the substance or on the procedure, whether to recommend that the PCIPD took up the discussions or to renew the IIM mandate. The Delegation suggested that there should be a factual report to the General Assembly, and that such a report could contain four elements recalling:

- (a) the decision of the General Assembly that initiated the IIM process and its mandate;
- (b) list of all the proposals received to that date, and to note that further proposals might be forthcoming;
- (c) the constructive discussions that they had had during those 3 IIMs;
- (d) the full agreement among all Members in the IIM process to continue their discussions on all of the existing proposals as well as new proposals in a structural and organized manner, without prejudice to the decision that the General Assembly might take with regard to the forum of these continued discussions.

148. The Delegation of the United States of America also referred to the document prepared by the International Bureau, thanking the International Bureau for the 300-plus pages document on WIPO development cooperation activities over the last five years. The Delegation pointed out that the document clearly demonstrated that WIPO's development assistance had been demand driven by the Member State requests, and had not been limited to technical assistance. It stressed that WIPO's assistance had included advice on IP flexibilities, legislation, traditional knowledge and genetic resources; studies on the economic importance of copyright industries and the use of the IP as a tool to support innovation, competitiveness and sustainable economic development. The Delegation noted that one of the key proponents of the WIPO Development Agenda had already received development assistance in each of those categories and that, in fact, by its count in that document, the group of co-sponsors of the Development Agenda had together requested and received a total of 456 development cooperation activities. The Delegation underlined that it particularly shed light on the statements made by some delegations that WIPO had ignored development concerns, or that WIPO had failed for 35 years to carry out its mandate. The Delegation concluded that it would be difficult to have a practical debate on IP and development, when they started that debate with such profound misunderstandings. The Delegation thanked once again the International Bureau for that document.

149. The Delegation of Morocco thanked the Chair for his untiring efforts to bring the consultations to a successful conclusion. It stressed the African Group's position, underlining that according to paragraph 4 of the proposal, the Group wanted to renew the mandate of the IIM and that it was in favor of dealing with all the proposals in the same way. The Delegation stressed that the African Group considered that any other proposal that would not be along those lines, would imply not treating the proposals on an equal footing. The Delegation added that the second position of the African Group was that the consultations, which would continue, would be fruitful if they took into account the concerns and priorities of all delegations. The Delegation reiterated that the African Group was in favor of continuing dialogue and consultations, and that it remained open to all proposals that would lead to a consensus.

150. The Delegation of Chile supported the proposal made by Argentina on behalf of the "Friends of Development", which was reasonable and very similar to what the African Group had proposed. The Delegation expressed the conviction that the African Group was entitled

to see that their proposal was treated in the same way as other proposals that had been submitted, and also in the same forum. The Delegation added that it would also like to see their proposal, that it was going to submit, treated in the same way. It concluded that that had been a very fruitful discussion and expressed the view that it should not be stopped. The Delegation believed that the PCIPD was not the right forum and mentioned that many delegations from developed countries, which at the beginning thought that that should be dealt within the PCIPD, had made their positions more flexible and were willing to extend the mandate of the IIM, including the Delegation that proposed to invigorate the PCIPD at the beginning. The Delegation encouraged those few delegations that wanted to take the process to the PCIPD, to be more flexible and to continue with the IIM.

151. The Delegation of Japan fully appreciated the effort made by the Chair in the process of the informal session. The Delegation noticed that the IIM process was useful, meaningful and significant and that they should continue such debate. However, the IIM was a process which had been established as a compromise at the General Assembly 2004, adding that the Delegation of the United States of America had correctly pointed that out. The Delegation expressed the view that the IIM's main function was to make a report for the General Assembly of that year by the end of July 30, 2005. According to the Delegation, such a report should be a factual one and it supported the idea that the IIM process should end after July 30, namely after the report was compiled. The Delegation thought that it was not appropriate for the IIM itself to decide on the extension of its function, and that it should be the General Assembly which would decide about the extension of the IIM process. It noticed that the proposals of Bahrain and the African Group were not discussed and suggested that those two proposals should be treated properly. In that context, the Delegation proposed that the Members might decide how to deal with those proposals at the forthcoming General Assembly. At the end the Delegation expressed its concern about the extension of IIM, and stressed that the issue was related to the process and not to the substance.

152. The Delegation of Bahrain stated it was looking forward to better results and that Bahrain and the Arab countries that had adopted the proposal were emphasizing the importance of development for the developing countries and least developed countries. It stressed that it was important to continue those discussions. The Delegation said that based on the views and the opinions it had listened to about the continuation of the IIM meetings, it believed that the members had to refer that topic to the Assembly to take the appropriate decision on the appropriate mechanisms. The Delegation suggested that note should be taken that the Members had attempted to achieve better results, and that they hoped that that would be possible through the Assembly.

153. The Delegation of Brazil expressed its frustration at the fact that it had not been possible to achieve a consensus recommendation for the General Assembly in the informal consultations. The Delegation observed that there had been a wide agreement with the idea of simply extending the IIM process for yet another year, to enable all proposals and new proposals to be considered adequately and on the same footing, in particular, the proposals that were not yet presented and considered, namely those from the African Group and Bahrain, co-sponsored by other Arab countries. The Delegation said that in the informal consultations, it had said that the "Friends of Development" had also presented a very substantive document on the Development Agenda, and it did not feel that the proposals contained in the document had been fully considered until that moment. The Delegation

noted that proposals from developed countries had also not been discussed and that they had not agreed upon the outcome, on any of those proposals. The Delegation concluded that as the IIM had not reached any outcome it was essential that it continued. The Delegation said that if the forum was changed mid-way, as was being insisted upon by a few delegations, it would diminish the importance of the Development Agenda, and not speak positively of the way in which that Organization was dealing with development issues. The Delegation underlined that Brazil saw the Development Agenda as a positive contribution to the work of that Organization and it thought it could be further developed in all the activities of the Organization. The Delegation said that in the informal consultations, Members had debated the issue of not prejudging the forum under which the Development Agenda would continue to be discussed. It understood that the only way of not prejudging that was to continue on the basis of the IIM meetings. The Delegation added that some delegations did not want permanent bodies to be created. In its opinion, the IIM was not a permanent body, but one that had to work until the Members had a substantially agreed outcome on matters, that were very important for developing countries. The Delegation stressed that the proposal concerning the PCIPD was one among other proposals that had been put forth during the course of their debates, and that it was not appropriate to adopt one among many other proposals, at that point in time. The Delegation stated that there was no agreement on the issue of what the PCIPD should or should not do, and that it did not consider that that was the right moment to pick and choose particular outcomes, for an early harvest. The Delegation was concerned about the unfortunate lack of agreement on the continuation of the IIM process, which was because of the positions of a few delegations. It expressed the fear that at the General Assembly, they might see the Development Agenda being given lesser importance, which would reflect very poorly on the way WIPO and its Members dealt with such an important issue for developing countries. The Delegation added that it thought that the report that should go to the General Assembly should be the report of the three IIM sessions themselves, and that it should indicate clearly that there was a majority position that favored the continuation of the IIM process, in its current form for another year.

154. The Delegation of Mexico stated that it appeared from the discussions that it was very difficult to reach conclusion and that it felt that it would be better to establish a factual report on how the current meeting took place. It would include the various proposals made, the intention of other states to present proposals in the future, and that that report would be submitted to the General Assembly, to decide on future work.

155. The Delegation of Argentina stated that it was not sure that it really understood what the Chair meant by factual report. However, having heard other delegations it would like to say that it would like the summary of the three meetings that had been held so far to be sent to the General Assembly. The Delegation added that what it had understood was what was needed to be sent to the General Assembly was the summary of the three meeting that had been held so far, with possibly a letter that would state the facts that those reports were being submitted to the General Assembly, in accordance with the decision taken the previous year. It sought a confirmation from the Chair about this procedure. The Delegation indicated that it would also like to correct some inconsistencies. The previous year it had presented an annex to the report to the General Assembly and that issue had been raised again in the meeting. The annex included a series of decisions that they hoped would be adopted by the General Assembly. One of those decisions was that a working be set up for reviewing all the remaining issues, on which decisions had not been taken. That working group was not supposed to be a permanent

body but an *ad-hoc* group that would deal with those various issues. It recalled that a certain number of delegations, which were in favor of sending those issues to a permanent committee, were opposed to the idea and that was why they decided upon the IIM. Therefore, it was not a matter of creating a permanent committee or body. Further, it said that what was stated as being having been said by Argentina during the unofficial consultations, that those discussions could continue for another 20 years, was taken outside the context. It added that what happened was that a series of proposals were made in the hope that they would be adopted by the General Assembly. At the time the countries rejected those proposals and so there were a number of developing countries that feared that that process would continue for many years. The Delegation said that it needed to accelerate the process and that was why it had made that comment. It added that it would do its utmost to ensure that the process was as efficient as possible. The Delegation added that nevertheless, given the lack of will to adopt any kind of decision, it seemed quite clear that that process could continue for many years, and that was not what the delegations of developing countries would like.

156. The Delegation of China stated that at present the Member States had agreed to continue the discussions on the development agenda and in the format of IIM. It said that the reasons were as follows: firstly, that was the format decided by the General Assembly; secondly, PCIPD was one of the proposals presented at that meeting. The Delegation further stated that as the IIM had not discussed substantive matters, and no decision on those proposals has been made.

157. The Delegation of South Africa stated that it would like to make a clarification with regard to the working group. It said that it had made that kind of proposal but that that proposal in fact was to deal with the implementation mechanisms and action points as the Delegation of Argentina had just pointed out. It said that the concern of the Delegation was that the discussions could continue indefinitely if they were sent to the PCIPD. It added that the IGC was the typical example of that, where discussions had been continuing without any outcome to benefit developing and least developed countries, such as the conclusion of a legally binding international instrument to protect traditional knowledge and genetic resources. The Delegation would like the discussions on the development agenda for WIPO to continue within the renewed mandate of the IIM, and added that the proposal by the African Group needed to be discussed within the renewed mandate of the IIM.

158. The Delegation of Botswana stated that it endorsed the statement made by the Delegation of Morocco. The Delegation wanted to register its disappointment with the way the crucial issue of development had been dealt with. It added that because of the importance of the issue, it thought that it was only logical to take the matter further to the General Assembly for guidance, and that the Delegation was not happy with the injustice and the treatment given to the African Group proposal, and that they remained hopeful that it would be discussed. It said that it would not want to get into the issue of PCIPD and the other proposals, because the very reason why some delegations were saying that they should let the Assembly decide on how to deal with their proposal, was the fear that they had that their proposal might rot somewhere in the corridors not knowing what it meant to that country. It asked that all proposals be accorded the same treatment and equality, because they all belonged to that organization.

159. The Delegation of Algeria supported the proposal made by Morocco on behalf of the African Group and said that it had listened carefully to all the proposals from all the Delegations, including those it did not support and whose visions were different. The Delegation said that they should discuss all the proposals in an open way, provide answers to those questions and that in that context, it was made clear that it did not intend to turn the IIM into a standing committee. The Delegation added that it was not their intention to prolong the negotiating process and drag it out indefinitely as it was not in the interest of developing countries and the African group. The Delegation stated that the General Assembly resolution that set up the IIM, did call on it to examine all proposals for the establishment of a plan of action of WIPO for development. Unfortunately, there was at least one proposal that had not benefited from that right of at least being presented plainly like the other proposals. The Delegation indicated that that was why they had asked the Chair, to reach a compromise to renew the mandate of the IIM, to enable their group to present its proposal. It would ask the Chair to state in his conclusions that their group had been deprived of the right to present its proposals as contained in the decision that set up the committee.

160. The Delegation of Colombia stated that the IIM, which was given a clear mandate from the General Assembly, had seen a dedicated effort by several countries, which was translated into 25 or so proposals, that were worked out in several countries. It said that they had analyzed and discussed those proposals. However, it was not possible to discuss some of them due to time limits. This justified the continuation of the format of the IIM, which for them was the appropriate forum to achieve the progress they hoped for. It said that it was essential that a new mandate for that meeting should concentrate on consensus building on each of the proposals and also for any new ones that may be presented. The Delegation supported the recent proposals submitted by the Delegation of Argentina on behalf of the "Friends of Development" and added that that proposal clearly included the possibility of them continuing discussions and reaching a point, where they would have integrated the positions of all the countries represented there. The Delegation indicated that they also saw that the proposal clearly included the possibility of submitting new proposals and initiatives, which would encourage them to continue building a development agenda for WIPO. Regarding the proposal from the United States of America, it saw it as one of the proposals included in the package of proposals they had, for which a consensus had not been reached. Therefore, it thought that in the future when there was a proposal to strengthen the role of the PCIPD, they could consider taking proposals to that forum, but at that point it was better to follow the way proposed by Argentina.

161. The Delegation of Senegal stated that before going to the three points it was going to make, it would like to support the statement made by Morocco on behalf of the African Group, a statement which very well summed up their position at that stage of the discussion. The first point, it said, related to the mandate of the IIM, and that it would not go into all the reasons that were prompting them to be in favor of its renewal, and that it would just like to stress two points. The Delegation said that it wanted all the proposals to be dealt with on an equal footing and that it insisted on that. It added that the second reason for renewing the mandate was a practical one and that it seemed to it appropriate to preserve the momentum that they had achieved over the last three sessions, and that that was yet one more argument for renewing the mandate. It continued that the second point it wanted to make, was that, as the Ambassador of Sri Lanka had said, if the maximum they could hope for was a factual report to emerge from that debate it appeared that the vast majority of delegations were in



favor of renewing the IIM's mandate and that it thought it was their duty to advise the General Assembly on what actually happened and that the second element of the factual report was that there were proposals in particular from the African Group, which had not been given appropriate treatment. It thought that it would only be just and fair for the General Assembly to see them as well to know about them from the factual report. It added that third, there was a compilation of all the proposals in the annex to the Chairman summary of the second session and that that list did not contain so far the concrete proposals submitted by the African Group the previous day and so, it asked that any report to the General Assembly should go beyond the present 24 proposals and include the concrete African proposals that had been submitted.

162. The Delegation of Bolivia said that it just wanted to repeat very briefly some its positions on the issues they were discussing. Firstly, it supported Argentina's proposal on behalf of the "Friends of Development" on the future of their discussions and that secondly, it presented a case, which might clarify the issues of the PCIPD. It said a similar example to the PCIPD was the Intergovernmental Committee on Traditional Knowledge, Genetic Resources and Folklore and that in that committee, there had been discussions for eight sessions and so far, there had been no satisfactory outcome or concrete solutions. The Delegation said that the developing countries therefore were, to put it mildly, fairly frustrated at those meetings and they believed those issues should have been dealt with in a cross cutting way in that organization. It stated that the Delegation was surprised about the impossibility of finding a solution to the problem of continuing that process in the IIM, or to take any decisions on that, when there was a consensus with the exception of one or two delegations. It believed that a solution that would send those discussion to the PCIPD would be detrimental, because it would favor only some of the proposals submitted so far. It said that it would like to echo the words of the Delegation of Chile who called for flexibility from those delegations who still thought the PCIPD was the solution because the other Delegations had already shown flexibility. It added that if no satisfactory results were achieved in that session, it would be with great sadness that that Delegation would see the WIPO's credibility reduced as also the credibility of those countries that still opposed dealing with development. That would send a message to the outside world, at a time when the UN was being reformed and when the millennium development goals were supported by all of them.

163. The Delegation of Egypt said that it would like to support the statements made by Algeria, Argentina, Bolivia, Botswana, Brazil, Chile, Colombia, India, Morocco, Pakistan, Senegal, South Africa, and Sri Lanka. It added that all of those statements reflected the level of frustration, which was also shared by the Delegation, regarding the inability to unanimously agree on continuing that on going process, which was far from having fulfilled its mandate. It said that they recognized that the desire to continue that process within the IIM was not being favored by very few delegations and that he would also like to respond to a point made by the Delegation of Japan. It said that what they were discussing was a recommendation to the General Assembly and not deciding on behalf of the General Assembly. The Delegation said that in all cases, it should be up to the General Assembly to adopt such a recommendation or to decide otherwise. The Delegation believed that the IIM was not and should not be a permanent body, because that would simply undermine its objectives in establishing a development agenda for WIPO, which it believed should be implemented through its various bodies and committees such as the SCP, the SCCR, IGC and PCIPD.

164. The Delegation of Canada stated that it agreed with all the delegations that had spoken that evening and thought there was consensus, in fact unanimity, that the discussions needed to continue. It said that they needed to discuss the African Group proposals and the Bahrain proposals and any future proposals on an equal footing, and that they also needed to re-visit and better explore the proposals that they had already reviewed. The Delegation recognized that though they had been frustrated on a matter of process, their discussions at that IIM had helped all delegations to better understand one another and that on that basis, they were optimistic that consensus could be reached at the 2005 General Assemblies on how to move forward in their work and on the relationship between intellectual property and development.

165. The Delegation of the Islamic Republic of Iran stated that regarding the renewal of IIM, they had still not finished their work and needed to reach a compromise. It added that on many occasions, in many committees, there was an expectation that developing countries had a flexibility and on many occasions they did have it. It added that it was also time that they recognized the flexibility of United Kingdom, which had proposed to transfer all decisions to the PCIPD and thought that they could also call on the flexibility of other countries. The Delegation concluded by saying that it also supported the renewal of the IIM and what had been said by the Delegation of Argentina.

166. The Delegation of Nigeria stated that it supported the statement submitted on behalf of the African Group by the Delegation of Morocco in the sense that it also supported a continuation of the IIM process to its logical end. It said that the African Group had already submitted a draft decision proposing such a course of action and that it wished also to support the statement made by the Delegation of Pakistan to the effect that development matters were crucial and critical matters to them. The Delegation added that that fact had been stressed by their leaders at the highest political level at Doha, especially with regard to WIPO to formulate a development Agenda. It said they were fully mindful of their responsibilities in and that they intended to carry out that political decision of their leaders. To that end, it was very strongly in favor of continuation of the IIM process, so that a full appraisal could be conducted of the development agenda in WIPO. The Delegation added that having said so, it would like to make particular reference to the statement of the Delegation of the United States of America and to indicate that there was merit in one or two things that they had said. For instance, it was important to list all the proposals that had been received by the IIM and also more importantly, it was very important to have a structured discussion. It added that they had already held three IIM meetings, with no results, simply because they had failed to structure their discussion on substantive issues, and decided to concentrate on trivial matters of procedure. It said that if they continued along those lines, even if the mandate of the IIM were to be renewed, they would still end up gyrating in one place, without actually considering issues of importance.

167. The Delegation of India stated that it had the experience of other committees of other bodies of WIPO where they had to spend, in one case, all of three days working on the summary. It said that they had a record of all three discussions and that perhaps the one way they could tackle that issue was to find out if the two delegations that were opposed to that, would object to having their names mentioned as to the ones opposed to holding of the IIM. The Delegation added that if they had no objection, they could simply capture that in two or three sentences at the end of the section, which could read something like continuation of

work. It said that if, however, they had an objection, they could simply leave the record of that section on the continuation of work regarding the development agenda, by reproducing the discussions as accurately as possible, and have the record speak for itself.

168. The Delegation of Argentina said that consensus was based on the majority and that it believed that the feeling of the majority there was quite obvious among members of WIPO. The Delegation added that it was therefore important to take into account what the Delegation of India had said and that that was a method that had already been used in the past, in particular, when there were delegations that were experiencing some difficulties. It said that it also wanted to refer to the statement made by the Delegation of Senegal, who mentioned a list and said that the proposals made by the African Group had not been taken into account. Those proposals needed to be added to the existing list. It said that they would be very grateful if they could be provided with an updated numbered list. The Delegation said that it would like the Chair to clarify the position regarding the report, as it had noticed that there was an item on the agenda called the adoption of the draft report, to be submitted to the General Assembly.

169. The Chair said that a factual report was a report that would be quite similar to the summary of the chairman that was submitted to them during previous sessions. The Chair added that it was something very brief, short and concise that stated the most important points of the meeting.

170. The Delegation of the United Kingdom, speaking on behalf of the EC and 25 Member States, said that they had noted in the Chair's introduction earlier that there was no consensus on the way forward. It had also noted the wise words and counsel of the Ambassador of Sri Lanka. It added that it did not believe that the time spent in those IIMs had been wasted and that there had been useful exchange of views and that they understood each other's positions better. The Delegation added that what they would suggest was that it was right to allow time for further reflection in the lead up to the General Assembly and that it would be right to return to those questions at that moment, refreshed and able to continue debates on those matters. It believed that the best way forward was for the Chair to prepare a factual report along the line of the reports of the previous two IIMs and that could be presented to the General Assembly for a decision on how to proceed.

171. The Delegation of the United States of America stated that it wanted to thank the Delegation of India for bringing up the point about the report and thought that it could go along with that suggestion and the suggestion of the Delegation of the United Kingdom that the Chair prepare a short factual summary, that could be sent out in a period of time for comments and/or to submit the full minutes of this meeting to the General Assembly, whichever he deemed appropriate. The Delegation indicated that from their listening to those interventions, it was not just one or two countries that were not allowing the consensus to go forward, but that there were a number countries that had indicated that they would like to leave the decision on the proper forum to the General Assembly.

172. The Delegation of Switzerland stated that the consultations that had just taken place and the interventions in the plenary session clearly confirmed the will of the members of the Organization to continue examining the proposals that had been submitted so far, as well as new proposals that could be made in the future. It said that they all recognized the importance

of the work that had been launched in the framework of the IIM, and that the Delegation would have liked that third meeting to end with a recommendation on the forum. That was why the Delegation had been flexible on that point in the consultations that had taken place, and did not want to intervene in the discussion until then. It added that what was important for the Delegation was for it to ensure that the work continued in the future and progresses. The Delegation said, however, it was still unclear whether the work would continue and if they wanted their work to continue in a positive context in the future, it seemed appropriate that that forum where they were at the moment, left the choice to the General Assembly, as had been proposed by several delegations. The Delegation added that it was confident that the General Assembly would be able to decide on the appropriate forum for their work to take place, and that it would allow for an equal examination of the proposals that had been made. The Delegation said that it also felt that it would be appropriate for the Chairman to draft a factual report.

173. In answer to the point made by the Delegation of Argentina, the Delegation of Senegal stated that it would just like to remind the Chair that the previous day, the African Group had submitted a list of 16 proposals, that was in fact presented by Morocco as the coordinator and that it would like to say that the revised list needed to take into consideration those 16 points.

174. The Delegation of Brazil said that it would like to remind the Chair that Brazil presented the proposal of the “ Friends of Development” and that it wanted to include the proposal on the transfer of technology in the list that was prepared. With regard to the report of the IIM to the General Assembly, it said that the report was a report of the IIM to the General Assembly and so should be approved by the members of the IIM. Therefore, it would like to know from the Chair as to how it would be done that day.

175. The Delegation of India said that it was perhaps the lateness of the hour that made absorption of various interventions and the implication of those interventions difficult. It said that it had heard the Delegation of the United Kingdom suggest a certain course of action, and commendable as that course of action might be, it did not understand how that could amount to a report of that session of the IIM, or indeed of the three sessions together. That might have merit in itself, but would still not amount to a report of the IIM or the IIM process. So it would like to know how that linked to what the Delegation of Brazil had said. Referring to the report to be prepared by the Chair, the Delegation said that the last time it embarked on such an exercise, it took several hours and certainly its Delegation was not looking forward to spending many hours before they reached that conclusion. On another point, since that had been made by a few delegations, it said that maybe because of the lateness of the hour, it was not clear how the General Assembly could take a decision on the forum that would not amount to a decision on the outcome of the IIM. It said that if that decision was to have the issues discussed in the PCIPD, which was the only other body that had been talked of in the context of the development agenda, it would amount to a decision on the outcome of that process in regard to one of the proposals. It said that when they left the decision open, they were really saying that the PCIPD should continue to be an option for the General Assembly and concluded that that was certainly not one that reflected the sentiment of that meeting.

176. The Delegation of Jordan said that the IIM option was supported during the informal meeting by the United States of America and the co-sponsor of the Bahrain proposal and that

the PCIPD was also supported. It said that they had tried to strike a balance to renew the IIM mandate for one year only, and that it felt needed to be clarified.

177. The Chair said that he had taken a break to consult with delegations, and as a result of those consultations, would like to propose that a factual report of the IIM be submitted to the General Assembly, consisting of the reports of the three sessions. Those would be reports, *in extenso*, containing the interventions made in the three sessions of the IIM. The reports of the first two sessions had already been adopted and what was required was the report of the third session. He stated that the Third Session could be resumed later to adopt the report and added that he was going to ask the Secretariat to give them details of the dates by which the draft report of that third session would be circulated and also when they would resume that session. The Chair indicated that the reports of the three sessions would be accompanied by a simple note from him, stating that the reports of the three sessions were annexed. He added that that set of documents would be the report submitted to the General Assembly, and in that way they would be fulfilling their mandate. He added that he would like to ask the Secretariat to indicate the dates by which it planned to make that draft report available. He said that as in the past, it would be considered by them and they could send their comments or amendments. The date of that meeting, when they would resume that session so as to adopt the report of the third session, would be communicated to them as soon as possible. The Chair added that the date would be a few days before the General Assembly. The Chair sought comments on his proposal.

178. The Delegation of India stated that it was important that they received that corrected report because corrections would have been sent in by delegations and the corrected version should be available sufficiently in time, for them to meet in the first week of September, as the first week of September should not be a particularly crowded period for WIPO. It said that if the Secretariat could indicate a possible date at that point, it would be useful for them to plan accordingly.

179. The Chair said that he would like the report to be ready in time and requested the Secretariat to indicate the schedule.

180. The Secretariat stated that the draft report containing all the interventions made during the current session would be communicated to the Permanent Missions of the Member States by August 15, 2005, and that it would also be made available in electronic form and on the WIPO website to the Member States, IGOs and NGOs within the same deadline. Comments on the draft report should be communicated in writing to the Secretariat by August 31, 2005. The revised draft report would then be made available and considered for adoption at the resumed Third session, which would take place for the said purpose of the adoption in September 2005. The Secretariat added that the date and time for the resumed third session would be communicated, as soon as possible.

181. The Chair asked the delegations whether they had any objections to that procedure, and as there were none, it was adopted.

Agenda Item 7: Closing of the Session

182. The Chairman thanked the delegations for their efforts, their patience and for the intelligent way in which they were able to find a solution to a difficult problem. He also thanked the interpreters very much for the enormous help they had given them during that meeting. The Chairman said the session would resume at a time and on a date, which would be given to them later for the adoption of the report, and adjourned the session.

[Anenx follows]

ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. ÉTATS MEMBRES/MEMBER STATES  
(dans l'ordre alphabétique des noms français des États)  
(in the alphabetical order of the names in French of the States)

AFRIQUE DU SUD/SOUTH AFRICA

Simon QOBO, First Secretary, Permanent Mission, Geneva

ALGÉRIE/ALGERIA

Boumédiène MAHI, First Secretary, Permanent Mission, Geneva

ALLEMAGNE/GERMANY

Li-Feng SCHROCK, Senior Ministerial Counsellor, Federal Ministry of Justice, Berlin

ARGENTINE/ARGENTINA

Alberto J. DUMONT, Embajador, Representante Permanente, Misión Permanente, Ginebra

Marta GABRIELONI (Sra.), Consejera, Misión Permanente, Ginebra

AUSTRALIE/AUSTRALIA

Tegan BRINK, Third Secretary, Permanent Mission, Geneva

AUTRICHE/AUSTRIA

Johannes WERNER, Deputy Head, Department of International Relations, Austrian Patent Office, Vienna

BAHREÏN/BAHRAIN

Jamal DAWOOD SALMAN, Director of Publication and Press, Ministry of Information, Manama

BANGLADESH

Toufiq ALI, Ambassador, Permanent Representative, Permanent Mission, Geneva

Mahbub-uz-ZAMAN, Minister, Permanent Mission, Geneva

Nayem U. AHMED, Third Secretary, Permanent Mission, Geneva

BARBADE/BARBADOS

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BÉLARUS/BELARUS

Aleksandr KULINKOVICH, First Secretary, Permanent Mission, Geneva

BÉNIN/BENIN

Yao AMOUSSOU, premier conseiller, Mission permanente, Genève

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BOTSWANA

Tshepo MOGOTSI, First Secretary, Permanent Mission, Geneva

BRÉSIL/BRAZIL

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BULGARIE/BULGARIA

Dimitar TZANTCHEV, Ambassador, Permanent Representative, Permanent Mission, Geneva



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HE Hua, Deputy Commissioner, State Intellectual Property Office (SIPO), Beijing

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DUAN Yuping (Mrs.), Deputy Director, Information Division, Copyright Department, National Copyright Administration of China (NCAC), Beijing

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HU Yuzhang, Program Officer, International Cooperation Department, State Intellectual Property Office (SIPO), Beijing

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CÔTE D'IVOIRE

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ÉGYPTE/EGYPT

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EL SALVADOR

Juan Carlos FERNÁNDEZ, Ministro Consejero, Misión Permanente, Ginebra

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Adel Issa AL MAHRI, First Secretary, Permanent Mission, Geneva

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ÉTHIOPIE/ETHIOPIA

Esayas GOTTA SEIFU, First Secretary, Permanent Mission, Geneva

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Evgueny ZAGAYNOV, Counsellor, Permanent Mission, Geneva

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GRÈCE/GREECE

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RÉPUBLIQUE POPULAIRE DÉMOCRATIQUE DE CORÉE/DEMOCRATIC PEOPLE'S  
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RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

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RÉPUBLIQUE-UNIE DE TANZANIE/UNITED REPUBLIC OF TANZANIA

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ROUMANIE/ROMANIA

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Hilary THOMAS (Ms.), Attaché, Permanent Mission, Geneva

SAINT-SIÈGE/HOLY SEE

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SÉNÉGAL/SENEGAL

André BASSE, premier secrétaire, Mission permanente, Genève

SIERRA LEONE

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SINGAPOUR/SINGAPORE

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Pai Ching KOONG (Ms.), First Secretary, Permanent Mission, Geneva

SRI LANKA

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Roman KOLAKOVIC, Second Secretary, Permanent Mission, Geneva

THAÏLANDE/THAILAND

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TRINITÉ-ET-TOBAGO/TRINIDAD AND TOBAGO

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TURQUIE/TURKEY

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URUGUAY

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VENEZUELA

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YÉMEN/YEMEN

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ZAMBIE/ZAMBIA

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II. ORGANISATIONS INTERNATIONALES  
INTERGOUVERNEMENTALES/  
INTERNATIONAL INTERGOVERNMENTAL  
ORGANIZATIONS

COMMISSION DES COMMUNAUTÉS EUROPÉENNES (CCE)/COMMISSION OF THE  
EUROPEAN COMMUNITIES (CEC)

Luis FERRÃO, Principal Administrator, European Commission, Luxembourg

Harrie TEMMINK, Administrator, Industrial Property, Internal Market and Services  
Directorate-General, European Commission, Brussels

Oliver Rowland Benjamin SLOCOCK, First Secretary, Permanent Delegation, Geneva

CONFÉRENCE DES NATIONS UNIES SUR LE COMMERCE ET LE  
DÉVELOPPEMENT (CNUCED)/UNITED NATIONS CONFERENCE ON TRADE AND  
DEVELOPMENT (UNCTAD)

Christopher SPENNEMANN, Expert, Division on International Trade in Goods, Services and  
Commodities (DITC), Geneva

Elisabeth TUERK (Ms.), Economic Affairs Officer, Trade Negotiations and Commercial  
Diplomacy Branch, Division on International Trade in Goods and Services, and Commodities,  
Geneva

CONSEIL DE L'UNION EUROPÉENNE/COUNCIL OF THE EUROPEAN UNION

Oliver HALL ALLEN, Counsellor, Geneva

GROUPE DES ÉTATS D'AFRIQUE, DES CARAÏBES ET DU PACIFIQUE (GROUPE  
DES ÉTATS ACP)/AFRICAN, CARIBBEAN AND PACIFIC GROUP OF STATES  
(ACP GROUP)

Marwa Joel KISIRI, Ambassador, Permanent Observer, Permanent Delegation, Geneva

OFFICE EUROPÉEN DES BREVETS (OEB)/EUROPEAN PATENT OFFICE (EPO)

Johan AMAND, Principal Director a.i., European and International Relations, Munich

ORGANISATION AFRICAINE DE LA PROPRIÉTÉ INTELLECTUELLE  
(OAPI)/AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI)

Anthioumane N'DIAYE, directeur général, Yaoundé

ORGANISATION EURASIENNE DES BREVETS (OEAB)/EURASIAN PATENT  
ORGANIZATION (EAPO)

Khabibullo FAYAZOV, Vice President, Moscow

ORGANISATION INTERNATIONALE DU TRAVAIL (OIT)/INTERNATIONAL  
LABOUR OFFICE (ILO)

John David MYERS, Industrial Specialist, Sectoral Activities Department, Geneva

ORGANISATION MONDIALE DU COMMERCE (OMC)/WORLD TRADE  
ORGANIZATION (WTO)

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Lauro LOCKS, Legal Affairs Officer, Intellectual Property Division, Geneva

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Viviana Carolina MUNOZ TÉLLEZ (Ms.), Intern, Geneva

Ouseph THARAKAN, Intern, Geneva

III. ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES/  
INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

Association of 3-D Trade Human Rights Equitable Economy  
Davinia OVETT (Ms.) (Programme Coordinator, Geneva)

Association littéraire et artistique internationale (ALAI)  
Victor NABHAN (Président, Lausanne)

Biotechnology Industry Organization (BIO)  
Evelyn MONTELLANO (Ms.) (Delegate, Washington, D.C.)

British Copyright Council (BCC)  
Emma PIKE (Ms.) (Director, British Music Rights (BMR), London)

Business Software Alliance (BSA)  
Benoît MÜLLER (Director, Software Policy Europe, Brussels)

Centre d'échanges et coopération pour l'Amérique latine (CECAL)/Exchange and  
Cooperation Centre for Latin America (ECCLA)  
Michel CELI VEGAS (Head, Geneva); Geraldine SUIRE (Ms.) (délégué, Bourg les Valence,  
France)

Centre pour le droit international de l'environnement (CIEL)/Centre for International  
Environment Law (CIEL)  
Maria Julia OLIVA (Ms.) (Director, Project on Intellectual Property and Sustainable  
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Chambre de commerce internationale (CCI)/International Chamber of Commerce (ICC)  
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Civil Society Coalition (CSC)  
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Comité consultatif mondial des amis (CCMA)/Friends World Committee for Consultation  
(FWCC)  
Martin WATSON (Representative for Global Economic Issues, Geneva);  
James LANKFORD (Research Assistant, Geneva); Carolyn DEERE (Ms.)  
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Confédération internationale des sociétés d'auteurs et compositeurs (CISAC)/International  
Confederation of Societies of Authors and Composers (CISAC)  
David UWEMEDIMO (directeur juridique, Paris)

Consumers International (CI) and Trans Atlantic Consumer Dialogue (TACD)

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European Digital Rights (EDRI)

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eIFL

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Fédération internationale des associations de producteurs de films (FIAPF)/International Federation of Film Producers Associations (FIAPF)

Bertrand MOULLIER (Director General, Paris)

Fédération internationale des acteurs (FIA)/International Federation of Actors (FIA)

Dominick LUQUER (General Secretary, London); Catherine ALMÉRAS (Mme) (délégation générale, syndicat français des artistes-interprètes, Paris)

Fédération internationale de l'industrie du médicament (FIIM)/International Federation of Pharmaceutical Manufacturers Associations (IFPMA)

Eric NOEHRENBERG (Director, International Trade and Market Policy, Geneva); Philip HEDGER (Executive Managing Director, International Affairs, Pfizer, Inc., New York); Susan CROWLEY (Ms.) (Senior Director, International Organization Relations, Merck Sharp & Dohme (Europe), Inc., Geneva); Boris AZAIS (Merck and Company, Brussels)

Fédération internationale de l'industrie phonographique (IFPI)/International Federation of the Phonographic Industry (IFPI)

Shira PERLMUTTER (Ms.) (Executive Vice-President, Global Legal Policy, Legal Policy and Regulatory Affairs Department, London)

Fédération internationale de la vidéo (IVF)/International Video Federation (IVF)

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Fédération internationale des associations de bibliothécaires et des bibliothèques (FIAB)/International Federation of Library Associations and Institutions (IFLA)

Barbara STRATTON (Ms.) (Senior Adviser, Copyright, Copyright and Other Legal Matters Committee, Chartered Institute of Library and Information Professionals (CILIP), London)

Fédération internationale des musiciens (FIM)/International Federation of Musicians (FIM)

Benoît MACHUEL (secrétaire général, Paris)

Free Software Foundation Europe (FSF Europe)

Georg C.F. GREVE (President, Hamburg); Karsten GERLOFF (Assistant to the President, Lueneburg, Germany)

Institute for Policy Innovation (IPI)

Tom GIOVANETTI (President, Texas)

International Centre for Trade and Sustainable Development (ICTSD)

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International Federation of Reproduction Rights Organizations (IFRRO)

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International Policy Network (IPN)

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IP Justice

Robin D. GROSS (Executive Director, San Francisco, California)

Médecins sans frontières (MSF)

Ellen 't HOEN (Ms.) (Director, Policy Advocacy and Research, Campaign for Access to Essential Medicines, Paris)

Third World Network (TWN)

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Union internationale des éditeurs (UIE)/International Publishers Association (IPA)

Jens BAMMEL (Secretary General, Geneva); Antje SORENSEN (Mrs.) (IPA Delegate); Hugh JONES (Copyright Counsel, UK Publishers, London); Makfudin Wirya ATMAJA (IPA Delegate, Geneva); Makfudin Wirya ATMAJA, President, Indonesian Book Publisher's Association (IKAPI), Jakarta

Union mondiale pour la nature (IUCN)/The World Conservation Union (IUCN)

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Union for the Public Domain (UPD)

Balganesh SHYAMKRISHNA (Consultant/Representative, Connecticut)

IV. ORGANISATIONS NATIONALES NON GOUVERNEMENTALES/  
NATIONAL NON-GOVERNMENTAL ORGANIZATIONS

Electronic Frontier Foundation (EFF)

Cory DOCTOROW (EFF European Affairs Coordinator, London)



V. BUREAU/OFFICERS

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Vice-Président/Vice Chair: Dimiter TZANTCHEV (Bulgarie/Bulgaria)

V. SECRETARIAT DE L'ORGANISATION MONDIALE DE LA  
PROPRIÉTÉ INTELLECTUELLE (OMPI)/  
SECRETARIAT OF THE WORLD INTELLECTUAL  
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[End of Annex and of document]