

# WIPO



PCDA/2/4

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WORLD INTELLECTUAL PROPERTY ORGANIZATION  
GENEVA

## PROVISIONAL COMMITTEE ON PROPOSALS RELATED TO A WIPO DEVELOPMENT AGENDA (PCDA)

**Second Session**  
**Geneva, June 26 to 30, 2006**

REPORT

*adopted by the Meeting*

1. The WIPO General Assembly, in its session held in September – October 2005, decided to “constitute a Provisional Committee to take forward the Inter-sessional Intergovernmental Meeting on a Development Agenda for WIPO (IIM) process to accelerate and complete the discussions on proposals relating to a WIPO Development Agenda and report with any recommendations to the General Assembly at its September 2006 Session”. It was also decided that the “Provisional Committee shall have two one-week sessions, and the deadline for submission of new proposals shall be the first day of the first session of the Committee”. The First Session of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), was held from February 20 to 24, 2006. The Second Session of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), was held from June 26 to 30, 2006.

2. The following States were represented: Afghanistan, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Congo, Côte d’Ivoire, Croatia, Cuba, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Gabon, Germany, Georgia, Greece, Haiti, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Jamaica, Japan, Jordan, Kenya, Kyrgyzstan, Kuwait, Lesotho, Liberia, Libyan Arab Jamahiriya, Malaysia, Mali, Mauritius, Mexico, Morocco, Myanmar, Namibia, Netherlands, Nigeria, Norway, Oman, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Rwanda, Singapore, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Kingdom, United States of America, Uruguay, Venezuela, Viet Nam, Zambia and Zimbabwe (90).

3. The following intergovernmental organizations (IGOs) took part as observers: African Regional Intellectual Property Organization (ARIPO), Commission of the European Communities (CEC), Food and Agriculture Organization of the United Nations (FAO), International Labour Office (ILO), *Organisation Internationale de la Francophonie* (OIF), South Centre, United Nations Conference on Trade and Development (UNCTAD), and the World Trade Organization (WTO) (8).
4. Representatives of the following non-governmental organizations (NGOs) took part as observers: 3-D > Trade - Human Rights - Equitable Economy (3D), Centre for International Industrial Property Studies (CEIPI), CropLife International, Centre for International Environment Law (CIEL), Electronic Frontier Foundation (EFF), Civil Society Coalition (CSC), Computer & Communications Industry Association (CCIA), Consumers International (CI), eIFL.net, European Digital Rights (EDRI), Free Software Foundation Europe (FSF), Friends World Committee for Consultation (FWCC), *Fundação Getulio Vargas* (FGV), 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 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 Trademark Association (INTA), International Video Federation (IVF), IP Justice, Latin American Association of Pharmaceuticals Industries (ALIFAR), *Médecins Sans Frontières* (MSF), The European Law Students' Association (ELSA), Third World Network (TWN) and World Federation for Culture Collections (WFCC) (35).
5. Following discussions by the PCDA, The Federalist Society and Queen Mary Intellectual Property Research Institute, attended the meetings of the PCDA as “*ad hoc*” observers.
6. The list of participants is attached to this report.
7. The PCDA discussed a proposal by the “Group of Friends of Development”, entitled “Decision of the PCDA on the establishment of a WIPO Development Agenda”(PCDA /2/2) and a proposal by Kyrgyzstan, entitled “Proposal on recommendation to the General Assembly of WIPO”.

#### Agenda Item 1: Opening of the Meeting

8. The Chair, Ambassador Rigoberto Gauto Vielman (Paraguay), warmly welcomed all the delegations, particularly those coming from capitals. He stressed that the second and final session should focus on results. The Chair said that since the last meeting, he had had the opportunity to hold consultations with regional groups and other interested delegations, in an attempt to find a solution in terms of process, so that they could obtain concrete results at that session, and be in a position to submit proposals to the General Assembly in its September 2006 session. The Chair had found the exchanges very useful and hoped that they could reach conclusions. He said that during his meeting with regional coordinators the previous week, it had been decided that there would be no general statements, but if any

delegation wished to take the floor, they could do so. The Chair said that a short while ago, the “Group of Friends of Development” had submitted a proposal which had been distributed by the Secretariat and some time would be set aside to discuss it. The Chair added that working groups, plenary sessions and informal meetings had been held with coordinators, in an attempt to make progress on the agenda. It was his intention to open the meeting, adopt the agenda and the report of the previous session, and then consult with the coordinators to settle on procedure, in order to reach an agreement and complete their work. The Chair said that three NGOs has sought accreditation to attend the meeting and requested the Secretariat to read out their names.

9. The Secretariat said that the three NGOs which had requested to attend the meetings of the PCDA were the Federalist Society, Washington D.C., United States of America; Creative and Innovative Economy Center, Washington D.C., United States of America; and Queen Mary Intellectual Property Research Institute, London, United Kingdom.

10. The Chair thanked the Secretariat and asked whether any delegation had reservations about any of those requests. As there were none, the three NGOs were granted *ad hoc* accreditation to attend the PCDA session.

#### Agenda Item 2: Adoption of the Agenda

11. The Chair proposed the draft agenda (document PCDA/2/1 Rev.), and as there were no comments, it was adopted.

12. The Chair informed the Committee that according to consultations that had been made with the coordinators, it had been agreed to have a full five-day meeting, and that as had been done during the IIM meetings, a report would be prepared later and communicated to delegations for approval.

#### Agenda Item 3: Adoption of the Report of the First Session of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA) (see document PCDA/1/6 Prov.2)

13. The Chair recalled that the Draft Report of the First Session had been circulated by the Secretariat and comments received from the delegations incorporated in the Revised Draft Report. He said that if delegations had any further comments, they could be handed over to the Secretariat. The report was then adopted. The session then adjourned for informal consultations.

#### Agenda Item 4: Consideration of Proposals Submitted by Member States

14. The Chair resumed discussions in the Plenary and apologized to the delegations for the delay as they were conducting prolonged consultations. He explained that the proposal made by him had not met with consensus and so it had been decided to start the discussions on a cluster wise basis, so that delegations could make their comments on the entire topic and not proposal by proposal. As the discussions progressed, members could submit draft recommendations. Thereafter, the meeting could discuss these suggestions and decide on a recommendation to be made to the General Assembly.

15. The Delegation of Mexico requested the Chair to explain its proposal in detail. It asked whether the document to be taken as a basis for discussion was the Annex to the Report

PCDA/1/6 Prov.2 or PCDA/2/2. If it was to be the report, what would be the status of document PCDA/2/2 for the present meeting. From the consultations, the Delegation had understood that the discussions would be conducted cluster wise. That may not be adequate as it had several comments on each proposal. If a cluster wise approach was adopted, it may not give full merit to all the proposals. The Delegation also requested the Chair to explain the status of document PCDA/2/2.

16. The Chair emphasized that the only document which could be used as a basis for discussion was PCDA/1/6 Prov. 2., especially the Annex containing all the proposals. There was no other document. PCDA/2/2 was a submission made by the “Group of Friends of Development”. That document, he reminded, would be submitted at some point by that Group, but at the time, it was not a basis for their discussions. He added that what they were not able to agree on earlier that day, was the Chair’s own proposal on methodology. After discussions, the delegations would be able to submit their concerns and identify, within the cluster, the specific questions on the specific topics. That approach presented no problem. When the delegations dealt with the issue, they could refer to all the clusters, and within them, if they so wished, to some specific topic, but they were not going to have the discussion “topic per topic”, and that was what they had been able to agree to in the morning.

17. Taking the floor as Coordinator of Group B, the Delegation of Switzerland thanked the Chair for his proposal and for the efforts he had made to try to bring the whole process forward to be able to achieve specific results by the end of the week, so as to make a recommendation to the General Assembly. The Delegation stressed that it was a desire fully shared by Group B and they were fully and constructively committed to that objective. However, in the light of the proposals before them within Group B, they continued to think that it would be useful to be able to give priority to some of the topics before the end of the week. That did not mean that they did not agree to proceed in the way in which the Chair had proposed. The Delegation said that they had some doubts and fears on the possible consequences of already discussing specific recommendations to the General Assembly or of listing them. They really found it difficult to see how that was going to facilitate their work, but confirmed that the members of Group B agreed to work constructively on this proposal. The Delegation also indicated that for the members of Group B, there was no intention of excluding any proposal from discussion, when talking about giving priority to some topics or seeing those which had an emerging consensus. The idea was to discuss and decide on proper action on all the proposals – a discussion that would continue after the General Assembly. The Delegation noted that they wanted to commit themselves constructively along those lines. Finally, with regard to that day’s discussion, it was suggested that it would have been more useful to carry out the discussion in an informal mode, in order to have more open and dynamic discussions.

18. The Chair declared that he appreciated the Delegation of Switzerland’s comments and the attitude of flexibility and openness on part of Group B. He expressed his opinion that it would have been useful to carry on the discussion in an informal manner to facilitate the participation of all delegations, but noted that it was a decision the delegations had to make. He asked the delegations to indicate whether they agreed to work in an informal mode.

19. The Delegation of Brazil was unclear about the question. Were they going to continue in a formal manner as the Chair had proposed at the beginning of the session, or was it going to be different, that is to accept the proposal from the Delegation of Switzerland on behalf of Group B, for the meeting to be informal. The Delegation said that it had no objection to this, as long as the other delegations accepted it. However, the Delegation believed that there was

an advantage in meeting in a formal session as the interventions were included in the minutes which enabled them to have a great degree of transparency, even for people in their capitals, who did not have the benefit of taking part in the meetings in Geneva. Therefore, if a record was kept of the country's position, they could always refer to it later. Also, in the formal mode, one of its benefits was that members of observer delegations could also take part.

20. The Chair then decided to continue in formal session and requested the delegations to speak on Cluster A, which was on assistance and capacity-building.

21. The Delegation of Brazil wished to refer to the suggestions on the proposals contained in PCDA/2/2 and to indicate it had suggestions for recommendations regarding the different points and items included under that section, on technical assistance, which were in the cluster under consideration.

22. The Chair interrupted the Delegation of Brazil as the Delegation of Mexico was raising a point of order.

23. The Delegation of Mexico reiterated that it did not understand the status of document PCDA/2/2. It believed that the document on which discussions were based was the Annex to document PCDA/1/6/Prov.2. Document PCDA/2/2, which they had had the opportunity to look at, and many delegations had only looked at that the same day, was very interesting, and had important proposals. But it believed that for many delegations it would be important to send that document to their capitals to receive ideas and specific proposals. The Delegation, therefore, wished to ask the Chair if the Committee was required to take that document as a basis, and if so what was the status.

24. The Chair reiterated that document PCDA/2/2 was not the basis for their discussions. If the Delegation of Brazil wanted to refer to the document, the delegations could consider it and refer to it or to any other document if they so wished, but the document which they had before them as a working basis was the document which was submitted as an Annex to document PCDA/1/6 Prov.2, and that there was no other document. If delegations wished to mention other documents, they could do so, but the Committee was not compelled to react, nor even to accept it.

25. The Delegation of Brazil continued saying that the document which they had submitted was an official document of the meeting, and contained their proposals and recommendations for the General Assembly, based on PCDA1/6/Prov. 2. They could clarify that position for the Delegation of Mexico. The "Group of Friends of Development" had synthesized that document, and wanted to put the points that were listed there in a language, which was more appropriate for recommendations to the General Assembly. Concerning the points there, it would have been easier to say that the "Friends of Development" supported the items contained in the proposals 13 to 32. But by doing so, they would not be making any headway, since each group was making a reference to their own items. Their effort, therefore, was to reduce the number of proposals, put them in a more appropriate language for a recommendation which could be the result of the present meeting. Specifically, it was a proposal made by the "Group of Friends of Development" to be considered in the present meeting. The Delegation believed other delegations would have until the end of the present meeting to make their own points and propose what they liked. It was thus sufficient to introduce the document and show which paragraphs referred to the cluster on technical assistance.

26. The Chair welcomed the clarification and thanked the “Group of Friends of Development” for their efforts in drawing up that document. He recalled that the deadline for the submission of proposals had already expired. However, the delegations could still submit documents as they wished, and make observations, but that did not compel the delegations to take a stand if they did not wish to do so. He then asked for further comments on the set of proposals contained in Cluster A.

27. The Delegation of Mexico indicated that it wanted to raise some questions, in order to be more informed and to be able to take the correct decision when informing its authorities in the capital. It thanked the “Group of Friends of Development” for making a document with a summary. It mentioned that some other observations could come later from its capital, but that it wanted to make some comments at that moment. With regard to document PCDA/1/6 Prov.2 and Cluster A, proposal 2, the Delegation had a little difficulty because the document referred to making national intellectual property (IP) institutions more efficient and ensuring a fair balance between IP protection and safeguarding public interest. As that was a technical assistance and capacity-building proposal, they had a difficulty in understanding whether, under this proposal, WIPO would have a mandate to try and ensure that IP Offices in Member States became more efficient, as well as ensured a fair balance, since that would transform WIPO into a supervisory body of the member countries. It did not quite understand what was meant by that paragraph and by the wording in it. The Delegation quoted: “this technical assistance should be extended to sub-regional and regional organizations dealing with IP”. Did that mean that their requests for technical assistance were to be made through those organizations? Were those sub-regional and regional organizations to benefit from technical assistance? Did that mean that WIPO would only respond to technical cooperation requests which had a sub-regional and/or regional effort rather than those which were directed at a national effort? The Delegation continued saying it was very pleased with paragraph 5, where there was a reference to establishing a Trust Fund within WIPO to provide specific financial assistance for least developed countries (LDCs), yet it was interested in hearing from the delegations who had proposed paragraph 5 as to where they were going to get hold of the funds to set up that Trust Fund, who was going to administer it, which bank was going to administer the fund, etc. In other words, it needed more details. As regards paragraph 10, “request WIPO to establish a voluntary contribution fund to promote the legal, commercial and economic exploitation of intellectual property rights (IPRs) in developing countries and LDCs”, the Delegation asked whether they had any model in mind or if the model was based on something which existed in other organizations within the United Nations (UN) System. It continued asking whether there was a basis or a system on which that body could determine what percentage was going to be involved there or the size of voluntary contributions which were going to be made, and so on. As regards paragraph 19, linked to neutral technical assistance, the Delegation identified some problems. It said that if technical assistance was provided by WIPO at the request of a government, how could it be anything other than neutral? It did not understand the emphasis on the word “neutral” and, therefore, asked why that was included in paragraph 19. As regards paragraph 25, which included “to provide technical cooperation to developing countries, at their request, in order to better understand the interface between IPRs and competition policies”, the Delegation said that there were also many other points referring to competition and it wondered whether in WIPO they actually had the capacity to deal with that issue, and if so, it did not know whether this body had the mandate or the competence. It added that it fell within the mandate of the WTO rather than WIPO. In relation to paragraph 29, linked to “orient[ing] technical assistance to ensure that national regimes were set up to implement international obligations in an administratively sustainable way and did not overburden scarce national resources”, the Delegation found it again a little difficult to understand its scope because they had been asked once again to turn

WIPO into some kind of supervisory body for what's being done nationally within States. The Delegation did not know how far WIPO was being asked to go there, and believed it might be a little bit too far. Should the Organization carry out specific monitoring or supervision of what each and every individual Member State was doing with its own set of resources? That would be over-stretching the Organization and it would also be asked to intervene in the national affairs of individual States. With regard to document PCDA/2/2, paragraph 3, they had been talking about the principles and technical assistance. On the issue of neutrality, the Delegation reiterated what had been said before with respect to the use of the word neutral in the other document. Requests for technical assistance were normally individual in nature and, therefore, there was a failure to understand why this issue of neutrality had been raised. The other issue was where it said that policies should be in accordance with demand. Relating to competition policies, this was again something which made life difficult because the Delegation did not understand what role WIPO should play in determining the Member States' national competition policies. The Delegation believed that competition policies were issues, which should be dealt with by another international organization, not WIPO. On paragraph "h", there should be a guarantee of transparency in all issues relating to technical assistance: how were States going to guarantee such a transparency in technical assistance, which WIPO body was going to deal with that and how much was it going to cost, if a new body had to be set up in order to ensure transparency. The Delegation indicated that it would be most appreciative if the "Group of Friends of Development" would go into this particular aspect of their proposal in more detail. In 4, paragraph "f", there was a reference to the "social costs of intellectual property protection and enforcement [were] maintained at a minimum in developing countries". Again, how could WIPO determine what the social costs of IP protection were in each individual Member State, and what would be the mandate and the scope of the work to be given to WIPO in determining those social costs? And that was without even mentioning the possible thorny issue of interference in the sovereignty of national Member States. In paragraph 6, "to set up financial mechanisms aimed at promoting development-friendly technical assistance", what would be the model and outline and where would the money come from? The Delegation did not know where the summary document of the "Group of Friends of Development" actually ended. The Delegation concluded its observations by indicating that it had comments on other paragraphs that would be put forward as the debate moved ahead.

28. The Delegation of Chile said that all the proposals contained in document PCDA/1/6/Prov.2 seemed relevant. As the Delegation had stated earlier on that day, it would seem that a good alternative would be to start working on text and, therefore, one also needed to look at the recommendations when one analyzed the clusters. On the proposal of the "Group of Friends of Development", the Delegation particularly wanted to refer to 3 and 4, and to generally say that it believed that it was a good proposal. The proposal would certainly help that body to analyze what was in the document which contained the 111 proposals. The Delegation thought the document summarized quite well all the proposals made by various delegations. The Delegation particularly wanted to highlight the issue of competition policy, because it felt that it fell within the mandate of WIPO. It was important that WIPO brought in the issue of competition policy in all the clusters and in all the areas being dealt with by it. It had discussed the issue with officials of the Organization who had agreed that WIPO could do a great deal more on competition policy than it had been doing thus far. The Delegation saw that as a crucial component of IP issues. Developing countries and LDCs did not have the appropriate legislation on competition. Therefore, that was an issue of considerable importance for them and of relevance to the Organization. As the debate progressed, the Delegation wished to make some specific proposals on two or three issues.

29. The Delegation of Nigeria congratulated the Chair and expressed its appreciation for the wisdom and sagacity in starting the deliberations by devising a methodology for them to consider those matters. The Delegation believed that they were now in full gear and actively engaged in the process. It thanked the Delegation of Mexico for seeking clarification on certain elements of the proposals contained under the technical assistance and capacity-building cluster. The African Group had tabled two or three proposals, and the Delegation offered to shed some light on those proposals, especially numbers 2, 5 and 10. With regard to number 1, it had received sufficient information to be convinced that the technical assistance being delivered by WIPO was, in terms of content and substance, demand-driven, neutral, objective and was at the request of independent or individual Member States. Therefore, the African Group was quite happy to discover those aspects of the technical assistance which was being provided by WIPO. And that it was actually aimed at assisting countries in developing their capacity to appreciate, utilize and benefit from the application of an IP system. So far, the African Group was quite pleased with that observation and wished to put it on record. On number 2, what was meant was the necessity to improve the capacity of national IP Offices, i.e., to equip them in such a manner that they would be able to translate commitments entered into at the international level or at the national level. And also, to help meet their requirements in terms of training, equipment and perhaps any other facilities that would enhance their efficiency and capability. The Delegation said that the reference to ensuring a fair balance between IP protection and safeguarding the public interest was a common theme and was being discussed in WIPO, the WTO and WHO, i.e., issues like access to health, medicines, nutrition, knowledge and so forth. The African Group felt that those were areas of public interest concern which IP should not transgress unduly, but instead should help fortify at the national level. A fair balance between those tools should also be ensured. Technical assistance should be extended to sub-regional and regional organizations dealing with IP. That was also to encapsulate the idea that it was necessary, particularly in Africa where regional IP organizations like ARIPO and African Intellectual Property Organization (OAPI) could benefit from the same facilities or assistance that were being given to national IP Offices. Whatever benefits were experienced at the national level should be extended to those organizations and to similar organizations in the developing world. With regard to item number 5, establishing a Trust Fund within WIPO, the African Group wanted to re-draft the sentence. Instead of specific financial assistance, it could be specific targeted assistance. Assistance need not necessarily be financial. Members within the Group had thought that the initial insertion of "financial" was what one might call the "printer's devil". The devil must be blamed for that, not the coordinator. So, it shall be specific assistance, in terms of technical and other sort of assistance. The Trust Fund could be something that Member States could decide on. It added that it was very happy to learn that a voluntary fund had been established during the course of the year in the Intergovernmental Committee on Traditional Knowledge, Genetic Resources and Folklore (IGC) and the Member States could decide upon something similar. With respect to number 10, the proposal to establish a voluntary contribution fund to promote the legal, commercial and other economic exploitation, the Delegation was not certain if it was an African Group proposal, but it was on the same lines with what they had proposed in paragraph 5. Overall, in the estimation of the African Group, the idea of technical assistance and capacity-building should be paramount in terms of appreciating, understanding and applying IP commitments by developing countries and LDCs. The African Group believed that that issue should not raise undue controversy if Member States were to approve it, it was only to advance their interest and perhaps to expand the scope of the application of IP. The Delegation, speaking on behalf of the African Group, reiterated its appreciation for the statement made by the Delegation of Mexico and hoped that what had been said would go some way in explaining issues.



30. The Delegation of South Africa wanted to make some additional comments on what the Coordinator of the African Group had declared. It said that technical assistance should be extended to sub-regional and regional organizations dealing with IP. This was conceptualized with the understanding that some of the countries in Africa did not have IP Offices and relied mostly on those sub-regional organizations.

31. The Delegation of Chile wished to indicate that at the TRIPS Council, there were some countries with vulnerable economies which had made a proposal relating to development, and it was mentioned that technical cooperation could be provided through regional organizations. Sometimes, those organizations did not have the opportunity to attract technical assistance and make use of it individually. Therefore, that proposal was quite positively welcomed given that sometimes no notifications were made for countries through regional organizations, if they did not have a Permanent Mission in Geneva. The Delegation, therefore, believed the proposal was worthy of consideration and should be open to acceptance.

32. The Delegation of the United States of America said that it supported the statement made by the Delegation of Switzerland on behalf of Group B, and recalled the mandate given by the General Assembly to that Committee to accelerate and complete the discussions on proposals, so that concrete and practical results could be achieved in the most timely and effective manner. With regard to Cluster A on technical assistance, the Delegation added that it had studied very carefully the 32 proposals made by various delegations, and was in a position to support the majority of those proposals. The Delegation called out the numbers of these proposals, namely, 1 to 12, 14, 17 and 22 to 25. With regard to Proposal 22, the Delegation mentioned that it supported the principle, as long as it applied to all WIPO staff, not just those involved in technical assistance, and that it was in line with best UN practices. With regard to other proposals under that cluster that had not been named, the Delegation stated that it had some reservations and concerns, and was not in a position to join a consensus to move them forward at that time, and would be glad to elucidate, point by point, their concerns on those proposals, at the appropriate time.

33. The Delegation of Brazil provided additional information regarding the suggestions which were submitted in document PCDA2/2 and indicated that the effort made was not limited to a synthesis of the proposal made by the "Groups of Friends of Development", but also to include the proposals of the other groups as well. It was an effort made to move to a point of convergence, and they had excluded some points contained in the complete proposal of the "Friends of Development". Therefore, they made some sacrifices as well, in order to achieve something which would be easier to handle. The Delegation pointed out that it was important to clarify that, for example, the whole issue of A1, had originally come from the African Group. Paragraph 3 were recommendations, which were being discussed as principles. The first principle was that technical assistance should be development-oriented and consistent with international and national instruments and national development policies, which had an integrated comprehensive approach, including the issue of competition which the Delegation of Chile thought was very interesting. The Delegation stated that it was a very important topic for Brazil and references to competition policy were found in several documents of the WIPO Secretariat itself. The Delegation was of the opinion that it was agreed that competition policies were an important framework for the proper implementation of IP policies. The issue that technical assistance should be neutral, have a non-discriminatory nature amongst recipients and be demand-driven, was the same language as was contained in the original proposal put forward by the African Group. The question of the independence of technical assistance staff was a very important topic for all the

organizations of the UN system. The issue of continuous evaluation was also important because it needs to have an independent framework. The Delegation added that more independent the framework, the more credibility such evaluation would have. It was also important that there were mechanisms to measure the effectiveness of technical assistance. The issue of transparency in paragraph “h”, could be achieved in different ways, including more complete, comprehensive information regarding the costs on the people who were involved in the projects in each country and that all of that was outlined in a transparent manner on Internet sites. There were several ways of ensuring that technical cooperation within WIPO was more transparent so that the necessary information could be accessed by all. Based on those principles in paragraph 4, it was attempted to include a list of the disciplines and guidelines, which can be drawn up for technical cooperation or technical assistance. That was a question of transparency, relating to the means to achieve it; the issue of how to see that technical training of members be changed towards making it more friendly to development; through the in-built flexibility in the international IP system. The African Group and others had referred to that point in different contexts. There was no reason to just focus on some obligations for the protection of individual interests of the rightholders. It was important to protect them, but along with this there would also be other commitments, which would be included in the treaties to provide some flexibility so that the countries can also adapt to meet their interests. Paragraph 4(c) dealt more specifically with competition law; (d) talked about the protection of local creations, creativity innovations, and inventions, touching developing national scientific and technological infrastructure. The Delegation did not see how a member could not be in agreement with this as an important objective of the cooperation rendered by WIPO. Furthermore, paragraph 2, for example, which originally was submitted by the African Group, spoke about strengthening the institutional capacity and rendering facilities to see that the national institutions of IP were more effective, etc., and struck a balance between protection and public interest. The Delegation thought that it was in harmony with what was contained in their proposal. The issue of financial mechanisms was very important and had been referred to, directly or indirectly, by the African Group, and the Delegations of Bahrain, and of the United States of America. The Delegation mentioned the objective of creating financial mechanisms so as to promote technical assistance to benefit developing countries and LDCs, particularly in Africa. The Delegation concluded by saying that what was being tried to achieve was that the language and wording could facilitate the synthesis in some way, as a final result of the session.

34. The Delegation of Italy stated that it had a suggestion, which would simplify the consideration of the points under discussion. The suggestion was that a document be prepared which would bring together all points which were similar. The Delegation added that there were quite a lot of points in the 111 proposals under discussion which were similar to one another. If proposal numbers 20 and 31, for example, in the first part were to be re-grouped it would make life a lot easier for everybody. The Committee could look at them together more easily and the discussion would be less complicated as a result. The Delegation offered its support to most of the proposals made in the first part, but mentioned that they had a few doubts nonetheless, mainly with paragraphs 2, 3, 20 and 26 to 32. On those particular paragraphs, the Delegation reserved its right to seek further clarification from the countries that originally tabled the proposals. The Delegation thought it would be appropriate to go into a more detailed discussion.

35. The Delegation of Japan said that technical assistance and capacity-building provided developing nations with a foundation for achieving economic development, utilizing IP. It supported most of the proposals in that cluster and added that such activities should be carried out on a demand-driven or tailor-made basis, and in consideration of the stage of development

and the needs of the country, instead of in a 'one-size for all' manner. The Delegation said that it would also wish to draw attention to the financial implications of the proposals on WIPO, due to budgetary constraints of WIPO.

36. The Delegation of Benin offered its support to the statement made by the Delegation of Nigeria, as Coordinator of the African Group, on all the proposals dealing with technical assistance and capacity-building, more particularly on the proposal for the establishment of a Trust Fund. The Delegation also thanked the Delegation of the United States of America for the flexibility with which it had agreed to enter into the debate.

37. The Delegation of India briefly commented on a few of the proposals on technical assistance and capacity-building. With regard to paragraph 8, the Delegation welcomed the proposal to request WIPO to help Member States in setting up national strategies in the field of IP, and stated that the assistance should not be prescriptive in nature. It should instead encourage an informed debate amongst various stakeholders in the country. It added that the ownership of the national strategies should, in any case, be with the national governments. Concerning paragraph 9, the Delegation also welcomed the proposal to increase financial resources for technical assistance for promoting an IP culture, with the emphasis on introducing IP at different academic levels. The Delegation also emphasized that it was necessary to ensure that the objective of promoting an IP culture needed to take into account the balance between the rights of IP owners and the larger public interest. Similarly, the Delegation recognized, as referred to in paragraph 12, the importance of competing in a knowledge economy and declared that the focus should, however, be on enhancing the capacity and capability of developing countries and LDCs to be able to participate and compete. For instance, subsidized subscription to scientific and technical journals and electronic databases should be made available to institutions in developing countries and LDCs. The Delegation emphasized that the focus of technical assistance should be on building the capacity of developing countries to compete in the knowledge economy.

38. The Delegation of France began its statement by stating that it could not comment on document PCDA/2/2 because it had been circulated very late and some of the language versions had become available only very recently. In those circumstances, it was really very difficult for the Delegation to make comments on the body of the text. On document PCDA/1/6 Prov.2, the Delegation stated that some proposals seemed likely to allow the Committee to reach consensus in a relatively short time, and it gave a list of such proposals, namely 1, 5, 6, 8, 11, 13 to 15, 19, 22, 23 and 31. The Delegation emphasized that some of the proposals such as 2, 3, 16 and 28 contained elements which seemed to be interesting and which would therefore be worthy of further and more detailed discussions. It hoped that on the basis of such information, the debate could continue, step by step, putting the Committee by the end of the week into a position where it could achieve a result, which could then be forwarded to the next General Assembly.

39. The Delegation of Mexico thanked the African Group for its statement, adding that it agreed that a paraphrasing of what was contained in Cluster A would shed more light on the proposals and help the Committee to support a majority of them.

40. The Chair then opened the discussion on proposals contained in Cluster B. He added that the Committee was looking at the entire set of paragraphs falling within that particular cluster and asked delegations to make links to other issues if they felt that to be appropriate. The Chair mentioned that there were issues, as the Delegation of Italy had indicated, which could perfectly be merged. He thought that this could be tackled at the appropriate time and

added that the “Friends of Development” had, to a certain extent, already done it in their document, but also thought that it could be done further and welcomed delegations who wished to contribute.

41. The Delegation of Brazil said that the “Friends of Development” had tried to reflect their proposals on norm-setting in paragraphs 7, 8, 9, 11, 12, and 13 in Cluster B of document PCDA/1/6 Prov. 2. Paragraphs 14 and 16 also contained certain aspects of proposals made by the African Group. The Delegation said that the issue of norm-setting within WIPO was a core element of its proposal for a development agenda. That was perhaps the most important aspect, because the obligations negotiated within the Organization were obligations that would, at some point in time, require implementation by all the Member States. The Delegation said that it had submitted other documents such as IIM/1/4 and also the document prepared for the 2004 General Assembly, WO/GA/31/11. A more recent document was from the PCDA, PCDA/1/5. The Delegation said that technical cooperation was not sufficient in itself, unless it took into account the varying levels of development of countries. With regard to document PCDA/2/2 paragraph 7, it proposed the adoption of principles and guidelines to ensure that WIPO norm-setting activities achieved a certain number of things, which were listed. Paragraph 7 on page 4 listed the objectives of a development agenda. The Delegation said that sub paragraph (b) referred to the differences and the level of economic, social and technical development among members and the need to avoid promoting harmonization initiatives, which were detrimental to developing and/or LDCs. The Delegation said that the issue of the public domain, in sub paragraph (c), was also important as it reflected the interests of developing countries. The Delegation referred to the safeguarding of exceptions and limitations, presently in treaties that are still in force. The treaties negotiated in WIPO should not only reflect the rights of IP right holders, but also those of developing countries, civil society and public stakeholders. The Delegation added that sub paragraph (e) dealt with the relationship between IP and human rights. It said that there was a relationship between those two issues and they needed to be properly tackled if IPRs were not to end up inadvertently, trampling on human rights and international human rights instruments. The question of policy space in developing countries was dealt with in sub paragraph (f). It was required to enable countries to meet their specific development needs and requirements, through the provision of flexibilities, exceptions, limitations, and the provision of protection, adequate to the level of development of national conditions in each country. The Delegation said that sub paragraph (g) was picked up in the Standing Committee on the Patent Law Treaty (PLT). Seminars, public hearings and consultations should be held in WIPO, enabling all the parties interested in the conclusion of an agreement to make contributions. That would involve not only states and governments, but private sector, academia, civil society organizations, etc. The Delegation pointed out the importance of the provision contained in sub paragraph (i), particularly in the context of the negotiation of treaties in WIPO. The Delegation added that paragraphs 8, 9, 11, 12 and 13 each contained a synthesis of the main components of the WIPO development agenda proposals, in so far as they dealt with the issue of norm-setting. With regard to document PCDA/1/6 Prov.2, the Group had some difficulties, specifically with paragraphs 5 and 6. The question of best practices for economic growth was considered by it to fall well outside the field of competence of WIPO. Economic growth was not what WIPO was set up to deal with and so there was no reason why WIPO should be thinking about compiling a guide book of best practices for economic growth. The Delegation added that they should focus on issues of IP and the relationship between IP and development. That was fully inline with WIPO’s objectives, as a specialized agency of the UN system.

42. The Delegation of Mexico considered the points included under Cluster B mostly acceptable for discussion, but had some problems understanding some of them, namely, points 3, 24 and 25, which were about issues of access to technology and knowledge. It wondered whether the Committee was not invading UNESCO's competence and the Committee for Science, Technology and Development under UNCTAD. The Delegation proposed that, if possible, the group or the delegation who had proposed it might explain the scope of the proposal to determine whether they could discuss it or not, or whether they were ready to discuss it. Regarding point 7, the Delegation did not understand the meaning of the proposal concerning access to the contents of the public domain, because it thought public domain was accessible to all, particularly works of human creativity, which did not require protection. It, therefore, found it a bit difficult to understand the scope and asked for some more clarifications in order to have decision-making elements. Finally, regarding point 26, the Delegation considered that dealing with questions on TRIPS was not under the competence of this Organization and that, given its wording, it should be an object for discussion at the WTO, not at WIPO.

43. The Delegation of Austria congratulated the Chair for the speed in which he had managed the discussion up to Cluster B from the proposals. However, it wished to make its statement on behalf of the European Union after the meeting of Group B, the following day.

44. The Delegation of Colombia said that it supported the majority of the proposals which were part of Cluster B, but wished to make a few comments, however, on some of those proposals with which it had some difficulties. It was, nonetheless, open to continue working on them to have greater clarity. Regarding points 7 and 8, which referred to the public domain, the Delegation understood, because that was also what was said by the Delegation when referring to protection and public domain, that they were trying to safeguard and preserve the public domain within the norm-setting framework of WIPO. The Delegation added that that was how they understood it along the lines of preserving, that this public domain be safeguarded and if that was what was intended, it could support it. Regarding proposal number 9, the Delegation believed that its scope was interesting, but added that it wished to receive more analysis on it. For the present it had some reservations concerning a few components. The Delegation stated that, although it understood the importance of the priorities of other WIPO Member States on proposal number 16, it believed that because of the inter-governmental nature and the wide-ranging participation which other member countries had, it was already creating necessary space or assistance so that each country could think about their priorities in a negotiating discussion process. So it did not really see the scope of the proposal very clearly. The Delegation stated that it had concerns regarding proposal number 22 which said that non-IP type systems be examined and did not really see how WIPO could handle topics that had no relation to IP. Therefore, the nature and the reason for this proposal was not clear to it. Finally, the Delegation also expressed doubts with regard to paragraph 26 and declared that it wished to study the topic further.

45. The Delegation of South Africa expressed its great appreciation for the speed in which progress was made and stated that it wished to make some observations on norm-setting. The Delegation declared that it was in agreement with the Delegation of Brazil that norm-setting was at the core of its proposals on the Development Agenda for WIPO and underscored that a norm-setting exercise that took into account the different levels of development was the very key to a successful Diplomatic Conference that normally adopted instruments in WIPO. The Delegation also pointed out that it had observed in Singapore, which was a typical example, a beginning, but not an end to itself, where a resolution supplemental to the TLT had been adopted, which really reflected some of the concerns with regard to norm-setting. It further

pointed to the document provided by the “Group of Friends of Development”, where it believed that points 8 and 9 were fairly covered.

46. The Delegation of India said that it wished to make comments on two paragraphs of the cluster, paragraphs 2 and 27. It said that it could not over-emphasize the need for the protection of traditional knowledge and genetic resources from misappropriation, and international patents being obtained on traditional medicines, without the knowledge of India and other developing countries. It emphasized the need for an internationally binding instrument, providing for mandatory disclosure of source, country of origin of the genetic resource and associated traditional knowledge in the patent application. The Delegation said that the Government of India had established a traditional knowledge digital library of approximately 100,000 Ayurvedic formulations, which was in line with the provisions of the Biodiversity Convention, regarding promotion of wider application of knowledge and providing equitable sharing of benefits, to communities and countries of origin. There was a need to make such databases consistent with the provisions of the Patent Cooperation Treaty (PCT). The Delegation said that it would reiterate that paragraph 2 was an important element of this and wished it carried forward. On paragraphs 27 and 22, it referred to a comment made by the Delegation of Colombia that if it was not the concern of IP, why should WIPO deal with it? In response, it clarified that all open source software was covered under particular licensing systems and they were fully treated as per the IPR clauses. That area of open source software had provided good benefits for technology transfer and for ensuring that customers were not tied to a proprietary system. The Delegation said that open standards was the need of the day, and that it would request WIPO to take up that issue.

47. The Delegation of China thought that norm-setting was one of the important missions of WIPO, which had to take full account of the development levels of developing countries. The Delegation said that it had already expressed its position concerning item 6 of that paragraph. It said that counterfeiting and IP piracy was not only the issue of developing countries, but also that of developed countries. It was a global issue. Some countries and organizations had prepared some statistics on piracy, but the means of investigation, statistical criteria and methods were issues of controversy. The Delegation, therefore, thought that the PCDA should focus on issues that were important to developing countries.

48. The Delegation of the United States of America said that as with the proposals under Cluster A, in document PCDA/1/6 Prov.2, there were several proposals under Cluster B, with which it could concur. All the proposals that it could support among the 111 proposals were those that were within WIPO’s core competency and mission, which was intellectual property protection. In Cluster B, it could concur with numbers 5, 6, 8, 12, 13, 15 and 16, with a desire again to maintain WIPO’s core competencies and mandate, and avoid duplication of efforts with other international organizations such as UNCTAD. Its specific concerns and objections with regard to the other proposals under Cluster B had been noted in detail during the course of the three IIMs and the first session of the PCDA and it was not in a position to support them at that time. The Delegation said that it would be pleased to offer additional views on proposals it could not support that day, at the appropriate time.

49. The Delegation of Italy said that it wished to reserve its position in the light of the coordination which would take place the following day by the European Community. In any case, it wanted to reiterate that proposal 2 was unacceptable. It was contrary to all the international negotiating rules. Within WIPO, the IGC negotiated issues relating to genetic resources, traditional knowledge and folklore and one of the items under discussion was the nature of the instrument which should be adopted. So it was not possible for the PCDA to

suggest and recommend the adoption of an internationally binding instrument when there was another committee discussing the issue.

50. The Chair stated that he had informed the Regional Coordinators that at some point in time he would have to leave the meeting briefly and in that case the Delegation of Kyrgyzstan, which was exercising the Office of Vice Chair, would replace the Chair, in order to continue the discussions.

51. The Delegation of Canada thanked the Chair and sought his permission to go back briefly on the proposals under the previous cluster. The Delegation declared that it was in a position to support the majority of the proposals made under Cluster A and added that, like other delegations, it had some questions about the scope and the application of some of the proposals, including 3, 16, 21, 30 and 32. With regard to Cluster B, the Delegation also declared that it was in a position to support the majority of the proposals, although it believed that additional clarifications were needed on some of them. The Delegation, thanking the Delegation of Chile for the clarifications it had provided on the issue of public domain, still had some reservations about the way in which the proposals on public domain were worded. On proposal 3, which it believed was at the end of proposal 1 in Cluster B, it had a question about what was understood by a “mechanism to facilitate access to knowledge and technology”. The Delegation concluded by recalling some comments which had been made by other delegations the previous day, which constituted important points for the continuation of their work. It agreed with the Delegation of Italy which had mentioned that some of the proposals were very similar to one another and that it would be useful to group them together. The Delegation added that there were not only similar proposals under the same heading, but also similar proposals under different headings. The Delegation would endorse the idea to group them in order to make work easier. It added that it would be a good idea to look at which proposals were most likely to achieve consensus. It believed that the Delegation of Nigeria had indicated that, with respect to technical assistance, what WIPO did was neutral and based on response to demand. The Delegation reiterated that it would be important to evaluate the programs and services offered by WIPO, in order to see the extent to which they met the expectations of requesting countries. The Delegation concluded by stating that the Delegation of the United States of America had reminded them of the mandate of the meeting, which was to accelerate and conclude the work. Other important points were raised in the course of the discussions, but the Delegation just wanted to highlight one or two, because it was important that the meeting bore that in mind as the work proceeded.

52. Speaking on behalf of the European Community (EC), the Delegation of Austria thanked the Chair and agreed with the observation that norm-setting was an essential part of the work regarding WIPO's development activities. In general, the Delegation believed that a further evolution of the IPRs system including the public domain for the benefit of the stakeholders was necessary. Although it was ready to discuss many of the proposals contained in Cluster B, some of the proposals required further considerations. On a preliminary review, the EC deemed that some proposals required further clarification or more in-depth consideration, namely 1-3, 7, 8, 9, 10, 14, 17, 18-20 and 23-27. The Delegation explained that it was the EC's preliminary view that discussions on the following proposals could lead to consensus in the short-term: 5, 6, 11, 12, 13, 16 and 22. It added that the EC reserved its right to reconsider the list later in light of the future discussions ahead. It also requested to be allowed to come up with the statement on Cluster A at a later stage.

53. The Delegation of Uruguay sought permission of the Chair to refer to what had been said the previous day. Its intention was not to break-off from the discussions on Cluster B,

but it needed to make additional comments. Firstly, the Delegation expressed its gratitude to the Delegation of Argentina, acting as coordinator for the “Group of Friends of Development” for the document PCDA/2/2. The Delegation agreed to most of the contents and objectives set forth by the Delegation of Brazil the previous day, namely to summarize the proposals made, including texts proposed by the different countries, and thereby facilitating their route to finding consensus and coming up with recommendations for the General Assemblies. It added that the Delegation of Brazil had highlighted and gone into detail about many of the proposals contained in document PCDA/1/6 Prov.2, and many of those were also reflected in the document provided by the “Group of Friends of Development”. The Delegation of Uruguay had wished to highlight what was cited in document PCDA/2/2, paragraph 7a, about adoption of principles, guidelines and treaty provisions to ensure that WIPO norm setting activities were in accordance with other international instruments, that reflected and advanced development objectives, in particular, human rights international instruments in paragraph 7e. It was in respect to human rights instruments that the Delegation wished to make the tie with IPRs. The Delegation believed that the two aspects should be dealt with together. In all fora and activities within WIPO, the link between human rights and IPRs needed to be emphasized. It stressed that no IPR-related norms should violate human rights and that human rights were inherent to all human beings. Therefore, all had the rights which need not be officially recognized by States. Human rights had developed over generations and that there were civil, political, economic, social, cultural rights, etc. Since WIPO was a specialized UN agency, it should act in concert with what had been agreed by the UN General Assembly (UNGA) and other specialized bodies of the system. The Delegation added that this also applied to human rights and the right to culture, the right to education, the right to access to knowledge. An example of human rights and IPRs emerged from the Committee on the Right of the Child which was responsible for monitoring compliance with the Convention on the Rights of the Child approved by the UNGA in 1989, and which had come into force in 1990. The Delegation stressed that the Convention was an international instrument, with many ratifications more than many other international instruments, and it had therefore come into force very quickly. The Delegation explained that, it was one of the more contemporary international human rights instruments. It observed that in 2004, the Committee had recommended the Government of El Salvador to give primacy to children’s right, when, for example, negotiating IPRs be negotiated internationally and then incorporated into domestic legislation. The Delegation believed that the recommendation was applicable not only to that country, but to all countries, even those who had not yet ratified the Convention. It was important because it emphasized the unavoidable link between IPRs and human rights. The Delegation therefore believed that the point should strongly be made to the General Assembly of WIPO when it looked at the issue of the agenda for development because human rights had to be taken into account if IPRs and human rights were going to be compatible with one another for the benefit of men, women and children. The Delegation added that it believed an NGO had supplied a very interesting report on human rights and IP, and there was a document which highlighted the relevance that NGO activity should have in discussing these issues in WIPO. This should be borne in mind and the Delegation urged the meeting not to forget the Millennium Development Goals adopted by the UN in 2000. It added that the issues were a roadmap for the UN and should also be a roadmap for WIPO’s activity.

54. The Delegation of Australia stated that prior to commenting on Cluster B, it wished to express its support for the majority of proposals on Cluster A. The Government of Australia called for WIPO technical assistance and capacity-building activities to be properly planned, demand-driven, rigorously evaluated and it encouraged WIPO to take a strategic and coordinated approach to such activities, and ensure that there was an effective priority-setting



mechanism to ensure that WIPO's limited resources were appropriately focused. In addition, a more strategic approach would assist economies such as Australia to better plan development activities and avoid duplication with other activities. In relation to Cluster B, while supportive of a number of the proposals, the Delegation believed that it was important that WIPO's activities remained member-driven. It added that member countries had their own national processes for norm-setting, most of those included consultation processes, with a very broad range of groups in society, and that it was important for the national processes to be fed into the consideration of norm-setting activities at the international level at WIPO. The Delegation supported contributions to the debate about norm-setting activities from all sectors, including industry, and public interest groups, and supported increased participation from interested groups from all sectors of society, in order to better inform and enhance debates on issues. The Delegation observed that the participation of interested groups would need to be managed appropriately within WIPO, to ensure that the participation of interested groups from all sectors did not impact adversely on the ability of Member States to contribute to meetings. And that it did not substantially increase the duration and frequency of meetings, which were resource intense activities, both for WIPO and Member States. With regard to specific recommendations, the Delegation supported recommendations 5, 6, 8, 12, 13, 15 and 16 and was supportive, in principle, of issues raised in recommendations 1, 9, 11, 17, 18, 19, 22 and 27, but requested more clarification in relation to the recommendations before it could support them.

55. The Delegation of Iran (Islamic Republic of) stated that Cluster B in the context of developing agenda norm-setting was very important, and that norm-setting should not be assumed merely as a means of paving the way for implementing commitments, but all Member States should enjoy the advantages as well. It added that it should be a main recommendation to the General Assembly. Setting up a range of principles and guidelines, as indicated in the paragraph 7 of PCDA/2/2, would assist Member States to regulate the process of norm-setting in WIPO in an efficient manner. Other paragraphs in the same document were the distillation of proposals that had been discussed between Member States in the IIMs and first session of the PCDA. On document PCDA/1/6 Prov.2, the Delegation expressed reservation on item no. 5, as it believed it had no direct relation with the process of norm-setting in WIPO. The Delegation further stated that on item no. 6, the Advisory Committee on Enforcement (ACE) had a clear mandate and that the issue had been discussed in the 3<sup>rd</sup> session of the ACE. The Delegation said that those were its preliminary observations on that cluster.

56. The Delegation of Paraguay wished to place particular emphasis on proposal 6 in Cluster B and mentioned that counterfeiting and piracy were having a devastating impact on the economic development of the country. For that reason, the Delegation strongly supported that particular proposal. The Delegation said that as Paraguay was a developing country, issues related to the public domain were also of critical importance. The Delegation further highlighted the importance of proposal no. 13, relating to WIPO's norm-setting activities. The Delegation recognized that there were different levels of development between developing and developed nations, and so it was important to get a balance between the costs and benefits of any initiative. Finally, the Delegation thanked the "Group of Friends of Development" for their work on the proposals.

57. The Delegation of Croatia took the floor on behalf of the Regional Group of Central European and Baltic States, and stressed the importance of Cluster B for IP protection, as well as for the sustainable development of all Member countries. The Delegation supported most of the proposals and their particular elements. It nonetheless expressed reservations on

proposals nos. 1, 2, 3, 7, 9, 10, 14, 17 to 20, and 23 to 27, which, in its point of view, required more clarification on how their application would work inside WIPO's structure. The Delegation said that some of those proposals were outside WIPO's mandate and stressed that it would support constructive proposals, as long as they were within the mandate of the organization.

58. The Delegation of Switzerland also hoped that the work of the committee would achieve specific results at the end of that session so as to fulfil the mandate entrusted to it. The Delegation stated that proposals nos. 5, 6, 8, 12, 15, 16 and 21 of Cluster B should be included in the recommendations made by the Committee to the General Assembly, and that it would be necessary to have a look at the financial implications of those proposals for their implementation. Regarding the other proposals of Cluster B, the Delegation pointed out its difficulties in accepting them as they stood. It stressed that further work was necessary to spell them out further, and to ensure that they fulfilled WIPO's mandate. The Delegation reiterated, as mentioned in the previous meetings of the IIM and PCDA, the importance for WIPO to continue focusing its activities in the field of IP. The Delegation supported most of the proposals in Cluster A, stressed their importance, and added that it would be useful to have assessments done and mechanisms set up to coordinate these different activities. Finally, the Delegation joined the Delegation of Canada and other delegations before it, in stating that it would be useful to look carefully at duplications and repetitions, in order to highlight the main ideas in the different clusters.

59. The Delegation of Bolivia wished to refer to very simple aspects, in order to illustrate, clarify and highlight what the committee was trying to promote and achieve. The Delegation said that what was bringing Member States together to the meeting was to design and establish a structure for WIPO development programs, and that that structure should go through the design of a norm-setting structure, reflecting the interest of all Member States. The Delegation mentioned that the interests of all the Member States were reflected in the 111 preliminary proposals submitted in the first meeting of the PCDA and it praised the work carried out by the "Group of Friends of Development" to organize, synthesize and give a format to the proposals, which were now contained in document PCDA/2/2, a document that would allow Member States to make headway in the achievements of the meeting. The Delegation wished to endorse it, in particular the topics linked to the public domain in paragraph 7(c) of document PCDA/2/2, and that relating to the participation of the civil society in carrying out norm-setting activities, as described in paragraph 7(g) of the same document.

60. The Delegation of Argentina expressed its support for the interventions made by the Delegation of Brazil, on behalf of the "Group of Friends of Development", and also endorsed what had been pointed out by the Delegations of Canada, Switzerland, Bolivia and Uruguay. The Delegation stated the importance of regrouping similar proposals, and declared that that was specifically the effort that its Group had tried to make by submitting document PCDA/2/2, which was aimed at giving an operational language to all the proposals. The Delegation mentioned that, as pointed out in informal consultations, the Committee should not lose sight of that document and the context in which all the proposals were made. Those were contained in the broad explanatory and complete documents submitted by the Delegation at the 2004 General Assembly, the meetings of the IIM, as well as in the meetings of the PCDA. The Delegation said that that document could be quite useful in the second stage that was referred to by the Delegation of Switzerland as it provided for a certain timing. For instance, in the field of technical cooperation, there were proposals that could be adopted immediately, such as no. 13. The Delegation expressed its understanding on the fact that

there were proposals that were more complex, such as for example those on technology transfer, but that the proposals should be addressed in the light of the discussions maintained for almost two years. The Delegation emphasized that its document could be used as a basis and that it was open to suggestions on it.

61. Initiating the discussion on Cluster C, the Delegation of South Africa limited its intervention to elaborating on the proposal for developing criteria and methodologies for selection of essential technologies. The Delegation gave the example of LDCs, where most of the patents were not filed, and stated that the information content of a patent itself might be a good basis to transfer technology to solve the problems in LDCs. The delegation referred to some examples in Africa, where patents were not filed in their respective countries and proposed that that kind of information could be used, through the transfer of technology to solve specific problems in Africa.

62. The Delegation of Brazil, on behalf of the “Friends of Development”, supported, generally, all the items contained under Cluster C on technology transfer. The Delegation referred to several proposals submitted by other delegations on different topics, particularly the question of ‘Public Domain’. The Delegation stated that developing countries had been trying for many years to find forms and multi-lateral agreements, to truly promote technology transfer to developing countries. The Delegation believed that further work should be done on that topic. The Delegation proposed that WIPO could extend its activities to examine and review methods, to solve the issue of transfer of technology in a more effective manner. The Delegation referred to certain paragraphs, which called on WIPO to be a Forum, which would formulate recommendations on policies and measures that industrialized countries could adopt to promote the transfer and dissemination of technology to developing countries. The Delegation proposed that since WIPO had several model laws for developing countries and offered its counseling services for norm-setting activities, it could do the same thing for developed countries, so that they could adapt their legislation to induce the transfer of technology for developing countries. That would also serve as a way of enforcing the provisions on the transfer of technology, as contained in TRIPS. The Delegation also referred to the issue of anti-competitive practices, and highlighted the idea of a mechanism to be created within WIPO. Through such a mechanism, developing countries could indicate their problems so that they could be resolved.

63. The Delegation of India recognized the crucial role of technology transfer in the Development Agenda. The Delegation strongly supported the proposal to create a body under WIPO for formulating, coordinating and assessing transfer of technologies policies and strategies, vital and essential for human society, especially those related to health, environment and sanitation. The Delegation stated that that body should also address the issue of asymmetry in technology transfer and balance the interests of concerned parties. The Delegation observed that the exchange between the research and scientific institutions in developed countries and those in developing countries ought to be undertaken in a cooperative and collaborative manner, with the understanding that the cooperation was for mutual benefit.

64. The Delegation of Mexico expressed concern as the work of PCDA was going further than the mandate of WIPO, and would interfere with the mandate of the Committee on Science and Technology in UNCTAD. The Delegation made a reference to certain paragraphs which dealt with Access to Foreign Patented Information on Technology and Technical Resources, and said that it was not prepared to deal with it, as it implied a reform of the Paris Convention. The Delegation also had reservations on creating a new body for formulating, coordinating and assessing transfer of technology policies and strategies, as it

believed that it would require an amendment to the WIPO Convention. The Delegation added that issues relating to anti-competitive practices fell within the competence of the WTO and not WIPO.

65. The Delegation of Algeria stated that the proposals contained in Cluster C were essential to consolidate development activities within WIPO, particularly the role of transfer of technology. The Delegation supported the statement made by the Delegation of Brazil on behalf of the “Group of the Friends of Development”, and declared that all the proposals contained in the statement could play an important role in promoting the development process and facilitating access to technology.

66. The Delegation of the United States of America stressed the importance of implementing the proposals tabled under Cluster C, which were within the core competence and mandate of WIPO. The Delegation stated that it could support several proposals within Cluster C, provided that it avoided duplication of work being undertaken in other organizations, or risk undermining that work in organizations, such as the WTO and UNCTAD.

67. The Delegation of Japan highlighted that IP was just one element in the whole picture of technology transfer, and therefore it believed that WIPO could handle it only from the IP perspective. The Delegation made a reference to several proposals, which could not be dealt within WIPO’s mandate. The Delegation opposed the idea to create a mechanism, like a special fee, which might lead to an increase in PCT fees.

68. The Delegation of the Russian Federation believed that all the issues which dealt with the provision of technical assistance and capacity building were interesting. The Delegation was interested in the study of best practices and with the assessment or evaluation of norm-setting and priorities in that area. The Delegation was open to discussing all the proposals under Cluster C, taking into account the mandate and functions of WIPO.

69. The Delegation of Canada raised several questions with regard to the feasibility of establishing or developing criteria and methodology to select essential technologies. The Delegation was ready, in principle, to create a new body for formulating, coordinating and assessing all transfer of technology issues, but raised several questions concerning the cost of that body, as well as the possibility of overlapping with other existing bodies. The Delegation also raised questions over the issue of the public domain and stated that those questions required more work, particularly by considering the costs and the mandate of WIPO.

70. The Delegation of Tunisia, speaking on behalf of the Arab Group, emphasized the vital importance it attached to discussions on the Development Agenda, and stated that the fact that so many proposals had been presented reflected the importance they attached to it. The Delegation supported the statement of the Delegation of Nigeria, on behalf of the African Group.

71. The Delegation of Australia said that from its own perspective, there were a lot of interesting proposals in the Cluster and that it supported a number of them, but had concerns about the practicality of some, as currently presented. It added that, as was raised by a number of other delegations, they needed to recognize the role of other international organizations to ensure that they did not duplicate their efforts, particularly considering WIPO’s budgetary constraints. The Delegation supported the concept that WIPO was an appropriate body to conduct activities relating to the transfer of technology, and that in

relation to specific recommendations, it supported 6, 8, 11. It believed that further analysis was required for recommendations 1, 5, 7, 10, 11, 14 and 15, to determine the feasibility of the proposals and to ensure duplication issues with other organizations were addressed.

72. The Delegation of Paraguay said that with regard to Cluster C of document PCDA/1/6 Prov.2, those were crosscutting issues for developing countries, particularly, transfer of technology and access to knowledge. The Delegation fully supported the proposals made to allow for a patent to come into the public domain, without preventing development and production of the technology. It believed that WIPO was one of the appropriate fora, where such issues could be addressed.

73. The Delegation of Austria, speaking on behalf of the EC, its Member States and acceding states, said that EC saw a role for WIPO in facilitating and improving the transfer of technology, in particular, for the benefit of the LDCs. While recognizing that, the Delegation said that there might be an even more specific role in that respect for other international organizations, including, but not limited to UNCTAD and the WTO. The Delegation added that WIPO could, where appropriate, assist those organizations in performing their tasks, especially when it came to IPRs and transfer of technology. It pointed out that the EC believed that discussions on proposals 8, 11 and 14 of Cluster C could lead to consensus in the short term and went on to say that the EC had a positive feeling about the intentions of proposals 6 and 9, but sought further clarification on the actual practical implications of those proposals before they could fully support them. The Delegation quickly referred to the list of items of Cluster A as well, and said that the EC considered technical assistance, with respect to IPRs, as one of the core competencies of WIPO. Such assistance should be further evolved to help WIPO discharge that service in the best possible way regarding the demands and needs of the members as well as the efficiency and the costs. The Delegation said that the EC deemed that discussion on the following proposals in Cluster A could lead to a consensus in the short-term: 1, 4 to 12, 14, 15, 17, 19 and 21 to 25. However, concerning the proposals of Cluster A, it pointed out that the EC had come to the conclusion that the following proposals needed further clarification before entering into in-depth discussion: 2, 3, 13, 16, 18, 20 and 26 to 32. It concluded by stating that the EC reserved its right to reconsider the list, in light of the discussion ahead.

74. The Delegation of China thought that transfer of technology and access to information, in terms of promoting the access to knowledge for developing countries, was very important and that it would integrate developing countries into the mainstream. Therefore, the Delegation supported most of the items in Cluster C, in particular, 7, 8 and 14, and hoped that, WIPO would play a greater role in that regard.

75. The Chair then requested the delegations to make their comments on Cluster D.

76. The Delegation of Brazil repeated what it had presented in document PCDA/2/2. It said that it was engaged in an effort to try and synthesize the proposals that were presented by the "Group of Friends of Development" under Cluster D, specifically those from numbers 11 through 16. Basically, most of the issues that were raised during the Development Agenda discussions had been incorporated under number paragraph 9 of PCDA/2/2. While emphasizing the need for carrying out impact assessment studies, it said that negotiations being held in WIPO, e.g., on patents and broadcasting, had shown the need for them to be accompanied by evidence-based need and justification, for the conduct of those negotiations. The Open Forum that had taken place in the context of the SPLT negotiations had demonstrated the need to provide for further discussions. Paragraph 9 of document

PCDA/2/2 not only contained proposals presented by the “Group of Friends of Development”, but also incorporated proposals that had been presented by others during the IIMs the previous year. In particular, it had taken into account the proposals presented by the African Group, which were under paragraphs 1 and 2 of Cluster D, and also the proposals under paragraph 4, which originated from Bahrain and the Group of Arab countries. With regard to paragraph 8, which dealt with collecting data on global piracy and counterfeiting, the Delegation said that it had made it clear in the first PCDA, and also during the current session of the PCDA, that piracy and counterfeiting were not an issue that related specifically and exclusively to developing countries. It was an issue that affected all countries, so why was it being singled out for developing countries. Also, the proposal on paragraph 5 which dealt with base-line national surveys for economic growth and the one under paragraph 7 to conduct global economic surveys of the creative and innovative sectors, it did not see how those could be brought within the framework of the Development Agenda. This was also true of the proposal in paragraph 6, entitled “Measuring the contribution of national creative and innovative industries”. The Delegation understood that the proposals presented by Members during the discussions on the Development Agenda on impact assessments were accommodated under paragraph 9 and, of course, it was open to consider comments by other delegations.

77. The Delegation of China thought that an effective review and evaluation mechanism was beneficial for increasing the transparency in WIPO’s activities and assisted its efficiency. It therefore, supported many of the proposals in that section. However, it objected to number 8, for the reasons expressed at the first PCDA meeting. The Delegation also had its reservations on proposal 5.

78. With respect to proposal number 8 of Cluster D, the Delegation of Paraguay said that the data should be collected as per a harmonized procedure, because at times the statistics on piracy did not reflect the reality. In that regard, while the Delegation supported point 8 of Cluster D, it stressed that the collection of data should be a serious exercise, and that if WIPO was going to collect it, they would be grateful for the data of their countries.

79. The Delegation of India drew the attention to paragraphs 2, 11 and 12 which all related to development impact assessments, whereby they supported, in particular, the proposal for WIPO to undertake independent, evidence-based, comprehensive and empirical development impact assessments, in respect of technical assistance, technology transfer and norm setting.

80. The Delegation of the United States of America stated that they were prepared to support a consensus on moving forward on several proposals within Cluster D, specifically proposals nos. 1, 3 through 9, 14 and 15, in Cluster D of the Annex of document PCDA/1/6 Prov.2. As regards the other proposals, its objections and concerns had been explained in detail during the discussions over the past two years in the three IIMs as well as in the first session of the PCDA. The Delegation concluded by saying that they were not in a position to support them at that time.

81. The Delegation of Japan shared the view that development-oriented activities by WIPO should be adequately assessed. It supported the proposals in D 4, 5, 10 and 14. However, careful consideration was needed from the perspective of how it should be done and who would do it. In that context, the Delegation had concerns with D 11 and 12. The financial implications of creating an independent office to evaluate all WIPO programs and also to carry out development impact assessments were not clear.

82. The Chair then requested the delegations to make their comments on the proposals in Cluster E.

83. The Delegation of Brazil said that in the proposal that was circulated by the “Group of Friends” in document PCDA/2/2, points 2, 18 and 19, tried to achieve a synthesis of the proposals in Section E. In point 2, the proposal addressed the mandate of WIPO and the efforts which may be undertaken so that WIPO strengthens its stature as a UN Agency. In point 18, the Delegation was moved by the concern for greater participation of civil society and of public interest groups in activities and negotiations. Point 19 contained a concerted concern of developing countries, which was to keep the Advisory Committee on Enforcement as a group to exchange national experiences. The Delegation agreed with all of the proposals in Cluster E, proposed by the “Group of Friends” and also by other African countries and Arab countries. The Delegation went on to say that it had some reservations and for the time being could not support the proposals 3, 4 and 5. The Delegation closed its statement by highlighting that it had worked on two main concerns. Firstly, to ensure greater participation in civil society in WIPO’s activities and, secondly, to strengthen its character as a UN Agency. It should be an agency which worked for development.

84. The Delegation of Mexico stated that it found proposals 2, 3,5,7 and 8 acceptable, and not the others.

85. The Delegation of the United States of America said that it was prepared to move forward on several proposals in Cluster E, specifically, those including 1 through 5 in the Annex of document PCDA/1/6 Prov.2, and not the others. Its objections and concerns had been explained in detail, during earlier discussions on the issue.

86. The Delegation of Japan stated that it was important to improve the transparency and efficiency of WIPO’s development activities, and that cluster included some proposals which were aimed at eliminating redundancy in technical cooperation activities and to implement them more efficiently. The Delegation could go along with proposals 3 to 5. Regarding no. 6, WIPO’s program and budget had already taken development aspects into account and the Delegation was not convinced of the necessity to amend the WIPO Convention. Regarding 1, the Delegation was not sure what WIPO, as a specialized agency on IP, could effectively do to reverse a “brain drain” into “brain gain”. In addition, with regard to item 9 proposing that WIPO’s advisory committee on enforcement take up the issue concerning exceptions and limitations, the Delegation regretted to say that it did not expect any constructive discussion in that forum, therefore, the Delegation thought that it would be better to do it as academic research, rather than jumping into the Advisory Committee on Enforcement (ACE).

87. The Delegation of Switzerland thought that it might be able to find consensus on proposals 2, 3, 4 and 5. With regard to 4, it would be interesting to know the budgetary implications of such a proposal. The Delegation thought that the current mandate of WIPO already made it possible to carry out a number of development activities, and some of them should still be implemented, while improving collaboration with other international organizations, without duplicating work. In that cluster, there were some proposals which would enable them to do that.

88. The Delegation of Canada supported Cluster E proposals 2 to 5 and, with regard to, Cluster D, in principle supported proposals 1, 4, 6, 7, 14 and 15.

89. The Delegation of Australia supported proposals 2 to 5.

90. The Delegation of the Russian Federation said that the proposals of particular interest were those aimed at strengthening cooperation with other international organizations, for instance, proposal 2, in particular. The Delegation was also interested in proposals 3 and 4. At the same time, it would like to point out that it did not have difficulties with regard to measures designed to strengthen some of WIPO's activities. It thought that WIPO was a specialized agency of the UN system, but it should work in the framework of its conventions and treaties, which were focusing on the promotion and protection of IP, cultural development, implementation of developing programs and technical assistance to developing countries. The Delegation added that in the framework of the current conventions, WIPO was doing a good job in that regard, fulfilling its mandate.

91. The Delegation of Tunisia said that it had sought some clarifications from the Secretariat and as the answers were now available, it did not wish to take the floor again.

92. The Chair then requested comments on the proposals under Cluster F.

93. The Delegation of Brazil said that continuing with the procedure that they had established of addressing the proposals incorporated in document PCDA/2/2, and not item F, it wished to draw the attention of the session to the proposal of paragraph 1 of PCDA/2/2, which recommended the General Assembly to initiate a process for the adoption of a high-level declaration on IP and development. It added that, as delegations could recall, this was a proposal that had been first presented during the General Assembly of 2004. The concern here was to link at a high level the two issues of IP and development, quite a straight-forward proposal, which had been incorporated in paragraph 1. Another proposal that was contained in document PCDA/2/2 that concerned item F, was the one that has been inserted under paragraph 20, which dealt with the follow-up procedure to the discussions. The Delegation was concerned about delivering concrete results and substantive recommendations to the General Assembly 2006 and added that it was also aware that some of the issues that had been raised during the discussions on the Development Agenda, and were part of the 111 proposals, might not be addressed entirely in that session and might need further consideration; for this reason, it had proposed, under paragraph 20, a renewal of the process of the PCDA, to further discuss and effectively address all issues related to the Development Agenda. It had also put forward a proposal for a number of meetings of the renewed PCDA, and was open and flexible to discuss that. The proposal in paragraph 20 reflected a common view of delegations there.

94. The Delegation of Austria asked the Chair to indicate what he intended to do with regard to the future process.

95. The Chair called for a move towards concrete and practical recommendations, which could be discussed and submitted to the General Assembly. He suggested this general approach and asked delegations if they had any further comments on Cluster F.

96. The Delegation of Tunisia took the floor on behalf of the Arab countries. It appreciated the positive interventions made by many delegations which had showed support to the Arab proposals and the various topics proposed. The Delegation said that the Arab Group supported the proposals made by the African Group and by the Delegation of Colombia, as well as any other proposals that would be in the service of development, and requested for its statement to be added to the minutes.



97. The Delegation of Bahrain said that it acknowledged the efforts made by certain countries on which comments had been made by the African Group, the Delegation of Colombia, and others. The Delegation said that the many papers, which were available, could be unified in a common document and thought that it was very important to maintain the style of discussions in order to reach their goals. The Delegation pointed out that it had to review and amend many topics and reiterated the efforts made by the African Group, the Arab Group, and the Delegation of Columbia to evolve an approach that would be acceptable to all. It added that this would be presented at a later stage.

98. The Chair then suggested that the discussions be continued in informal sessions. Resuming the discussions in plenary, the Chair apologized for the delay as he had been holding consultations with the coordinators and with other interested delegations. He said that he would start by offering the floor to the delegations after which he would give the NGOs and IGOs an opportunity to speak.

99. The Delegation of Austria, speaking on behalf of the EC, stated its preliminary views on Clusters D, E and F. With regard to Cluster D, it believed that discussions on proposals 6, 8, 14, 15, as well as no. 1, the latter with reservation, could lead to consensus in the short-term. On the other hand, it sought further clarification on proposals 2, 10 to 13, and 16 before entering into in-depth discussions. In Cluster E, the EC considered proposals 2 to 5, 7 and 8, as being ready for discussions and where consensus might be rapidly reached. However, in the Delegation's view, further clarification was needed with respect to proposals 1, 6, 9 and 10. Finally, in Cluster F, it considered proposal 2 to be likely to be agreed upon in the short-term, while it would appreciate further clarification concerning proposals 1, 3 and 4.

100. The Delegation of South Africa offered to provide additional information on some of the proposals contained in Cluster A. Some members had seemed reluctant to support proposal A 3, maybe because of its lack of clarity. Therefore, the Delegation wished to provide supplementary information. It reminded that this particular proposal concerned the strengthening of national capacity for the protection of local creations, innovations, inventions, in order to develop the national technological infrastructure. The Delegation wished to leave out scientific development and would limit its intervention to technological infrastructure. It believed that perhaps that had also something to do with the informal sector. In that context, and as an example, it called WIPO to identify relevant IP tools to protect the traditional unique designs, such as textile and clothing, folkloric art paintings and folkloric design musical instruments. It wondered if a possible Swiss design protection could be explored, such as the registered design right instrument, to prevent the deliberate copying and independent development of those designs that had just been mentioned. The Delegation also wished to comment on proposal 2. The Coordinator of the African Group had gone into much details in terms of that proposal and had added something at some point on those sub-regional and regional organizations, dealing with IP in terms of technical assistance. In Africa for example, some countries did not have IPOs, therefore these sub-regional organizations helped service those particular countries. The Delegation explained that it wished to comment on proposal 16 and then on the proposal of the "Group of Friends of Development" which was D 11 and 16. On the latter, it believed that an independent evaluation and research mechanism was needed to assist, for example, in the evaluation of all WIPO's programs and also to carry out a development impact assessment of norm-setting activities and technical assistance. A lot could be learnt from the Trademark Law Treaty (TLT) adopted in Singapore, it added.

101. The Delegation of the United States of America wished to draw the Committee's attention to the fact that Cluster F had not yet been addressed. In that cluster of proposals, there was a mix of process and non-process issues. The Delegation wished to limit its comments to non-process proposals and expressed support for proposal no. 3.

102. The Delegation of Benin wished to clarify proposal no. 5 contained in document PCDA/1/6, on the creation of a Trust Fund. More specifically, in the area of IP, measures needed to be taken to build up national institutional capacity, because it was the existing link between IP and other areas of social, cultural and economic activity. Any capacity-building and national strengthening strategy should be prepared, taking into account the general situation in a given country and bearing in mind how problems in one sector or one area could affect capacity in others. It was not possible to really benefit from IP, unless all the sectors involved in it and with it, were actually strengthened. At the same time, that meant that a wide-ranging program had to be developed and that there had to be sustainable financing for such a program. Given the links that existed between the different sectors, a development program based on IP could only be implemented if the appropriate resources were made available. That was the reason why, on behalf of the LDCs, the Delegation had proposed the establishment of a Trust Fund within WIPO. The proposal to establish a Trust Fund for the financing of specific technical assistance actions and programs for the benefit of LDCs within WIPO was based on the action that WIPO had been taking through its LDCs' Division. Two countries had already been involved in taking action to help LDCs in the past by financing a technical assistance program to LDCs and the Delegation wished to pay tribute to these countries, namely the Republic of Korea and Sweden. The LDCs' current request, made as part of the discussion, was to boost the content of such programs and such cooperation between the organizations and between the countries by providing a legal framework for further action. The use of IP as a tool for economic growth and its integration into the LDCs' development strategies meant that that kind of institution would be called upon for assistance on a more regular basis. A WIPO-managed Trust Fund, the purpose of which was to establish programs of action for LDCs which requested assistance, would boost WIPO's ability to work with LDCs and help them achieve their development objectives based on a knowledge economy. Funds would be provided to it by industrialized nations, other countries, and by all organizations willing to make a contribution. That was basically the detailed outline of the proposal for the establishment of the Trust Fund for LDCs and the Delegation of Benin hoped that it had provided the clarification requested by other delegations.

103. The Delegation of South Africa mentioned that in its previous intervention, it had left out something with regard to Cluster A 3. The protection of local creations was explained, but it had left out the explanation of innovations and inventions and other to develop national technological infrastructure. On that, the Delegation wished to briefly mention that perhaps WIPO could assist developing countries, especially in Africa, to explore some instruments, such as the utility model system, which was an incremental improvement of the existing products. The results of extensive discussions on that particular subject and the Delegation's statement in that regard could be found in document PCDA/1/6 Prov.2, and it wished to stress that perhaps utility models could be explored to assist technological advances in Africa.

104. The Delegation of Brazil, speaking on behalf of the "Group of Friends of Development", wished to make a comment which would apply to all the clusters. It said that "Friends of Development" were obviously concentrating on making references to their own proposals, contained in PCDA/2/2, but had also made some references to points contained in the complete list in PCDA/1/6 Prov.2 as well. But there was one point that needed to be

made, and that was while there were certain points on which they had not commented at all, their silence did not mean consent. The Delegation stated that some of the proposals tabled by other members of other groups were drafted in a way that reflected the opinion they wished this body to have on them. Document PCDA/2/2 contained their position and they had made an effort to be as clear as they could, but the Delegation thought that efforts needed to be made by others as well.

105. The Delegation of Nigeria wished to emphasize that the African Group, like the Delegation of Brazil, had deliberately been silent on certain proposals. The Group had its own viewpoint and position, but it thought that by refraining from making reservations, or putting certain proposals under a question mark, it might advance the process and actually contribute to the achievement of a consensus and in carrying a substantial body of proposals forward to the General Assembly. What the Group saw being done, as a process of elimination, was the approval of a minimum body of proposals by some delegations. What was not known was at what point in time clarifications would be provided and negotiations conducted on the large body of proposals, that were apparently going to be left behind. The Delegation thought it was important to get an idea of when, how and what was going to be done to finalize consideration of those proposals. It believed that it would not simply list three out of 20 proposals, and say one accepted them, and the others would be consigned to later discussions. The Delegation thought that would not advance what was being done in this body. It then addressed specific clusters. A number of delegations had provided the Group with their opinion and viewpoints, regarding the specific proposals. The African Group proposal, particularly under the technical assistance cluster, technology transfer, norm-setting and institutional mandate, were not derived out of thin air, but were predicated upon practical experiences of individual countries and collectively as a continent. Research had been conducted on those topics and it had come to the conclusion that it was important to submit proposals to the PCDA, particularly those based upon the authoritative studies conducted by committees and experts in the field. The African Group wanted to appeal to delegations to study carefully, if they had not yet done so, the report of the Commission on IP of the United Kingdom, which had highlighted a number of problem areas under each of the clusters. The report provided very useful, pragmatic and constructive proposals on how to tackle those problem areas. The African Group also wished to refer to a study conducted by the Board of Trade of Sweden. The issue of flexibilities was addressed there consistently, professionally, as was the issue of transfer of technology. The OECD reported on an assessment, impact study, etc., relating to the matter of transfer of technology and technical assistance. So, on the whole, what was being proposed by the African Group was not unreasonable. The proposals were very reasonable; they were situated or anchored on substantive and substantial reports and on deliberations by experts and others who were well-versed in the field. To conclude, the African Group's opinion was that it was not only useful for them to pronounce their readiness to engage or to be flexible, but to let them be seen to do so in order to finalize the process as quickly as possible. The Delegation hoped that this appeal would not fall on deaf ears.

106. The Delegation of Chile wanted to clear up some doubts that appeared to exist about the proposals, or at least one of the proposals made by its Delegation. Generally speaking, the Delegation was happy with the proposals from the "Group of Friends of Development", the draft resolution, and it supported virtually all the points and felt that its proposal was duly reflected in the draft resolution. This was especially true of collaborative projects and new forms of innovation to be explored, as was referred to in 11. However, the Delegation wished to refer in particular to the issue of the public domain. The Delegation's proposals were included in B 7 and 8 and D 9. From the statements made by various delegations, it said that

it had got the impression that two of those three proposals had quite a substantial support, and those were the ones that were dealing with the analysis of the implications and benefits of an open and accessible public domain. Yet, the one where consideration was given to public domain and norm-setting seemed to have a little bit less support. It was thought that this was probably because that proposal was not clearly understood. The Delegation indicated that it was talking about the proposed models for protection, identification and access to content in the public domain. In other words, the objective of that proposal was to do something specific on promotion and on highlighting the importance of public domain. When the proposal on the public domain was tabled, addressing the Delegation of Paraguay, as it thought that that Delegation was the first to react to it, it had been mentioned that patents, which were not renewed, fell into the public domain, and that once in the public domain, those inventions could be used by anybody. The Delegation declared that this was what its proposal was about. It wished to have specific tools in this area. There were many public initiatives, libraries, universities, centers and other international organizations which were doing a great deal to promote and protect the public domain, but it was felt that governments had not really been doing as much as they could have been. WIPO was doing something in the area of the PCT, for example, clearly identifying when patents came into the public domain. There were other examples, which were too numerous to mention, but South Africa had mentioned one the previous day: reciprocity. What was protected in a given country, for example, was not necessarily protected in others. The PCT database gave an indication of where and what was protected, for example, that a patent has been protected in five countries and not in other countries, which were members of the PCT. There were other points made, including the fact that national offices could provide more information as to when patents came into the public domain. The Delegation also suggested that a copyright registry was not obligatory. It was true that virtually all countries worldwide had copyright registers and WIPO had recently produced in the Copyright Committee a document on copyright registers held worldwide. There were works included in those registries and the Delegation could not understand why those offices could not give an indication as to when those works were going to enter the public domain, whether it be literary works, music, scientific productions. The benefits would be obvious and those benefits would accrue to everybody: to individuals, to governments, to international organizations, to universities, to researchers, teachers, etc. The Delegation's proposal, therefore, was directed at precisely covering those issues. It was trying to get governments to get more involved with and do more to achieve protection of the public domain. When the word protection was used, it did not mean protection by the appropriation of something in the public domain. That was actually the contrary that they were trying to get at. In the proposal from the "Group of Friends of Development", the Delegation thought the issue of the public domain was covered under the heading of norm-setting. When countries were negotiating a treaty, they had to deal with the extension of the grant, for example, the years of better protection technology, the creation of new categories of right holders, etc. How did all of those things, taken together, affect the public domain? This was covered before, as previously indicated, under norm-setting. However, it was felt that that deserved a chapter apart in whatever decision emerged from the work of the Committee. The Delegation felt that would be a correct signal. It did not try to take rights away from IP right holders, that was basically a matter of transparency with respect to the relationship between governments and individuals, especially IP right holders and inventors. There was a need, the Delegation thought, to look at specific issues when discussions were held and, if necessary, studies should be carried out on those issues.

107. The Delegation of Bahrain supported the statement made by the Delegation of Nigeria. The Delegation noted that it was quite clear that the requirements of their respective societies were very different from the development point of view, particularly because development of

technology often gave them problems. It also wished to endorse what had been said by the Delegation of Tunisia the day before. The Delegation had indeed submitted its proposals with the proposals of the African Group and that of the Delegation of Colombia, so that all of the proposals could become recommendations to be submitted to the General Assembly. In any case, the PCDA should reach a position, which would enable it to best serve the interests of developing countries, particularly because the requirements were identical.

108. The Delegation of Cuba indicated its support to what had been said by the Delegation of Brazil. The Delegation reiterated that the fact that it had not made comments about proposals contained in the document PCDA/1/6 Prov.2 did not mean that it approved of them. The Delegation of Cuba had co-sponsored the proposal submitted by the “Group of Friends of Development”.

109. The Chair then invited the NGOs to make their statements.

110. The Representative of CP-Tech said that the development agenda was a debate on whether or not WIPO should have had the type of discussions about IP policy that were necessary to make good public policy. It reminded that cost benefit analysis and other tools to evaluate proposed treaties had been used and it wished to raise a few questions on the matter. Would WIPO consider the impact of IP on norms or other methods of supporting creative and inventive activity? For example, would WIPO look at the impact of patent or copyright policy on technology standard-making activities? Would WIPO embrace more sensitivity on issues like access to medicines or access to knowledge, particularly as members faced more pressures on enforcement of IP? The Representative stressed that there were many measures that would send this signal including the proposal for a treaty on access to knowledge, impact assessments on the proposed broadcasting treaty and a review on the implementation of paragraphs 4, 5, 6 and 7 of the Doha declaration on TRIPS and Public Health.

111. The Representative of the Civil Society Coalition wished to make a couple of suggestions. Firstly, would WIPO legitimately address issues concerning the protection of consumer interests? If they now agreed that the protection of consumer interests was important, could WIPO actually do things that made a difference? For example, could WIPO hold countries to understand the tools they would address on issues such as excessive pricing or other abuses of IPRs? Could WIPO work with and listen to consumer stakeholders with as much zest as it worked with right owners/stakeholders. Secondly, could WIPO begin to bring serious and objective evidence in economic analysis to its norm-setting activities, as was proposed in item 9 of document PCDA/2/2? Thirdly, did WIPO explicitly acknowledge that the level and nature of IPR protection would be different for countries of different levels of development? And finally, would WIPO move beyond its focus on IPR as the only relevant mechanisms to support creative and inventive activity? Given these general concerns, there were dozens of proposals under consideration that would send a signal that WIPO was prepared for a reform. That meeting should have focused on the message it wanted to send. Would there be a new approach that was more balanced in terms of consumer interests?

112. The Representative of Consumer International (CI) stated that opposition to certain proposals concerning issues about protecting the public interest in areas of limitations and exceptions to rights, protection of public health and control of anti-competitive practices in one hand, and the use of greater economic analysis in assessment of the impact of proposals on the other, had sometimes ironically come from the higher income countries in these negotiations. Yet, paradoxically, these were the same countries that often looked at models to

emulate in terms of their own domestic approach to these issues. For example, the United States of America was at present engaged in extensive discussions about the impact of patents on innovation and the appropriate methods of controlling anti-competitive practices and protecting consumers through agencies such as the Federal Trade Commission in the Department of Justice and the National Academies of Science. Europe as a whole was engaged in the evaluation of its IPR norms looking into empirical data of how programs met objectives and the use of more economic analysis, including, for example, the recent review of the protection directive for databases and the current review of the EU copyright directive. The Representative asked to look at what had recently taken place at the World Health Assembly (WHA), when the WHA had agreed to a far-reaching resolution to create a global plan of action to support innovation systems that were consistent with access to medicine and other public health concerns. That process had started as a southern initiative by the Governments of Kenya and Brazil, but it was eventually embraced by the United States of America and other high income countries. There was a need for the same type of effort to move forward here. Another proposal was to create a system within WIPO to enable countries to seek reports and analysis. One model for this could be the way, for example in the United States of America, the congressional research service or the congressional budget office provided services to members of the parliament, all of whom came from different political perspectives and were often opponents on the same issue. But they used the same joint research service to gravitate positions that were based on better evidence and more objective analysis.

113. The Representative of the Latin American Association of Pharmaceuticals Industries welcomed the initiative of the Governments of Argentina and Brazil to establish a development agenda at WIPO. In the Association's view, the proposal reflected very clearly the needs of developing countries and the concerns of the industry that they represented. The Association shared all the views that were expressed in the document PCDA/2/2, in particular concerning points 3 to 5, 7 to 9, 13, 14, 16 and 17.

114. The Representative of the International Video Federation (IVF) stated that its members comprised companies involved in all areas of the audio-visual industry, including entities specializing in the distribution of audio-visual content and physical carriers such as DVD and VHS and other digital networks, including the Internet. Its members closely followed the discussions taking place in WIPO on the development agenda and, in that context, had been working closely with other organizations representing the creative community, including the FIAPF, IFTA and IFPI. The Association wished to remind the participants in the discussion that the livelihood of the millions of people who made up the creative community in all nations depended on the strength and survival of copyright as an international institution. Copyright was a necessity for engaging in the process of creation, for producing a movie, publishing a book or recording a song, for enabling the production and distribution of content. Copyright protection was essential for cultural, societal and economic development in all countries, small or large, poor or rich. These were still valid concepts for the future. It further stated that it had carefully listened to the comments made by the different delegations and wished to emphasize the following points: firstly, that there was no reason to believe that there was any contradiction between development and copyright. Considerations which had always played an important part in WIPO's work. These efforts could be deepened through many of the proposals in Cluster A. Discussion on the development agenda should be focused on how to develop technical assistance, to organize training sessions to support developing nations in their efforts to develop their creative sectors and to address IP issues. There was no need to revise or to go beyond the existing WIPO mandate to achieve those desirable goals. Secondly, a balanced relationship between right holders and users was and

always had been a fundamental element in any copyright regime. Efforts to achieve such a balance through appropriate flexibility had always been central to the copyright debate and had been built into every copyright-related WIPO treaty in various ways. Dramatic changes to existing copyright conventions were not necessary to maintain this balance. Additionally of course, WIPO could help address public interest issues by means of increased coordination with other UN agencies as per some of the proposals in Cluster E. In conclusion, the Representative declared that the process currently taking place should not result in the weakening of the copyright protection or the modification of WIPO's mandate. It strongly supported the development of WIPO's technical assistance programs as the best way to address the needs of the development agenda. It also hoped to see these meetings resulted in a deepening of those efforts.

115. The Representative of the International Federation of Reproduction Rights Organizations (IFFRO) stated that it represented collective management organizations in the field of reprographic reproduction, so called RROs, as well as national and international creators and publisher associations that were members of IFRRO. It recalled that RROs had been set up in more than 50 countries to license access to scientific and literary printed works, in the form of reprography and certain digital uses. The association wished to comment on Cluster A, technical assistance and capacity-building. It stressed that the strengthening of national capacity for protection of creations, innovations and inventions, in order to develop a national IP industry, also required access to copyright works and structures to offer such access through individual and collective licensing mechanisms. It also required that assistance to develop these mechanisms and structures met the needs of the nations concerned. It insisted that the technical assistance should be prepared to accommodate the amounts at the national, sub-regional and regional levels, and also enable network building that could enhance the assistance that was provided. This was also the fundamental idea behind the IFRRO cooperation programs, especially the ones which were run with WIPO. This joint cooperation between IFRRO and WIPO had, for instance, enabled joint practical training in collective management of reproduction rights, in Benin, Burkina Faso, Cameroon, Madagascar, and Mauritius. Training arrangements had been set up with mentor organizations, operating under similar legal and other frameworks, to ensure that assistance was offered in a way that met the need of the recipients of the assistance. In addition to the training with successful organizations in the relevant field of activity enabled by the project, it was equally important that countries involved could build networks that strengthened the assistance and enhanced the possibility of adapting the aid to national, sub-regional and all regional needs. On the adaptation of assistance to the needs of the recipient, and to enable it to be demand-driven, the Representative was pleased to announce that earlier on that week, IFRRO and ARIPO had signed a cooperation agreement. This agreement would *inter alia*, for instance, make it possible to develop cooperation projects on all relevant fields of activities for ARIPO on copyright, legislation, enforcement, awareness-building, and copyright administration. It also provided for a platform for a three-party cooperation between ARIPO, WIPO and IFRRO on, for instance, training programs, that could easily be extended to a multi-partied cooperation involving other interested parties. IFRRO believed that technical assistance through this type of cooperation, involving both the private and the public sectors, was a prerequisite for the strengthening of cultural industries and the facilitating of access to knowledge in most countries, including the LDCs.

116. The Representative of the International Federation of Film Producers Association (FIAPF) welcomed the fact that the discussions over the past couple of days had enabled the Chair to begin identifying proposals that might reach a consensus between the Member States. Many of these proposals concerned technical assistance and the increase in production

capacities. As the Delegation of Austria, speaking on behalf of the EC, had stated the previous day, as well as other delegations, technical assistance was an essential component of WIPO's mandate. The industry of cinema and audio-visual companies wherever it was in the world, required a concentration of technical, human and financial capacities or recourses. The last film produced by Mr. Mohamed Ramzy, the Egyptian producer who had participated in the previous PCDA discussions, would have used or employed more than 300 people. They were direct jobs, artists, image technicians, electricians, carpenters, masons and whole of other professionals. So this was a creative industry which was a creative phenomenon and an industry that could play an extremely important role in the economic growth of a country. WIPO could play an essential role through its association with a number of proposals on technical cooperation and assistance under Cluster A, proposals 5, 7, 8, 9, 10 and 11, for example. Those were practicable proposals, very distant from the ideological and theoretical views that one could quite regularly hear in that body. Finally, the Representative reiterated the Federation's offer to all representatives from developing countries to contribute by its know-how and skills to set up or implement specific projects to facilitate the growth or birth of national film industries. They would facilitate international co-production with those countries as partners, and would help to reverse the brain drain by creating sustainable production capacities.

117. The Representative of the Electronic Frontier Foundation (EFF) stated that it had produced a briefing paper for WIPO's Member States on recommendations for WIPO's technical assistance program, which had been made available for distribution. It declared that it wished to address four sets of proposals in document PCDA/1/6. Firstly, with regards to Cluster A, the EFF supported the adoption of guidelines for WIPO's technical assistance program to ensure that it was development-oriented, individualized, balanced and integrated, including proposals 13, 18, 20 and 31. WIPO's legislative advice played a key role in the development of national and global IP norms. Secondly, the EFF supported proposals B 7, 8, 17, 18 and 21 and the proposal D 9 on the adoption of principles and provisions to ensure that WIPO's norm-setting activities protected a robust and lively public domain, and that it protected international flexibilities, national exceptions and limitations and the ability to regulate anti-competitive practices. Copyright law was designed to facilitate the creation of information goods, but was increasingly acting as a barrier to knowledge growth innovation. The main obstacle to utilizing public domain resources was identifying them. Accordingly, the EFF supported the Delegation of Chile's proposal for an international database of public domain works, similar to the measure proposed recently in the legislation of the United States of America and currently having been created for Canadian works by access copyright and creative commons. This would provide much-needed certainty for trans-border collaboration of Internet projects, such as project Goodenbourg's collection of 10,000 public domain books, the Google© library and open contents alliance projects and users around the world. Thirdly, the EFF supported the creation of a mechanism to carry out continuous independent evidence-based development impacts assessment, at WIPO's norm-setting and technical assistance activities, including proposals D 1, 11, 12, 14, 15 and 16, to assist the Member States who had been asked to adopt technological protection measure laws in a new broadcasting treaty in the Standing Committee on Copyright and Related Rights (SCCR), WIPO should conduct an assessment of the likely costs and impact of implementing such obligations. Fourthly, the Foundation supported discussion of mechanisms to facilitate access to knowledge, as aligned in proposal B 24, and consideration of alternative copyright-based and collaborative models of innovation and knowledge production, such as free and open source software and creative commerce licenses in proposals B 22 and 27. Finally, the EFF supported the creation of an appropriate process within WIPO to continue work on all the



identified proposals to enhance WIPO's institutional capacity to meet the needs of all of its members.

118. The Representative of IP Justice stated that IP Justice was an international public interest NGO that promoted balanced IP laws. IP Justice wished to register its support to the proposal submitted by the "Group of Friends of Development" on the establishment of a WIPO development agenda. This document had carefully synthesized various proposals into 21 concrete recommendations to the General Assembly that would significantly advance the public interest at WIPO and re-align WIPO with its UN mandates. IP Justice supported in particular the recommendation to reaffirm WIPO's commitment to the principles and goals of the UN system, economical and social development. As a member of the UN family, humanitarian objectives should be WIPO's state of priority. It further stated that the PCDA should adopt the declaration proposed in point 2 of the "Friends of Development", proposal that permitted consideration of various models to incentivize innovation. The proposed declaration also recognized that the pursuit of upward harmonization of IPRs without consideration for the social and economic costs ran contrary to WIPO's UN mandate. IP Justice also encouraged the PCDA to recommend to the 2006 WIPO General Assembly to launch negotiations for a treaty on access to knowledge and technology. Such a treaty could promote positive use of information technologies and laws designed to narrow the gap in the digital divide. IP Justice added that another concrete recommendation that the Committee could make to improve the public interest culture of WIPO would be to adopt the principles, guidelines, and correlative treaty provisions in point 7 of the proposed recommendations. The nine public policy recommendations in point 7 reflected the shared view of several proposals and the needs of all WIPO Member States to instill a balanced perspective throughout all WIPO activities and practices. IP Justice also supported the recommendation in point 5 to promote model approaches for implementing safeguards against anti-competitive practices and flexibilities and limitations in international IPR treaties. Those provisions were equally a part of the legal framework reflecting the balance struck between the public and rightholders, yet was often less understood by developing countries.

119. The Representative of *Médecins Sans Frontières* (MSF) wished to talk about access to essential medicines campaign. It reminded that MSF was an international medical humanitarian organization, providing assistance through over 500 medical relief programs in 80 countries worldwide. MSF was interested in IP protection and in particular pharmaceutical patents where it found itself increasingly confronted with problems of access to essential medicines. The Representative therefore stressed that a discussion under the development agenda would not be useful if concerns about access to essential medicines in developing countries were not addressed. The report of the WHO Commission on IPRs, Innovation and Health, released in April 2006, clearly stressed that innovation was meaningless if the people who needed it did not have access to it. Above all, the report presented a wealth of evidence in support of the views that the current system of drug development, because of its reliance on patents and commercial incentives for the priority setting and financing of medical R&D, was fundamentally flawed. As stated earlier, following a proposal by the Governments of Brazil and Kenya, ministers at the WHA had agreed to start discussions on the establishment of a global plan of action to tackle the current crises in R&D. The objective was to work toward "securing and enhance a sustainable basis for needs driven essential R&D". WIPO should also engage in discussion on real health needs-driven innovation and alternative models to stimulating R&D, that ensured the development of projects that were desperately needed, and at the same time ensured access to them. MSF concluded by saying that the development agenda was indeed a good forum in that respect.

120. The Representative of the Free Software Foundation Europe (FSFE) declared that it had various comments in relation to the document PCDA/1/6/Prov.2 and the discussions that had followed. Regarding item B 22, the FSFE was surprised to see free software Creative Commons described as activities outside the mandate and scope of copyright. The Representative believed the Delegation of Mexico had a similar understanding. As also explained in the FSFE free software essential reference paper that had been made available, the vast majority of free software was using copyright licensing for its software. Similarly, creative comments consisted of a set of modular copyright licenses for artistic works. It assumed that it was not the intention of WIPO to declare copyright in general outside the scope. The FSFE recommended to rephrase point B 22 along the lines of “intensifying activities for all users of the copyright system, including free software and creative comments”. With regard to items A 18 and 25, as well as 13, 15, 16 and 18, the FSFE wished to direct the attention of the assembly to the difficulties of the EC at trying to re-establish a competitive market *vis-à-vis* Microsoft®. That particular case provided an excellent demonstration of the difficulties experienced by industrialized countries to limit monopoly abuse, and while publicly available technical specifications were not sufficient to maintain an open standard. This was increasingly being understood by legislators in several countries, such as Denmark. In its motion B 103, the Danish Parliament had defined an open standard along three criteria. Any such standard should be: well-documented with its full specification publicly available; freely implementable without economic, political or legal limitations on implementation and use; and, should standardize and maintain an open forum, a so called standards organization through an open process. The Representative also encouraged the different delegations to take a look at the reasoning of the motion which made it quiet clear that open standards were essential to stop the spread of software independencies from one group of users, or organization, to another. As the Delegation of India had pointed out, free software was an important element of capacity-building, it was the best choice to give independence to governments and it helped the common man and woman. This could be seen as particularly relevant to items A 2, 6, 7, 11, 12, 14 and 15, as well as B 9, 11, 27 and 28, C 1, 3, 10, 11 and 12. Free software was relevant to WIPO, not only in terms of being licensed under copyright, it was also relevant in so far as WIPO’s planning to make massive use of software from many of its development agenda activities, specially A 11, 12, 14, B 9 and D 11. For all these items, should the General Assembly agree to move forward with them, free software and open standards would be essential building blocks for WIPO in a development-related activities. The FSFE stressed that it was its understanding that by sparing this debate, the development agenda could generally help WIPO to adapt to future challenges. It was increasingly understood that independence of political organizations and structures from the corporate interest vendors was a critical issue for democracy. Several political bodies around the world had already adapted their procurement policies in ways that would secure their independence and political mandate, by demanding control over the software they depended on for the daily work. The FSFE believed that WIPO, as an organization, faced similar issues in all its activities and should take them into consideration in due time. As a closing remark, the FSFE also considered items E 7 and 8 to be central to WIPO’s quest for more transparency democracy and all stakeholders involvement, and therefore encouraged all delegations to offer their support to these points.

121. The Representative of the International Chamber of Commerce (ICC) declared that, as competition policy was a subject which appeared to be of concern to several delegations, it wished to offer some information on this topic. Competition policy was being increasingly adopted all around the world and over 90 countries had some form of competition law. At the international level, competition policy was addressed by several IGOs. For example, UNCTAD had been working on competition policy for many years on the basis of its set of

multilateral agreed equitable principles and rules. UNCTAD also provided technical assistance in this field to its member countries. The International Competition Network (ICN) was a recently established network of national and regional competition authorities, and had to this day nearly 100 members from all regions, with the incoming Chair from South Africa. The ICN allowed established and more recent competition authorities to exchange experiences and to study competition issues of concern for countries at all levels of development. The Representative reminded the audience that the OECD had worked on technical issues relating to competition policy for many years. It organized a global forum every year to which it invited non-OECD members to debate issues of interest to all regions. Topics for discussion in the OECD had included the relationship between IPRs and competition policy- Competition policy had also been discussed for several years within a WTO experts group. As was mentioned by the Representative of Consumers International, reviews were currently taking place in the United States of America and the EU on the interface between IP and competition. To conclude, the ICC declared that competition policy had already been discussed in expert groups and several intergovernmental fora. It was suggested that this committee would find it useful to be aware of the results of their work and ICC offered to share any information that it had concerning this. More generally, the ICC supported proposals which could provide help to countries to use the IP system in a practical way to help further development without undermining the IP protection necessary to build up creative and innovative industries in those countries. In that context, the ICC wished to refer to panel discussions which it had organized in May 2006 on practical ways in which the IP system could be used to further development. The themes addressed included national and regional innovation strategies, measures to help small and medium-sized enterprises (SMEs) and the informal sector gain access to the IP system, access to scientific and educational information, and the use of genetic resources to develop local capacity and encourage investment and technology transfer. The Representative added that the summary of these presentations had been made available and were also to be found on the ICC website.

122. The International Federation of the Phonographic Industry (IFPI) declared itself extremely supportive of the goal of maximizing the use of the IP system to promote development, including bi-creative sectors in developing countries. The Representative reminded the audience that IFPI represented over 1,450 producers of sound recordings based in almost every country of the world. It was stressed that its members created music that represented cultural expressions of all kinds. Many of its members operated in developing countries and it was the IFPI's primary goal to promote the creation and the value of music in these countries, as well as in any other country in the world. With regard to the proposals included in the annex to document PCDA/1/6, the Representative wished to make a few remarks on the proposals included in Clusters A, B and D. On Cluster A, on the issues of technical assistance, IFPI totally supported the development of practical projects and the design of strategies to help address development problems and challenges. In addressing the challenges for creative sectors in developing countries, effective technical assistance was extremely important. IFPI encouraged WIPO to continue its important work in this area, as well as work on future study and exchange of information and assistance in capacity-building that would lead to greater understanding among countries on development issues that was needed. Regarding the issues of norm-setting flexibilities, public policy and public domain included in Cluster B, IFPI declared that it supported the focus in WIPO's work on the relationship between IP protection and development. WIPO had built social and economic considerations into its work, including developing countries' concerns. IFPI strongly supported the studying of the impact of piracy and counterfeiting. This work was extremely useful and important to understanding the adverse effect piracy had on economic development and creation. International instruments on copyright represented a balance that already took

into account the value of the public domain and allowed countries to implement development considerations. Rights provided under international agreements were minimum rights which were balanced against limitations and exceptions. Countries enjoyed the flexibility to implement exceptions which took into account all particular policy rules. Therefore, there was no need to redesign existing copyright treaties, as these were already established on balance that allowed national development considerations. Finally, on Cluster D and on the issues of assessment, evaluation and impact studies, IFPI strongly supported any evaluation exercise which would examine the important role of creative sectors as an engine for coercing. Assessments should focus on optimizing economic development, full creative enterprises of all sorts and encourage the continuation of WIPO's work industry.

123. The Representative of the International Publishers Association (IPA) stated that it was a federation of 78 national publisher associations from 68 countries and declared that one of their objectives was to promote the development of the publishing industry and the culture of reading, in particular in the developing world and, therefore, they were supportive of the WIPO development agenda discussions. The IPA proposed to narrow down the discussions only to include such matters that fell within the WIPO's remit. The Representative encouraged the delegations to identify suggestions among the 111 proposals that were within the WIPO's current competence, as described in Article 3 of the WIPO Convention. The IPA also asked that WIPO be allowed to focus on areas where facts demonstrated the existence and the extent of a problem, such as the question of how to ensure access to scientific, technical and medical information in the developing world, and how to bridge the information gap in that area

124. The Representative of the European Bureau of Library Information and Documentation Association (EBLIDA), speaking on behalf of the Library Community, represented by the International Federation of Library Associations, Electronic Information for Libraries and EBLIDA, agreed that developing and transition countries needed assistance to make the transition to compete more effectively. Libraries were essential partners of the WIPO partnership office, to enable developing countries to compete in the knowledge economy. EBLIDA supported the proposals on public domain as well as the proposal submitted by Chile, regarding the obligation to notify works and inventions that fall into the public domain, in a global database, and the vision of open access to research material. EBLIDA also supported the setting up of a mechanism for increasing the international flow of technical information and believed that WIPO should raise awareness for the open access model amongst Member States, and encourage exchange of policies and practices in that area.

125. The Representative of the Computer and Communications Industry Association (CCIA) believed that information and communication technology drove economic growth and development and they supported WIPO's efforts to fashion global rules to do the same. CCIA supported the future efforts by WIPO to address the fact that the absence of appropriate limitations and exceptions could similarly impede investment in development and inhibit technology transfer. CCIA stated that a successful knowledge economy required a balanced IPR approach, for protecting the rights of creators, while also establishing limitations and exceptions, that allow technology innovators to utilize, transmit and disseminate information.

126. The Representative of the International Federation of Pharmaceutical Manufacturers Association (IFPMA) stated that many proposals aimed at giving local enterprises a cutting edge with the backing of national governments, international organizations and even the private sector, should be implemented with safeguards to protect those creations and to enforce the rule of law.

Agenda item 5: Adoption of the draft Report of the second session of the PCDA/  
Agenda item 6: Adoption of the draft PCDA Report to be submitted to the General Assembly

127. The Chair introduced a document that had been prepared by him, on the basis of which the work of the Committee could be based. He stated that the document tried to reflect the views expressed in document PCDA/1/6 Prov.2, and proposals submitted by the “Friends of Development” in document PCDA/2/2. However, the Chair stated that given the differences between these proposals, the task had been a difficult one and he called upon the “Friends of Development” to work with the Chair to see how their proposals could be better incorporated into that document. He stated that the document had been circulated and that delegations would be given time to go through it, and later he would meet with the regional coordinators and interested delegations, to consider whether the document could be treated as a basis for the work of the Committee. The Chair added further that the document included a few paragraphs on the subject of continuing the process of establishing a development agenda for WIPO and the body that would take such work forward. The Chair closed his comments by clarifying that all the proposals submitted would be considered during the process, even though they might not have been part of the initial package of proposals, recommended for consideration during the present session.

128. The Delegation of Brazil said that it had not agreed with this manner of working during the informal sessions, and that the draft did not reflect their discussions. The Delegation pointed out that what had been agreed to was that the contributions of all groups would be made available and there would not be a list of proposals of “emerging consensus.” The Delegation declared that as this document had not been drafted within the agreed parameters, it was not acceptable. The Delegation concluded by saying that it would prefer it if there was to be no document at all.

129. The Delegation of Argentina expressed its concern for the fact that the proposed procedure had been rejected by them and that they had agreed in good faith on a working method, which appeared to have been reversed in a paper that had been distributed that morning. The Delegation added that it did not support a discussion based on establishing baskets, emerging consensus, or drawing up of a list. The Delegation concurred with the statement of the Delegation of Brazil in stating that it was not prepared to work on the basis of the Chair’s document.

130. The Delegation of Iran (Islamic Republic of) stated that given the respect it had for the position of the Chair, it relied on its guidance, whether in informal or formal sessions. The Delegation pointed out, however, that what had been agreed to was to proceed after consulting with and having the views of all delegations, and that the document that had been submitted was without any consultations with the major groups. As such, the Delegation declared that it could not support that procedure.

131. The Delegation of Switzerland thanked the Chair for the paper it had produced and stated that its group was ready to undertake an analysis of it in group meetings. The Delegation added that it wished to remind delegations who were resisting that paper that during the informal session that had taken place the previous day, a mandate for producing such a paper had been given. The Delegation proposed that the delegations break into group meetings and consider that paper.

132. The Delegation of South Africa thanked the Chair for the hard work that had gone into compiling its paper, but stated that it did not accept it as a way to move forward as it reflected the “basket approach” that it had not agreed to.

133. The Delegation of Cuba stated that it supported the statements of the Delegations of Brazil and Argentina, and added that that was not the procedure that had been agreed to.

134. The Delegation of Austria thanked the Chair for the effort that had gone into presenting its paper, and expressed the view that discussions about baskets or no baskets lay in the past and should be overcome. The Delegation went on to say that clusters had been discussed and the mandate of this body was now to produce concrete recommendations. The Delegation added that the Chair’s proposal contained for the first time, concrete recommendations, and as such, was keeping with the mandate of the body. The Delegation added that its statement was made before consulting with the EU and, as such, it could not say anything about the content of that paper, though the information provided there would be of great help to them.

135. The Delegation of Kyrgyzstan thanked the Chair on behalf of its group for the effort that he had made in preparing the paper and stated that its group had not yet discussed it, but stated that it would do so in time. The Delegation added that the debate of the previous three days had enabled them to move forward and that it found the document to be very constructive in that process.

136. The Delegation of Mexico thanked the Chair for his efforts in facilitating the work of the Committee with the paper. The Delegation added that having listened to the previous statements and given that it had not had the time to go over the document, it would be more comfortable if future discussions would take place in informal session.

137. The Delegation of Bolivia thanked the Chair for the effort that had gone into the preparation of the paper. The Delegation added, however, that it was not the procedure that had been agreed. The Delegation pointed out that several proposals had been deleted and as such, it could not work on the basis of that paper. It supported the statements of the Delegation of Brazil and other delegations, which had made similar submissions.

138. The Chair thanked the delegations for their statements and added that it did not recall that there had been any agreement to draft a document agreed to by all delegations. He added that he had tried to reflect what delegations had said during the previous days and that he would hold consultations with them on agreeing on procedures for taking the work of the Committee forward.

139. The Delegation of Brazil declared that it did not support this procedure and did not wish to continue the dialogue, whether in informal or formal sessions.

140. The Chair stated that it understood that the Delegation of Brazil did not accept the document as the basis on which the work of the Committee could continue, but expressed the hope that the Delegation would be willing to have consultations, so that it could explain as to how the work could be continued. With that, the Chair adjourned the meeting for informal consultations.

141. On reconvening the formal session, the Chair said that he had consulted with the various groups and indicated to them that he would try to adopt a more broad and flexible procedure, allowing delegations greater freedom of expression. The Chair went on to emphasize that the

document that had been agreed to as the basis for the work of the Committee could not be any document, other than PCDA/1/6, Prov.2, which had been agreed to during the informal sessions. The Chair added that it was important to bear in mind that a lot of headway had been made in the meeting, particularly the unofficial agreement amongst the delegations that the procedure for putting in place a Development Agenda for WIPO should continue in the form of a standing body, and that all proposals should be taken into account in that process, without discarding any of them, even if they were at first instance not acceptable to all. The Chair emphasized that it was up to the committee to decide whether it was ready to make a decision to submit a set of proposals to the General Assembly or whether it would have to let the General Assembly begin deliberating on this question from the very beginning. The Chair closed his comments by stating that he would continue to work with the committee in the manner indicated.

142. The Delegation of Croatia expressed its strong support to the proposals in the paper submitted by the Chair. It stated that that paper was the most viable and sensible basis for proceeding with the work of the Committee. The Delegation added that the paper did not exclude any of the 111 proposals from the discussions, that it merely postponed some issues to a later stage in the negotiations. The Delegation further added that the draft recommendation in document PCDA/2/2 was not representative of the discussions and that it wanted to focus the deliberations on the proposal of the Chair. The Delegation further stated that it was not clear to its regional group as to why the “Group of Friends of Development” had abandoned the consensus that was reached for producing the paper by the Chair. The Delegation felt that at that stage, it would be useful to recall the mandate of the PCDA, which was to agree on a set of recommendations to be made to the General Assembly. The Delegation further stated that it was obvious that the committee would not be ready to adopt recommendations based on all 111 proposals, and as such the committee should try to agree on some of those proposals. The Delegation commended most of the delegations for their dedication, hard work and flexibility, displayed during the process. The Delegation concluded by recalling that during the previous two years, the committee had come a long way and that it believed that it was ready with a set of proposals to be submitted to the General Assembly. The Delegation stated that if other members were not ready to do so, it would be frustrating for its group and that the efficiency and purpose of the sessions would be called into question. If that was the case, the Delegation would, for its part, question the whole proceeding and consider whether or not the process should be continued.

143. The Delegation of Brazil stated that it wished to clarify that in informal meetings and formal sessions, it had stated that its position was contained in document PCDA 2/2, in which all of the proposals of members were taken into account and, as such, should be the basis of negotiation. It did not accept or approve the document containing the 111 proposals as the basis of negotiation. The Delegation pointed out that the result of the present session was to exclude the views of a group of members and, as such, the process was not acceptable and it did not want to continue with the process. The Delegation further pointed out that in particular the proposals from the “Group of Friends of Development” had been excluded which it found to be even more ironic, given that it was the only group that had made an effort to move forward with the set of 111 proposals. The Delegation stated that the group had made a very serious effort to cut down the large number of proposals that existed, to avoid duplications, and included elements of proposals submitted by other groups in an effort to reach consensus. The Delegation stated that it was the only group that made that effort to try to find convergence, whereas the other groups continued with the process of identifying proposals under different categories on the basis of criteria, in respect of which no consensus had been reached. The Delegation informed the Chair that it had instructions not to continue

with the present process and repeated that the meeting should be adjourned, with the report showing that no consensus had been reached and that a factual report of the discussions be submitted to the General Assembly. The Delegation stated that it wished to make very clear that the proposals to be submitted to the General Assembly, were those contained in the documents submitted by the “Group of Friends of Development”, i.e., WO/GA/31/11, IIM/1/4, PCDA/1/5 and PCDA/2/2.

144. The Delegation of Kyrgyzstan thanked the Chair and paid tribute to the efforts of the Chair in trying to ensure that the work of the committee moved forward and added that the paper submitted by the Chair reflected the whole range of opinions expressed and that it supported the spirit and principles contained in that paper. The Delegation concluded by saying that it was vital to take into account, as much as possible, all the proposals presented by the delegations and thanked all delegations that had contributed to the work of the committee.

145. The Delegation of Austria stated, on behalf of the EC, that it whole-heartedly supported the text submitted by the Chair and that in its opinion, it was fully in line with the mandate of the PCDA, and that it would help the committee achieve its goals. The Delegation of Austria reiterated its willingness to support a great number of concrete proposals, as had already been stated on previous occasions, and assured the Chair of the determination of the EC to cooperate with the Chair to successfully conclude the meeting.

146. The Delegation of Switzerland joined the Delegations of Croatia, Kyrgyzstan and Austria in thanking the Chair for its efforts in compiling the paper. The Delegation stated that it wished to make specific remarks and some more general remarks on that paper. The Delegation went on to state that Group B had carefully analyzed that paper and that despite the fact that not all that was proposed by Group B had been included, and that it was also not comfortable with some of the proposals of other delegations that had been included, it was in a position to fully accept the paper. It stated that after two years, there were results and they needed to be accepted. During that time, many delegations had shown maximum flexibility to reach the point they had come to. It had taken this committee four meetings, which had cost altogether more than one million Swiss francs. The Delegation urged the committee that it was now time to get concrete results and to harvest the fruits and that it would be very disappointing not to be able to agree on at least some of the proposals. The Delegation expressed disappointment at the absence of compromise and flexibility from some delegations.

147. The Delegation of Argentina supported the statement of the Delegation of Brazil and added that it too had specific instructions not to continue discussing this issue under the present conditions and procedure. The Delegation added that excluding the positions of the proponents of the development agenda was not acceptable. The Delegation reiterated that as the Delegation of Brazil had said, the “Group of Friends of Development” had made an effort to submit proposals in four documents, amounting to over one hundred pages, that could have served as a basis for the negotiations, yet those proposals remained in those four different documents. The Delegation asserted that the annex to the minutes of the last meeting could not be a basis for structuring the debate. The Delegation pointed out that there was no agreement to do that and that they could not replace the documents and proposals that were submitted.

148. The Delegation of Bahrain stated that it wished to thank the groups that supported its position and wished, in particular, to thank the Chair for the effort it had made in drawing up



the document, which reflected the desire to obtain practical and concrete results acceptable to all, and to ensure that the work of the committee would be successful and its expectations met. The Delegation expressed the view that it was urgent and necessary to consider that document in detail, so that it could serve as the basis for the discussions of the committee, to enable it to achieve results, which could be submitted to the next General Assembly. The Delegation expressed support for the proposals of the Chair and the hope that its interests would be taken into account. It added that during the previous two years, the committee had worked very hard and had made a lot of progress. The Delegation paid tribute in particular to the efforts between the African Group, the Arab Group and the Latin American Group, particularly Colombia. The Delegation concluded by stating that given that all delegations would like to achieve positive results, the document of the Chair should be considered substantially.

149. The Delegation of Thailand said that the Asian group wished to be constructive and flexible and added that the group was ready to go along with any consensus that was reached on the way forward. The Delegation said that it was too early to adjourn the meeting and that they should continue to seek a consensus, considering that they still had one and a half days left.

150. The Delegation of South Africa expressed its difficulty in accepting the proposal in the way it was presented as it had expected to reach an outcome which accommodated the interests of all the members.

151. The Delegation of Nigeria said that it wished to endorse its confidence in the Chair and expressed its readiness to give him support in order to lead the meeting towards a desired result. It recalled that the African group had submitted a document which contained an elaborate set of proposals for the establishment of a development agenda. By that action, the African group had indicated its interest in the process and willingness to continue to the very end to see that its proposals were actually adopted and implemented. The document submitted to the IIM and the PCDA was actually the outcome of the mandate of the governments of African States and the Ambassadors in Geneva. The mandate of the group was to continue discussing until the process was concluded and good results achieved. Therefore, the Delegation called for the Chair to continue with the meeting in the hope that all the interests and concerns of the African group would be accommodated in the implementation of the proposals for the establishment of a development agenda in WIPO. The Delegation added that its proposals were clear, concise, precise, and actionable and that there were no ambiguities about them. The group did not intend to withdraw from their clear proposals or to see the process terminated halfway without a definitive result. With regard to the proposal of the Chair, the Delegation said that it was acceptable as a fundamental document on which they could work and make changes, as required.

152. The Delegation of Colombia expressed its thanks for the efforts made by the Chair and added that the paper submitted was very close to a good way to move forward and serve as a basis for discussions. It added that the process had stopped because many of the proposals, in particular those of the "Group of Friends of Development", should have been included in the document together with those that they could have supported. The Delegation thought that it would have been very useful to continue the negotiations in the most constructive spirit with flexibility being shown in the discussions. The Delegation referred to a comment made by the Delegation of South Africa, a Delegation which was also a member of the "Group of Development", that the delegations needed to search and strike a balance in the negotiating process to reach a common agreement between the delegations. The Delegation also referred

to the statement made by Delegation of Thailand that it was premature to stop the process as the possibility of reaching a consensus was still open. That would save two years of work and the intense efforts made by several delegations.

153. The Delegation of Iran (Islamic Republic of) said that they should remember that they were discussing one of the most important things dealt with by the UN, that is the development of developing countries. During the past years, it had showed flexibility with the proposal of all Member states in order to be cooperative and have an inclusive approach, but its flexibility should not be assumed as a consensus for other proposals. It added that after two years of discussions, all its components of the development agenda had been finally ignored.

154. The Delegation of the United States of America expressed its full support for the statement of Group B. It also expressed its support for the Chair's text and thanked him for offering it, looking at it as a good compromise that provided a basis for going forward in the discussions. It added that it had looked at the document, PCDA/1/6/Prov.2, as a basis for their discussions that week. That had been agreed to in the last meeting, as stated in paragraph 7 of page 109 of that document. The Delegation added that regardless of the outcome of the meeting that week, it hoped that WIPO, as a part of its on-going development work, would be able to implement many of those proposals within its current program and budget.

155. The Delegation of Ethiopia extended its appreciation for the effort and wisdom of the Chair in leading the session. It added that for LDCs, development was not something which they could give up, and that they really needed a concrete outcome from that session. Development was "food and medicine" for them and they wanted to stand, not as a Goliath, but as an equal with other nations and benefit from it. It added that at that moment, the world had the capability and the resource to do its part for developing nations.

156. The Delegation of Benin took the floor on behalf of the LDCs, to thank the Chair for the efforts he had undertaken, to lead them towards the end of the debate. It explained that those who needed development most were, without doubt, the LDCs and that they were ready to support any initiative which could enable them to progress along that path. The Delegation added that it supported the statement made by the Delegation of Nigeria on behalf of the African Group. It added that they felt that it was still necessary and possible to reach an understanding, so as to come up with a development plan for WIPO. It supported the Chair's proposal and looked at it as a good basis for discussions, leading to achievement of results.

157. The Delegation of China said that it wished to thank the Chair for his efforts. It added that it fully supported the intervention made by the Delegation of Thailand, on behalf of Asian group, and hoped that all parties would show the maximum flexibility to continue the discussions.

158. The Delegation of India noted the efforts made by the Chair and also his views that the process would not be discontinued at this juncture and added that that had also been emphasized by that Delegation. However, it added that the proposal put forward by the Chair did not adequately reflect the content of the discussions held thus far. The Delegation said that the list of proposals, identified as enjoying emerging consensus, seemed lop-sided and that there was an inadequate parity between the treatment of what was proposed to be carried forward in the near term, and what was sought to be put to the future. Regarding the equally important issue of carrying forward the development agenda debate, it added that in the Chair's proposal they would have liked to see a clearer road map of how to take the process

forward. The Delegation emphasized the importance of deliverables and said that there was no listing of issues for consideration in the medium-term. It concluded by stating that the Delegation was not in a position to accept the Chair's proposal as it currently stood, and looked forward to contributing to any further efforts that the Chair wished to undertake.

159. The Delegation of Chile believed that the document could have reflected all the proposals in a more balanced way. It added that all the members had to show more flexibility and be willing to accept proposals from others. The Delegation said that it would have liked to have the most inclusive results possible and as the Asian group had said, there was still one and a half days left. The best solution would be for the Chair to take that document off the table and do what ever he liked with it. The wisest thing would be to explore new ways of approaching the problems. The Delegation concluded by saying that it continued to believe in the development agenda objectives and was confident that they could take the process forward.

160. The Chair thanked the delegations and recalled that there were some who had rejected the document he had submitted, and who had requested that the process should conclude as it was, forwarding everything that had been said, to the General Assembly. The Chair noted that other delegations did not actually refer explicitly to his proposal, but that they had indicated that in their view, both the process and the meeting should continue until the end to achieve some specific results. Yet, further delegations had supported the proposal made by the Chair, because they considered it to be a good basis for discussions and for making recommendations to the General Assembly. The Chair noted that there was also one delegation which had indicated that the Chair's document should be set aside and that other ways of working should be sought. He indicated that such was his summary of the situation but would be grateful for delegations to share their views with him. He clarified that his question related to the proposal he had made that morning and that he would open the floor to delegations to allow them, in as respectful and courteous a manner as possible, to express their points of view and give him an outline of their respective positions, to be able to make an assessment of the situation and see how, and indeed whether, they could continue.

161. The Delegation of Chile recalled it was Chile which had suggested that morning for the Chair to withdraw the document, and that it had done so in a constructive spirit. The Delegation still wanted the process to continue, even though it did not have any alternative proposal for the time being.

162. The Chair asked the Delegation of Chile whether they had enough time to explore other approaches.

163. The Delegation of Chile believed that whatever proposal or solution was reached during that meeting should be as inclusive as possible, and that it was not rejecting anything or excluding any of the 111 proposals on the table and that it wished the process to continue. The Delegation clarified that, regardless of which forum that was, it should focus on the Development Agenda, and that it would not mind renewing the mandate of the PCDA. The worst thing would be to kill the process altogether and that it could therefore recommend to the General Assembly that the present process should continue, and that they should have an agreement, however little ambitious it may be, which could serve as a minimum common denominator. The Delegation indicated that it would not go into the substantive issues at that stage, but hoped that all the proposals would be included. It added that they were flexible and had expressed a preference for the format presented by the "Group of Friends of Development".

164. The Delegation of Paraguay welcomed the proposal of the Delegation of Chile, because it did not abandon any of the proposals submitted to the present committee. The Delegation wished for the process to continue in a permanent forum of some kind, and indicated that it was of the view that an agreement with some kind of roadmap could be reached. Such an agreement would not exclude any of the proposals submitted.

165. The Delegation of Switzerland, speaking on behalf of Group B, indicated that the paper constituted an excellent working basis and that in its view they should work along those lines. The Delegation recalled that there had been a broad support for the paper, as they had noticed that morning. Concerning the interventions of the Delegations of Chile and Paraguay, it said that it was of the view that process and content were two things, which went together. The Delegation went on to say that there was no point in continuing with the process if one did not have a content, and that they should first try to focus on the content, which were the proposals summarized by the Chair in his document.

166. The Delegation of Argentina declared that it continued to believe that the present document could not constitute a basis for their work, and that what the Delegation of Switzerland had just said about the content and the process, was something they had already discussed in informal consultations. In the Delegation's view, those were two elements which were interrelated and inextricably linked. The Delegation agreed with the Delegation of Chile that the proposal should be reiterated, perhaps it was just a problem of misunderstanding, but they did not think that they had a consensus to agree upon a text at the moment. The Delegation noted that they had a compromise text from the Chair at their disposal, yet, in the Delegation's view that was premature because it was quite obvious that the conditions to draw up a new document were not in place. The Delegation preferred to take that matter to the General Assembly to submit a factual report of the present meeting to them. Only then they would discuss the issues at the General Assembly and they would decide how to move forward with the process.

167. The Delegation of Austria reiterated its support for the Chair's text and indicated that it associated itself with the statement given by the Coordinator of Group B and that, as previously said, it was determined to cooperate with them to reach a successful conclusion of the meeting. The Delegation concluded by saying that it would show an open and constructive spirit towards each and every new proposal which may be submitted.

168. The Delegation of Croatia indicated it was still convinced that the Chair's proposal was the best one and that it represented a good basis upon which they could proceed with their work. The Delegation also pointed out that the proposal was made on the basis of the agreement that all Members accepted and that it also followed the logic of clusters which had been adopted during the last PCDA meeting. It also recalled that they had discussed ways of finding a solution on how to proceed with the meeting, and indicated in that regard that the Delegation was of the view that since it would probably be too difficult to find another solution at the present late stage, the best way would be to proceed with the proposal as the Chair had just outlined.

169. The Delegation of Colombia stressed the importance of making an effort to find a solution to make the most of the last two years of work and efforts, in which countless proposals had been submitted. At that point in time, the Delegation indicated that they could even sacrifice some of the proposals that could be implemented in a longer-term or in the medium-term and perhaps put priority on a series of proposals, which could be implemented

in the short-term. In that sense, the Delegation noted that the Chair's paper could be used as a basis for recommendations. The first part of the document, namely the first six paragraphs, included some of the elements of their discussions. The Delegation went on to say that what they could think about at some point was to look at the annex, as a basis for the negotiations as suggested by the Chair, and try to reach agreement about taking into account the other proposals from the "Group of Friends of Development". The Delegation recalled that it had also supported some of those and that in its view an extra effort could be made that day and the following, to try to agree on a more inclusive list, by being imaginative. The Delegation suggested talking about a package of about 30 proposals, five per cluster, putting priority on those proposals that could be implemented very quickly and trying to strike a balance between the origin of the various proposals, irrespective of the number of proposals. The Delegation said that they could come up with a package, which could be the balanced reflection of the origin and the character of the proposals. In conclusion, the Delegation stressed that they should constructively continue to work to try to bring concrete results for the General Assembly.

170. The Delegation of Brazil recalled that its position was similar to that expressed by the Delegation of Argentina.

171. The Delegation of Mexico considered that the document submitted by the Chair had the right characteristics to be the basis of their work, and pointed out that if the meeting was closed, it would render the work of the whole week useless. In the Delegation's view, discussions should continue in informal meetings.

172. The Delegation of Ecuador stated that it wished to reiterate the position it had expressed that morning, namely its commitment to the views expressed around the proposals of the "Group of Friends of Development". The Delegation went on to say that the proposals made by that group reflected the desire that progress in IP, an area in which the Delegation was very committed, could not constitute an obstacle or a barrier to progress in areas in which developing countries had extreme difficulties. In the Delegation's view, the terrible situations affecting many states and peoples worldwide should be a key element that mobilized the discussions in that forum, so that additional progress could be made towards an effective decision to transform those barriers into positive aspects, that could help developing countries, instead of restraining development. That was the reason why Ecuador had been working with that group of countries, in which the proposals or package were inextricably linked. That was also the reason why it was often very difficult to see the fragmentation that some were trying to achieve, which tended to reduce or restrict the scope of what they were trying to do with those proposals. The Delegation went on to say that it was frustrated with some of the results which had or had not been achieved in that session, and deplored the lack of flexibility because of the difficulties they had come across. Instead, they could have made IP a constructive tool, and in the Delegation's view, that opportunity had been lost in the present committee. The Delegation concluded by saying that it hoped that in the General Assembly, where they would have to go over the work done at the present committee, more effective and positive results could be achieved.

173. The Delegation of Venezuela supported the arguments made by the Delegation of Argentina and supported by the Delegations of Brazil and Ecuador.

174. The Delegation of Bahrain reiterated the views it had expressed in its statement that morning. The Delegation also stressed the importance of transparency to which it attached a great deal of importance. In the Delegation's view, the way in which they were working

would not enable them to achieve results and that was the reason why they should keep in mind the interests they were trying to pursue, to be able to submit a recommendation to the next session of the General Assembly. The Delegation went on to say that if they could not go any further, everyone would have lost in the process. The Delegation further noted that the flexibility everybody had spoken about should give rise to a consensus, otherwise they should allow the General Assembly to decide and, in that regard, the Delegation believed that the Chair's paper was a good basis for that work.

175. The Delegation of Cuba reiterated the position it had expressed that morning.

176. The Delegation of Thailand, speaking on behalf of the Asian Group, reiterated the position it had expressed that morning, namely that the Asian Group wished to be constructive in its approach, show flexibility, and that it would go along with any decision that commanded consensus from the meeting. The Delegation recalled from the informal consultations with the coordinators and Member States, which took place the previous day, that there was an emerging consensus on the need to continue with the discussions required for the elaboration of a minimum common denominator. In the Delegation's view, that consensus had not been quite achieved at that moment. The Delegation concluded by saying that it would not object to what the committee would agree upon.

177. The Delegation of Iran (Islamic Republic of) pointed out that from the very beginning of the week, it was said that transparency would lead their utmost thoughts, and that flexibility would be required to discuss the proposals of all Member States. The Delegation recalled it had represented its viewpoints in the document PCDA/2/2. In the Delegation's view, the process had to be transparent, inclusive and clear. In that regard, the Delegation noted however that there were a lot of ambiguities in the text and that its viewpoints had been excluded altogether. The Delegation indicated it would support a text that would cover the concerns of all in consensus.

178. The Delegation of the Russian Federation fully supported the points made that morning by the Delegation of Kyrgyzstan, speaking on behalf of their regional group. The Delegation also gave its support to the Chair for the efforts he had been making to seek consensus. In the Delegation's view, the document prepared by the Chair could be a basis for further discussions. The Delegation went on to say that it also believed it was necessary to continue with their discussions and efforts, which had been made to seek a mutually acceptable solution.

179. The Delegation of Nigeria, speaking on behalf of the African Group, reiterated what it had said in its earlier statement regarding its support of the Chair's leadership and also welcomed the Chair's document, to which substantial changes should nonetheless be made. In the Delegation's view, what was needed was a careful reflection on where they wanted to go, and what they actually wanted to achieve out of a process which had already taken them two years. From most of the delegations' comments, which that Delegation had heard, it appeared that the consensus which had emerged was for the continuation and not for the termination of the process. The Delegation proposed the adoption of a set of principles or guidelines that would be of comfort to all delegations. The Delegation went on to say that the principles it wished to propose were very simple and practical. For instance, the present meeting could agree to give a very strong commitment that the PCDA and the Development Agenda would continue and would not be prematurely terminated. Secondly, that they would all agree to establish criteria for the implementation of the 111 proposals that were annexed to the report of the first PCDA, and certainly that they could now agree to work out a formula

for the implementation of those proposals in the short-, mid- and long-term. More importantly, the Delegation suggested that they should all commit themselves to agree that no proposal would be rejected or consigned to a locker and forgotten, that all proposals would be discussed along the same lines at one point or another. In the Delegation's view, that should clear the air and give everybody the opportunity to discuss ways and means of establishing the Development Agenda. The Delegation would come up with a non-paper for the guidance of the Chair and other delegations, to see if it would help the process forward.

180. The Delegation of the United States of America restated its position from the morning; namely that it supported the Chair's text as the basis for going forward on those issues. While not perfect, in the Delegation's opinion, it included proposals from many countries and regions, including the African and Arab Groups, Brazil, Argentina and Colombia. The Delegation noted that it did not include proposals it had submitted but, nevertheless, the Delegation wished to work on those matters to go forward, in a constructive spirit to find consensus among all in the PCDA. The Delegation concluded by saying that the document, which the Chair had put together, did in fact reflect that consensus in terms of identifying those proposals that had support from the greatest number of delegations.

181. Resuming discussions after a break, the Chair explained that the start of the plenary had been delayed because he had been waiting for the conclusion of discussions among Coordinators, which had taken place that morning and the day before. The Chair explained that it had not been possible to reach a consensus on the final results of the Session. He thanked the delegations for their considerable efforts, particularly those which had submitted documents and had assisted him in his work. The Chair expressed his disappointment with the results, but added that all the participants had agreed that the Development Agenda was important. The Chair was convinced that discussions held during the PCDA would prove useful for future discussions on the Development Agenda. The Chair expressed his optimism that at the General Assembly, delegations would take appropriate decisions, which would be beneficial to all WIPO Member States, to WIPO itself, and particularly, of course, for developing Member States. The Chair suggested that the decision would be to simply forward the factual report of the PCDA and the official documents submitted to it, to the General Assembly. He added that this was on the same lines as what had been done after the sessions of the IIM in 2005, and sought the views of the delegations on his suggestion.

182. The Delegation of Thailand, speaking on behalf of the Asian Group, expressed its disappointment that no consensus could be reached on the proposed recommendations on the Development Agenda. However, the Delegation stated that it still believed in the importance of mainstreaming the development dimension into all activities of WIPO. The Delegation expressed its hope that during the General Assembly, Member States would find a way to set the Development Agenda on a solid and action-oriented basis. Lastly, the Asian Group expressed its willingness to continue to play a constructive role to work with Member States, to find an inclusive approach, which reflected the concerns of the Member States.

183. The Delegation of the United Kingdom pointed out that everybody shared the disappointment of the Chair that delegations were unable to deliver on the potential the Meeting offered. The Delegation reaffirmed its commitment to working on development issues with WIPO and all its members, to reach agreement on a work program in the nearest possible future. Bearing that in mind, the Delegation suggested that perhaps those countries who felt that they were able to make a compromise on which further work may be based, might consider meeting informally, in order to identify ways in which the current deadlock could be broken.

184. The Delegation of Switzerland, speaking on behalf of Group B, indicated that it had shown utmost flexibility to achieve results in order to sharpen, strengthen and focus WIPO's development activities. It was a process, which had lasted two years, involving five meetings, at a cost of one million Swiss francs, with no results. The Delegation added that the paper proposed by the chair was a balanced one, in which every proponent found most of its proposals. It included a clear road map for the future work on the Development Agenda after the General Assembly. According to the Delegation, the second part was an operational, workable and balanced compromise of proposals, elaborated during a long process. The Delegation stated that the committee was supposed to give clear guidance to the General Assembly on how to better take into account the real needs of developing countries. Unfortunately, the spirit of compromise was unequally distributed. The Delegation pointed out that some delegations had preferred not to move, for reasons it could not understand, as those delegations had 20 out of 40 proposals in the Chair's paper. That attitude was detrimental for developing countries, which would have benefited from the prompt implementation of the 40 proposals. The Delegation indicted that the outcome was sad and deplorable. The excellent momentum that had developed during the week was not used, even though an overwhelming majority had been eager to use it, in order to come to concrete recommendations for the General Assembly. The Delegation also expressed a special thanks to all the delegations which had worked constructively and in a good faith for the success of the process.

185. The Delegation of Kyrgyzstan noted its concern for the turn of events of the previous day. It said that delegations had been excited about the prospect of developing a new Development Agenda for WIPO. There was a hope for designing systems and practices, which would have helped countries to derive advantages from the IP system. Reviewing what had happened since the last PCDA, the Delegation stated that at the end of the meeting in February, it had been decided to prepare a list of proposals divided in various clusters, which would form the basis for discussions in the second session. It had also been decided that the names of the proponents of the proposals would not be mentioned, as the proposals would be treated as those of the PCDA. When the Delegations started the discussion earlier that week, they were informed about a new proposal which had been tabled. The delegations did not want to be distracted by that development, as they wanted to apply their minds to the list of proposals circulated in February. Therefore, the Delegation noted that it wholeheartedly supported the move to mandate the Chair to come up with a suggestion for the recommendations to be made to the General Assembly. It believed that the vast majority of the Member States had also supported that idea. The Delegation was shocked by the reaction of some delegations to the paper presented by the Chair. In fact, that reaction was conveyed to the Chair, even before delegations had had a chance to look at the paper. After listening to the arguments the day before, the Delegation sat down to analyze the paper circulated by the Chair. The Chair had told them that the attempt had been to identify, as a first step, the proposals on which there had clearly been no objections from the Member States. Then, there had been a further attempt to add those proposals, on which a few Member States had sought further clarification, information or else suggested some slight changes. The rest of the proposals had not been included at that stage. The Delegation noted that the idea behind that had not been to exclude any proposal from consideration. It was a first step to consider those 40 proposals in an attempt to reach consensus and submit definite proposals to the General Assembly. The Delegation considered that it was always better to take up those proposals first, on which there were better chances of convergence, than to take up items on which the areas of divergence were relatively wide. The words used by the Chair had been "emerging consensus" and that was what countries wanted to look at. But, of course, at the end of the



process, Member States would have adopted the Development Agenda as one package, and not a series of separate proposals. Therefore, there should have been no concern or dismay if some of the proposals had not been included in the first list. The Delegation was also concerned by the suggestions made the previous day, that the proposals of a particular Group had not been added to the list, even though it had been decided that the proposals would have been treated as those of the PCDA and not of individual countries and groups. The Delegation had done a quick check on the numbers of proposals, from each proponent, that had been included in the list of 40, and the results were: "Friends of Development"-18; African Group-9; Bahrain-6; Chile-2; Colombia-1; United States of America-4; the proposals of the United Kingdom had not been added. Therefore, the Delegation could not understand why some groups were upset. The Delegation argued that the process had to be approached with due diligence, sincerity and maturity. It was also important to show respect to other delegations and the Chair. Delegations could not summarily dismiss efforts made by the Chair, who had been mandated to present a proposal. The Delegation expressed its considerable respect for the Chair, who had chaired the discussions admirably during the previous year and more. He had tried his best to carry all the delegations with him and make proposals. The Delegation also noted that the paper that had been presented by the Chair was consistent with the mandate that had been given by the General Assembly the previous year. It had the support of the majority of developing countries, LDCs, developed countries and countries in transition. It was balanced and covered the views of most groups and countries. It had the possibility of ultimately identifying the elements of a Development Agenda and facilitating the achievement of tangible results. At the same time, the Delegation pointed out that the process could not continue on the basis of suggestions and proposals made by just a few delegations. Nor could a few delegations let the process come to an unsuccessful end, as failing was not an option. The Delegation stated the importance of going to the General Assembly with some concrete suggestions, highlighting the need to establish the credibility of the committee and avoid a situation in which the PCDA communicated to the General Assembly, that it had not been able to agree on anything. Therefore, the Delegation proposed to submit a proposal making recommendations to the General Assembly, about the content and process of the future work program. That proposal was more or less on the same lines as the proposal made by the Chair the previous day, around which it perceived a fairly wide support. The Delegation said that its proposal had already been submitted formally to WIPO, and requested it to be admitted as a formal proposal to the PCDA, under Agenda item 6.

186. The Delegation of Austria thanked the Chair for his efforts to bring the committee to a success and joined other delegations in regretting the outcome of the PCDA. The Delegation recalled that the EC had expressed its wish to support a great number of proposals in its interventions, and had really tried to reach concrete recommendations. The Delegation added that it had not excluded, or vetoed, anything from future discussions, and it remained in an open and constructive spirit with respect to all the issues under consideration.

187. The Delegation of Australia considered that the majority of delegations had approached the previous few days with the genuine desire to deliver an outcome, and they had been flexible in their approach. The Delegation was disappointed that the committee had not been able to achieve its mandate. Like many other delegations, it felt that the Chair's paper submitted the previous day was a good starting point for further discussion and development of an inclusive paper, which could have been presented to the General Assembly. It was disappointing that that work had not been concluded. The Delegation indicated that, as a country that delivered significant development funds and organized a number of activities in the area of IP and economic development, it remained committed to continuing its efforts to

working in partnership with WIPO and its regional neighbors, to deliver a member-driven and demand-based program of activities.

188. The Delegation of Brazil also expressed its disappointment with the results of the meeting and its frustration that it had not been possible to reach an agreement. And that, despite the efforts that all delegations had made, including those in the group of “Friends of Development” to try and make progress not only on the original proposal from 2004, but on promoting the other issues and concepts which it believed could offer the Organization solid foundations for building something more integrated on the issue of the development of IP, and its relationship with development. The Delegation stressed the crucial importance it attached to the Development Agenda. It mentioned the work which the Group had done and presented during the process, starting with document WO/GA/31/11, IIM/1/4, PCDA/1/5, PCDA/2/2. The Delegation indicated that many issues of substance were included in those papers and it continued to be of the opinion that they contained a very clear and rational approach. Such documents were of great importance for the Organization, and not only for the members of the Organization who participated as delegates, but also for those who were outside of the Organization, but might still be interested in and concerned by the issues discussed. The Delegation added that those who read those documents would find a great deal of material of over 100 pages worth, which would enrich their own contributions to discussions and work on the relationship between development and intellectual property. The Delegation reiterated the importance of the issue and considered that it should be a standing item on the work agenda of WIPO. It noted that the results of the committee had not made it possible to make positive steps forward, which was regretted by the Delegation. The Delegation stated that it had worked in good faith, wanting to make headway and had shown as much flexibility as it could. The Delegation had made considerable efforts to merge proposals, in order to include proposals made by groups other than its own. It wanted to improve the quality of the proposals and move the process forward, through the document PCDA/2/2. The Delegation expressed its regret that some members were not happy to consider PCDA/2/2. The Delegation also noted that the content of that document had not been reflected in the document which had been circulated by the Chair and in those circumstances, it was simply not possible for the Delegation to accept that as an inclusive and comprehensive piece of work, prepared in a democratic and transparent way which would cover everybody’s concerns. The Delegation indicated that it was always prepared to work on the basis of any proposals, including proposals which other countries wanted to submit as its Group had done for that session. It would be flexible, in the way it worked with document PCDA/2/2, containing its proposals and those of others, but noted that that did not seem to be the general feeling in the committee. The Delegation indicated that a large number of members were apparently not prepared to look at PCDA/2/2 and hold discussions on that basis. The Delegation stated that given that one group’s position was being excluded, it had been very difficult to achieve positive results. Despite the above, the Delegation continued to believe that there was potential for making progress. The documents presented by the “Group of Friends of Development” continued to be on the table and it was extremely important that, together with the factual reports of the two sessions of the PCDA, they be forwarded to the General Assembly. Those documents would be a very detailed and rich reflection of the debate which had taken place on the Agenda for Development. The Delegation reiterated its support for the continuation of the process and reminded delegations that it had started the process in the first place. It was very interested in seeing the process continue and in seeing it continue in as inclusive a way as possible, so that proposals made by all Member States were considered, not just those of a selection of Member States. The Delegation hoped that in the General Assemblies, Member States would show willingness to adopt specific proposals for implementation in the subsequent period. It had already made its idea clearly known, about

how the Member States could work to bring that about and stated that work of that kind required negotiation of texts. It required a merging of proposals, which would require hard work, but it was prepared to accomplish that hard work. The Delegation noted that it did not just want to go through proposals in a mechanical way, on the basis of tables or on the basis of whether people were for or against them. It added that just raising name plates and saying “Yes, I agree” or “No, I do not agree”, and then having the proposal accepted or declined was not sufficient, because it did not help to go into the reasons for the problems behind acceptance or non-acceptance of a proposal. While acknowledging that it would take more time and effort and it would be a long-term process, the Delegation indicated that in its view it needed to be done and it would be a more constructive way of approaching the issue. The Delegation explained that it would take time for the issues to mature in the Organization, because that was the nature of the Organization and the critical issues it discussed. The Delegation pointed out that some processes had taken upto 10 years before the Organization had actually managed to conclude them and, even then, the outcome had been less than entirely satisfactory to some. The Delegation added that if the process took a long time, it took a long time, and it did not mean that it should be abandoned. The Agenda for Development would therefore be dealt with in the traditional WIPO way, taking a few years before the various common points of interest could be clearly identified, turned into language which could then be implemented, and agreed upon for specific action by the General Assemblies. It was not something that could be solved in the short-term, just as Rome had not been built in a day. The Delegation indicated that more time was needed and there was a need for effective dialogue on the substance of the issue. The Delegation stated that those were the reasons that explained why, in the informal sessions, they were not able to accept the idea that proposals should be categorized and work should be conducted on them on a straight “Yes, we can accept them” or a “No, we cannot accept them” basis. In the opinion of the Delegation, that would have reduced the original planned scope of the Development Agenda and it would have meant that important aspects of the Development Agenda would have been lost. The Delegation added that progress should be made following the traditional blueprint, as in other negotiations, with the joint drafting of points. It was very difficult to build consensus if members tried to draft themselves in corners or refused to work on drafting, refused to accept the consideration of new proposals, which might, if looked at, prove to have common points on which delegations could agree. The Delegation noted that that was not the only group that had tabled proposals, there were other major groups of countries, which had tabled proposals, and all that material did not exist at all before the Development Agenda process began within WIPO. The Delegation also stated that provided the process proceeded in an inclusive, transparent and democratic way, it was ready to continue to work on the Development Agenda, and hoped that other members would feel the same way and be able to do so in the same spirit. The work on the Agenda would, therefore, continue and could come up with an Agenda for Development, based on convergence of points of view, rather than dealing with issues which seemed to be taken up without any specific context. In conclusion, the Delegation wished to put formally on record its willingness to continue to work constructively in the future on an Agenda for Development. It was not possible for the Delegation to work on the basis of the document which had been circulated at the meeting, and, therefore, it did not want to see that document forwarded to the General Assembly. The position explained by the Delegation would be included in the factual report and if there was willingness and good faith on everyone’s part to work in the future with a view to achieving results, it thought that it would be possible to achieve such results and have something as substantive, positive and acceptable to the majority in the General Assembly.

189. The Delegation of the United States of America endorsed the statement of the Delegation of Switzerland on behalf of Group B and others supporting both the letter and the spirit of the Chair's proposal.

190. The Delegation of South Africa stated that having played a constructive role, both within the African Group and the "Group of Friends of Development", it was also disappointed that the committee had not been able to reach a consensus. It trusted that the General Assembly would be able to take the Development Agenda process forward.

191. The Delegation of Nigeria took the floor, as the Delegation of Nigeria and not as the Coordinator of the African Group. The Delegation noted that the saying that "when you see your neighbor's beard on fire, you should wrap water on yours", was true and explained that the process had ended in a very dramatic and unexpected manner. It indicated that delegations should prepare themselves for the future in order not to repeat the same outcome. The WIPO Development Agenda process was about two years old and during that process issues relating to the Agenda had been discussed in two meetings of the WIPO General Assembly, three sessions of the IIM and one session of the PCDA. Member States and Groups had presented 12 papers and 111 proposals had been compiled in actionable and operational form. Six clusters had been created to categorize such proposals. The Delegation went on to add that the major concerns or parameters of those discussions and proposals related to technical cooperation or technical assistance, technology transfer, norm-setting activities and the role and mandate of WIPO. The Delegation of Nigeria had been very active in those discussions. It acknowledged the importance of IP, recognized that some of its aspects were closely intertwined with the economic growth process and was keen to ensure that future developments in that field synchronized with the needs and aspirations of developing countries and LDCs. In view of the above, the Delegation was keen to expedite the process of consideration of all the proposals, so that some tangible gains would flow to developing countries and LDCs. Nigeria was aware of the need to build an international consensus around the process, and derived hope from one encouraging feature, that not a single Member State of WIPO had expressed opposition to adopting such an Agenda within WIPO. The differences were only with regard to the elements of such an Agenda, and the pace at which it should be adopted. The Delegation thought that such issues could be resolved through debate and discussion, but there was a need to lend a sense of purpose, pragmatism, direction and urgency to such a debate. Commitment to continue the process by all Member States was also necessary at that point in time. It would not only reassure the proponents of the various proposals about the viability of the process, but also the timing to what extent agreement could be reached on issues to be harvested and forwarded to the WIPO General Assembly for action. On the larger issue of arriving at a consensus on the list of 111 proposals, the Delegation suggested a phased plan of action. Under that plan, proposals could be identified for discussion in the short-term, medium-term and long-term. Such a categorization should not be perceived as a pronouncement on the merits or acceptability of any individual proposal, but as a timeframe for their discussion and eventual adoption. The Delegation proposed in the short term for Member States to initiate discussions on proposals, which were, among other things, within the existing program and budget and mandate of WIPO; which did not involve significantly large investments of financial and human resources, and would result in immediate tangible gains to developing countries and LDCs. The proposals identified for consideration in the medium-term should be those for which WIPO would be required to make new provisions in its program and budget, either through the flexibility available to it or through the approval of the General Assembly. Proposals involving the establishment of new bodies or guidelines; conducting assessment and evaluation exercises; establishing databases and rosters should also be considered in the

medium-term. The Delegation proposed that matters relating to institutional mandate; evolving parameters for treaty-making exercises and external funding to complement resources presently available for development cooperation activities, should be matters that would be discussed and agreed upon in the long-term. The Delegation realized the complexity of the process and recognized the importance of continuing the discussions on the Development Agenda, beyond the current session of the PCDA. Therefore, it suggested that a recommendation be made to the General Assembly for the establishment of a WIPO Committee to take the IIM and PCDA process forward. That body would be called a Standing Committee on a WIPO Development Agenda. The Standing Committee should meet twice a year, and make provisions to facilitate the participation of representatives from developing countries, countries in transition and LDCs in particular. In the view of the Delegation, the Development Agenda needed to be mainstreamed into WIPO in a gradual and agreed way. The Delegation noted that its statement was submitted in good faith after a careful reading of the current atmosphere. It requested, therefore, that the statement be made available to the Chair of the General Assembly, His Excellency Ambassador Enrique Manalo of Philippines, to help him in reaching a favorable solution on the way forward on the implementation of the Development Agenda in WIPO.

192. The Delegation of Chile welcomed the note of optimism from the Chair, which reminded delegations of what had happened with the IIM. It hoped that the General Assembly could achieve what had not been achieved during the Meeting. It pointed out that the call of the Delegation of the United Kingdom was a very important one, and that it was prepared to remain open to continuing consultations. The Delegation indicated that the document of the “Group of Friends of Development” was a good basis for discussion. It thought that it was a flexible document, that could incorporate the proposals of others, including those that had been submitted by the Delegation, as well as from other groups, that it thought were very useful ones, such as the ones from Group B, Delegations of Colombia, the African Group, the United States of America and the United Kingdom. The Delegation stated that the “basket approach” was not the most appropriate approach, as it would lead to an unbalanced treatment of the different proposals. That is why it had suggested that perhaps, it would be best to explore new approaches and start from zero, all over again. It believed that everybody, including delegations, NGOs and the Chair, should try to achieve results and be flexible. Finally, the Delegation indicated its intention to continue working together with others and be as flexible as possible, and hoped that others would do the same.

193. The Delegation of Indonesia associated itself with the statement delivered by the Delegation of Thailand on behalf of the Asian Group. The process to mainstream the Development Agenda in WIPO should be consistent, and that represented the fundamental position of the Delegation. The inability to reach consensus on concrete outcomes in the session should not lead to the end of the process. It recalled that all statements delivered by the preceding speakers stressed the importance of continuing the process. The Delegation noted the fact that many delegations had a strong willingness to continue the process.

194. The Delegation of Croatia thanked the Chair, on behalf of the Central European and Baltic States, for his efforts and honest attempts to help Member States arrive at the outcome that they had all expected, namely reaching an agreement on the recommendations for submission to the General Assembly. It was, however, disappointed that agreement could not be reached, even though it thought that they had arrived at the point where some proposals were ripe for harvest and could be forwarded to the General Assembly. Therefore, it thought that the Chairman’s paper was the most appropriate basis for concrete and focused discussions that could have resulted in recommendations to the General Assembly. The paper was based

upon agreement by all members and it contained proposals from all groups that had tabled their proposals during the IIM and PCDA process. They were disappointed and sad, because some members had decided not to join the consensus and refused to work on the basis of the paper. It was striking to hear that that particular group even refused to work on the basis of 111 proposals, even though their proposals were also contained among those 111 proposals. Unfortunately, by avoiding agreement on the recommendations, that body had failed in helping developing countries, which would have been able to reap concrete benefits for their economies out of that package of recommendations. The Delegation concluded by reiterating its support for the process in the PCDA, and its readiness to work in a constructive manner during the General Assembly, with an aim of finding a most suitable solution within the WIPO framework.

195. The Delegation of Argentina stated that, as one of the delegations that had begun this process in WIPO, one might imagine that its Delegation was one of those with a very strong interest in having recommendations to the General Assembly and for the process to continue. It supported the Delegation of Brazil and also wished to add that it was indeed interested and keen in the process continuing. It had started a process, which it hoped would remain on the table, until solutions were found, in an inclusive, democratic and transparent manner. Unfortunately, it did not want to see what happened in that session again, and hoped that there would be some movement and flexibility in finding a process and content that would be transparent in the future. It reiterated its will to be completely committed to working hard and had submitted lots of documents; it would continue in that spirit in an attempt to move the process forward. The Delegation agreed with the procedure that the Chair had proposed, of transmitting the minutes of the meeting to the General Assembly, together with the official documents that had been circulated. It also reiterated that it did not agree with, and could not accept the Chair's paper and had already explained the reasons for that refusal. Finally, with regard to the methodology used to elaborate the Chair's paper, the Delegation wished to recall that that process had been rejected from the very beginning, as a method of work. So it should not have been the basis on which that document was developed. As for the statement from the Delegation of Nigeria, which had proposed a way of working, the Delegation wished to recall that the "Group of Friends of Development" at the last meeting of the PCDA, in document PCDA/1/6, had already proposed a process which it had hoped to see as the working method of the PCDA. The Delegation wanted to reiterate that without inclusive and transparent consideration, it was not possible to make progress. When the Chair of the General Assembly looked at how to hold consultations and to take the procedure forward in the General Assembly, it was hoped that the procedure it had proposed would be taken into consideration as well.

196. The Delegation of Bahrain also wished to express its appreciation for the great efforts that the Chair had made, with the purpose of achieving results that would be satisfactory to all. The Delegation had made every effort possible to bring divergent viewpoints together, because it believed that a convergence of opinions would achieve a common interest, and it also believed that the Chair's excellent way of running the meeting had given every delegate the right to submit whatever was found commensurate with its particular country's interest. Therefore, it wished to thank the Chair for all the efforts that he had made and it looked forward for further efforts that would enable the realization of results in all developing countries.

197. The Delegation of Egypt also wished to express its appreciation for the efforts made towards trying to bring this meeting towards a successful outcome, an outcome for which it worked constructively as a member of the African Group and as a member of the "Friends of

Development". It also wished to join the wide membership in expressing its deep disappointment on where that body now stood. It believed that that body had an important opportunity, an important chance to reach an outcome, to which all delegations could feel an adequate extent of ownership. Unfortunately, it seemed that one had failed to do so. It nevertheless insisted on the fact that the Delegation's current disappointment should not in any way prevent them from using the opportunity to be provided by the next General Assembly, in order to adequately address the collective ambition towards establishing a development agenda for WIPO.

198. The Delegation of Canada thanked the Chair for the efforts he had made over the week. The Delegation supported the statement made by the Delegation of Switzerland on behalf of Group B. The Member States had come with an open mind ready to show flexibility. Unfortunately, those efforts had not led to the results that one would have liked to see. The Delegation assured the members that the question of development remained very important for Canada and that it wished to continue to make initiatives on the national and international levels and to take part in the work at WIPO in that regard.

199. The Delegation of the Russian Federation began by thanking the Chair. In the course of that session, the Delegation had more than once expressed its support for the efforts the Chair had made, and it supported the approach regarding working methods. The Delegation wanted once again to thank him for the considerable work that he had put in to seek some kind of a consensus. It agreed with the previous delegations which had already expressed their gratitude to him on that point. Furthermore, it wanted to say that, like many others in the room, it was disappointed that at that stage the body had been unable to actually achieve any specific agreements, or find a mutually acceptable outcome to their discussions.

200. The Delegation of Serbia commended the Chair for his efforts and the wisdom that he had offered to the members through his proposals. The Delegation declared that Serbia supported the statement of the Delegation of Croatia on behalf of the Regional Group of Central European and the Baltic States. It did not have any proposals because it had found some of its needs fairly well expressed through other proposals. At that stage, the Delegation wished to briefly offer a couple of remarks on the process itself. It was its belief that each and every proposal faithfully reflected the needs and interests of a country or a group of countries, which submitted it. By accepting the proposal itself, one accepted the reasoning behind it so it did not see the need of discussing it in great detail. By having the proposals postponed or putting them for further discussion, the Delegation hoped to understand the real demand and the way in which they could achieve the needed results adequately. For the large majority of proposals, after three years of the process, one was clear of where that body was and the Delegation saw its proposal as a way of conveying that feeling to the General Assembly. That would, at the same time, be a clear sign that that Committee could work and could deliver. And that was the goal of a demand-driven process. The Delegation did not support an all-or-nothing approach. It believed that the development agenda was neither a one-time event nor a single package. It considered that it was a process, which could and would develop and adapt to members' future needs. Unfortunately, not all were ready to be equal and happy during that week. It hoped that that would not be the case during the General Assembly.

201. The Delegation of China thanked the Chair for his efforts for that Meeting. The Meeting had not achieved a consensus, for which the Delegation expressed its regret. However, what made it happy was that the Chairman had expressed optimistic ideas and many delegations had expressed their will to continue the work. The Delegation supported

the intervention made by the Delegation of Thailand on behalf of Asia, and it hoped that the discussions on the Development Agenda would continue. At the same time, it hoped that the discussions would achieve some results, so as to help the developing countries and LDCs to solve some development problems.

202. The Delegation of Japan also thanked the Chair for his excellent efforts to try to reach consensus for that Meeting. The Delegation supported the statement of the Delegation of Switzerland, on behalf of Group B. Like other countries, Japan was very well aware of the importance of development, because it thought that the whole world, not only industrialized countries but also developing and LDCs, would be in a position to be able to benefit from utilizing the IP system.

203. The Delegation of Paraguay said that the members knew that the Meeting had not been successful and, therefore, there was not very much to be happy about, but it was satisfied that all the Member States of the Committee had at least appeared to want the work on the Development Agenda to continue. The Delegation was convinced that the General Assembly would be able to take the appropriate and wisest decisions to ensure that the process did continue within that Committee. The Delegation did not want to conclude without thanking all Delegations who had tabled proposals and also wanted to echo the hope expressed by some, that none of those would be excluded. It thanked the Chair for his patient and skillful chairmanship of that Committee.

204. The Delegation of Tunisia thanked the Chair for his efforts in managing that committee's work in trying to reach a consensus. It regretted that despite all those efforts, one had not been able to reach consensus on the recommendations which should be presented to the General Assembly. It looked forward to further efforts on the part of the Chair during the General Assembly meetings and it hoped that the discussions on the Development Agenda would continue, and that one would be able to reach tangible results in the future.

205. The Chair said that he had been given a copy of the document presented by the Delegation of Kyrgyzstan (document PCDA/2/3). The Delegation had asked that it be circulated, so that a copy was available with everyone. He assumed that there were no comments on that document. But if there was a need to consider it, they would have to meet again that afternoon. The Chair thought it would be best for it to be simply distributed to everybody and then if there was any delegation that had a comment to make on it, they could do so. He did not wish to start a new debate, but bearing in mind the need for transparency, and given that the document had been submitted by a delegation, he did not think that Committee could refuse to accept it. To continue moving forward, he wished to indicate that he was of the opinion that the document had been submitted during the Session, but there was not much point discussing it or beginning to discuss it, so he proposed that it should be included in the package of documents that would be submitted to the General Assembly with the report. The Chair asked if there were any comments on the document.

206. The Delegation of Argentina commented that, as was said in the covering note, that was a proposal from Kyrgyzstan. The Delegation believed that the proposal, which was originally submitted by the Chair, was a proposal from the Delegation of Kyrgyzstan. It supported inclusiveness, but as the Delegation understood it, that was now a proposal from Kyrgyzstan.

207. The Chair confirmed that understanding and suggested that it simply be included in the rest of the documentation without having further discussion on it. With regard to the report of the Second Session of the PCDA, the Chair 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 July 21, 2006, 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 4, 2006. The revised draft report would then be made available by August 25, 2006, and considered for adoption at the resumed second Session, which would take place for the said purpose of the adoption in September 2006. The date and time for the resumed second session would be communicated as soon as possible.

Agenda item 7: Closing of the session

208. The Chair thanked all the delegations and said that he would inform Ambassador Enrique Manalo of Philippines, Chair of the General Assembly, of the discussions in that session. With that, he formally adjourned the Meeting.

[Annex follows]

ANNEX

I. ÉTATS/STATES

(dans l'ordre alphabétique des noms français des États)/  
(*in the alphabetical order of the names in French of the States*)

AFGHANISTAN

Assad OMER, ambassadeur, représentant permanent, Mission permanente, Genève

Khalil NASRI, premier secrétaire, Mission permanente, Genève

AFRIQUE DU SUD/SOUTH AFRICA

Theodores Louis MALHERBE, Deputy Director, Economic Relations and Trade, Department of Foreign Affairs, Pretoria

Mthokozisi Herbert Silindele THABEDE, Economic Relations and Trade, Department of Foreign Affairs, Pretoria

Simon Z. QOBO, First Secretary, Permanent Mission, Geneva

ALGÉRIE/ALGERIA

Boumédiène MAHI, premier secrétaire, Mission permanente, Genève

ALLEMAGNE/GERMANY

Li-Feng SCHROCK, Head of Division, Trade Mark and Unfair Competition, Federal Ministry of Justice, Berlin

ARMÉNIE/ARMENIA

Sonia VARDANYAN (Mrs.), Senior Specialist, Copyright and Related Rights Department, Intellectual Property Agency, Yerevan

AUSTRALIE/AUSTRALIA

Ian GOSS, General Manager, Business Development and Strategy Group, IP Australia, Woden ACT

Gary KICHENSIDE, Director, International Cooperation, IP Australia, Woden ACT

AUTRICHE/AUSTRIA

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

Elisabeth SÜß (Ms.), Legal Department B, National Trademarks, Geographical Indications, International Relations, Austrian Patent Office, Vienna

Nicole ADLER (Ms.), Advisor, Permanent Mission, Geneva

AZERBAÏDJAN/AZERBAIJAN

Elmar MAMMADOV, Third Secretary, Permanent Mission, Geneva

BAHREÏN/BAHRAIN

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

BANGLADESH

Mohammad Mahbubur RAHMAN, Joint Secretary and Registrar in Charge, Department of Patents, Designs and Trade Marks, Ministry of Industries, Dhaka

BÉLARUS/BELARUS

Aleksandr KULINKOVICH, First Secretary, Permanent Mission, Geneva

BELGIQUE/BELGIUM

Michel GEREBTZOFF, premier secrétaire, Mission permanente, Genève

Mélanie GUERREIRO RAMALHEIRA (Mlle), attaché, Service public fédéral, économie, P.M.E., classes moyennes et énergie, Bruxelles

BÉNIN/BENIN

Yao AMOUSSOU, premier conseiller, Mission permanente, Genève

BOLIVIE/BOLIVIA

Luis Fernando ROSALES LOZADA, Primer Secretario, Misión Permanente, Ginebra

BRÉSIL/BRAZIL

Henrique Choer MORAES, Diplomat, Ministry of External Relations, Rio de Janeiro

Cliffor GUIMARÃES, Ministry of Culture, Rio de Janeiro

Helinton José ROCHA, Director, Department of Intellectual Property and Technology,  
Ministry of Agriculture, Brasilia

Ana Paula S. JUCÁ S. SILVA (Mrs.), Manager for International Sanitary Regulation,  
National Health Surveillance Agency (ANVISA), Brasilia

Juliana Vieira BORGES VALLINI (Mrs.), Advisor, National Health Surveillance Agency  
(ANVISA), Brasilia

Rafael MAFRA, Technical Assistant, National Health Surveillance Agency (ANVISA),  
Brasilia

José Carlos CAVALCANTI DE ARAÚJO FILHO, Analyst Foreign Trade, Intellectual  
Property, Ministry of Development, Industry and Foreign Trade, Brasilia

Guilherme PATRIOTA, Counsellor, Permanent Mission, Geneva

BULGARIE/BULGARIA

Petko DRAGANOV, Ambassador, Permanent Representative, Permanent Mission, Geneva

Dessislava PARUSHEVA (Miss), Second Secretary, Permanent Mission, Geneva

CANADA

Danielle BOUVET (Mrs.), Director, Copyright Policy, Copyright Policy Branch, Department of Canadian Heritage, Ottawa

Michel PATENAUDE, Senior Policy Analyst, International Affairs, Canadian Intellectual Property Office, Department of Industry, Ottawa

Edith ST-HILAIRE (Mrs.), Deputy Director, Intellectual Property, Information and Technology Trade Policy Division (EBT), Department of Foreign Affairs and International Trade, Ottawa

Pascale ROCHETTE (Mrs.), Trade Policy Officer, Intellectual Property, Information and Technology Trade Policy Division (EBT), Department of Foreign Affairs and International Trade, Ottawa

Luce BOURGAULT (Ms.), Senior Economist, Economic Policies, Policy Branch, Canadian International Development Agency, Hull, Quebec

Sara WILSHAW (Mrs.), First Secretary, Permanent Mission, Geneva

CHILI/CHILE

Andrés GUGGIANA V., Legal Adviser, Intellectual Property Department, General Directorate of International Economic Affairs, Ministry of Foreign Affairs, Santiago

Maximiliano SANTA CRUZ, First Secretary, Permanent Mission, Geneva

CHINE/CHINA

QIAN Mengshan (Mrs.), Deputy Director General, International Cooperation Department, State Intellectual Property Office (SIPO), Beijing

CHEUNG Kam-fai, Deputy Director, Special Administrative Region Intellectual Property Department, Hong Kong

DUAN Yuping (Ms.), Director, Information and Publicity Division, Copyright Management Department, National Copyright Administration, Beijing

LIU Aiping (Ms.), Director, Application Division, Trademark Office, State Administration for Industry and Commerce, Beijing

LI Yanmei (Ms.), Program Officer, International Cooperation Department, State Intellectual Property Office (SIPO), Beijing

FU Cong, Counsellor, Permanent Mission, Geneva

ZHAO Yangling (Mrs.), First Secretary, Permanent Mission, Geneva

ZHANG Ze, Third Secretary, Permanent Mission, Geneva

COLOMBIE/COLOMBIA

Ricardo VELEZ BENEDETTI, Ministro Consejero, Misión Permanente, Ginebra

CONGO

Delphine BIKOUTA (Mme), premier conseiller, Mission permanente, Genève

CÔTE D'IVOIRE

Sylvain BAH, sous-directeur, Office ivoirien de la propriété intellectuelle (OIFI), Ministère de l'industrie et de la promotion du secteur privé, Abidjan

Léhouan Jean François KAMAH, chargé d'études, Office ivoirien de la propriété intellectuelle (OIFI), Ministère de l'industrie et de la promotion du secteur privé, Abidjan

Désiré Bosson ASSAMUI, conseiller, Mission permanent, Genève

CROATIE/CROATIA

Josip PERVAN, First Secretary, Permanent Mission, Geneva

CUBA

María de los Angeles SÁNCHEZ TORRES (Sra.), Directora General, Oficina Cubana de la Propiedad Industrial (OCPI), Ciudad de La Habana

DANEMARK/DENMARK

Kaare STRUVE, Senior Legal Advisor, Danish Patent and Trademark Office, Ministry of Economic and Business Affairs, Taastrup

ÉGYPTE/EGYPT

Mohamed Sherif EL-ESKANDARANY, First-under-Secretary of State, Ministry of State for Scientific Research, Vice-President of the Academy of Scientific Research and Technology (ASRT), Cairo

Ragui EL-ETREBY, First Secretary, Permanent Mission, Geneva

Heba MOSTAFA (Miss), Third Secretary, Ministry of Foreign Affairs, Cairo

Mahmoud DIAB, Press Office, Ministry of Social Solidarity, Cairo

EL SALVADOR

Francisco Alberto LIMA MENA, Embajador, Misión Permanente, Ginebra

Martha Evelyn MENJIVAR CORTEZ (Sra.), Consejera, Misión Permanente, Ginebra

ÉQUATEUR/ECUADOR

Rafael Alfonso PAREDES PROAÑO, Coordinador General, Ministerio de Relaciones Exteriores, Quito

Luis VAYAS VALDIVIESO, Primer Secretario, Misión Permanente, Ginebra

ESPAGNE/SPAIN

D. Jaime JIMÉNEZ LLORENTE, Técnico Superior, Departamento de Coordinación Jurídica y Relaciones Internacionales, Oficina Española de Patentes y Marcas, Ministerio de Industria, Turismo y Comercio, Madrid

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Lois BOLAND, Director, Office of International Relations, United States Patent and Trademark Office, Department of Commerce, Alexandria, Virginia

Candy GREEN (Miss), Director, Office of Intellectual Property Enforcement, Bureau of Economic and Business Affairs, United States Department of State, Washington, D.C.

Lisa CARLE (Ms.), International Economic Affairs Counselor, Permanent Mission, Geneva

Neil GRAHAM, Attorney-Advisor, Office of Policy and International Relations, United States Copyright Office, Library of Congress, Washington, D.C.

Joyce Winchel NAMDE (Ms.), International Relations Officer, Office of Technical Specialized Agencies, Bureau of International Organizations Affairs, United States Department of State, Washington, D.C.

Paul E. SALMON, Senior Counsel, Office of International Relations, United States Patent and Trademark Office, Alexandria, Virginia

Jon SANTAMAURO, Intellectual Property Attaché, Permanent Mission, Geneva

Michael SHAPIRO, Attorney-Advisor, Office of International Relations, United States Patent and Trademark Office, Department of Commerce, Alexandria, Virginia

ÉTHIOPIE/ETHIOPIA

Abdulrezak OUMER JEJU, Patent Search and Examination Team Leader, Ethiopian Intellectual Property Office, Addis Ababa

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Ilya GRIBKOV, Third Secretary, Permanent Mission, Geneva

Elena KULIKOVA (Ms.), Counsellor, Legal Department, Ministry of Foreign Affairs, Moscow



FINLANDE/FINLAND

Marja-Leena RINKINEVA (Mrs.), Deputy Director General, Ministry of Trade and Industry, Helsinki

Sami SUNILA, Senior Government Secretary, Industries Department, Ministry of Trade and Industry, Helsinki

Jaakko RITVALA, Senior Advisor, Industries Department, Business Law Division, Ministry of Trade and Industry, Helsinki

Riitta LARJA (Ms.), Coordinator, International and Legal Affairs, National Board of Patents and Registration of Finland, Helsinki

FRANCE

Gilles REQUENA, chef, Service des affaires européennes et internationales, Institut national de la propriété industrielle (INPI), Paris

Marion DEHAIS (Mme), déléguée, Ministère des affaires étrangères, Paris

Gilles BARRIER, premier secrétaire, Mission permanente, Genève

GABON

Malem TIDZANI, directeur général du Centre de la propriété industrielle du Gabon (CEPIG), Ministère du commerce et de l'industrie, Libreville

GÉORGIE/GEORGIA

Zurab NEPARIDZE, Deputy Director General, Georgia National Intellectual Property Center (SAKPATENTI), Tbilisi

GRÈCE/GREECE

Stella KYRIAKOU (Ms.), Attaché, Permanent Mission, Geneva

HAÏTI/HAITI

Gladys FLORESTAL (Miss), First Secretary, Permanent Mission, Geneva

HONGRIE/HUNGARY

Veronika CSERBA (Mrs.), Assistant to the President, Hungarian Patent Office, Budapest

Orsolya TÓTH (Ms.), Third Secretary, Permanent Mission, Geneva

INDE/INDIA

Swashpawan SINGH, Ambassador, Permanent Representative, Permanent Mission, Geneva

Mohinder S. GROVER, Deputy Permanent Representative, Permanent Mission, Geneva

Shiv BASANT, Joint Secretary, Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH), Ministry of Health and Family Welfare, New Delhi

Laxman PRASAD, Adviser, Department of Science and Technology, New Delhi

Ramesh Chandra TRIPATHI, Director, Department of Information Technology, New Delhi

Nutan Kapoor MAHAWAR (Mrs.), First Secretary (Economic), Permanent Mission, Geneva

Thannickal Chacko JAMES, Deputy Secretary, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, New Delhi

INDONÉSIE/INDONESIA

Gusti Agung Wesaka PUJA, Ambassador and Deputy Permanent Representative, Permanent Mission, Geneva

Dian WIRENGJURIT (Ms.), Minister Counsellor, Permanent Mission, Geneva

Abdul Kadir JAILANI, First Secretary, Permanent Mission, Geneva

Widya SADNOVIC, Third Secretary, Permanent Mission, Geneva

IRAN (RÉPUBLIQUE ISLAMIQUE D')/IRAN (ISLAMIC REPUBLIC OF)

Mohammad Hassan KIANI, Director General, Registration Office for Companies and Industrial Property, Registration Organization of Deeds and Properties, Tehran

Hekmatollah GHORBANI, Third Counsellor, Permanent Mission, Geneva

IRAQ

Ahmed AL-NAKASH, Third Secretary, Permanent Mission, Geneva

ITALIE/ITALY

Vittorio RAGONESI, Legal Adviser, Ministry of Foreign Affairs, Rome

Fabrizio MAZZA, Counsellor, Department for Economic Cooperation, Ministry of Foreign Affairs, Rome

Ivana POGUESE (Mrs.), Technical Examiner, Italian Patent Office, Rome

Riccardo CIULLO, attaché, Permanent Mission, Geneva

JAMAHIRIYA ARABE LIBYENNE/LIBYAN ARAB JAMAHIRIYA

Hanan Bahgat ALTURGMAN (Mrs.), Head, Intellectual Property Office, National Bureau for Research and Development, Tripoli

Nasser AL ZAROUG, First Secretary, Permanent Mission, Geneva

JAMAÏQUE/JAMAICA

Andrea DUBIDAD-DIXON (Mrs.), First Secretary, Permanent Mission, Geneva

JAPON/JAPAN

Takashi YAMASHITA, Director, Multilateral Policy Office, International Affairs Division, General Affairs Department, Japan Patent Office, Tokyo

Yuichiro NAKAYA, Deputy Director, International Affairs Division, General Affairs Department, Japan Patent Office, Tokyo

Shintaro TAKAHARA, First Secretary, Permanent Mission, Geneva

Shigechika TERAKADO, First Secretary, Permanent Mission, Geneva

Kenichiro NATSUME, First Secretary, Permanent Mission, Geneva

JORDANIE/JORDAN

Mamoun Tharwat TALHOUNI, Director General, Department of the National Library, Ministry of Culture, Amman

KENYA

Jean W. KIMANI (Miss), Counsellor, Permanent Mission, Geneva

Joseph Mutuku MBEVA, Patent Examiner, Kenya Industrial Property Institute (KIPI),  
Ministry of Trade and Industry, Nairobi

KIRGHIZISTAN/KYRGYZSTAN

Muktar DJUMALIEV, Ambassador, Permanent Representative, Ambassador, Permanent  
Mission, Geneva

Muratbek AZYMBAKIEV, Counsellor, Permanent Mission, Geneva

KOWEÏT/KUWAIT

Hasan ALOBAIDLI, Commercial Attaché, Permanent Mission, Geneva

LESOTHO

Mampoi TAOANA (Ms.), Deputy Registrar-General, Registrar-General's Office, Ministry of  
Law and Constitutional Affairs, Maseru

LIBÉRIA/LIBERIA

Robert Y. MEZZEH, Deputy Director, Trademarks, Ministry of Foreign Affairs, Monrovia

MALAISIE/MALAYSIA

Azwa Affendi BAKHTIAR, Second Secretary, Permanent Mission, Geneva

MALI

Mahamadou Dit Cheickne DOUCOURE, conseiller technique, Ministère de l'industrie et du  
commerce, Bamako

MAROC/MOROCCO

M'hamed SIDI EL KHIR, conseiller, Mission permanente, Genève

MAURICE/MAURITIUS

Vishwakarmah MUNGUR, First Secretary, Permanent Mission, Geneva

MEXIQUE/MEXICO

Alfredo RENDÓN ALGARA, Director General Adjunto, Instituto Mexicano de la Propiedad Industrial (IMPI), Ciudad de Mexico

Juan Manuel SÁNCHEZ, Tercer Secretario, Misión Permanente, Ginebra

MYANMAR

Nyunt SWE, Deputy Permanent Representative, Permanent Mission, Geneva

THANDA (Miss), Assistant Director, Intellectual Property Section, Ministry of Science and Technology, Naypyitaw, Yangon

Khin Oo HLAING (Ms.), Second Secretary, Permanent Mission, Geneva

NAMIBIE/NAMIBIA

Tileinge Sacharias ANDIMA, Registrar, Companies, Close Corporations and Industrial Property, Ministry of Trade and Industry, Windhoek

NIGÉRIA/NIGERIA

Usman SARKI, Minister, Permanent Mission, Geneva

Maigari BUBA, First Secretary, Permanent Mission, Geneva

NORVÈGE/NORWAY

Jostein SANDVIK, Senior Legal Advisor, Legal and Political Affairs, Norwegian Patent Office, Oslo

OMAN

Abdullah AL-HINAI, Director General, Organizations and Commercial Relations, Ministry of Commerce and Industry, Muscat

PARAGUAY

Rigoberto GAUTO VIELMAN, Embajador, Representante Permanente, Misión Permanente, Ginebra

Carlos César GONZÁLEZ RUFFINELLI, Director Nacional del Derecho de Autor, Ministerio de Industria y Comercio, Asunción

PAYS-BAS/NETHERLANDS

Paul J. SCIARONE, Minister plenipotentiary, Deputy Permanent Representative, Permanent Mission, Geneva

Sabina VOOGD (Mrs.), Senior Policy Adviser, Ministry of Foreign Affairs, The Hague

Roland A. DRIECE, Senior Policy Adviser, Ministry of Economic Affairs, The Hague

PÉROU/PERU

Alejandro NEYRA, Segundo Secretario, Misión Permanente, Ginebra

PHILIPPINES

Leny RAZ (Mrs.), Director, Bureau of Trademarks, Intellectual Property Office, Makati City

Raly TEJADA, First Secretary, Permanent Mission, Geneva

POLOGNE/POLAND

Sergiusz SIDOROWICZ, Third Secretary, Permanent Mission, Geneva

PORTUGAL

Nuno Manuel GONÇALVES, Director, Copyright Office, Ministry of Culture, Lisbon

José Maria MAURICIO, Director, Patent and Trademark Director, National Institute of Industrial Property (INPI), Lisbon

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

Joo-Ik PARK, First Secretary, Permanent Mission, Geneva

RÉPUBLIQUE DOMINICAINE/DOMINICAN REPUBLIC

Gladys Josefina AQUINO (Srta.), Consejera, Misión Permanente, Ginebra

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Lucie ZAMYKALOVA (Ms.), Patent Examiner, Chemistry and PCT Division, Patent Department, Industrial Property Office, Prague

ROUMANIE/ROMANIA

Bogdan BORESCHIEVICI, Director, Patent Library, Information System and Services Directorate, State Office for Inventions and Trademarks, Bucharest

Daniela Florentina BUTCA (Ms.), Head, International Cooperation Bureau, State Office for Inventions and Trademarks, Bucharest

Livia Cristina PUSCARAGIU (Miss), Second Secretary, Permanent Mission, Geneva

ROYAUME-UNI/UNITED KINGDOM

Nicholas THORNE, Ambassador, Permanent Representative, Permanent Mission, Geneva

Tom GOODWIN, First Secretary, Permanent Mission, Geneva

David CAIRNS, First Secretary, Permanent Mission, Geneva

Pamela TARIF (Mrs.), Second Secretary, Permanent Mission, Geneva

Dave WOOLF, Policy Advisor, Intellectual Property and Innovation Directorate, The Patent Office, Newport

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

RWANDA

Arnaud KAJANGWE, Officer on Multilateral Services, Permanent Mission, Geneva

SAINT-SIÈGE/HOLY SEE

Silvano M. TOMASI, nonce apostolique, Mission permanente d'observation, Genève

Anne-Marie COLANDRÉA (Mme), attaché, Mission permanente d'observation, Genève

SINGAPOUR/SINGAPORE

Burhan GAFOOR, Ambassador, Permanent Representative, Permanent Mission, Geneva

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

SOUDAN/SUDAN

Mohamed Hassan KHAIR, Second Secretary, Permanent Mission, Geneva

Ebtihag Awad Ahmed IDRIS (Mrs.), Legal Advisor, Registrar General of Intellectual Property, Ministry of Justice, Khartoum

SRI LANKA

Samantha PATHIRANA, Second Secretary, Permanent Mission, Geneva

SUÈDE/SWEDEN

Maria WESTMAN-CLÉMENT (Ms.), Special Advisor, Division for Intellectual Property and Transport Law, Ministry of Justice, Stockholm

SUISSE/SWITZERLAND

Alexandra GRAZIOLI (Mme), conseillère juridique, Division droit et affaires internationales, Institut fédéral de la propriété intellectuelle, Berne

Roman KOLAKOVIC, deuxième secrétaire, Mission permanente, Genève

THAÏLANDE/THAILAND

Supavadee CHOTIKAJAN (Ms.), Second Secretary, Permanent Mission, Geneva

Shotiwat CHAROENPOL, Legal Officer, International Cooperation Section, Department of Intellectual Property, Ministry of Commerce, Nonthaburi



TUNISIE/TUNISIA

Mokhtar HAMDY, sous-directeur, Direction de la propriété industrielle, Institut national de la normalisation et de la propriété industrielle (INNORPI), Tunis

Narjes REZGUI (Mme), sous-directeur chargée des relations extérieures, Institut national de la normalisation et de la propriété industrielle (INNORPI), Ministère de l'industrie, de l'énergie et des petites et moyennes entreprises (PMIs), Tunis

Elyes LAKHAL, premier secrétaire, Mission permanente, Genève

TURQUIE/TURKEY

Füsün ATASAY (Ms.), Division Director, International Affairs Department, Turkish Patent Institute, Ankara

Yasar OZBEK, Legal Adviser, Permanent Mission, Geneva

URUGUAY

Alfredo SCAFATI, Presidente, Consejo de Derechos de Autor, Ministerio de Educación y Cultura, Montevideo

VENEZUELA

Alessandro PINTO DAMIANI, Segundo Secretario, Misión Permanente, Ginebra

VIET NAM

PHAM Hong Nga, Counsellor, Permanent Mission, Geneva

ZAMBIE/ZAMBIA

Mathias DAKA, Deputy Permanent Representative, Permanent Mission, Geneva

Ngosa MAKASA (Miss), Senior Examiner, Patents and Companies Registration Office, Lusaka

ZIMBABWE

Richard CHIBUWE, Counsellor, Permanent Mission, Geneva

II. ORGANISATIONS INTERNATIONALES  
INTERGOUVERNEMENTALES/  
INTERNATIONAL INTERGOVERNMENTAL  
ORGANIZATIONS

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

Christoph SPENNEMANN, Legal Expert, Geneva

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

Joanna WEYCHERT (Ms.), Standards Department, Geneva

Heather CAMERON (Ms.), Standards Department, Geneva

Morse FLORES, Intern, Project to Promote ILO Policy on Indigenous and Tribal Peoples,  
Standards Department, Geneva

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

Luis Manuel Chaves da Fonseca FERRÃO, Principal Administrator, Directorate General  
Information Society and Media, European Commission, Luxembourg

Jens-L. GASTER, Principal Administrator, Industrial Property, Internal Market  
Directorate-General, European Commission, Brussels

ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET  
L'AGRICULTURE (FAO)/ FOOD AND AGRICULTURE ORGANIZATION OF THE  
UNITED NATIONS (FAO)

Paul Paredes PORTELLA, Liaison Officer, Liaison Office with the United Nations in  
Geneva, Geneva

ORGANISATION INTERNATIONALE DE LA FRANCOPHONIE (OIF)

Libère BARARUNYERETSE, ambassadeur, représentant permanent, Délégation permanente, Genève

Sandra COULIBALY LEROY (Mme), représentant permanent adjoint, Délégation permanente, Genève

Marion JULIA (Mme), assistante de l'ambassadeur, Délégation permanente, Genève

Mame KANKOU (Miss), stagiaire, Délégation permanente, Genève

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

Roger KAMPF, Counsellor, Intellectual Property Division, Geneva

Adebusola OKUPE (Ms.), Intellectual Property Division, Geneva

ORGANISATION RÉGIONALE AFRICAINE DE LA PROPRIÉTÉ INTELLECTUELLE (ARIPO)/AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANIZATION (ARIPO)

Gift Huggins SIBANDA, Director General, Harare

SOUTH CENTRE

Sisule F. MUSUNGU, Acting Coordinator, Innovation, Access to Knowledge, and Intellectual Property Programme (IAIP), Geneva

Ermias Tekeste BIADGLENG, Program Officer, Geneva

Dalindyabo SHABALALA, Research Fellow, Geneva

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

3-D > Trade - Human Rights - Equitable Economy (3D)

Davinia OVETT (Ms.) (Programme Manager, Geneva); Kimberly LEHMKUHL (Miss) (Programme Assistant, Geneva)

Association de l'industrie de l'informatique et de la communication (CCIA)/Computer & Communications Industry Association (CCIA)

Matthew SCHRUERS (Senior Counsel for Litigation and Legislative Affairs, Washington, D.C.)

Association latino-américaine des industries pharmaceutiques (ALIFAR)/Latin American Association of Pharmaceutical Industries (ALIFAR)

Mirta LEVIS (Sra.) (Directora Ejecutiva, Buenos Aires)

Association littéraire et artistique internationale (ALAI)/International Literary and Artistic Association (ALAI)

Victor NABHAN (président, Lausanne)

Association pour une infrastructure de l'information libre (FFII.e.V.)/Foundation for a Free Information Infrastructure (FFII.e.V.)

André REBENTISCH (Germany); Benjamin HENRION (Belgium)

Centre d'études internationales de la propriété industrielle (CEIPI)/Centre for International Industrial Property Studies (CEIPI)

François CURCHOD (représentant permanent auprès de l'OMPI, professeur associé à l'Université Robert Schuman de Strasbourg, Genolier)

Centre international pour le commerce et le développement durable (ICTSD)/International Center for Trade and Sustainable Development (ICTSD)

David VIVAS (Program Manager, Geneva); Pedro ROFFE (Delegate, Geneva)

Centre pour le droit international de l'environnement (CIEL)/Centre for International Environment Law (CIEL)

Palesa THLAPI GUYE (Mrs.) (Fellow, Geneva); Margaret PRYSTOWSKY (Miss) (Fellow, Geneva); Bernadette Ann VILLA (Ms.) (Intern, Geneva)

Chambre de commerce internationale (CCI)/International Chamber of Commerce (ICC)

Giulia DI TOMMASO (Ms.) (Representative, Legal Policy and International Relations, Unilever European Public Affairs, Brussels); Ivan HJERTMAN (European Patent Attorney, IP Interface AB, Stockholm); Peter Dirk SIEMSEN (Senior Partner, Dannemann, Siemsen, Bilger & Ipanema Moreira, Rio de Janeiro); Daphne YONG-D'HERVÉ (Ms.) (Senior Policy Manager, Intellectual Property and Competition, International Chamber of Commerce (ICC), Paris)

Civil Society Coalition (CSC)

Thiru BALASUBRAMANIAM (Representative, Geneva); Anthony SO (Fellow, Geneva); Jason CROSS (Fellow, Geneva)

Comité consultatif mondial des amis (CCMA)/Friends World Committee for Consultation (FWCC)

Martin WATSON (Representative, Global Economic Issues, Geneva); Nico TYABJI (Program Assistant, Global Economic Issues, Geneva)

Confédération internationale des sociétés d'auteurs et compositeurs (CISAC)/International Confederation of Societies of Authors and Composers (CISAC)

David UWENEDINO (Director, Legal Department, Paris)

Consumers International (CI)

James LOVE (Director, Consumer Project on Technology (CPTech), Washington, D.C.)

Electronic Frontier Foundation (EFF)

Gwen HINZE (International Affairs Director, San Francisco)

Electronic Information for Libraries (eIFL)

Teresa HACKETT (Ms.) (Project Manager eIFL-IP, Dublin)

European Bureau of Library, Information and Documentation Associations (EBLIDA)

Andrew CRANFIELD (Director, The Hague)

Fédération ibéro-latino-américaine des artistes interprètes ou exécutants (FILAIÉ)/  
Ibero-Latin-American Federation of Performers (FILAIÉ)

Luis COBOS (Presidente, Madrid); José Luis SEVILLANO (Director General, Madrid);  
Miguel PÉREZ SOLÍS (Asesor Jurídico, Madrid); Carlos LÓPEZ SÁNCHEZ (Asesor  
Jurídico, Madrid); Javier DÍAZ DE OLARTE (Asesor Jurídico, Madrid);  
Paloma LÓPEZ PELÁEZ (Sra.) (Asesora Jurídica, Madrid)

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

Eric NOEHRENBERG (Director, International Trade and Market Issues, Geneva);  
Lucy AKELLO-ELOTU (Ms.) (Policy Analyst, International Trade and Market Issues,  
Geneva)

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

Gadi ORON (Legal Adviser, Legal Policy and Regulatory Affairs, London)

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

Laurence DJOLAKIAN (Miss) (Legal Advisor, Brussels); Theodore SHAPIRO  
(Legal Advisor, Brussels); Vincent ARTIS (Legal Advisor, Brussels); Anthony DECKOFF  
(Legal Advisor, Brussels)

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

Barbara STRATTON (Ms.) (Senior Advisor, Copyright, Chartered Institute of Library and  
Information Professionals (CILIP), London)

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

Valérie LÉPINE-KARNIK (Mme) (directrice générale, Paris); Bertrand MOULLIER  
(conseiller, Paris)

Free Software Foundation Europe (FSF Europe)

Georg GREVE (President); Karsten GERLOFF (German Team)

Fundação Getulio Vargas (FGV)

Pedro DE PARANAGUA MONIZ (Project Lead, Professor, Center for Technology and  
Society (CTS), Brazil)

Independent Film and Television Alliance (IFTA)

Lawrence SAFIR (Vice President, European Affairs, London)

Institute for Policy Innovation (IPI)

Tom GIOVANETTI (President, Texas)

International Centre for Trade and Sustainable Development (ICTSD)

Johanna Andrea VON BRAUN (Miss) (Delegate, Geneva); Daniel FROMM (Summer Associate, Geneva)

International Federation of Reproduction Rights Organizations (IFRRO)

Olav STOKKMO (Secretary General, Brussels); Tarja KOSKINEN OLSSON (Mrs.) (Honorary President, Helsinki)

International Policy Network (IPN)

Alec VAN GELDER (Research Fellow, London)

International Trademark Association (INTA)

Laura CRUZ (Ms.) (External Relations Coordinator, Latin America); Bruno MACHADO (Geneva Representative)

IP Justice

Robin D. GROSS (Ms.) (Executive Director, San Francisco); Cindy ORTON (Ms.) (Policy Fellow, San Francisco); Kevin ORTON (Policy Fellow, San Francisco)

Médecins sans frontières (MSF)

Pascale BOULET (Ms.) (Legal Advisor, Campaign for Access to Essential Medicines, Paris)

Queen Mary Intellectual Property Research Institute

Viviane MUNOZ TELLEZ (Miss) (Research Assistant, London); Duncan MATTHEWS (London)

The European Law Students' Association (ELSA)

Maria MOGUILNAIA (Ms.) (Director, ELSA International, Brussels); Leonor AGUERA JAQUEMET (Ms.) (Secretary General, ELSA Spain, Valencia)

The Federalist Society

Mark SCHULTZ (Washington, D.C.)

Third World Network (TWN)

Martin KHOR (Director, Geneva); Riaz Khalid TAYOB (Officer, Geneva); Sangeeta SHASHIKANT (Miss) (Researcher, Geneva)

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

Jens BAMMEL (Secretary General, Geneva)

World Federation for Culture Collections (WFCC)

Philippe DESMETH (Board Secretary, Brussels); Tom DEDEURWAERDERE (Professor, Centre for the Philosophy of Law, Université Catholique de Louvain, Louvain-la-Neuve)

IV. BUREAU/OFFICERS

Président/Chair: Rigoberto GAUTO VIELMAN (Paraguay)

Vice-Président/Vice Chair: Muktar DJUMALIEV (Kirghizistan/Kyrgyzstan)

V. SECRETARIAT DE L'ORGANISATION MONDIALE DE LA  
PROPRIÉTÉ INTELLECTUELLE (OMPI)/  
SECRETARIAT OF THE WORLD INTELLECTUAL  
PROPERTY ORGANIZATION (WIPO)

Geoffrey Sau Kuk YU, vice-directeur général/Deputy Director General

Sherif SAADALLAH, directeur exécutif, Bureau de l'utilisation stratégique de la propriété intellectuelle pour le développement/Executive Director, Office of Strategic Use of Intellectual Property for Development

Pushendra RAI, directeur par intérim, Division de la propriété intellectuelle et du développement économique, Bureau de l'utilisation stratégique de la propriété intellectuelle pour le développement/Acting Director, Intellectual Property and Economic Development Division, Office of Strategic Use of Intellectual Property for Development

Esteban BURRONE, administrateur de programme, Division de la propriété intellectuelle et du développement économique, Bureau de l'utilisation stratégique de la propriété intellectuelle pour le développement/Program Officer, Intellectual Property and Economic Development Division, Office of Strategic Use of Intellectual Property for Development

Bajoe WIBOWO, administrateur de programme, Division de la propriété intellectuelle et du développement économique, Bureau de l'utilisation stratégique de la propriété intellectuelle pour le développement/Program Officer, Intellectual Property and Economic Development Division, Office of Strategic Use of Intellectual Property for Development

Paul REGIS, administrateur adjoint de programme, Division de la propriété intellectuelle et du développement économique, Bureau de l'utilisation stratégique de la propriété intellectuelle pour le développement/Assistant Program Officer, Intellectual Property and Economic Development Division, Office of Strategic Use of Intellectual Property for Development

[End of Annex and of document]