

## **Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore**

**Sixteenth Session**  
**May 3 to 7, 2010, Geneva**

### **DRAFT REPORT**

*prepared by the Secretariat*

## INTRODUCTION

1. Convened by the Director General of WIPO, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the Committee”) held its sixteenth session in Geneva, from May 3 to 7, 2010.
2. The following States were represented: Albania, Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Barbados, Belarus, Belize, Belgium, Bolivia (Plurinational State of), Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d’Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Ecuador, Egypt, El Salvador, Finland, France, Germany, Ghana, Greece, Guatemala, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Jordan, Kenya, Kyrgyzstan, Lao People’s Democratic Republic, Lebanon, Lithuania, Macedonia (Former Yugoslav Republic of), Malaysia, Mali, Mauritius, Mexico, Moldova (Republic of), Monaco, Morocco, Mozambique, Myanmar, Namibia, Netherlands, New Zealand, Niger, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Serbia, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Kingdom, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia and Zimbabwe (106). The European Union and its 27 Member States was also represented as a member of the Committee and Palestine participated as an observer.
3. The following intergovernmental organizations (“IGOs”) took part as observers: African, Caribbean and Pacific Group of States (ACP Group), African Intellectual Property Organization (OAPI), African Regional Intellectual Property Organization (ARIPO), Benelux Organization for Intellectual Property (BOIP), Eurasian Patent Organization (EAPO), European Patent Office (EPO), Food and Agriculture Organization of the United Nations (FAO), International Union for the Protection of New Varieties of Plants (UPOV), Organisation internationale de la Francophonie (OIF), Patent Office of the Cooperation Council for the Arab States of the Gulf (GCC), Secretariat of the Convention on Biological Diversity, Secretariat of the United Nations Convention to Combat Desertification, South Centre, United Nations Environment Program, United Nations Conference on Trade and Development (UNCTAD), and the World Trade Organization (WTO) (14).
4. Representatives of the following non-governmental organizations (“NGOs”) took part as observers: American Folklore Society; American Intellectual Property Law Association (AIPLA); Center for International Environmental Law (CIEL); Centre for International Intellectual Property Studies (CEIPI); Chamber of Commerce of the United States of America (CCUSA); Civil Society Coalition (CSC); *Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos (CAPAJ)*; Coordination of African Human Rights NGOs (CONGAF); CropLife International; Ethio-Africa Diaspora Union Millennium Council; Foundation for Aboriginal and Islander Research Action (FAIRA); Ibero-Latin-American Federation of Performers (FILAIE); Indian Council of South America (CISA); Indian Movement “*Tupaj Amaru*”; Indigenous Peoples (Bethechilokono) of Saint Lucia Governing Council (BGC); International Association for the Protection of Intellectual Property (AIPPI); International Center for Trade and Sustainable Development (ICTSD); International Chamber of Commerce (ICC); International Commission for the Rights of Aboriginal People (ICRA); International Committee for the Indians of the Americas (Incomindios); International Council of Museums (ICOM); International Federation of Pharmaceutical Manufacturers Associations (IFPMA); International Publishers Association (IPA); International Seed Federation (ISF); International Trademark Association (INTA); International Union for Conservation of Nature (IUCN); International Video Federation (IVF); IQ Sensato; Kanuri Development Association; Knowledge Ecology International (KEI); Max Planck Institute for Intellectual Property, Competition and Tax Law

(MPI); Natural Justice; Nigeria Natural Medicine Development Agency (NNMDA); Norwegian Council for Traditional Music and Traditional Dance; Organization for Social Action and Development (OSAD); Queen Mary Intellectual Property Research Institute (QMIPRI); Rromani Baxt; Russian Association of Indigenous Peoples of the North (RAIPON); Saami Council; Samburu Women for Education and Environmental Development Organization (SWEEDO); The Sudanese Association for Archiving Knowledge (SUDAAK); Traditions for Tomorrow; the Tulalip Tribes of Washington Governmental Affairs Department (“the Tulalip Tribes”); West Africa Coalition for Indigenous Peoples’ Rights (WACIPR); World Self-Medication Industry (WSMI) (44).

5. A list of participants is annexed to this report.
6. Document WIPO/GRTKF/IC/16/INF/2 provided an overview of the documents distributed for the sixteenth session.
7. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions and provides the essence of interventions, without reflecting all the observations made in detail or necessarily following the chronological order of interventions.
8. Mr. Wend Wendland of WIPO was Secretary to the sixteenth session of the Committee.

#### **AGENDA ITEM 1: OPENING OF THE SESSION**

9. Mr. Johannes Christian Wichard, Deputy Director General of WIPO, opened the session on behalf of the Director General Mr. Francis Gurry. In his opening remarks, Mr. Wichard stated that this was a very important session as it was the first meeting of the Committee under its new and very challenging mandate which the Member States of WIPO had given to the Committee at the General Assembly in September 2009. He recalled the terms of the mandate and noted that there was little less than one and a half years, or four sessions of the Committee and three sessions of an intersessional working group, to carry out the work. Time was scarce and it was hoped that progress would be made at the sixteenth session. The Secretariat would do its best to support and facilitate the negotiations. He expressed his gratitude to Ambassador Gomez Camacho of Mexico for his effective chairmanship of the fifteenth session, and described in general terms the working documents that had been prepared for the current session. He suggested that at the present session, the Committee continue its substantive work, in accordance with its mandate. The comments made at the previous session and during the intersessional commenting process were already a valuable starting-point, but there was much to discuss and much progress still to be made. There were also some procedural questions which needed to be resolved during the IGC, and he was grateful to Ambassador Dumont, the Chair of the General Assembly, for having conducted consultations on these questions. He introduced Dr. Konji Sebati, who had joined his Sector, the Global Issues Sector. Dr. Sebati came with rich experience in diplomacy, most recently as the Ambassador of South Africa to France, in industry and in medical practice, in particular in programs combating the spread of HIV/Aids. Dr. Sebati would focus in particular on WIPO’s work on GR, TK and TCEs and WIPO’s program on Global Challenges. In conclusion, Mr. Wichard thanked the members of WIPO’s TK Division who had prepared the session.

#### **AGENDA ITEM 2: ELECTION OF OFFICERS**

*Decision on Agenda Item 2:*

10. *Upon the proposal of the Delegation of Thailand, on behalf of the*

*Asian Group, seconded by the Delegation of El Salvador, on behalf of the Group of Countries of Latin America and the Caribbean and supported by Switzerland on behalf of Group B, the Committee elected as its Chair His Excellency Ambassador Philip Richard Owade of Kenya, unanimously and by acclamation, for the 2010-2011 biennium. Upon the proposal of the Delegation of El Salvador, on behalf of the Group of Countries of Latin America and the Caribbean and the Delegation of Slovenia on behalf of the Central European and Baltic States, seconded by the Delegation of Switzerland on behalf of the Group B, and by the Delegation of Angola, on behalf of the African Group, the Committee elected as its Vice Chairs, for the same period, Mr. José Ramon Lopez de Leon Ibarra of Mexico and Mr. Vladimir Yossifov of Bulgaria.*

11. In expressing his appreciation, the Chair thanked the African Group for his nomination. He noted the enormous and complex responsibilities and challenges the Committee collectively had to surmount. He recalled the difficulties in renewing the mandate of the Committee at the Thirty Eighth Session of the General Assembly and noted that it was, however, encouraging that in the true spirit of multilateralism, characterized by give and take, a decision was reached to renew the mandate of the Committee, to among other things “continue its work and undertake text-based negotiations with the objective of reaching agreement on a text of an international legal instrument (or instruments) which will ensure the effective protection of GRs, TK and TCEs.” The Committee was requested to submit to the 2011 General Assembly the text (or texts) of an international legal instrument(s). The General Assembly would decide in 2011, on convening a Diplomatic Conference. He said despite likely differences and divergent points of view on the form and content of the texts of the legal instrument(s), the work of the Committee had been made much easier. Although the mandate was robust and ambiguous, the expected outcome had been clearly set out. Focus was therefore required and any attempts to detract or sidetrack the Committee had to be resisted. He implored the Committee to collectively chart out the most direct path to its destination. As Chairman, he would help to steer the process and, in doing so, endeavour to exercise fairness and impartiality. However, coming from a developing country in Africa, he could not be oblivious to the desires of millions of people from his continent and other developing countries for whom a legally binding instrument for the protection of GRs, TK and TCEs should already have been concluded. There was no doubt that the Committee had exhausted the preliminary deliberations and needed to move straight to the norm-setting mode. A legally binding instrument was long overdue to combat bio-piracy that had proceeded unchecked for decades. He emphasized that the search for a legally binding instrument must begin from the premise that IPRs must allow the creators or owners of patents or copyrights to benefit from their work or investment. While most of these had been protected, TK, TCEs and GRs remained in a legal void. He drew the Committee’s attention to the wording of Article 27 of the UN Declaration on Human Rights (UDHR) – which provided for the right to benefit from the protection of moral or material interests resulting from authorship of any scientific, literary or

artistic work. In conveying his appreciation to H.E. Ambassador Gomez Gamalho of Mexico for the commendable effort in chairing the last session of the IGC, he also commended the Director General and the Secretariat for the steadfast leadership in the search for progress in the normative agenda especially in TK, TCEs and GRs for which the Director General had repeatedly challenged Member States to double their efforts in advancing the agenda. He asked Member States to seize the opportunity to provide legal protection for those who had been left behind and capitalize on the prevailing international atmosphere to right the wrongs of the past. He stressed that the Committee should not lose the momentum.

12. The Delegation of Spain stated that there were no Spanish translations of some of the documents.
13. The Delegation of Spain, on behalf of the European Union and its 27 Member States, wondered whether the reference to certain documents under agenda items 8, 9 and 10 meant the exclusion of other documents. If so, this would be contrary to the mandate given by the General Assembly to the Committee.
14. The Delegation of Lebanon stated that not all documents had been translated into Arabic.
15. At the invitation of the Chair, the Secretariat responded to the comments made by the Delegations of Spain and Lebanon on the language versions of the documents. The Secretariat clarified that all working documents for the session had been made available in all six UN languages. Information documents prepared by the Secretariat were also available in all six UN languages. Information documents, which had been submitted by Member States, such as those in response to the invitation to submit experiences on IP and GRs, were available in the language of submission and, where applicable, English. The Secretariat had been grateful to receive close to 200 pages of such submissions and it had not been possible to have them all translated in all six languages. However, it was confirmed that all working documents and other information documents were available into all six languages, and these had been available for some time. The draft report of the fifteenth session was available in English, French and Spanish. Other Committee documents, such as the gap analyses, had also been translated in all six UN languages and had been available on the WIPO website in all languages for some time. The Secretariat also announced that the WIPO TK website had recently been refreshed and restructured and invited IGC participants to visit it.

### **AGENDA ITEM 3: ADOPTION OF THE AGENDA**

*Decision on Agenda Item 3:*

16. *The Chair submitted the revised draft agenda circulated as WIPO/GRTKF/IC/16/1 Prov. 2 for adoption and it was adopted.*

### **AGENDA ITEM 4: ADOPTION OF THE REPORT OF THE FIFTEENTH SESSION**

*Decision on Agenda Item 4:*

17. *The Chair submitted the draft report of the fifteenth session of the Committee for adoption and it was adopted.*

**AGENDA ITEM 5: ACCREDITATION OF CERTAIN ORGANIZATIONS***Decision on Agenda Item 5:*

18. *The Committee unanimously approved accreditation of all the organizations listed in the Annex to document WIPO/GRTKF/IC/16/2 as ad hoc observers, namely: Association des Etudiants et Chercheurs sur la Gouvernance des Etats insulaires (AECG), Azerbaijan Lawyers Confederation, Confederación de Nacionalidades Indígenas (CONAIP), Cooperativa Ecológica de las Mujeres Colectoras de la Isla de Marajó (CEMEM), Ethnic Community Development Organization (ECDO), Kus Kura el León Sociedad Civil, National Education Social and Traditional Knowledge (NEST) Foundation, National Indigenous TV Ltd. (NITV), Organisation d'appui aux organisations communautaires de base "Arc-En-Ciel" and the United Nations of Indians.*

**AGENDA ITEM 6: OPENING STATEMENTS**

19. The Delegation of El Salvador, speaking on behalf of GRULAC, reiterated that all its members were willing to collaborate in the work that would be done during the week, as well as in the future, including the meetings of the intersessional working groups. It recognized the work done by the former Chair of the Committee, His Excellency the Ambassador of Mexico, Mr. Juan José Gómez Camacho, a member of his regional group, who had shown his solemn commitment towards each of the Member States and paid due attention to the concerns of every Delegation individually and the regional groups during his chairmanship. The transparent consultation and communication mechanism used by Ambassador Camacho had meant it had been possible to start a consensus-building process regarding one of the subjects, which was of great importance. It thanked the Secretariat for preparing and updating the working documents, as well as for holding the information meetings before the Committee session. It thanked the Ambassador of Argentina, Mr. Alberto Dumont, Chair of the General Assembly, who had started the consultation process on the procedures and content of the intersessional working group meetings of the Committee and also thanked the coordinators of the Regional Groups and the European Community for their highly committed contributions which had enriched the process. It thanked the African Group for the proposal it had submitted, which provided the basis for the aforementioned consultation process. It reiterated its support for the text-based negotiations geared towards reaching an agreement on the text of the international legal instrument (or instruments), which would guarantee the effective protection of genetic resources, traditional knowledge and traditional cultural expressions, without jeopardizing the work being done in other bodies. With regard to the work program contained in the decision of the WIPO General Assembly held in 2009, the following was highlighted: the need also to continue work in between sessions of the Committee. The work that the Committee was going to undertake in the 2010-2011 biennium should be based on the work done to date by the

Committee, and all the working documents submitted should be used, especially documents WIPO/GRTKF/IC/9/4, WIPO/GRTKF/IC/9/5 and WIPO/GRTKF/IC/11/8(a), which would serve as a basis for the Committee's work in respect of the text-based negotiations. The Committee was the body responsible for the negotiations and decision-making. The intersessional working groups' target should be to bolster and encourage talks in the Committee. The intersessional working groups should provide legal and technical advice and assessments. The working groups should submit reports regarding the results of their work to the Committee as well as draft recommendations, including drafting proposals, for review by the Committee. With regard to where and how long the intersessional working groups would meet, it would be preferable for meetings to be held at WIPO headquarters in Geneva and for the first working group to meet for five days. Depending on that meeting, the length of the meetings of working groups 2 and 3 could be adjusted, if necessary.

20. The Delegation of Slovenia, speaking on behalf of the Central European and Baltic States, attached great importance to the work of the Committee, which played a leading role in addressing the various aspects of preserving, promoting and protecting GRs, TK and TCEs. It was committed to making progress and expressed readiness to achieve a balanced result in all important issues that were to be discussed during the session and was very much supportive of the endeavours of the Chairman of the WIPO General Assembly to bridge the differences regarding the outstanding issues related to the Intersessional Working Groups (IWGs). The Chairman's proposal was an important step forward and included several useful elements that the delegations of the Central European and Baltic States were ready to discuss. It was of the view that the biggest hurdle seemed to relate to the composition of IWGs. It still favoured an open-ended format where experts from interested countries could participate without any limitations. It expressed confidence that this issue could be resolved in cooperation with other regional groups. It favoured a structured discussion in tackling particular topics like GRs, TK and TCEs and expressed the view that priority should be given to clear-cut definitions first, and then to other pertinent issues like the questions of beneficiaries, public domain, objectives and scope of protection, among others. It confirmed that it continued to favour a legally non-binding option as far as TCEs were concerned. In the area of TK there were still divergent perspectives on the issues involved, hence the need for a firm definition and more clarity on the eligibility criteria. It acknowledged the need to protect TK and to find a due balance among the different interests. In the field of the IP aspects related to GRs, it expressed support for the disclosure of origin requirement. It noted that the work of the Committee had been going on for more than eight years. It said that it was about time to speed up the technical work and try to build up the necessary compromises. It said that its regional group would actively participate in dealing with the agenda items and do its best to advance the work on all open questions.
21. The Delegation of Switzerland, speaking on behalf of Group B, commended the Secretariat for its preparatory work and for the informal briefing session which had been held on April 15, 2010. Following the strengthening of its mandate, the Committee was reaching a stage where the Member States should confirm the positive impetus that had been given to its substantive work and advancement in this work. Group B was fully committed to continuing the work undertaken during the fifteenth session of the Committee on the draft policy objectives, the guiding principles and the draft provisions. It was crucial that WIPO and the Committee play a leading role in addressing the IP aspects of protecting, promoting and preserving TK, TCEs and GRs, not only in view of achieving the concrete mandate the Committee received from the last General Assembly, but also for the useful contribution that WIPO had to deliver for the work undertaken in other international fora. It took note that in line with the renewed mandate, TK, TCEs and GR should continue to be addressed on an equal footing in the Committee. It expressed confidence that the Chair would ensure proper time management at the meeting, in order to ensure that the three issues were duly addressed during the session. While recognizing the need to progress, without delay, the work on TCEs, TK and GRs, it recalled the urgency to take procedural decisions concerning the IWGs and deeply regretted that this was

not addressed at the fifteenth session of the Committee. It referred to the positive discussions that Group B had had with other regional groups since the beginning of the year and said those discussions had increased their mutual understanding. It was convinced that the Committee was close to a positive decision. The Delegation thanked again the Chair of the General Assembly for the useful consultations he had undertaken on this issue. The document circulated by the Chair of the General Assembly among regional coordinators constituted a good basis for continuing the discussions. To achieve a consensus by the end of the session, it suggested that the Chair launch a process of informal consultations. It favoured an open-ended format for the IWGs, should IWGs be mandated to draft texts, and added that an open-ended participation would ensure full transparency and inclusiveness in line with Development Agenda Recommendations 15 and 44, as well as efficiency and coherence of work between the Committee and the IWGs. An open-ended format would also enable participation of representatives of local communities and indigenous peoples, as well as other interested NGOs, as observers. It appreciated the opportunity given during the indigenous and local communities panel to have a direct and frank interaction and discussion with the representatives of indigenous and local communities. It remained committed to facilitate the participation and interaction between representatives of Member States and representatives of indigenous and local communities in the work of the Committee and IWGs. It expressed the strong commitment, constructive spirit and support of the Delegations of Group B, in order to advance the substantive work of the Committee under its renewed mandate and achieve tangible results.

22. The Delegation of Thailand, speaking on behalf of the Asian Group, congratulated the Chair and expressed confidence that under its leadership, the Committee would make significant progress during the course of its present session. It highlighted the importance it attached to the new mandate of the Committee. The Chair of the General Assembly was thanked for the consultations he had undertaken in the past months in bringing together the different regional groups' positions. It also thanked the Secretariat for organizing the useful informal briefing that had taken place on April 15, 2010 and for preparing the working documents. It looked forward to seeing further substantive progress at the present session and was encouraged to note that at the fifteenth session of the Committee, examination of the texts had already begun for TCEs, TK and GRs. It welcomed the useful comments that had been made on these texts and hoped for greater engagement in the text-based negotiations from the Member States. The Committee was the appropriate forum for the consideration and discussion of all three subject matters, so that related and overlapping issues could also be addressed. With regard to the IWGs, it was convinced that it would be more efficient if each meeting was to be devoted to one subject matter only. Regarding the arrangements for the IWG meetings, it reiterated the wish of the Asian Group that they be conducted in a manner that was efficient, transparent, and with adequate representation of the views by all Member States. It proposed that the revised documents (WIPO/GRTKF/IC/16/4, WIPO/GRTKF/IC/16/5 and WIPO/GRTKF/IC/16/6), along with all other relevant information documents, be examined by the IWGs. As the Committee at its previous sessions had already spent a great deal of time on conceptual and policy discussions, it would be useful not to repeat these discussions at the IWGs level. It said that the IWGs should focus on examination of texts, so that concrete outcomes could be achieved at the end of each meeting. It added that the IWGs should have the flexibility to work in plenary as well as to set up drafting sub-group(s), if necessary. It was of the view that the IWGs should deal with the TCEs at their first meeting, as greater progress had been made on this subject matter and that subsequent meetings should deal with TK and GR, respectively in order to draw benefits from the outcome of the first IWG on TCEs. The Committee was urged to conclude its deliberations on the arrangements for the IWGs as soon as possible, so that the Member States would have the opportunity to make further progress on the revised draft texts. The Asian Group remained committed to contributing constructively and looked forward to making progress on the substantive items under the Committee's agenda. It noted that there was no wide divergence of views among the different groups on the procedural issues relating to the



arrangements for the IWGs. It expressed the readiness of the Asian Group to adopt a flexible approach in further engaging with other groups so that the Committee could reach amicable solutions. Regarding the scheduling of the first IWG, it was of the view that it should be convened during the period between the present session and the seventeenth session of the Committee. It said that its statement included broad comments made on behalf of the Asian Group and that individual Member States of the Asian Group might wish to express their own specific viewpoints in separate statements.

23. The Delegation of Angola, speaking on behalf of the African Group, congratulated the Chair of the Committee on his election and extended its trust in his chairmanship. The Delegation was pleased to see an African chair the Committee at a crucial stage of important negotiations. The African Group was ready to start substantive negotiations on the texts, using previous documents as a basis (WIPO/GRTKF/IC/9/4, WIPO/GRTKF/IC/9/5 and WIPO/GRTKF/IC/11/8(a)), taking into account their subsequent revisions intended to incorporate the comments made on the said documents. It underlined that achieving the Committee's mandate and submitting a comprehensive and negotiated text to the General Assembly depended on the sustained efforts of the Committee and on each Member State's political will. It said it trusted that they would achieve that goal. It was necessary, in order to allow the Committee to fulfill its mandate, to agree on the arrangements for the intersessional working groups, and also the groups should aim to speed up and strengthen the Committee's technical negotiations. To that end, the intersessional working group should focus on converging on issues that may require more time and attention within the framework of the Committee's negotiations. The issues regarding definitions, the subject matter to be protected, exceptions and limitations, the duration of protection, consent and prior authorization, moral and economic rights, beneficiaries of the protection and finally *sui generis* protection options were raised. The Delegation of Angola, speaking on behalf of the African Group, added that the said issues had been identified by the African Group over the course of the Committee's discussions in the previous ten years in relation to the documents being used as a basis for the current negotiations. The intersessional working groups should have a very clear purpose; the Delegation reiterated its proposal to limit participation to technical experts chosen on the basis of three subject areas: traditional knowledge, traditional cultural expressions and genetic resources, and to plan a meeting for each of the three areas, hence three meetings were to be held before September 2011, as set out in the Committee's mandate. It was open to finding a solution to the pending issues and remained confident that the current discussions on procedure would be fruitful. It was hoped that negotiations on the drafting of an international legal instrument would not be slowed down by procedural discussions. Similarly, the African Group was anxious to see the Committee's negotiations lead to concrete results which would favor sustainable development in African countries and development of their traditional knowledge and genetic resources. The Delegation added that both the Committee's negotiations and those being held in other fora, such as the Convention on Biological Diversity (CBD), should address the concerns of African countries in a holistic manner. Furthermore, negotiations were underway at the CBD to establish an international regime on access and benefit sharing, which would be concluded in Nagoya, Japan in October 2010. The negotiations being held at WIPO could positively contribute to those of the CBD being concluded. Most countries involved in the negotiations regarding the legally binding regime were driven by political will; it trusted that the same would be true for the Committee. WIPO played an important role in the CBD's negotiations and it was hoped that WIPO would continue to encourage and identify the ways and means through which it could contribute to the implementation of the Regime on Access and Benefit Sharing after the meeting in Nagoya. It was hoped that the negotiations underway in other international bodies would complement and not hinder talks whose overall objective was the protection of traditional knowledge, traditional cultural expressions and genetic resources. The Delegation was pleased to announce, on behalf of the African Group, that the African Regional Intellectual Property Organization

(ARIPO) would adopt the Protocol on the Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore in the context of a diplomatic conference to be held in Windhoek, Namibia in August 2010. The adoption of the Protocol had been facilitated through WIPO's assistance as well as that of other actors, and had benefited from the Committee's discussions. Furthermore, it was worth noting that the African Intellectual Property Organization (OAPI) had already adopted a similar instrument. The adoption of the Protocol by ARIPO and the instrument by OAPI, which grouped together 33 countries from the African continent, could constitute a good basis for the Committee's discussions. The Delegation, speaking on behalf of the African Group, reiterated its wish to see the representatives of indigenous and local communities involved and participating in the negotiations both in the Committee and the intersessional working groups.

24. The Delegation of the Kyrgyzstan, on behalf of the Regional Group of Central Asia, Caucasus and Eastern European Countries, expressed the hope that in view of the Chair's rich experience, the Committee would make progress towards resolving the issues it faced and would achieve concrete results. The Group confirmed that it was ready to provide all possible support in that endeavor. The Secretariat was thanked for the high quality of the preparation of the session. It welcomed the presence at the current meeting of representatives of local communities, whose participation had been made possible by the WIPO Voluntary Fund. In that connection, it expressed thanks to all countries that had provided financial assistance to the Fund and hoped that the experience of indigenous and local communities currently available would make an important contribution to the work of the Committee. It commended the Panel of indigenous and local communities that had been held on the first day of the session. The Group thought that it was a very good initiative and hoped that the Panel would also be funded. In conclusion, the Group hoped that the work of the Committee and of the IWGs would be successful.
25. The Delegation of China expressed the hope that the present session of the Committee would achieve positive results. It recalled that for many years, and with the active participation and support of Member States, a great deal of work had been undertaken on the protection of TK, TCEs and GRs. It noted with satisfaction that under the new mandate and working mechanism, the Committee had adopted a more efficient manner to discuss the issues related to an effective protection of TK, GRs and TCEs and as a result some progress had been made. It expressed the hope that full collaboration and participation of Member States would allow the Committee to take a more practical approach and engage in a more active manner in promoting further the discussion in order to reach substantive results. The Delegation expressed its readiness to work together with other Member States in an active and constructive manner and would make its best effort to this end.
26. The Delegation of Spain, speaking on behalf of the EU and its Member States, recalled that there were three equally important topics in the present mandate of the Committee and that WIPO was the proper forum for all IP-related questions related to those topics. It referred to the fact that the General Assembly adopted a clear mandate on how the work of the Committee should proceed in order to reach some concrete results. It said that the Committee had entered a new phase of discussions that required careful preparation by all Member States to reach common ground, to accelerate the Committee's work and to overcome the challenges involved. It expressed its commitment to work actively towards achieving the results that were expected from all Member States. It noted that the terms of reference of the IWGs remained unresolved, hindering the debate on more substantive issues and expressed appreciation for the efforts of the Chair of the General Assembly that might help the Member States reach an agreement on this procedural issue. It said that it shared this constructive spirit, as they would be ready to discuss the Chair's proposal. It requested, for the sake of transparency of the entire process and in order to ensure results that would represent the interests of all Member States, that participation in the IWG be open to experts from all interested Member States. It remained confident that the constructive

spirit on this procedural issue was shared by other Delegations and that the Committee could reach a consensus quickly, as there was an urgent need to restart the work and achieve real progress. It believed that it was of great importance to secure structured discussions on TCEs/EoFs as well as on TK and GRs. Bearing in mind the new mandate for the Committee, it said that the entire work carried out by the Committee should constitute the basis of the discussions, not excluding any particular document or documents. It was of the view that in order to make progress on TCEs/EoFs it was crucial to prioritize the finding of clear definitions of TCEs. It envisaged that from that starting point, in a second stage, the Committee would keep working to set up an appropriate outline on the objectives and principles, the scope and term of protection, its relation to public domain and the existing IP rights protection. It added that other aspects such as exceptions and limitations must be analysed in the current course. It recalled that the EU and its Member States already expressed a firm preference for legally non-binding options regarding TCEs. It recognized and respected TK as it had been built, preserved and transmitted by its custodians over centuries. It noted that an adequate balance must be reached between providers and users of TK in full respect of national customary tradition. It would present specific proposals for discussion under this agenda item later in the week. The EU and its Member States had been maintaining a proactive approach over the years in dealing with IP aspects related to GRs. The voluntary disclosure of origin was introduced in some EU Member States even before the Committee was established. Some EU Member States had further introduced mandatory disclosure of origin since then. It referred to document WIPO/GRTKF/IC/16/INF/15 which provided additional details of currently existing legislation on GRs in the EU. It expressed its appreciation for the extensive information provided regarding the legal protection of GRs at national level. It requested that appropriate consideration be given to these information documents when discussing the range of options under item 10 of the agenda. It finally said that it was ready to engage constructively in the discussions and recalled that consensus was built on trust.

27. The Delegation of Nepal, on behalf of the Least Developed Countries Group (LDCs), thanked the Secretariat for the quality of the documents. It was satisfied with the new mandate of the Committee and expressed the need to make tangible progress in a timely manner. The Group wished for the renewed mandate and timeline of the Committee to be upheld by the Member States, as started in the fifteenth session. The Group expected good progress during the sixteenth session. Regarding the IWGs, the Group suggested that the Committee confine the discussion to one subject per session to allow the IWG to have a more focused and efficient discussion. The Group suggested that the discussions proceed on the basis of WIPO/GRTKF/IC/16/4, WIPO/GRTKF/IC/16/5 and WIPO/GRTKF/IC/16/6 as members had individually made specific comments in relation to these texts. Regarding the duration of the session, the Group agreed with allocating five days for the first session and then evaluating whether the Committee needed to change the duration. Similarly, the Group would support balanced geographical representation in small closed groups in the IWGs. The issues of GR, TK and TCE were very important as some of the LDC countries were rich in these resources but were unprotected due to the insufficiency of knowledge, technical know-how and financial resources. In this context, the Group's participation in the IWGs would be very fruitful. In the past, the participation of the Member States of the Group had not been encouraged and also, due to the various country issues, some of the members in the Group were not able to attend the meetings of the Committee. The Group implored the Committee to consider LDCs in the future meetings by increasing the financial resources for the Group. It informed the Committee of the importance attributed to GR, TK and TCEs by LDCs in their report, to promote economic development and protect their cultural heritage and GRs, especially through the promotion of SMEs. The high-level forum on IP for the LDCs in early December 2007 had underlined the importance of the protection of cultural heritage, TK, GRs and geographical indications of LDCs from misappropriation and called upon WIPO to undertake more projects to map out and fortify the resources of the LDCs to realize their economic potential. The second high-level forum for

LDCs held in July 2009 had further strengthened the protection and use of traditional cultural and artistic creations, particularly relating to TCEs and folklore, copyright, related rights systems and other appropriate mechanisms. The Group requested more assistance from WIPO and ongoing necessary assistance from the Secretariat for the capacity-building of their national institutions to protect GR, TK and TCEs from misappropriation. As the Committee continued to discuss the normative framework to provide protection at an international level, assistance was also required in development of appropriate national policies and legislation. In conclusion, the Delegation supported the statement made by the Delegation of Thailand on behalf of the Asian Group.

28. The Delegation of Egypt, on behalf of the Development Agenda Group (DAG), commented on how the misappropriation and misuse of TK, TCEs and GRs had elicited great concern. In light of this, it wished to emphasize the urgency of incorporating appropriate norms into the multilateral IP system and was strongly committed to establishing a legally-binding international instrument(s) that ensured the effective protection of GR TK and TCEs. It was important to ensure that the WIPO process did not undermine or prejudice the ongoing negotiations of the CBD, the WTO or any other related ongoing negotiations. It attached great importance to the Committee and its new mandate. It thanked the Secretariat for organizing the sixteenth session and for preparing the documents and looked forward to seeing substantive progress made in the present session. It was happy that the examination of texts for GR TK and TCEs had progressed in the fifteenth session and hoped to see greater engagement in text-based negotiations from the wider membership in the sixteenth session. It thought that the Committee was the appropriate forum for the discussion on GR, TK and TCEs and suggested that one meeting be devoted to one subject matter for the IWGs so as to focus on advancing the substantive tasks at hand, including proposals for text(s) for consideration by the Committee. The discussions of the IWGs should be focused on the revised draft texts, WIPO/GRTKF/IC/16/4, WIPO/GRTKF/IC/16/5 and WIPO/GRTKF/IC/16/6, for the maximum amount of time so that concrete outcomes could be achieved by the end of each IWG. The Committee had already spent a great deal of time on conceptual and policy discussions during previous sessions and it should avoid a repetition of these discussions. The IWGs should be afforded the flexibility to work in plenary as well as to set up drafting sub-group(s), if necessary. It said the IWGs should have limited participation of technical experts on each of the three issues, GR, TK and TCEs. The Group understood that there would be three IWGs sessions to be held before September 2011, in accordance with the renewed mandate. It proposed that the IWGs first deal with TCEs as more progress had been made on the subject matter. The subsequent IWGs could potentially benefit from the results of such discussion on TCEs. The Committee was urged to conclude its deliberations on the arrangements for the IWGs at the present session so that Member States would have the opportunity to make further progress on the revised draft texts. It said it was committed to making constructive contributions to these discussions and looked forward to making progress on the substantive items on the Committee's agenda. It noted that there was not a wide divergence of views among the different groups on the procedural issues relating to the arrangements for the IWGs and suggested that the first meeting of the IWGs be convened during the period between the present session and the next session of the Committee.
29. The Delegation of Indonesia aligned itself with the statements made by the Delegations of Thailand and Egypt, on behalf of the Asian Group and the DAG respectively. Efforts for the protection of GR, TK and TCEs had assumed greater significance and drawn the attention of the international community over the past decade. It attached great importance to the protection of GR, TK and TCEs as they had increasingly been exposed to misappropriation and misuse as a result of the continuous absence of a legal international regime. It also stated that it had witnessed the unrelenting emphasis towards expanding and deepening the protection of other areas of IP, and thought that there was the continuous absence of the protection of GR, TK and TCEs. It commented on the high economic and cultural value of the GR, TK and TCEs,

and that such wealth should appropriately be utilized for the socio-economic development of the people to whom they belonged. Studies had indicated the annual global market for GR, TK and TCEs reached hundreds of billions of dollars annually. It was only legitimate for the rightful holders of this wealth to benefit from utilization of their unique creations and inventions. The Delegation highly commended the mandate given by the WIPO General Assembly to the Committee. This was a consensual mandate that should be pursued to achieve an international legally-binding instrument for the protection of GR, TK and TCEs in the provided time-frame. The Committee was obliged to provide clear modalities for the IWGs. The Delegation suggested that it would be beneficial to hold focused session of each IWG to ensure the substantial advancement of the texts. It was pleased to see the development of relevant documents on TK and TCEs. It said it looked forward to seeing an international legal instrument emerging from the negotiations and was ready to proceed with the work of the Committee to negotiate the texts under consideration. It hoped that the Committee would fulfill its mandate and stated objective within the agreed timeline set by the General Assembly.

30. The Delegation of Cuba supported the statements made by the distinguished Delegations of El Salvador, speaking on behalf of GRULAC, and Egypt, speaking on behalf of the DAG. The Delegation said that, as was stated in the document on the guiding principles of DAG, paragraph nine, “the misappropriation and misuse of traditional knowledge, traditional cultural expressions and genetic resources [had] elicited great concern amongst developing countries”. There was an urgent need to make progress in the Committee’s Session in light of the mandate given by the General Assembly of 2009. A working group session should already have been held in May 2010. It was essential to show flexibility where required, as that would show whether there was the political will to establish international legal instruments, as was the case for other forms of IP. The international legal texts would be a significant contribution by WIPO to the effective protection TK, TCEs and GRs. This was a priority concern for Member States of DAG and a highly sensitive issue in the Latin American region, given that 40 per cent of the world’s biodiversity was concentrated in South America and had been affected time and again by cases of misappropriation of its resources. They were closer than ever to implementing Recommendation 18 of the Development Agenda, however, it required that they show they were all equally committed. The Delegation referred to the UN Declaration on the Rights of Indigenous Peoples adopted by the UN General Assembly in September 2007, and drew attention to Article 31. Furthermore, WIPO, as a specialized agency of the UN, could objectively contribute to those rights being enforced, which were historically avoided. It requested that the informal consultation processes which were being held that week, should be held in such a format as to guarantee the presence of all Member States concerned, thereby ensuring transparency and inclusiveness. It was recommended that effective use of time was made in order to reach the outcomes hoped for.
31. The Delegation of the Plurinational State of Bolivia supported the statements made by the Delegation of El Salvador, speaking on behalf of GRULAC, and the Delegation of Egypt, speaking on behalf of the DAG. It had witnessed many acts of misappropriation of biological and GRs, TK and TCEs. It had observed that the interests of developing countries were not taken into account and that that was, to a large extent, due to the lack of appropriate instruments for the protection of the said resources. Setting up the Committee had created expectations which with the passing of time had not been met, leaving countries feeling frustrated, especially those that were megadiverse, as was the case for Bolivia. Without prejudging the outcome of negotiations in other fora, it was felt that with the renewal of the Committee’s mandate, the challenge was for the IP system to meet the expectations of developing countries. Bolivia had always supported the largest and broadest participation of Member States in all the processes. However, with regard to the intersessional meetings, setting up a working group of experts selected by the Member States and which directly involved experts from indigenous peoples would provide added value in terms of the efficiency of negotiations and would enable results to be obtained in the time allocated. Reference was

made to Bolivia's legal progress in that area. In accordance with the Political Constitution of the Plurinational State of Bolivia, the following aspects in relation to GRs, TK and TCEs and in the context of international negotiations, should be taken into account: respect for the rights of native indigenous peoples and farmers; harmony with nature, protection of biodiversity and prohibition of forms of private appropriation for the exclusive use and exploitation of plants, animals, microorganisms and any living material. It highlighted the importance of protecting TK, GR and TCEs, that was to say, the interaction of indigenous peoples with biodiversity, which was in danger of being misappropriated mainly through biopiracy practices. It added that those practices not only undermined the rights of native indigenous peoples and farmers who owned biodiversity resources but determined the patenting of life forms, which Bolivia totally opposed as it was considered to be a practice harmful to the uses and customs of its owners. Those practices were creating the type of structure which meant there was a risk that future biodiversity and culture would gradually be lost.

32. The Delegation of Australia stated that as Australia was a mega bio-diverse country with a vibrant living indigenous culture and a robust IP system it had a significant interest in the work of the Committee. The Delegation welcomed the flexibility and political will demonstrated by Members in reaching consensus on the renewal of the mandate of the Committee at the General Assemblies in October 2009 and hoped that Members would be able to again demonstrate the commitment necessary to progress the work at the present session. It was committed to reaching agreement on the IWGs. The IWGs' work program was essential. The Delegation had been disappointed by the failure to reach agreement at the fifteenth session and thought that the draft texts provided a useful basis to make progress. It said that it was ready to constructively engage in text-based negotiations during the present meeting and hoped to avoid devoting unnecessary time to questions of process and to focus instead on substantive work. A meaningful, substantive, outcome-oriented discussion of all three interrelated issues was vital for Members to make progress towards fulfilling the mandate. The issues under consideration in the Committee affected all WIPO Members, irrespective of the level of development or regional group. It hoped that Members would move beyond the traditional divisions and political dynamics that had plagued the Committee in the past, and work together to progress its important objectives. The Committee should work to establish an environment of genuine trust, built through gaining a shared understanding of the issues. It believed that if the Committee could bridge the differences and achieve an outcome to these negotiations which had broad support. Without that broad support, any outcome was likely to be ineffective. The Delegation commented on the successful conclusion of the recent CDIP session which boded well for the present meeting and hoped for a very productive sixteenth session.
33. The Delegation of Brazil supported the statement made by the Delegation of El Salvador on behalf of the Group of Latin American and Caribbean countries and the Delegation Egypt on behalf of the DAG. It hoped that progress would be made at the present session towards a common goal which was to reach agreement on a legally binding instrument or instruments on GRs, TK and TCEs. To make progress it would be preferable to start on TK and TCEs in the Committee and in the IWGs as discussions were more advanced on these issues. The two texts on TCEs and TK were already drafted and structured in the format of normative instruments, while the GR document was still limited to a list of options. It reflected on negotiations on access to and benefit-sharing in GRs that were advancing in other international organizations such as the CBD and the WTO and enquired as to whether WIPO was incorporating developments from those negotiations in other fora into the possible instrument on GRs. It highlighted that for the negotiations to be successful they would necessarily have to involve the active participation by NGO and indigenous representatives.
34. The Delegation of Ecuador expressed its commitment to collaborating in order to reach the proposed objectives. It supported the statements made by the distinguished Delegations of El Salvador, on behalf of GRULAC, and Egypt, on behalf of DAG. It reiterated the importance

Ecuador attached to the Committee's work, as well as its interest in the IWGs being made up of experts appointed by Member States through the Regional Groups. The number of experts should ensure balanced geographical representation and strengthen the participation of experts from Member States, representatives of indigenous communities and NGOs. The goal of both the Committee and the IWGs should be to achieve effective protection of TK, associated GRs and TCEs. It highlighted the importance of holding text-based negotiations. The substantive discussions, in both the intersessional meetings and the Committee, could start by looking at TCEs. Adopting an international legally binding instrument or instruments would meet the needs and expectations of indigenous peoples and local communities. At the national level, work in the same vein was continuing under the Ecuadorian Constitution, which established and guaranteed that the State recognize the collective rights of indigenous peoples and local communities to maintain, protect and develop collective knowledge; their sciences, technologies and ancestral knowledge; GRs found in biological diversity and agro-biodiversity; their medicines and traditional medical practices, including the right to recover, promote and protect ritual and sacred places, as well as plants, animals, minerals and ecosystems. It thanked WIPO for its valuable assistance in relation to the adoption of national law on the effective protection of TK and TCEs; that work was being carried out in consultation with and with the direct participation of indigenous peoples and local communities in Ecuador.

35. The Delegation of Tunisia underlined the importance attached to the protection GRs, TKs and folklore, as assets with direct impact on economic, cultural and social development of all countries, and, more particularly, developing countries. While positive results achieved by the General Assembly in 2009 were welcome, concern was expressed as to the failure in achieving the desired objective of the previous IGC session, including one or more binding instruments for the protection of natural, intellectual and cultural assets. It expressed support for the statement made by the Delegation of Angola on behalf of the African Group, and was willing to start substantive negotiations in coordination with the African Group on the basis of a negotiation text built on WIPO documents WIPO/GRTKF/IC/9/4, WIPO/GRTKF/IC/5/9, WIPO/GRTKF/IC/11 and WIPO/GRTKF/IC/8A, as modified following comments submitted during the previous IGC session. Participants were urged to move forward with the implementation of the IGC mandate and provide the General Assemblies in 2011 with a comprehensive negotiation text. Referring to the outstanding issue of IWGs aiming at accelerating and furthering ongoing IGC negotiations, it was of the view that the IWGs should concentrate on developing converging views on issues that required more time and attention, including issues such as definitions, exceptions and limitations, duration, PIC, moral and economic rights, and *sui generis* protection. The Delegation underlined that, for each of the three issues, a separate working group should be formed and, as mentioned in the General Assembly's decision, the three working groups should be established before September 2011. It was open to finding solutions for the outstanding issues and hoped that the ongoing procedural discussion would lead to positive results and pave the way for negotiations on one or more international legally-binding instrument.
36. The Delegation of India supported the statements made by the Delegation of Thailand on behalf of the Asian Group and the Delegation of Egypt on behalf of the Development Agenda Group. It appreciated the spirit of collaboration and accommodation shown by all the Member States and the efforts of the Chair of the General Assembly in enabling a consensus for continuation of the Committee and for more focused deliberations towards a legally-binding treaty on GR, TK and TCEs. It hoped that the future work of the Committee and that of the IWGs would adequately address the concerns of the Member States on this issue. It commented on the progress made at the fifteenth session by commencement of the examination of texts and hoped that the momentum would accelerate in the present session and that the Committee would achieve consensus on the work of the IWGs and progress with the revised draft texts circulated by the Secretariat. India had a vast store of TK that was well documented in languages including Sanskrit, Hindi, Urdu, Arabic and Tamil. Prior to the Traditional Knowledge Digital Library

(TKDL), it had not been possible for patent examiners across the world to access this TK and deny claims of novelty in a patent application based on traditional Indian systems of medicine. In relation to the TKDL, language and format barriers had been overcome and information was now scientifically structured in five international languages with the help of the information technology and a unique classification called the Traditional Knowledge Resource Classification. It discussed the progress made in addressing the problem of biopiracy and misappropriation related to TK and the associated GR through the TKDL. India had signed TKDL Access Agreements with the European Patent Office (EPO), USA, UK and Germany. Since July 2009, the EPO had identified 36 patent applications which concerned Indian systems of medicine in which third party evidence had been filed. In two cases, the EPO had set aside its intention to grant patents after receiving the TKDL evidence. The Delegation added that in the other eleven cases, including an application by an Indian company, the applicants had decided to withdraw their four to five year old applications when they were confronted with TKDL evidence. It was estimated that these efforts had led to a sharp decline of almost 44% in the filing of patent applications involving Indian systems of medicine. The changes had been possible only through email and at no additional cost apart from the set-up costs. The TKDL had created a defensive mechanism against misappropriation, although more needed to be done. There also needed to be positive rights for local and indigenous communities that were the real holders of TK. Where such TK had been widely documented or was no longer confined to a community and expanded to groups of communities or even peoples, rights must lie with a 'national level authority'. The diversity among countries as storehouses of TK needed to be taken into account as, for example, India had both codified and non-codified systems of knowledge. The potential system of protection must recognize the whole range of TK. The Delegation asserted that the Committee was the appropriate forum to address the issue of GR, TK and TCE and develop a legally-binding treaty(ies). The Committee was also reminded about recognizing the developments taking place in other international multilateral fora, for example the issue of access and benefit-sharing in GR and associated TK being discussed at the CBD and the developments at the WTO. It suggested that all these bodies should act in unison. It supported the proposal made by the Delegation of Thailand, on behalf of the Asian Group, on the arrangements for the IWGs and the sequence of subjects to be discussed. It stated that there had been more progress on the text on TCEs so this should be discussed first, followed by TK and then GR. As Member States had expressed the desire to discuss substantive issues, the Committee could decide a definite area of work for the IWGs. It hoped for the continuation of cooperation exhibited during the General Assembly and that issues of the Committee would be addressed, including misappropriation and misuse of existing knowledge, mandatory disclosure of source of origin, PIC and access to knowledge and benefit-sharing with owners of knowledge.

37. The Delegation of Guatemala supported the statements made by the Delegations of El Salvador, speaking on behalf of GRULAC, and Egypt, speaking on behalf of DAG, of which Guatemala was a member. It thanked various delegations and representatives of indigenous communities for their valuable contributions and input during the session, especially concerning the issue of GRs. It also thanked the Delegation of Bolivia for the initiative of holding a parallel event to the Committee's session. It thanked the donors (governments, non-governmental organizations and public and private entities) who had made WIPO's Voluntary Fund for Accredited Indigenous and Local Communities possible. Guatemala was a small developing country which, despite being rich in TK, TCEs and biodiversity, was facing significant economic limitations in order to participate in the multilateral meetings in Geneva. Most Guatemalan indigenous communities lacked the financial means to cover the travel and accommodation expenses of its representatives. Guatemala had significant ethnic and cultural diversity; there were 22 linguistic communities which belonged to the Mayan family, as well as Xinka and Garifuna communities. In light of that ethnic diversity, Guatemalan authorities were facing a significant logistical challenge to



coordinate efficiently its national positions and ultimately put them forward in the multilateral forum. The Voluntary Fund was a necessary tool to support the participation of its communities and give them the opportunity to make their suggestions and express their concerns directly in the Committee. It called on donors to continue contributing to the Voluntary Fund, and the Delegation was pleased as the Fund had made it possible for the Asociación Maya Toonik – an indigenous Mayan association from Guatemala and spokesperson for Guatemalan indigenous peoples – to attend and participate in the previous session. In relation to the input of the Asociación Maya Toonik, it endorsed the proposal submitted by the association in the previous sessions, and in keeping with the proposal it requested WIPO to prepare a glossary that reflected the world view of indigenous peoples and inherent spirituality of their lifestyle and relationship with nature. It recalled that the proposal had been welcomed by a number of delegations, including the Delegation of Spain. The glossary could be created in accordance with a pilot project in Guatemala. The national experience could possibly, if the Committee agreed, be shared in the future in the forum with the aim of enriching the text-based discussions and ensuring the effective protection of TK, TCEs and GRs. Given that Guatemalan indigenous communities were among the largest in Latin America, it hoped that WIPO would support the project. The Delegation called on Member States to invest political capital and adopt the flexible approach advocated by various regional groups in order to establish the working arrangements for the intersessional meetings.

38. The Delegation of the Islamic Republic of Iran expressed its appreciation to the Director General and the WIPO Secretariat. It supported the statements made by the Delegation of Thailand on behalf of Asian Group and the Delegation of Egypt on behalf of DAG. Due to the absence of internationally-binding rules for the effective protection of GR, TK and TCEs, piracy and misappropriation for commercial benefit had become a prevailing phenomenon all over the world, particularly in developing countries. It stated that the IP system, in the meantime, protected, indiscriminately, inventions originated from misappropriations and piracy, irrespective of the consent of the authentic owners and the existence of an equitable profit-sharing agreement. This rather unfortunate and rampant situation continued to deprive developing countries of greater leverage and revenues over the use of their potential resources and served to undermine their sustainable development and competitiveness in international markets. To remedy this unfair situation, a paradigm shift in the IP regime and the establishment of new international norms and binding rules were required to help developing countries protect, utilize and commercialize GR, TK, and TCEs at the international level. The establishment of the Committee by the WIPO General Assembly in September 2000 had given rise to an unprecedented enthusiasm and hope for the extension of IP protection to GR, TK, and TCEs. It stated that the effective protection of GR, TK and TCEs could further improve the enabling environment for development in developing countries. In the past decade, the Committee had seemingly failed to show any tangible results, because of its unclear mandate, lack of focus, and the unwillingness of certain countries. The new mandate of IGC provided a new momentum for the fulfillment of these long-pending aspirations. As stipulated in the mandate, the effective protection at the international level could only be realized by formulating legally-binding international instruments. It asserted the urgent need for the protection of ancient civilizations' heritage, as a foundation and base for TK and cultural heritage, through developing legally-binding instruments. The new impetus in the process was made in December 2009 at the fifteenth session of the Committee when text-based negotiations had begun and noted that the working documents negotiated at that session served as a good base for developing any subsequent instruments. The Committee was now on the verge of creating a *sui generis*, transparent and efficient system for the protection of collective creations and innovations. It noted that the arrangements for the IWGs were an important outstanding procedural issue that needed to

discussed. It said it appreciated the efforts made by the Chair of the WIPO General Assembly in the recent months to bridge the gaps between different positions on IWGs. As discussed at the fifteenth session, it thought it worthwhile to begin a process of informal consultations, to pave the way for a plausible agreement. The Committee should be mindful, in pursuit of the text-based negotiations in the Committee and IWGs, that the working documents on TK and TCEs were ahead of the GRs. Therefore, the ongoing negotiations of the CBD to establish an international regime on access and benefit-sharing could assist and complement WIPO's efforts towards ensuring the effective protection of GRs. This should be considered when deciding the sequence of the tasks to be assigned to the IWGs. The Delegation stated that the IWGs should be used to accelerate and improve ongoing negotiations within the Committee. It supported the open-ended participation of technical experts in the IWGs with a mandate for drafting texts for the consideration by the Committee and the notion of one IWG per subject matter but welcomed other proposals. It reiterated its commitment to engage constructively in the discussions towards productive results.

39. The Delegation of Botswana, in supporting the statement made by the Delegation of Angola on behalf of the African Group, wished that the work of the Committee, particularly during the present biennium, would take concrete steps in consolidating the work done so far and make progress towards the development of an international instrument(s). Since the fifteenth session of the Committee, as of March 2010, Botswana had passed the Industrial Property Bill, 2009 with a view to strengthening the IP system and promoting innovation and creativity for national development. The Act took into account the protection of TK and handicrafts. It asserted this had been an important milestone as it recognized the use of natural products and the role of local communities in the utilization of their knowledge. At the regional level, Botswana had hosted the twelfth session of the Council of Ministers of the African Regional Intellectual Property Organization (ARIPO) at Gaborone in November 2009. This meeting had approved the draft ARIPO Protocol on the Protection of Traditional Knowledge and Expressions of Folklore. Botswana, as the Chair of the Council of Ministers of ARIPO, had been mandated to submit to WIPO, on behalf of the Member States of ARIPO, this instrument as an important input to the work of the Committee. This document had been published as WIPO/GRTKF/IC/16/INF/24. It believed that processes at the national and regional levels could benefit more from an emerging consensus amongst the Member States of WIPO regarding the protection of GR, TK and TCEs at the international level. It asserted that the sixteenth session should be focused on tangible outcomes as per the mandate given by the General Assembly.
40. The Delegation of Mexico was interested in making substantive progress in order to fulfill the mandate conferred on the Committee by the WIPO General Assembly. It expressed the will and commitment to assist in reaching the consensus necessary to fulfill the said mandate and hold a successful diplomatic conference in 2011. It was interested in continuing the discussion on substantive texts, pointing out that it had sent substantive text proposals on the said matters on time. The negotiations held within the framework of the CBD should be taken into account in WIPO's work, and vice versa, without that causing either process to slow down. In the Committee's session, it was necessary to establish the methodology to be used for the remainder of 2010 and 2011 in order to achieve the mandate conferred by the General Assembly. In relation to intersessional meetings, the proposals submitted by the African Group and Group B should be reconsidered and reviewed in order to find common ground so that a consensus could be reached. Both proposals could be complementary, as was set out in the document introduced by the Chair of the General Assembly, Ambassador Alberto Dumont. It suggested that intersessional meetings were given a clear mandate and focus on specific aspects of each subject, and that the participants in the said meetings were appointed by their own governments. The meetings should be open to parties concerned and accredited observers (for the sake of transparency), and groups should not take decisions, but rather only make recommendations and/or prepare conclusions for consideration by the Committee.

Indigenous peoples should be present at the meetings just as sectors concerned were. It agreed with the proposal of the African Group with regard to the fact that the three subjects should be discussed separately and that the first intersessional meeting should only focus on TCEs. The second meeting should focus on TK. In keeping with the schedule, the subject of GRs would be discussed after the conclusion of the work of the Working Group on Access to Genetic Resources and Benefit Sharing of the CBD. It agreed with the proposal of Group B that the meetings of the IWGs should last five days. It noted that there were 62 indigenous peoples with a population of around ten million which represented a large mosaic of expressions and cultural traditions in addition to its rich biodiversity. The Consultation on Protection Mechanisms for Traditional Knowledge, and Natural, Biological and Genetic Resources of Indigenous Peoples being held in Mexico was already in its final phase.

41. The Delegation of Peru felt that the renewal of the Committee's mandate in the previous meeting of the Assemblies was of vital importance given that it had enabled the negotiation process to start with a view to producing a text of an international legal instrument(s) which would guarantee the protection of GRs, TK and folklore. However, it was concerned because more than half a year had gone by since the renewal of the mandate without even being able to agree on the conditions or content of some of the intersessional meetings, whose sole purpose was to facilitate and contribute to the negotiations of the Committee by means of the input and recommendations of experts in the subject areas. It hoped that, in addition to the substantive discussions, Member States would reach a successful outcome which would include an agreement to hold intersessional meetings. It was committed to the mandate and the Committee's work and was willing to contribute actively and constructively to the consultations and discussions during the week. It firmly believed that the IP system was a fundamental vehicle for economic, social and cultural development in countries, especially those countries which were megadiverse and a source of vast knowledge and TCEs. Considerable efforts had, therefore, been made to ensure the preservation, protection and promotion of its resources, thereby avoiding all acts of biopiracy involving biological resources of Peruvian origin and the collective knowledge of indigenous peoples of Peru. One sign of those efforts was the adoption in 2002 of a *sui generis* law which established a protection regime for the collective knowledge of the indigenous peoples of Peru in respect of biological resources, as well as setting up a National Commission against Biopiracy whose mission it was to identify, prevent and avoid acts of biopiracy with the aim of protecting the interests of Peru. Another sign of the efforts being made was the recent publication of a practical guide on accessing GRs and using TK of indigenous peoples of Peru by the National Commission against Biopiracy; the main aim of the publication was to offer guidance to those potentially interested in accessing their GRs and using TK of their indigenous peoples in accordance with the national standards in force by providing information on the procedures to be followed and on the competent authorities involved in the said process. Despite these efforts, various cases of misuse or misappropriation of TK, whether related to GRs or not, and TCEs had been reported. For this reason it legitimately hoped for the creation of an international legally binding instrument which would guarantee the protection of its biodiversity and knowledge related thereto. It called on the other Member States to take a flexible approach and contribute constructively to the negotiation process by making proposals. That would mean a text of an international legally binding instrument could be agreed on in accordance with the mandate of the Committee. It said that the Committee could not afford to continue stalling on procedural aspects given that they promptly needed to address the substantive aspects of the negotiation as the work program of the session was considerable and the time available limited. They were at a crucial stage where it was necessary to work with clear objectives and determination in order to reach a successful outcome. It recalled that at the end of the day the aim was to develop a better IP system for everyone's benefit and that the successful outcome of the negotiations would enable the said goal to be reached and would especially be to the benefit of the poorest indigenous communities in developing countries.

42. The Delegation of Burundi congratulated the Chair of the Committee on his election. It too welcomed the renewal of the Committee's mandate, which had come about following a proposal by the African Group, a great deal of effort and thanks to the mediation of the Chair of the General Assembly. The new mandate would open the way to adopting one or more legal instruments for the protection of TK, GRs and TCEs. The Delegation recalled that the issue at hand was of great importance for indigenous communities, developing countries and the international community in a world where everyone's lives were interdependent. It pointed out that the protection of TK, GRs and TCEs, which shaped the future of indigenous communities, were part of the peace and integrated development projects which drove the UN. It underlined the highly symbolic value of TK, GRs and TCEs. It was pleased to see those Delegations which in the past had distanced themselves from the African proposal aimed at a renewed and strengthened mandate, had since shown maturity and flexibility, and said that the proposal could suit all Member States. In addition, it supported the statements made by the Delegations of Angola, speaking on behalf of the African Group, Nepal, speaking on behalf of the LDCs, and Egypt, on behalf of the DAG. The statement made by the Delegation of Switzerland, speaking on behalf of Group B, regarding the fact that real progress had been made, had inspired the feeling that it was possible to reach concrete results in the Committee, including in those areas where there was no common agreement, such as the issues related to IWGs and the approach *i.e.* whether or not subjects should be dealt with separately and in what order. It referred to the "discussion tree", which was a tree around which people in Africa gathered to discuss and find solutions, and called on WIPO, a large avant-garde organization, also to bring solutions which would propel them into the future. The situation as it stood could be seen from two angles: in relation to 2001-2009, much time and work had been lost. However, that was not necessarily in contradiction with the African proverb, which said that no matter how long the night may be, the sun was sure to shine and dawn was sure to break. The Delegation of Burundi thus said that although years might seem to have been lost, since the renewed mandate they had become the basis which would hopefully see the process result in a tangible instrument, and invited the Committee to consider the historic importance of the moment and seize it. It did not think that the Delegations would wish to turn back and invited them all to join forces to reach the objectives of the Committee.
43. The Delegation of Senegal congratulated the Chair on his election and wished him success. It supported the statement made by the Delegation of Angola, speaking on behalf of the African Group. As the Chair of the Committee had mentioned in his opening statement, the Member States had managed to renew, thanks to consensus-based momentum, the mandate of the Committee even when most Delegations had thought it was impossible. The Delegation of Senegal invited the Delegations to continue working in the constructive spirit which had broken the deadlock in which the Committee had found itself. It was necessary to take into account developments which might occur in other bodies, such as the CBD. Difficulties were expected along the way in relation to holding a diplomatic conference in 2011 aimed at finalizing an international legal instrument(s) to guarantee the effective protection of GRs, TK and TCEs. However, none of the challenges would be insurmountable given the stakes. The Delegation of Senegal said that the outcome targeted by the Committee was not only a legitimate objective focusing on particular subjects, but would rebalance the current IP system, adding that some States felt crippled by the burden of obligations under that system without really having any rights. With regard to the question of the composition of the IWGs, it was thought that the limited participation of experts was the only way of ensuring that they would analyze the question in depth and recommend texts within the deadlines given. It was necessary to avoid turning the IWGs into duplicates of the Committee, which would somewhat distance the Committee from its mandate. By definition, a group of experts was a limited group whose work would not be diluted by political or diplomatic statements.
44. The Delegation of Pakistan was confident that under the Chair's leadership the Committee would be able to make significant progress. It associated itself with the statement made by

the Delegation of Thailand on behalf of the Asian Group and by the Delegation of Egypt on behalf of the Development Agenda Group. It highlighted the great importance that it attached to the issues at the heart of the Committee, which reflected a desire on part of the international community to respect the rights related to the GRs, TK and TCEs. It expressed the hope that deliberations of the Committee would realize in actuality the desires of the people of the world and would not be a false hope. It was encouraging that, at its fifteenth session, the examination of texts had begun for TCEs, TK and GRs and that comments had been made on these texts. It looked forward to greater engagement in text-based negotiations from the wider membership. The Delegation remained committed to contributing constructively and looked forward to making progress on substantive items on the Committee's agenda. Regarding the IWGs, it believed that a common understanding could be achieved and that it would be more efficient if each IWG was devoted to one subject matter only. This solution would allow the IWGs to focus on advancing substantive tasks at hand, including proposals for text(s) for consideration by the Committee. It suggested that the first IWG deal with the TCEs, as greater progress had been made on this subject. Discussions on TK, then GRs would follow. In this way subsequent IWG meetings could potentially benefit from the results of discussions on TCEs. Addressing the composition of the IWGs, it was of the opinion that a balance in participation of all the stakeholders was necessary. It was very important that the first meeting of the IWG be convened before the next session of the Committee. It invited all Delegations to work together with utmost sincerity, with succinct and clear objectives in order to conclude deliberations on the arrangements for the IWGs as early as possible, giving Member States the opportunity to make further progress on the revised draft texts. It stated that the inputs that would be received from the IWGs would be vital to reaching a result in the text-based negotiations.

45. The Delegation of South Africa associated itself with the statement made by the Delegation of Angola on behalf of the African Group and recalled that the present session marked nine years since the inception of the Committee. WIPO had taken a significant step forward in recognizing the importance and relevance of protecting TK, TCEs and GRs through the establishment of the Committee and since then the Committee had had fruitful substantive discussions and provided valuable documents, which had led to the development of draft texts. It welcomed the new mandate which gave new momentum to the Committee and stood ready to constructively engage in the Committee to ensure that texts were ready by 2011 for consideration by the General Assembly, for the purpose of adopting an internationally legally binding instrument(s). The Secretariat was thanked for all the valuable hard work that it had done in the past nine years and noted with appreciation documents WIPO/GRTKF/IC/16/4 and WIPO/GRTKF/IC/16/5. It noted that the IWGs were still an outstanding procedural issue that needed to be finalized. It was recalled that intersessional work had been proposed by the African Group with the aim of accelerating the ongoing negotiations in the Committee and that the IWGs were proposed to provide a platform for more substantive technical discussions by technical experts on key issues which pertained to the current texts. It added that these issues had been identified by the African Group based on discussions that had been taking place on documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5 (now renumbered WIPO/GRTKF/IC/16/4 and WIPO/GRTKF/IC/16/5). In this regard, it adhered to the African Group's position that the IWGs should be focused, with clear terms of references, and that participation should be limited to the technical experts identified by regional groups, and representatives from indigenous and local communities whose interests were also affected. This format would allow the technical experts to provide technical clarity and possible language that would be incorporated into the Committee's negotiations. It also recalled that three intersessional meetings had been proposed and remained of the view that these three meetings had been identified to address each of the three issues in their own right, namely TCEs, TK and GRs. It believed that the first intersessional meeting should focus on TCEs, as this was the most mature in terms of negotiations, followed by TK and lastly GRs. It recognized the

importance of ensuring protection of GRs and the role of IP in this regard and referred to the substantive debate on the issue of GRs and relevant proposals made by Member States as to how to address this issue. It was of the view that protection of GRs through full disclosure and PIC, as well as the ensuring of fair and equitable sharing of benefits, were some of the elements that needed to be addressed by the existing IP system. It regarded the current ongoing negotiations within the CBD as important in effectively protecting its GRs. It highlighted that these negotiations, and those in other fora, were not aimed at hampering the negotiations within the Committee but to be complementary to ensure full protection of GRs, as well as to aid developing countries in achieving the Millennium Development Goals. It welcomed the fact that the recognition of 2010 as the Year of Biodiversity had brought about new political will by a majority of Member States to recognize that the results of the CBD's work be an internationally legally-binding instrument. The Delegation remained positive that this would filter through to the Committee's negotiations. In conclusion, the Delegation said that its country was proud to host the 2010 FIFA World Cup. It played a video and invited all Committee participants to enjoy a performance and exhibition that would take place at WIPO.

46. The Delegation of Cambodia expressed appreciation to the Deputy Director General for the comprehensive opening remarks and thanked Ambassador Alberto Dumont, Chair of the General Assembly, for his contribution to the IGC's process. It supported statements made by Nepal on behalf of the LDCs Group and echoed the proposal made by Asian Group concerning arrangements for the IWGs which would examine documents WIPO/GRTKF/IC/16/4, WIPO/GRTKF/IC/16/5 and WIPO/GRTKF/IC/16/6 along with all other relevant information, in an efficient and transparent manner. It urged the Committee to use the residual time and the renewed mandate to undertake and speed up text-based negotiations for an effective protection of TK, GR and folklore. It also encouraged all Members to balance the common interest of the LDCs, who were facing great challenges in protecting their resources. To reduce the challenges, it requested WIPO to increase technical assistance to enhance the LDC's national policies, legislations and capacity building for both, the Geneva and Capital based officials.
47. The Delegation of Japan supported the statement made by the Delegation of Switzerland on behalf of Group B. The Delegation of Japan understood the importance of the discussion on GR, TK and TCEs and worked with a constructive spirit. It supported the negotiations of the Committee, under the renewed mandate, which had taken place at the fifteenth session and expressed the wish to progress with constructive discussions. It hoped that the sixteenth session would promote better understanding among Member States through discussions of fundamental issues, including proposed subjects, objects and definitions of terms. It stated that GRs were very important and hoped for careful discussion on the issue. Regarding the problem of misappropriation of GRs, it divided it into two issues – the problem of erroneously granted patents and the problem of CBD compliance based on access and benefit-sharing (ABS) and PIC. It recalled its previous proposal for a “one click” database to prevent erroneously granted patents. This proposal had been supported by many countries, and the Delegation wished to continue discussing it. It commented on the TKDL announced by the Delegation of India. The Delegation stated that at its own Patent Office, internal considerations had been taken into account on the acquisition of the permission to access the Indian TKDL to prevent erroneously granted patents. Japan had communicated with India its wish for the Japanese Patent Office to obtain the access to the TKDL. The issues concerning GR, TK, and TCEs were being discussed in other fora, but WIPO had the expertise as the UN specialized agency on IP. It said it would continue actively to participate in the discussions of the Committee and wished to work together with experts and specialists from other Member States.
48. The Delegation of Zambia aligned itself with the statements made by the Delegation of Angola on behalf of the African Group and the Delegation of Nepal on behalf of the LDCs Group. It supported the need for tangible results after a decade of discussions which had been focused on procedural matters instead of substance. It implored other delegations to approach the

negotiations in good faith and asserted that the Committee had passed the point of justifying the need for protection and the need for a *sui generis* approach. The Delegation referred to the 'gap analyses' and other previous studies which had highlighted the gaps existing in the international protection regime. The Committee had gathered all the necessary facts and had inquired into the relationship between conventional IP systems and the protection of GR, TK, and TCEs as well as the limitations on protection. It noted that the problems had been highlighted and it was time to translate these findings into a legally enforceable agreement. It also acknowledged the progress made at the fifteenth session and hoped for more progress. It said it looked forward to discussions based on documents WIPO/GRTKF/IC/9/4, WIPO/GRTKF/IC/9/5 and WIPO/GRTKF/IC/11/8(A) and was open to any additional documents that provided a basis and added value to text-based negotiations. The Delegation highlighted the progress underway in the CBD negotiations and asserted that equal importance be placed on the three substantive matters in three separate IWGs. It stated that it was guided by the assurance that the documents would set minimum standards and obligate their adoption by Member States. The protection to be provided would be determined at the national level and emphasized the need to set minimum standards for States as was done in the TRIPs Agreement. The content of the outcome of these deliberations was most important and the document must ultimately be 'binding'. It commented that the instrument(s) must be forward-looking and be clear, concise, unambiguous, self interpreting and 'self contained'. It stated that the instrument should show the cultural and legal diversity of the various countries and asserted the need for a transparent process. It said it was determined to uphold the disclosure principle to show the country origin of the GRs and TK used in inventions, as well as evidence of PIC by holders or competent authorities, and evidence of fair and equitable sharing.

49. The Delegation of the United States of America (USA) stated it had a renewed commitment to work on appropriate new legal norms for the recognition and protection of GRs, TK and TCEs. The Delegation said that for decades it had provided robust domestic law to recognize indigenous Americans as the rightful owners of their cultural heritage, such as the Native American Arts and Crafts Act and the Native American Grave Protection and Repatriation Act. Neither the laws nor their enforcement was perfect but they were evidence of the Delegation's commitment to appropriate, thoughtful recognition of traditional communities and indigenous peoples. It thanked the Secretariat for the enormous investment of time and energy used to make the impressive documents and hoped that equivalent work would be done in relation to GRs. It also stated that the two principles and objectives documents showed the amount of substantive work that stood before the Committee, as had been also pointed out by the Delegations of Spain on behalf of the EU and its Member States and of Japan. The Committee should establish proper, well-understood, appropriate and meaningful definitions, forms and levels of protection for the different subjects under discussion. The genuine beneficiaries of any new international legal norms must be the indigenous people and local communities who were the source of the cultural heritage and often the guardians of GRs. It also said that any new international legal norms should be compatible with the fundamental right to freedom of expression and the rights of individuals to the fruits of their scientific, literary, and artistic achievements, as established in the Conventions administered by WIPO but also in Article 27 of the UDHR. The Delegation wished to show its renewed effort to identify the needed elements of a workable, widely-acceptable system of new legal norms established in an instrument(s) created by the Committee. It hoped that the Committee could agree quickly to an appropriate IWG program. On arrangements for the IWGs, the Delegation supported statements by the Delegations of Thailand, Egypt, Indonesia, India, Pakistan and Zambia that the IWGs be dedicated to one of the three subject areas and that the first subject should be TCEs. It said the IWGs should be open to all if there were to be text negotiations that establish new legal norms. In conclusion, the USA supported the statement made by the Delegation of Mexico that "transparency must prevail."

50. The Delegation of Namibia supported the statement made by the Delegation of Angola on behalf of the African Group. It said it was ready to start substantive text based negotiations based on the documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/11(8) A, which had been revised to include all comments made at the fifteenth session of the Committee. It thanked the Secretariat and confirmed that the IWGs should remain focused and should be limited to participation of technical experts based on each of the subject matter under discussions. It hoped that the Committee would achieve its mandate of holding the 3 IWGs, with ultimate concrete results of a legally binding instrument(s) before September 2011. It also thanked ARIPO and her member states for the continued support of WIPO, which had culminated in a regional instrument for the protection of TK, GR and EoF. In conclusion, it stated that it had the honor of hosting the Diplomatic Conference, in August 2010, for the adoption of the aforementioned ARIPO protocol.
51. The Delegation of Kenya looked forward to making concrete progress in the quest for an international legal instrument on the protection of GR, TK and TCEs. It supported the statement made by the Delegation of Angola on behalf of the African Group including the discussion on the IWGs. It emphasized the importance of the IWGs in the process and the need to have structured consultations in order to achieve maximum results within the extended mandate of the Committee. It said it recognised that a lot had already been done and the need to build on the existing work. It stated that negotiations could be long and protracted but once the issues had been clearly identified and addressed, it would be possible to reach a consensus and achieve the desired results within the mandate of the Committee. It was currently in the process of finalising the national policy on TK, GR and TCEs, which was an all inclusive process that involved the stakeholders at all levels. The Government, through the Kenya Copyright Board, also worked with the stakeholders to devise a legal instrument as well as the administrative framework to protect TK, GR and TCEs at the national level. It stated at present, TCEs were to a certain extent protected under the Kenyan Copyright Law. The Delegation commended the WIPO Secretariat for the exemplary work in facilitating the process.
52. The Delegation of Colombia was willing to work actively to further the negotiations. It said that the protection of TK, TCEs and GRs was fundamental. It was necessary to recognize and protect the rights of indigenous and local communities to their knowledge, innovations and traditional practices, which was why prior informed consent in accordance with terms mutually agreed on for the use of the said knowledge, innovations and practices should be obtained. It was necessary to ensure the participation of indigenous and local communities in the fair and equitable sharing of benefits resulting from the use of their knowledge, innovations and traditional practices. Countries had sovereignty over their natural resources and therefore had the authority to establish the conditions for their access and use, including the mutually agreed terms under which the said access and use were granted. The disclosure of origin of GRs and TK involved in patent applications, and proof that they had been legally accessed in accordance with the law, was an important mechanism to avoid and combat misappropriation and unauthorized use. It said that the progress made in the negotiations should not presume the progress of negotiations being held in other fora.
53. The Delegation of Chile was willing to collaborate actively in the Committee's work in order to make substantive progress in all areas of the Committee's mandate. It thanked the representatives of the indigenous and local communities for the interesting presentations on free and informed prior consent that had been given the previous day, which illustrated the discussions being held in the Session. It said that the Committee was at a stage where it was possible to expect real progress in the medium term. The mandate of the General Assembly represented a substantive step forward in the area and was the result of the Committee's hard work in the past few years. It was very interested in the work which the IWGs was to carry out; work which would hopefully start in the near future. It was fundamental that the work of the groups focused on technical aspects in which experts could discuss and make concrete



recommendations. It was important to be sure of the mandate and the way of furthering the work so that the Committee could focus effectively on the subjects and substantive documents. With regard to practical matters, such as the timeframe for meetings and participation in the meetings, the Delegation hoped that all Committee Members would be flexible so that the groups could move towards the mandate conferred on them by the General Assembly.

54. The Delegation of Israel stated that they were confident that under the leadership and stewardship of the Chairman, the Committee would achieve its goals. The Delegation endorsed the statement made by the Delegation of Switzerland made on behalf of Group B and commended the Director General and the Secretariat for the good and elaborated documents presented to the Committee at the current session. It welcomed participation of organizations and representatives of Indigenous peoples and commended the very interesting Indigenous panel. The Delegation represented the State of Israel, and also the Jewish People around the World. It had a major interest in the process and work of the Committee and the IWGs, as well as their outcome, in relation to IP, TK, TCEs/EoF. It stated some examples which included the preservation of Jewish languages such as the Yiddish, which originated in Germany, and the Ladino, which originated in Spain; the conversation and development of the Hebrew language; the ancient Jewish books, such as the Talmud, through which the Holy Bible (the Old Testament) could be better understood and the ten-spheres philosophy books of the Kabala and Zohar; as well as other EoFs through dances, music and lyrics. The Delegation stated it's interest in any text-based instrument as an outcome of the open-ended deliberations, particularly with regard to TCE and TK. The Delegation stated that it would be fully committed to the drafting discussion.
55. The Delegation of the Republic of Korea welcomed text-based negotiations because they were an efficient way of achieving tangible outcomes. The Delegation also stated that the IWGs were an important way of reaching a consensus on the texts. It said the Committee was a negotiating and decision-making body and in contrast, the IWGs would support and facilitate negotiations of the Committee by assisting in text drafting and providing legal and technical analysis. If necessary, the IWGs could also present options and scenarios for the consideration by the Committee. It asserted that the IWGs should be open-ended and could include all stakeholders of each subject matter. This would ensure transparency and an adequate level of representation. The groups should include technical experts who could support and facilitate negotiations of the Committee by providing a legal and technical perspective to the issues of the Committee. The IWGs should also include Indigenous peoples as well as NGOs that could speak on behalf of all stakeholders. The Delegation stated that the IWGs would produce satisfactory results if each meeting was devoted to a single subject matter. It stated that the revised draft documents WIPO/GRTKF/IC/16/4, WIPO/GRTKF/IC/16/5 and WIPO/GRTKF/IC/16/6 should be discussed in the IWGs along with other relevant facts and information pertaining to TCEs, TK and GRs. It asserted that it was committed to making progress on the agenda of the Committee with flexibility and hoped that there would be substantial progress in the discussions of the Committee so that all participants would be satisfied with the outcome of this session.
56. The Delegation of Malaysia stated that the Committee would achieve positive and encouraging progress under the leadership of the Chair. It aligned itself with the statements made by the Delegation of Thailand on behalf of the Asian Group and the Delegation of Egypt on behalf of the Development Agenda Group. It stated that they had, alongside many developing countries, an incredible wealth of GRs, TK and TCEs. It was for this reason that they were also victims of piracy, misuse and misappropriation. It stated that it attached great importance to the mandate given to the Committee by the General Assembly and was very happy with the progress made on the texts for GRs, TK and TCEs at the fifteenth session of the Committee. It supported the statements made by the Asian Group and the Development Agenda Group. It recalled that Member States had worked tirelessly in a search for the right formula on the arrangement of the

- IWG at the fifteenth session of the Committee and hoped that the sixteenth session would result in mutually agreed, meaningful solutions.
57. The Delegation of El Salvador recognized the work of the previous Chair of the Committee, the Ambassador of Mexico, Mr. José Gómez Camacho, as well as the work of the Ambassador of Argentina, Mr. Alberto Dumont, the Chair of the Assembly, who had started the consultation process on the procedure and content of the intersessional meetings of the Committee. It supported the document prepared by Ambassador Dumont which was a very good basis for the discussions. With regard to the questions to be reviewed in the intersessional meetings, it was preferable to start with the subjects which were more advanced in terms of substance and content. It was flexible as concerned the order of the subjects to be discussed. Concerning the composition of the IWGs, it supported the statements made by many Delegations regarding the fact that those meetings should be inclusive and transparent. It reiterated its willingness to collaborate with all Committee Members and the regional groups in order to conclude the session with a decision on this important matter.
58. The Delegation of Yemen supported the statements made by the Delegation of Egypt on behalf of the Development Agenda Group and the Delegation of Thailand on behalf of the Asian Group. The protection of TK, TCEs and GRs was within the remit of WIPO because it responded to the needs of the least developed and the developing countries who had already spoken out about being victims of the infringement of the use of TK. It congratulated the Director General for adopting a very effective stance on these matters and supported statements made by the Director General during the fifteenth session to the effect that negotiations had to begin so that the Committee could achieve effective results. In conclusion, it wished the Chair the best of success in its work.
59. The representative of the CBD updated the Committee on the ongoing negotiations of an International Regime on ABS and related activities under the CBD which were relevant to the work of the Committee. The Ad Hoc Open-ended Working Group on ABS had met three times as requested by the Conference of the Parties to the Convention on Biological Diversity (COP) in 2008 and had made considerable progress in negotiating the International Regime (IR). The ninth meeting of the Working Group on ABS was held in Cali, Colombia, in March 2010 and a major development at that meeting was the agreement by Parties to continue negotiations on the basis of a draft protocol tabled by the Co-Chairs. The draft protocol was recognized as a balanced and manageable document that would provide a good basis for the finalization of the negotiations. She said the Working Group was unable to complete its Mandate in Cali and had decided to suspend and resume the ninth session at a later date. In this regard, it was agreed that the resumed session would take place in Montreal, Canada, from July 10 to 16, 2010. At that meeting, Parties would be expected to finalize negotiations and to submit the IR for adoption by the tenth meeting of the Conference of the Parties to the Convention on Biological Diversity (COP 10), in Nagoya, in October 2010. A number of complex issues remain unresolved. Those most relevant to the work of the Committee included the following: Issues related to compliance with PIC and mutually agreed terms (MAT), scope of the IR, including the issue of the fair and equitable sharing of benefits arising out of the utilization of derivatives and the relationship with other international instruments and forums related to ABS, and ABS in TK associated with GRs. At the last CBD meeting, it was recognized and emphasized that the issue of compliance lay at the heart of the negotiations. She said that one of the main objectives of the IR was to ensure compliance with PIC of countries providing GRs and with ABS agreements between users and providers, once GRs had left the provider country. Parties were yet to agree on the most appropriate measures, tools and/or mechanisms to be included in the IR in order to ensure compliance through the monitoring or tracking of GRs. One suggested mechanism was the establishment of check points and disclosure requirements by Parties, including at entities publishing research results relating to the utilization of GRs, IP examination offices and authorities providing regulatory or marketing approval of products derived from GRs.

She stated that there was a range of views on this issue. Some countries strongly supported the establishment of check points and disclosure requirements, at various check points to be set out in the IR, including at IP examination offices. Other member states supported the establishment of check points and disclosure requirements, but stressed the need for the IR to provide sufficient flexibility for Parties to determine which check points and disclosure requirements they wished to establish in light of their national priorities and circumstances. While other countries opposed the establishment of check points and disclosure requirements, particularly at IP examination offices. The issue of derivatives was also a key outstanding issue. Although there was general agreement that the IR should provide for the sharing of benefits arising out of the utilization of GRs and their derivatives, there was still no agreement on how to address this issue in the IR. An agreement was still to be reached on a provision to be included in the draft protocol dealing with the relationship of the IR with other international instruments and forums related to ABS, including WIPO. She noted that considerable progress had been made on the issue of TK associated with GRs in order to ensure that TK associated with GRs was accessed with the PIC or approval of Indigenous and local communities and that benefits arising out of the utilization of TK associated with GRs were shared with the indigenous and local communities holding such knowledge. Some outstanding issues were still to be resolved in order to ensure that the IR could adequately address ABS as it related to TK while respecting the rights of indigenous and local communities and taking into consideration national circumstances. The text reflected the status of negotiations on the draft protocol which was also annexed to the report of the ninth meeting of the Working Group on ABS, also available on the CBD website. As usual practice, the resumed session of the Working Group in July will be preceded by two days of regional consultations on July 8 to 9, 2010. She also recalled that the UN General Assembly had declared 2010 the International Year on Biodiversity. The adoption of the International Regime at COP 10 would demonstrate the will of all Parties to fully implement the three objectives of the Convention, thereby making a further step towards sustainable development and recognizing the contribution of ABS to the conservation and sustainable use of biological diversity. She stated that a number of the issues addressed in the negotiations of the IR on ABS were related to the work of the Committee. Therefore close cooperation between the work of the Committee and the work under the CBD was more than ever necessary to ensure harmonization, mutual support, and to avoid overlap. As negotiations continued with a view to the finalization of the IR in the coming months, she assured the Committee of the full cooperation of the CBD Secretariat. She said she enjoyed and appreciated the excellent working relationship with WIPO over the years and would continue to collaborate in the future.

60. The representative of ARIPO recalled that ARIPO and its seventeen member states had actively participated in the work of the Committee towards the establishment of an international normative framework that would lead to the development of an international legally binding instrument(s). The will to address the complexities and differences associated with defining the most appropriate legal mechanisms, balanced, consistent with international treaties and responsive to the needs of the knowledge owners required the Committee's full engagement and determination to advance the work of the session. ARIPO had informed the Committee at its previous sessions that it had put in place a road map to ensure that an appropriate and effective instrument be established by ARIPO to prohibit and repress the misappropriation of TK as well as empower TK holders to exercise their rights. This involved the development of a draft legislative framework for the protection of TK and EoF, harmonization of the framework with OAPI, the organization of regional consultations and development of a regional legal instrument on the protection of TK and EoF. It also included the organization of a diplomatic conference to adopt the Protocol, which will take place in Swakopmund, Namibia, from August 9 to 10, 2010. Those collective efforts had enabled the organization to develop a Protocol on TK and EoF, which the Delegation of Botswana, the current chairman of the supreme organ of ARIPO and the Council of Ministers had submitted as an important input to guide the work of the Committee. The Protocol had been used extensively as a basis for the development of national

and regional frameworks in Africa and beyond, and ARIPO believed that such national and regional experiences would provide a practical approach that would form the basis for the text based negotiations. The representative of ARIPO indicated that he would be referring to relevant provisions contained in the Protocol during the discussions of agenda items 8, 9 and 10, and was optimistic and looking forward to progress and concrete outcomes. He hoped that the Committee would be able to come up with suitable modalities and workable procedures for negotiations in both the Committee and IWGs to accelerate the work of the Committee. He fully supported the statement made by the Delegation of Angola on behalf of the African Group.

61. The representative of the Saami Council, on behalf of the Pacific Caucus, Russian and Eastern Europe Caucus, Arctic Caucus and Tulalip Tribes, congratulated the Chair on his election and requested that the organizations he was representing be given ample speaking time, possibly not at the end of the speakers list. He congratulated and applauded the Delegation of New Zealand for endorsing the UN Declaration on the Rights of Indigenous Peoples and noted that the USA was reviewing their position and that those developments affirmed the status of the Declaration as the standard for indigenous peoples' rights internationally and that the same must be recognized by the Committee as the negotiations proceeded. At the ABS Working Group, certain parties, notably the EU and Canada, had taken the position that some TK issues such as compliance would be better dealt with in the Committee than in the ABS Working Group. They were therefore looking forward to constructive proposals to achieve consensus from the delegations on those issues. The EU had taken the position that the instrument being dealt with on TCEs should not be legally binding. However, he felt that TCEs should not be given less protection than TK internationally. He noted that the Committee was currently focusing on text-based negotiations, based on document WIPO/GRTKF/IC/16/4 and WIPO/GRTKF/IC/16/5 that would result in legally binding instruments. He asserted that it agreed in general with the proposal of the African Group on the intersessional work and regional indigenous representation. The participation of indigenous peoples as well as reflection of their text proposals in the draft documents, and participation of indigenous peoples in the IWGs and other intersessional activities were also important issues to be considered.
62. The Chairman assured the representative of the Saami Council that the participation of indigenous peoples and the civil society was greatly valued as was clearly highlighted in his previous statements and that they would be given all the necessary time to speak.
63. The Representative of Tupaj Amaru said that the Committee, established more than nine years ago, had not made any real progress because of the many economic and political interests of States. The Member States should stop postponing the drafting of an instrument or coherent international treaty in keeping with international law. Over the course of recent years, he had observed the clash between two blocks: the rich countries of the North, which had hindered the work of the Committee when simple recommendations or non-binding directives were put forward, and the developing countries of the South, which had defended the urgent need to draft and adopt an international legal framework. He gave various reasons why legal protection of TCEs, TK and GRs was urgent. TK and TCEs were not covered by legal protection in States and did not fall within the scope of IP law. In a globalized world in constant crisis, there was a greater need than ever to have an international legal framework for regulation and implementation mechanisms aimed at legal protection, especially for TK, intangible assets, sacred and secret knowledge of indigenous peoples and communities. Defining and harmonizing concepts and terms related not only to the preservation of cultural and biological diversity but also to political, ethical and legal issues in relation to biodiversity and the environment were a fundamental aspect of States' political will, which was meant to be a legal support to the new international economic regime. At a time when biopiracy was rife, it was disappointing to see rich countries systematically oppose harmonization and adoption of standards regarding legal protection. It was disappointing to see their incoherent policies, constantly requesting more time to think and more flexibility in keeping with the markets, while

their pharmaceutical companies and agro-industrial companies continued to pillage genetic heritage and TK of ancestral peoples. The double standard policy showed that IP law was a western concept that did not take into account indigenous rights, and because of its nature and scope, did not recognize the holders of TK as subjects of law, nor was it geared towards the protection of cultural heritage of ancestral civilizations, except as merchandise. In the name of endless economic growth, which implicitly entailed the destruction of genetic and natural resources, the holders of the said resources and knowledge had been robbed without prior consent of their knowledge and living traditions and were denied the right to fairly sharing benefits resulting from the use and abuse of their age-old knowledge. He urged the Committee to authorize the full and effective participation of representatives of indigenous peoples and communities in the debates, and their contributions and input should be duly taken into account and published.

64. The Representative of CONGAF said that his organization was optimistic about the progress of the Committee's work. With regard to GRs and their link to the TK of local communities, he said that many international organizations were expecting a great deal from the Committee's conclusions and that its crowning achievement would be a framework convention, a legally binding text.
65. The representative of CISA pointed out that the rights of Peoples, including Indigenous Peoples must be considered universally in the deliberations and in the final outcome document that recognized, preserved and protected the rights of all Indigenous Peoples without attempting to diminish their property rights. The status of Indigenous Peoples and their level of participation must be in accordance with the universal application of the right of Indigenous Peoples and all other peoples to consent on any provision of the instrument that would affect them. As a representative from the Arctic Region who informs other Indigenous Peoples in other regions, the position of CISA was that they must negotiate the final parameters for its participation to insure that the selection would be inclusive and non-discriminating, and that the concept of seven regions was not what had been agreed upon.
66. The representative of IPCB commented on the issue of the participation of indigenous peoples in the work of the Committee stating that the principle of representation included the right of indigenous peoples to speak for themselves, to select their own representatives, and to have regionally-balanced representation. The indigenous peoples, who are holders of distinct legal rights and owners of much of the subject matter under discussion in the Committee, would expect that their status be considered as full and equal partners on matters that affect their rights and interests. She requested the Chair to ensure that all comments and written submissions by indigenous peoples are reflected in the text for consideration by all parties. She said that in the event the IWGs became meetings of technical experts, they would expect to nominate their own indigenous experts who would represent broad expertise in indigenous peoples' human and international rights, as well as familiarity with the more narrow subject matter under discussion. She stressed that Indigenous peoples' participation should not be restricted, and should be regionally and gender balanced.
67. In addition to the joint statement presented by the representative of the Saami Council, the representative of the Tualip Tribes wished to make several general comments and congratulated New Zealand as the newest State having endorsed the UN Declaration on the Rights of Indigenous Peoples. He reminded the Committee that, while the process was occurring within the context of IPRs, indigenous peoples had a large number of non-intellectual and non-commercial issues related to the protection of their knowledge. He said that the Committee must be careful not to produce unintended consequences from any measures developed. Disclosure of TK in databases or registers for example, as suggested by Japan, could solve a patent problem while creating many other problems for indigenous peoples. Any process requiring disclosure of TK must provide safeguards and protection mechanisms, ensuring FPIC of indigenous peoples. He supported the establishment of three working groups

with a thematic focus and stressed that those groups be empowered to develop text with full and effective participation of indigenous peoples and local communities. The Committee should not use any terms that refer to “subject to national legislation”. It would be appropriate to refer to flexibility in the mechanisms to enable implementation of the terms of the regime in ways that are appropriate to national context, but that there should be no ambiguous language that would allow parties to circumvent the provisions and obligations of any eventual regime.

68. The Representative of CAPAJ, speaking on behalf of the Qollana Aymara People’s Parliament in the Andes, thanked Committee Members for their interest in putting a stop to the phenomenon of bio-colonization and preparing an instrument that would do justice to the creations and resources of indigenous peoples. He said that a protection standard could not be limited to identifying the authors of particular knowledge so as to put it on the market, but must promote its conservation and reproduction. Creations were not only the fruit of the reasoning of humankind, but nature too participated in the creation. For indigenous peoples, the contribution made by mother nature was not only invaluable, but could not be transferred at will or by someone who had registered that fruit, creation or variation of a creation. He said that a seed, once selected, was planted with veneration in mother earth, and the new fruit would emerge depending on the climate, the altitude and water, and therefore it was mother earth who had worked on that creation and was the main actor who deserved to be protected and rewarded. Creations and GRs had to be increased and shared with all of humanity free of charge and in order to avoid the depletion of resources. The standard that was being drafted should be inspired by the principles of respect for nature and provide that in the event of conflict between a development project and tried and tested indigenous traditions, those traditions should be the preferred option.
69. The Representative of CEIPI drew the Committee’s attention to the second session of the working group on the development of the Lisbon system (appellations of origin), which would be held from August 30 to September 3, 2010. He said that the Lisbon system was promising for developing countries given the discussions held regarding the protection of TK and that the work of that working group thus provided the opportunity to continue discussing the development of TK in the context of the Lisbon system. .
70. The Representative of ICRA International described his Organization as a French NGO which, for many years, had promoted and defended the rights of indigenous peoples, in particular the right to the preservation of indigenous intangible cultural heritage. ICRA was at the head of a group of NGOs which had organized, with the support of a number of French members of parliament, the first international meetings to combat biopiracy, at the National Assembly in Paris, in order to raise the awareness of public authorities and opinion to the phenomenon of piracy of living and TK. The representative stated that biopiracy was the result of a drift in the current industrial property system which still allowed certain firms in the pharmaceutical, cosmetic and agricultural sectors to grant themselves economic monopolies on inventions which in reality were devoid of novelty and inventive step, as they were based solely on the ancestral experience of indigenous communities regarding their environment and its resources. That had, moreover, been confirmed by a decision handed down by the European Patent Office concerning a patent filed by a German firm on the use of *pelargonium*, a plant whose properties had been known for generations to the indigenous communities of South Africa. The Representative invited the IGC to harmonize its work with that of the CBD, the WTO and the FAO, with a view to rapidly establishing defensive measures aimed at putting a stop to current abuses relating to the filing of patent applications based on GRs with which TK was associated. The representative said that he had noted the creation of databases on TK and the relevant clauses of contractual agreements providing access to GRs. He called for an amendment of international patent law so as to oblige an applicant for a patent to indicate in advance the origin of the GRs on which he based his invention, to indicate whether there was associated TK and, where necessary, to guarantee the equitable sharing of benefits with the indigenous community

holding the associated TK. He considered that TK should be disclosed only with the prior agreement of the indigenous communities holding such knowledge, after their prior informed consent was obtained. Failing that, there was a risk that secret and sacred knowledge would be irreparably disclosed, thereby endangering the social and cultural balance of the indigenous communities in question. Although necessary, defensive protection was, insufficient to guarantee completely the interests of indigenous peoples. For that reason, the representative encouraged the work of the IGC with a view to preparing an international legal instrument which would truly put a stop to the discrimination which existed within intellectual property between holders of industrial knowledge, on the one hand, and holders of TK, on the other. That work should lead to the establishment of a real legal status for TK outside the public domain. The instrument should cover the rights of indigenous peoples in their cultural and intellectual property, as they were clearly described in the UN Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly in 2007. It should integrate the principles of self-determination, PIC by the communities holding TK, equitable sharing of benefits derived from biodiversity, and respect for customary indigenous rules and protocols, as well as their integration into the hierarchy of the rules contained in domestic laws. In accordance with the UN Declaration, the representative considered that in order to make this instrument effective, those rights should be fully associated with the preparation of such an instrument. Finally, given the urgency in connection with the erosion of global biodiversity, the absence of protective status for TK and the vicissitudes linked to the adoption of an international instrument, the representative suggested that a moratorium be established on patent applications relating to GRs associated with TK.

**AGENDA ITEM 7: PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES:  
VOLUNTARY FUND**

71. The Chair introduced documents WIPO/GRTKF/16/3 and WIPO/GRTKF/IC/16/INF/4.
72. In accordance with the decision of the Committee at its seventh session (WIPO/GRTKF/IC/7/15, paragraph 63) the sixteenth session was preceded by a half-day panel of presentations, chaired by Mr. Albert Deterville, the Aldet Centre, St Lucia. These presentations were made according to the program (WIPO/GRTKF/IC/16/INF/5). The Chair of the Panel submitted a written report on the Panel to the WIPO Secretariat which is contained below:

“The Panel of Indigenous representatives consisted of Ms. Gulnara Abbasova of the Foundation for Research and Support of Indigenous Peoples of Crimea, Ukraine; Mr. Mattias Ahren of the Saami Council, Norway; Ms. Haman Hajara of the African Indigenous Women’s Organization – Central African Network, Cameroon; Mr. Russell Taylor of the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), Australia; Dr. Debra Harry of the Indigenous Peoples Council on Biocolonialism (IPCB), USA; and Mr. Caesar Sarasara of Alternativa de Desarrollo Amazonico (ALDEA), Peru.

Ms. Gulnara Abbasova informed the Committee on how the Crimean Tatar Indigenous People understand free, prior and informed consent, regarding GRs, TK and TCEs; providing background information on the Crimea People, whom she said, amount to about 14% of the population of the Crimea. She said that domestic law denied Indigenous rights in Ukraine, although the Constitution recognized the rights of ethnic, religious and linguistic minorities. A Council of representatives of Tatar People under President of Ukraine consisting of 33 members of Crimean Tartar representative body, and elected by the congress, did exist.

Mr. Mattias Ahren said that there was no need to further dissect free, prior and informed consent, as this is self explanatory. He deliberated on the following questions: Who is the holder? Who is the consent provider? Is the consent to the right, for all TK and TCEs? Is the right for perpetuity? He stated that the draft instruments had approximately stated it correctly

who the rights holder/custodian was. He said the rights holder/custodian must be the person/community who created the TK; hence the granting of free, prior and informed consent before any use occurs. He said that the definition and term of protection of TK and TCEs reflected this position well; and that Article 6 of WIPO/GRTKF/IC/16/4 talked about it as genuine aspect of cultural and social heritage, maintained, used and developed by Indigenous Peoples. Mr Ahren said that WIPO/GRTKF/IC/16/5 had a similar definition. In the examination of the TK Instrument, he observed that the right is subject to principles and national laws; stating that it was not right for national laws to decide the existence of the right or not. There can be a role of the State to assist communities with TK and consent process, but upon the invitation of the communities. He said both draft instruments entertained the idea that providing consent, could be by someone else (state authority), but this could only work with the consent of the communities.

Ms. Haman Hajara spoke on behalf of the Mbororo People and stated that these peoples were in 12 West African countries. She said that they understood free, prior and informed consent to mean no pressure, no manipulation, and no coercion. She explained “prior” to mean in advance, how in advance depended on the circumstances. She explained “informed” to mean conscious of negative and positive aspects. She explained “consent” to mean the right to say no or yes. Governments in West African countries did not recognize the Mbororo People as citizens of these countries. Their knowledge was not eligible for Intellectual Property protection, and they were not recognized as parties. They were not party to any agreement, and there was no mechanism in place for them to effectively participate. There was a need for customary institutions of the Mbororo People to be recognized and empowered, as well as, the need for the protection of their TK and TCEs.

Mr. Russell Taylor stated in his presentation that AIATSIS had 50 years experience with Australian Indigenous Peoples. He said that it was the world’s largest research centre and operated as a statutory organization within the Federal Ministry for Industry, having legislative functions to assist in research and train researchers. AIATSIS was governed by a council of nine persons, eight of which are Indigenous People. AIATSIS had taken legal action to address misuse of TK rights, and had a very strong relationship with Indigenous communities. It promoted Guidelines developed in consultation with Indigenous communities, and had a Research Advisory Committee and Research Ethics Committee. Its Guidelines had relevance to all issues being addressed by the Committee. He said that AIATSIS had comprehensive information on free, prior and informed consent including the risks and benefits. He said that research did not occur in a cultural or ethical vacuum.

Dr. Debra Harry started her presentation by referring to a comment made by the United Nations Secretary-General at the opening of the Ninth session of the United Nations Permanent Forum on Indigenous Issues to the effect that Indigenous Peoples were equal partners of the United Nations family. She reiterated that free, prior and informed consent is not well defined, and defining it was a challenge, and that free, prior and informed consent was a process of engagement, not an event. She said that indigenous peoples had the right to say no at any time, just as in bioethical standards. New consent must be sought for uses other than original purpose and that free, prior and informed consent included the right of enforcement. She referred to Article 31 of the Declaration on the Rights of Indigenous Peoples and said that WIPO had an international obligation to protect and operationalise free, prior and informed consent for indigenous peoples. Indigenous peoples also needed to exercise and develop the right to self-determination and establish laws, protocols and procedures to regulate and govern the implementation of free, prior and informed consent.

Mr. Caesar Sarasara addressed the subject of free, prior and informed consent in GRs, TK and TCEs and said that the TK of the 40 groups of the indigenous peoples within the ALDEA in Peru today had become a business. How to obtain respect? The indigenous peoples didn’t have businesses, but had had trade between and among the tribes for a long time. A Convention



was signed with an Agrarian group and two Universities. They had benefited from the experience, contributed knowledge to the world and shared the benefits. He said that the 40 Tribes signed the tripartite alliances with the State and the scientific community. He said there was a need for indigenous peoples to have more interaction with the State. He said that the need to enter the process of understanding and continuity to ensure that the intrinsic value of the community was maintained. The State was obligated to manifest good political will and reach out to the most vulnerable.

The Panel entertained questions from the Delegations of New Zealand and Panama.”

*Decision on Agenda Item 7:*

73. *The Committee took note of documents WIPO/GRTKF/IC/16/3, WIPO/GRTKF/IC/16/INF/4 and WIPO/GRTKF/IC/16/INF/6.*

74. *The Committee encouraged and called upon members of the Committee and all interested public or private entities to contribute to the WIPO Voluntary Fund for Accredited Indigenous and Local Communities.*

75. *The Chair proposed, and the Committee elected by acclamation, the following eight members of the Advisory Board to serve in an individual capacity as members of delegations of WIPO Member States: Mr. Heinjoerg HERRMANN, Counsellor, Permanent Mission of Germany, Geneva; Mr. Faiyaz Murshid KAZI, First Secretary, Permanent Mission of Bangladesh, Geneva; Ms. Marisella OUMA, Executive Director, Kenya Copyright Board, State Law Office, Nairobi, Kenya; Mrs. Antonia Aurora ORTEGA PILLMAN, Officer, Dirección de Invenciones y Nuevas Tecnologías, Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI), Lima, Peru; and Mrs. Larisa SIMONOVA, Deputy Director, International Cooperation Department, Federal Service of Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow, Russian Federation; and, as members of accredited observers representing indigenous and local communities or other customary holders or custodians of TK or TCEs: Mr. Preston HARDISON, representative of the*

*Tulalip Tribes of Washington  
Governmental Affairs Department,  
United States of America; Mr. Lyndon  
ORMOND-PARKER, representative of  
the Arts Law Centre of Australia,  
Woolloomooloo, Australia; and, Ms.  
Polina SHULBAEVA, representative of  
the Russian Association of Indigenous  
Peoples of the North (RAIPON),  
Moscow, Russian Federation. The  
Chair of the Committee nominated Mr.  
Vladimir Yossifov, Vice Chair of the  
Committee, to serve as Chair of the  
Advisory Board.*

#### **AGENDA ITEM 8: TRADITIONAL CULTURAL EXPRESSIONS/EXPRESSIONS OF FOLKLORE**

76. Upon the invitation of the Chair, the Secretariat introduced document WIPO/GRTKF/IC/16/4. As the Committee had during its 15<sup>th</sup> session undertaken an initial discussion of Articles 1 and 2, the Chair then invited participants to take the floor on Article 3 of document WIPO/GRTKF/IC/16/4.
77. The Delegation of Spain, on behalf of the EU and its Member States, stated that, while recognizing the commenting process on document WIPO/GRTKF/IC/16/4, pursuant to the current mandate of the Committee, the Committee should also take into full account other working documents. With reference to its opening statement, the Delegation argued for the development of a non-legally binding instrument. It confirmed its constructive approach to reviewing document WIPO/GRTKF/IC/16/4 and wished to make as much progress as possible through a rich and enlightening debate. The Delegation flagged certain issues without prejudice to other issues that could arise in the course of the session. Referring to the objectives, it agreed with most of the general terms, however, it thought that these could be subject to improvement from a formal and substantive viewpoint. It insisted on the responsibility of States to respond to the needs of their local indigenous communities. Regarding the general guiding principles, it believed that existing IP protection and other international instruments should be considered in helping indigenous communities protect their TCEs. Concerning the substantive principles, it highlighted that definitions should be consistent with IP and thought that a glossary of terms would be necessary to ensure a coherent interpretation of the definitions, which could help the Committee make progress in its work. Further work on document WIPO/GRTKF/IC/16/4 would be necessary, particularly to answering important questions related to the scope of protection, term of protection, the public domain, limitations and exceptions and the way in which TCE protection would complement the current copyright system. Whilst understanding the complexity of the subject matter, the Committee could count on the constructive support of the EU and its Member States throughout its current and future discussions on TCEs.
78. The Delegation of USA recommended that, for purposes of drafting, the phrase “relevant community” be used in Article 3(a) and subsequent references. It was of the view that this phrase would be best defined in Article 2 (“Beneficiaries”) in which it could then be used as a defined term throughout the document. Referring to the comments made by the Delegation of Zambia in that document WIPO/GRTKF/IC/16/4 needed to be clear, concise and unambiguous, the it thought that long phrases such as “relevant indigenous people or community, traditional and other cultural community” would not serve that purpose and therefore recommended that “relevant community” should become a defined term in the document.

79. The representative of the Saami Council commented that Article 3 was a long article and in order to comment on paragraph (a), a general observation was necessary. He understood that the Article took on a multi-layered approach for protection. The Article outlined the kind of protection that a rights holder would enjoy. For this reason, it would be extremely important to underline throughout document WIPO/GRTKF/IC/16/4 that the rights holders would be the indigenous peoples and local communities to the extent of having created their TCEs. Such an approach should be natural for a body dealing with IP and IP-related rights. A property right included the right to control the subject matter at hand and the right to prevent others from using it. Article 3 was limited in that sense and did not clearly identify the origin of TCEs and the role of indigenous peoples as the rights holder. Regarding the issue of registration, the representative understood the purpose and value in the legal certainty registration would provide. It could, however, be problematic as certain TCEs could not be registered for spiritual or cultural reasons. Furthermore, registration could make TCEs vulnerable to unauthorized use. For these reasons, he believed that registration would not solve the issue of protection and that considerable work on this Article was needed.
80. The Delegation of India stressed the need to first define what rights the TCE holders would obtain and what the nature of the rights would be, whether it would be a collective right, right to manage TCEs, right to authorize or right to privacy. A clear definition was needed before changes could be made in Article 3. For now, it proposed that the phrase “free prior informed consent” be struck out in Article 3(a). This issue was already covered by the sentence “...there shall be adequate and effective legal and practical measures to ensure that the relevant indigenous people or community, traditional and other cultural community can prevent the following acts...”
81. The Delegation of South Africa commented on Article 3(a) in that there should be consistency in the use of the phrase addressing indigenous communities. It proposed not to delete the phrase “relevant indigenous people or community, traditional and other cultural community”, rather that it be reflected consistently in the document as referring to the rights holders. Furthermore, the phrase “free, prior and informed consent” was significant in reflecting the right of the rights holder to give consent. It therefore proposed to retain that phrase as well.
82. The representative of CISA challenged the Committee in saying that it was discriminatory by nature that proposals made by indigenous representatives would not be reflected on the screen and that they would not have a say in the development of the draft text. Bearing in mind the wish of indigenous peoples to have their rights duly protected, he proposed that in Article 3(a) the phrase “as referred to in Article 7” be bracketed. Regarding the national authority, it questioned which national authority was referred to. He agreed with the Saami Council that indigenous peoples around the world were not willing to register their TCEs at the risk that it would be exploited without their consent. No automatically designated national authority would ensure that their rights be protected. Recognizing the right of indigenous peoples to self determination, it would be crucial for them to have an oversight on measures taken by these national authorities acting on their behalf. For this reason, he proposed to bracket the phrase “as referred to in Article 7” as more work would be needed to ensure that adequate protection be provided to indigenous peoples in this document.
83. The Delegation of Egypt thanked the Secretariat for the working documents and the translation thereof. It, however, commented on the Arabic translation by stating that it was essential to ensure the correct use of terms in the translations. The Delegation reserved its right to submit future comments on the Arabic translation of the documents. It proposed that the Secretariat send the translations for review to experts fully knowledgeable of the terms so that these could be used in the right context. It made a procedural observation that clear definitions and terms were necessary and questioned who would be carrying out such task. A clear formula would be needed on the way in which amendments, comments and proposals would be reflected in the

text. The Delegation expressed its concerns on the way in which definitions and terms were dealt with by the Committee.

84. The Delegation of Canada reserved its right to submit written comments on Articles 1 and 2 of document WIPO/GRTKF/IC/16/4. Referring to Article 3, it agreed with the Saami Council that this was a long Article with a lot of substance and that it was important to read this Article in conjunction with the objectives and general guiding principles. The Delegation proposed to add a “chapeau” to Article 3 comprising objectives 9 and 10 of the draft provisions. The text on objective 10 read “contribute to the promotion and protection of the diversity of cultural expressions”. When addressing the issue of misappropriation, it was important to keep in mind that cultures grew by for example learning from other cultures. Objective 9 read “promote intellectual and artistic freedom, research and cultural exchange on equitable terms, which are equitable to indigenous peoples and traditional and other cultural communities” and the Delegation proposed to add the phrase “as well as for the users of TCEs and which reflect the broader interest of society” thereafter. The Delegation thought it was important that the objectives were reflected in the articles as the three parts of document WIPO/GRTKF/IC/16/4 were interlinked and could not be treated in isolation. In this regard, part 3 comprising of the substantive draft provisions would sound more comprehensive and enable the Committee to make better and informed decisions on the content of the articles. The proposed chapeau could eventually be used as a preamble to an international instrument on TCEs. As the Committee had begun its negotiation process, the Delegation thought it would enable the Committee to make better decisions on its negotiations.
85. The Delegation of Spain, on behalf of the EU and its Member States, reserved its right to submit written comments on Articles 1 and 2 and the objectives of document WIPO/GRTKF/IC/16/4. Regarding Article 3, it commented that the characteristics and scope of protection for TCEs could require a different prospective to be taken, should it be related to the scope of copyright protection.
86. The representative of FILAIE, referring to Article 3, suggested that the third bullet point in subparagraph (i) would only read “any distortion, mutilation or other derogatory action in relation to the traditional cultural expressions/expressions of folklore”. He was of the view that it was not necessary to add the subsequent phrase as suggested. In subparagraph (ii), the representative suggested that this subparagraph would stop at “...derivatives thereof” and that the phrase “by third parties” be added and the subsequent wording in the subparagraph be deleted. He believed that no further interpretation on moral damages or harm was needed once the beneficiaries were determined.
87. The Delegation of the USA suggested that the Chair could confirm the possibility for delegations to submit written comments on Articles 1 and 2 of document WIPO/GRTKF/IC/16/4. Referring to the intervention of the Delegation of South Africa, the Delegation clarified that its proposal was to define the phrase “relevant community” in Article 2 on Beneficiaries, which would encompass all ideas that were already in the text, such as “indigenous people or community, traditional and other cultural community”. The phrase “relevant community” would then be used throughout the text. The Delegation thus proposed that the phrase “relevant community” be bracketed.
88. The Delegation of Morocco thanked the Secretariat for document WIPO/GRTKF/IC/16/4 and supported the statement made by the Delegation of Angola, on behalf of the African Group. Article 3 on the scope of protection was an issue already dealt with by the Committee in the past. It should be specific and consistent with particularly Article 2 on Beneficiaries. Article 3 should therefore take into account the characteristics and national practices of Member States in regard to their national TCEs. In order to ensure that the beneficiaries of protection could be a nation, in addition to an indigenous community, traditional community or any other cultural community, the Delegation proposed that the word “nation” be included. It proposed the

following wording to be included in paragraph (a) of Article 3, "...to ensure that the beneficiaries that may be a nation, indigenous community, traditional community or any other cultural community can prevent..."

89. The work of the Committee was important for Australia and the Delegation was enthusiastic to make positive contribution from the particular prospect of all indigenous people in Australia. Referring to paragraph (a) of Article 3, the Delegation of Australia proposed that the phrase "which have been registered or notified as referred to in Article 7" be bracketed. The reason for this proposal was to question whether the types of economic and moral rights were to be determined by such a provision or be depended on the action of government registration. It was important to refer back to objectives 3, 5 and 7. Consideration should perhaps be given to leaving the option open to the communities, as to whether they should choose to exercise their rights through a national authority, through another type of organization acting on their behalf or to exercise their rights themselves within their communities.
90. The representative of CAPAJ commented on the proposal made by the Delegation of South Africa on Article 3 and stated that the phrase "free, prior and informed consent" should be kept in paragraph (a) of the Article. This was also recognized in Article 27 of the Law on Civil and Political Rights, which established that peoples or communities were entitled to have their cultural identity respected and their TCEs protected. That phrase confirmed this right and should be maintained as a basis of democracy. The mandate of the Committee was precisely to ensure that peoples participating in the process should also gain in the benefits.
91. The representative of BGC raised a few pertinent issues. Referring to the UN Declaration of the Rights of Indigenous Peoples, he suggested that Member States should have a copy of the UN Declaration as many had adopted it. Article 31 of the UN Declaration stated that "indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions". This issue was being discussed by the Committee and yet Member States, whilst having adopted the UN Declaration, had taken away this right from indigenous peoples. He questioned whether he should ask the Delegation of Saint Lucia to present itself in the Committee and speak on behalf of its 75.000 indigenous peoples. Whilst respecting the procedures and protocols, he thought that it was not right that he should ask a Delegation to submit his proposal on his behalf to the Committee. The representative questioned whether those States that spoke about their respective indigenous and local communities were mandated to participate in the Committee and speak on their behalf. A process may be necessary to be developed for indigenous and local communities to submit their proposals, as at last session a submission was made by the Delegation of Trinidad and Tobago on the representative's behalf. He announced the establishment of the "GRTKF International", a group comprising like-minded indigenous leaders in the Caribbean region. GRTKF International would meet to provide understanding on the needs, feelings and expectations of indigenous and local communities in relation to their rights and to protecting their TCEs. It was important that the Committee would find mechanisms to make it possible for indigenous and local communities to intervene and make their concerns known. Indigenous experts participated in the Committee and could make valuable contributions to its work.
92. The representative of the Tulalip Tribes commented on the proposals made by the Delegation of Canada and the Delegation of USA. He agreed with the Delegation of Australia that the clause proposed by Canada actually placed an objection on the conditions to use TCEs. Indigenous and local communities were faced with misappropriation of their secret and spiritual forms of TCEs. There existed symbols and expressions, which were not made to be innovated upon, changed or used by third parties. In regard to the proposal of USA, the representative commented that although he understood the need to reduce jargon, he suggested that the phrase should remain as was and not be generalized to "relevant community".
93. The Chair opened the floor for discussion on subparagraph (i) of Article 3.

94. The Delegation of Zambia announced that it would submit written comments on document WIPO/GRTKF/IC/16/4. Article 3 concerned the scope of protection whereas Article 4 related to the management of rights. One could have supposed that Article 3 would outline the rights that a rights holder could enjoy. This Article however outlined the acts of misappropriation to be prevented. The Delegation therefore proposed that an article be included that would solely deal with the rights to enjoy as this document did not contain such article yet. On the third bullet point of Article 3(a)(i), the Delegation suggested that papers be prepared on the kind of mutilation or distortion that existed and proposed the phrase "...or any action that may be prejudicial to the expressions, that would offend against or damage the reputation, customary values or cultural identity or integrity..." be included after "...in order to cause harm thereto..."
95. The representative of the Saami Council proposed that the phrase "other than words, signs, names and symbols" in subparagraph (i) of Article 3 be deleted as such provision would provide for these forms of TCEs to enjoy less protection than other types of TCEs, which should not be the case.
96. The Secretariat provided an explanation on subparagraph (i) of Article 3 in saying that the type of protection to be afforded related to copyright protection. In subparagraph (ii), the protection afforded was similar to trade mark protection. TCEs protection was, therefore, differentiated between these two categories.
97. The Delegation of Australia commented on the last bullet point in subparagraph (i) of Article 3 referring to "the acquisition or exercise of IP rights over the traditional cultural expressions/expressions of folklore or adaptations thereof". It was of the view that document WIPO/GRTKF/IC/16/4 as a whole envisaged that an author or artist could have copyright-related rights in a work. This provision however would rather prevent the individual indigenous creator from obtaining copyright-related rights and exercising these rights by for example licensing. The Delegation asked whether it was the intention of the provision to restrict such conventional rights, which should actually still remain an option to an indigenous artist or author. It also requested clarification on whether the intention was to prohibit the acquisition or exercise of IP rights in unfair circumstances or to limit TCEs to anonymous works, which would not fall under copyright protection. Consideration should therefore be given to basic policy objectives on the relationship between the individual rights of an indigenous creator over a work and the rights of a community related thereto.
98. The Delegation of South Africa supported the comment made by the Saami Council. It also proposed that the phrase "other than words, signs, names and symbols" in subparagraph (i) be bracketed in order not to prejudge. The Delegation furthermore believed that limiting protection for TCEs to copyright and trade mark type of protection was premature.
99. The Delegation of Morocco referred to paragraph (a) of Article 3 and proposed that the word "nation" be included and that the paragraph should also reflect any use of TCEs for market or commercial purposes other than the traditional use.
100. The representative of ARIPO referred to and supported the amendment proposed by FILAIE on the third bullet point of subparagraph (i) of Article 3.
101. The Delegation of Morocco wished to see its comments made reflected on the screen as it believed that implementing proposals and comments made directly on the screen would enrich the discussion of the Committee. It proposed that the use of TK for commercial purposes be excluded and that the word "notion" or "idea" be inserted in subparagraph (i) of Article 3.
102. The representative of the Saami Council suggested that subparagraph 3(a)(ii) be deleted adding that he agreed with the explanation given by the Delegation of South Africa. He understood the explanation given by the Secretariat as to the distinction between copyright and trademarks in the Article, but thought that the Delegation of South Africa had been right to point out that there were clear differences between the signs and symbols of indigenous peoples, which were

TCEs, and trademarks. Therefore, the distinction did not work, at least not fully as expressed in the document. He also stated that the paragraph in its entirety was too restrictive in the protection awarded to something that was at least based on copyright. He said that paragraph (a) dealt with protection of TCEs of particular cultural or spiritual value only. He argued that copyright protection could be awarded regardless of the cultural or spiritual value of the TCE and that the requirement of registration would not apply, as registration was not necessary to enjoy copyright protection. If the analogy was copyright, the logic was then to change those parts of the paragraph.

103. The Delegation of New Zealand introduced Policy Objective XIII, which sought to “enhance certainty, transparency and mutual confidence.” The Delegation said that Article 3 attempted to deal with the transparency question by introducing the concept of registration. It said that it was still uncertain that registration was an appropriate option especially given the concerns of indigenous peoples with regard to registration systems, including the risks of documentation. It suggested that the IWG, when considering the scope of protection under Article 3, consider two issues: (1) investigate or recommend any alternative ways that the Draft Provisions could address the transparency objective, and; (2) consider variants of registration that minimize risks, e.g., registration systems where there was no examination and where the indigenous peoples themselves agreed on the content of the registration.
104. The representative of Tupaj Amaru made a statement related to Article 1 “Subject Matter of Protection” and claimed that there was a lot of confusion in the text. He said the Model Law of 1982 already recognized what the subject matter of protection was and that it was clearer. He quoted the Model Law, saying that the definition included verbal expressions, such as stories and legends, popular poetry, accounts, sagas, riddles and other signs, sacred names and symbols, musical expressions such as songs and indigenous instrumental music, percussion music — he gave the example of the Sanpoyas instrument in Bolivia — corporal expressions such as dances, theatre, ceremonies, rituals and other folklore performances, tangible expressions such as works of art, drawings, paintings, sculptures, pottery, mosaics, terracotta, woodwork, jewels, materials, etc., and musical instruments and works of architecture. He added that such TK had universal value from the historic, aesthetic and anthropological viewpoints, and was passed on from generation to generation. He said that he wanted the last paragraph of the Model Law to be included. He said that the way in which WIPO had set out the subject matter of protection was clearer and more specific.
105. The Delegation of the USA expressed concern about the concept of control or exclusive rights over derivative works. It was concerned about the breadth of such control or establishing such an IP or IP-like right, as well as about the impact of such rights on the public domain and on freedom of expression, both for people within and outside of indigenous communities and traditional communities. It preferred a standard or to return to the 1982 Model Law, which, instead of providing control over adaptations and derivatives, ensured that the rights established over TCEs would not extend to “the borrowing of expression of folklore for creating an original work of an author or authors.” Moreover, it, in both subparagraphs (ii) and (i), suggested “bracketing” all occurrences of “derivatives.” As an alternative to deletion, the Delegation proposed replacing “derivatives” with “adaptations.” It explained that the concept of “derivatives” did not exist in existing international IP texts in the same way that “adaptations” did. The right of adaptation was a well-known right in Article 14 and Article 14*bis* of the Berne Convention. The derivative work right was a right established in some national laws. For consistency, if the concept was to remain throughout the text, “adaptations” was preferred.
106. The Delegation of Angola, on behalf of the African Group, announced that the Delegation of Botswana wished to present WIPO/GRTKF/IC/16/INF/24: “Submission of Botswana on behalf of the Member States of the African Regional Intellectual Property Organisation (ARIPO): The African Regional Intellectual Property Organisation (ARIPO) Draft Protocol on the Protection of Traditional Knowledge and Expressions of Folklore.”

107. The Delegation of Botswana informed the Committee that Botswana had submitted, on behalf of the African Regional Intellectual Property Organization's (ARIPO) Member States, as an information document to the sixteenth session of the Committee, document WIPO/GRTKF/IC/16/INF/24. The Delegation stated that the draft Protocol had been first adopted by the Council of Ministers at its Eleventh Session in Maseru, the Kingdom of Lesotho in November 2007, and then further reviewed by Member States through national consultations and experts, and approved by the ARIPO Council of Ministers in November 2009 in Gaborone, Botswana. It had also been used as a basis for national and regional legislative frameworks in Africa and other regions. Following those developments, ARIPO was planning to hold a Diplomatic Conference to adopt the Protocol in Swakopmund, Namibia from August 9 to 10, 2010. The Delegation stated that the Protocol upheld the following cardinal principles: equity, respect for TK systems as well as the dignity and spiritual values; respect for the continuing use of customary laws and protocols; enhancing the diversity of cultural contents and artistic expressions in the interest of traditional and local communities and the need to maintain an equitable balance between the rights and interests of knowledge holders and users; promoting innovation, creativity and transfer of technology to the mutual benefit of holders of TK and folklore; preventing misappropriation and misuse as well as safeguarding the disappearance of TK and EoF; recognizing the need to ensure and promote respect for traditional cultures in order to meet the needs of communities by empowering them; among others. The Delegation, on behalf of ARIPO and its seventeen Member States, submitted the Protocol to the Committee as a meaningful contribution to the issues being deliberated, mainly encapsulated by documents WIPO/GRTKF/IC/ 16/4 and WIPO/GRTKF/IC/ 16/5. It stated that its interventions would be guided by the provisions of the Protocol in relation to the substantive articles of the draft provisions under discussion. It was also ARIPO's wish that members of the Committee study the document and embrace it as a meaningful contribution to the work of the Committee.
108. The Delegation of Australia wished to assist in clarifying the scope of the central provision that defined acts of misappropriation, particularly with reference to policy objective VIII, which sought to encourage community innovation and creativity, in particular by rewarding and protecting tradition-based creativity. It added that a long standing concern had been to protect indigenous communities against competition from non-authentic products. Article 3(a)(ii) could deal with that issue in part. However, it said that the provision was rather complex as it mixed aspects of economic and moral rights and was limited to use of certain words and signs. Additionally, Article 3(a)(ii) had already been put in brackets. The Delegation suggested an alternate wording to specifically cover misappropriation through: "the offering for sale or sale of articles that are falsely represented as TCE/EoF made by indigenous people." It said that it would assist further discussion as to whether such acts should be regarded as misappropriation.
109. The Delegation of South Africa wished to join the Delegation of USA in commenting on the issue of "derivatives." It said that indeed the issue could benefit from consideration of a historical precedent such as the Model Law of 1982. However, it added that it was also important to take cognizance of the fact that some of the issues that had led to the insertion of "derivatives" had come from national law, practices and case law. Based on the South African experience, it was of the opinion that post-1982, as well as with the work of the Committee, future laws needed to take into consideration some of the weaknesses and problems that had come up in the management of derivatives. To drop "derivatives" would affect TCEs, TK and GR. For the sake of consistency, it recommended that the word "derivatives" be kept in the text, based on its experiences from national case law on issues that affected TCEs.
110. The Delegation of India commented on the general scope of the Article. It said that the Article classified TCEs/EoF into three very different categories and that different forms of protection were envisaged for these three groups: (1) TCEs/EoF of particular cultural or spiritual value or significance, (2) other TCEs/EoF and (3) secret TCEs/EoF. This gave the impression that the community had no natural right over TCEs/EoF. What was customarily available also seemed



to be taken away. That approach was not in the best interest of traditional communities; it would, in practical terms, prevent them from enjoying any benefit under the Treaty and could also create problems at the national level. Therefore, it suggested that the better approach was to make a distinction between TCEs/EoF that were known as one group and those kept secret as another group.

111. The representative of FILAIE stated that Article 3(a)(ii) gave communities a way of preventing misuse and misappropriation. However, it added that the last part of the Article had to be deleted: “which disparages, offends or falsely suggests a connection with [...] into contempt or disrepute.” He said that the right should not be subject to the condition that the misappropriation or misuse is “disparaging, offensive or falsely suggests a connection with indigenous peoples.”
112. The Vice Chairman proposed to move on to subparagraph (iii), which was a proposal that the Delegation of Mexico had made and the Delegation explained why it had been made.
113. The Delegation of Yemen observed that the Committee was trying to define concepts and trying to find ways of sorting TCEs/EoF into categories. It said that it could be done using pre-defined concepts. Folklore, generally speaking, could be divided into four categories: (1) popular literature, including stories, legends, myths, popular poetry, epics, proverbs, sayings and riddles; (2) architecture, models, uniforms, costumes, etc.; (3) traditions, customs, ritual expressions such as circumcision or birth ceremonies or religious ceremonies or performances and other expressions; (4) artistic performances such as theatre, singing, sufism, religion, songs, and body expressions. Precise definitions needed to be developed.
114. The Delegation of the USA said that Article 3(a)(iii) was an attribution provision. It recommended that the provision include, as draft text, a phrase taken from Article 5 of the WPPT. The WPPT provided a right of attribution for performers but added that that right of attribution existed “except where omission is dictated by the manner of the use.” The Delegation proposed that addition, because in practical circumstances it was not always possible or appropriate to provide attribution.
115. The Delegation of Canada requested that the questions it was about to pose, which could be used by the IWG, be included in the “comments” part of the revised document. It claimed that one of the challenges was to find the necessary balance between the protection of TCEs and acts of misappropriation which contributed to cultural diversity. It posed the following questions: Who will be responsible for granting access to TCEs and who may authorize such access? What happens if a TCE is held by more than one community, who decides, who arbitrates? Will work inspired by, or adapted from, a TCE be covered? And how would such protection affect, interact or overlap with protection already granted under existing IP laws? Finally, how is this level of protection, combined with proposals for perpetual protection of TCEs, consistent with demands for a robust public domain?
116. The Delegation of Venezuela (Bolivarian Republic of) supported the suggestion by the representative of FILAIE on Article 3(a)(ii), concerning the deletion of the last part of the sentence. It proposed that the article end after “derivatives thereof.” It claimed that those rights should be full rights.
117. The Delegation of Morocco said that there was a discrepancy between the French and Arabic texts at Article 3(a)(iii), where reference was made to the term “fixation”. That term was accurately reflected in Arabic, but in French it had been translated as “information”. The Delegation additionally proposed that the text be amended to include “any fixation, representation, publication, communication or use in any form of the TCEs/EoF must be legitimate and faithfully reflect the region to which these communities belong.”
118. The Delegation of Venezuela (Bolivarian Republic of) referred to the Venezuelan system, in which criminal and civil courts were separate, and where both criminal and civil actions were

taken in a case, the civil proceedings must wait for a decision to be taken in the criminal proceedings, before a civil decision was taken, as the criminal proceedings prevailed over civil proceedings. Under the Venezuelan legal system only purely criminal or purely civil actions may be taken. It therefore argued that the drafting of subparagraph 3(b)(ii) was confusing, and proposed that the paragraph be amended to read “criminal or civil”.

119. The Delegation of India proposed amending subparagraph 3(b)(iv) as follows: “Where the use or exploitation is for gainful intent, there shall be benefit-sharing on terms determined by the relevant communities in consultation with the Agency referred to in Article 4”. That modification was imperative for the following reasons: (1) there was a need to recognize collective ownership with positive exclusive rights of the communities and not just rights to prohibit; (2) the right to assign these rights by agreements had to be recognized, and not only based on the principle of free, prior and informed consent, (3) equitable remuneration systems for any type of TCE/EoF were not acceptable, it was the exclusive right of the community; (4) if the use of TCEs/EoF was spread all over a nation or country, and not identified with any specific community, the benefit-sharing had to be based on the decision of the national authority.
120. The representative of Tupaj Amaru offered that the text could draw from many UN instruments, in particular, the UN Declaration on the Rights of Indigenous Peoples. He said that the text was not strong enough in many areas and that it should be legally binding. Article 3, in addition to identifying the indigenous peoples and communities and other cultural communities, had to identify the rights and obligations of parties. He asked why the role of the State, which was to defend and protect the rights of indigenous peoples and communities, did not appear in the article. Concerning subparagraph 3(b)(ii), he argued that it had to read “prohibit” instead of “prevent,” and that sanctions should be available in both the criminal and civil courts.
121. The Delegation of the USA proposed that, at the end of subparagraph (i), the language drawn from Article 5 of the WPPT “except where omission is dictated by the manner of the use” be added. It stated that it wanted that the same language be inserted in all relevant places in the document. Moreover, it agreed with the comment made by the Delegation of India concerning Article 3(b)(iv), that it really was a matter to be determined by the relevant communities.
122. The Delegation of Venezuela (Bolivarian Republic of), concerning subparagraph (iv), suggested deleting “where the use or exploitation is for gainful intent.” The use or exploitation could not be subject to any condition. It was obvious that the use or exploitation was in order to make profit, because, as the word “exploitation” was so strong, it implicitly suggested that it was being done for profit.
123. The representative of the Saami Council reiterated that the article was too restrictive in terms of the protection provided. He agreed with the Delegation of USA, supporting the comments by the Delegation of India concerning subparagraph (iv), that it was up to a community to decide or determine the terms for benefit-sharing. Supporting the comments made by the Delegation of Venezuela (Bolivarian Republic of), he added that benefit-sharing did not only apply when there was a gainful intent. He expressed concern with respect to that paragraph. He drew attention to Article 6 of the TK Draft Provisions, which dealt with benefit-sharing suggesting that the same approach be followed and serve as inspiration. He repeated that the article was too limited; for example, it only dealt with benefit-sharing in the context of “other TCEs”, *i.e.*, those that were not culturally and spiritually significant; that could hardly be the idea, he said. He also claimed that benefit-sharing should be recognized as a general principle, which could then be better addressed in a separate article, in order to apply to all forms of TCEs. He suggested that Article 6 of the TK Draft Provisions, with relevant amendments, be introduced into the TCE Draft Provisions, thereby taking a general approach to the whole benefit-sharing concept.
124. The Delegation of Algeria said, as drafted, Article 3(a) only applied to situations before an act had taken place; in its view, the provision had to apply also to situations during which the act

was taking place. It thus proposed to add, after “prevent,” the phrase “to stop.” Further, in Article 3(b), it suggested to replace, after “practical measures to,” the word “ensure” with the word “guarantee.” Lastly, it suggested adding in Article 3(b)(ii), after “can be prevented,” “or stopped.”

125. The representative of FILAIE suggested deleting, in Article 3(b)(iv), “where the use or exploitation is for gainful intent.” He argued that it was unnecessary and rather proposed that it read “when it is used or exploited.”
126. The Delegation of China said that it had already submitted comments in writing to the Secretariat and that it intended to continue to do so.
127. The representative of BGC commented on a previous comment referring to ownership by several communities. In the CARICOM countries, a process was under way dealing with the very same issue as in the IGC, *i.e.*, a framework for the protection of TK, TCEs and GR. Within that process, during a visit to the various communities, including indigenous communities, the issue of ownership of TCEs of indigenous peoples had come up. He wondered how to deal with TCEs that crossed borders within small states, suggesting that it was an issue that should be left to national laws to address. Moreover, he added that the fact that benefit-sharing had to be determined by the national authority did not reflect the experience in the Caribbean, or in St. Lucia. He said that there was only one indigenous people in St. Lucia, which lived in different constituencies, each under a different governing council. He suggested that national experiences should be taken into consideration. In that particular sense, both comments would disadvantage St. Lucia.
128. The representative of CISA stated, in relation to Article 3(b)(i), that the term “relevant” was not definitive and did not indicate who the indigenous peoples and communities were. He was aware that this was dealt with under Article 2, but that Article 3 had to read “the relevant traditional indigenous peoples and communities.” He also wished to ensure that there was a way to address the use of institutions in order to acquire use or property rights over indigenous property. There had to be a process in which to define who the peoples were, so that the proper agent or authority of the peoples concerned could be dealt with. He added that there were already international instruments that could be relied upon, in order to ensure that indigenous peoples were being protected. He reserved the right to raise the issue again, and, throughout the document, to raise the question on protection against abuses.
129. The representative of CAPAJ stated that the article, as a whole, intended to prevent the subjugation of indigenous peoples, to protect them from being exploited. In other words, it intended to prevent people from making profit from their creations. Article 3(b)(i) established that the source of any work was the indigenous community, and that creations should not be mutilated or deformed in any way. The purpose of that subparagraph was to prevent companies set up precisely to make profit from taking advantage of indigenous peoples by deforming their customs. For example, in the Amazon, many communities, because of climate, did not do wear tops. But some tourist agencies were taking women from these communities to the cities and putting them on shows simply to make profit. That was giving a false impression of the custom to the people living in cities and transformed ways of life of the indigenous women of the Amazon into another type of business, which had nothing to do with the source itself, which very often were spiritual and respected practices. He said the article was very important but that the language had to be clearer and more direct: Its purpose was to protect indigenous peoples from subjugation for profit.
130. The Delegation of Zambia contended that the document had to deal with rights and obligations. Article 4 presupposed that there was an article dealing with rights, in that case, Article 3. Article 3 only looked at negative rights, which was consistent with aspects of IP rights, which were basically negative rights. The Delegation reiterated the need to look at positive rights. Looking at Article 3(b)(i), which referred to the identity of communities as being the source of the work, it

suggested that they be also recognized as owners of these works, because of the particular meaning in law of “ownership,” which included a positive right. It suggested amending Article 3(b)(i) by adding “or owner” after “source.” That reflected the rights of ownership.

131. The representative of the Ethio-Africa Diaspora Union Millennium Council supported the comments made by the representative of the Saami Council according to which, under Article 3 benefit-sharing had to be dealt together with the principle of free, prior and informed consent. As drafted, Article 3(b) was to the effect that the TCEs not notified would not be subject to free, prior and informed consent, whereas in Article 3(a), that was clearly spelled out. That fundamental differentiation was not justified: all TCEs had to be subject to free, prior and informed consent. Article 3 or another article in the instrument could deal with that.
132. The Delegation of Australia supported in principle the interventions made by the representatives of BGC and of CISA. It stressed the need for the IWG to examine the effect on both indigenous communities and the public domain in examining circumstances in which states could exercise property rights over non attributed TCEs.
133. The representative of the Patent Office of the Cooperation Council for the Arab States of the Gulf (GCC) pointed out that the article did not take into account an existing discrepancy between TK and TCEs on the one hand, and the kinds of behaviors and methods used on the other. He added that there were various treaties and conventions dealing with the protection of knowledge, including some managed by WIPO, but that the methods used were always appropriate. He suggested looking into that issue in more detail under Article 5, dealing with limitations.
134. The Delegation of the Russian Federation said that subparagraph (b) was very difficult to read because of all the amendments and changes made. For instance, it was difficult to understand the long sentence in subparagraph (b)(iii), starting with “any false, confusing or misleading indications”; it was not entirely clear what was meant by “indications.” It suggested that subparagraph (b)(iii) be made easier to read. Having “indigenous peoples and communities and traditional and other cultural communities” twice rendered the article overly complicated. It suggested mentioning it once and not listing the long phrase again, and simply making reference to the first occurrence of the term. In other words, the second mention of the term could simply link to the first. Secondly, the Delegation endorsed what had been said concerning the ambiguity or inaccuracy of the approach or method to achieve protection of TCEs. It claimed that it was imperative to clarify who precisely was going to be involved. A very precise definition was needed. It needed to be understood who was doing what and who was representing whom and in legal terms, who was entitled to represent what. At present it was all very, very complicated. Document WIPO/GRTKF/IC/16/4 did not allow going into that fundamental issue in sufficient detail. The commentary to that document stated that contemporary creative expressions created by an individual could or could not be considered as TCEs. However, this depended on whether or not the individual was in fact the author or creator of the work. Who, however, was going to determine whether or not what had been produced was actually a TCE or rather a work that could be protected by copyright, in which case again a certain period of protection had to be afforded? There were specific rules and particular limitations about that topic and international agreements on copyright set that out in detail. The question was about the way in which this could be adapted to different situations, because TCEs could be used by all members of a community and therefore, it was fundamentally different. There was a collision in standard and in the various approaches taken. The way protection had been approached thus far was completely different from the way it would have to be approached if TCEs were to be understood as something completely different from individual creations. The Delegation recommended reflecting on that fundamental issue of a clash of rights between TCEs and the way they would be protected, on the one side, and copyright and the way it provided protection, on the other. It said that more in-depth analysis was needed. When thinking about what could be done, it called on pragmatism and said that it

was necessary to see how legal protection could actually be afforded in practice, but also what precisely the subjects or the objects of protection were. That needed to be examined, for instance in Article 2, because a lot of what was in Article 2 had to be interpreted differently in different cases. Article 2 did not take into account the possibility of making use of TCEs by indigenous peoples living in different states; the whole question of cultural exchange was not taken into account, the fact that there were common TCEs that could be used by indigenous peoples and also by other people living in the same territory.

135. The representative of Tupaj Amaru endorsed the comments made by the Delegation of the Russian Federation. The text was very long and difficult to read and understand. He referred to the Vienna Convention on the Law of Treaties (1969) which stated that articles had to be precise enough to be put into practice. He suggested adding, in subparagraph (b)(iv), after “designated national authority,” “designated by the indigenous communities referred to in Article 4 in consultation with the relevant indigenous peoples and communities.” Moreover, the term “cultural communities” was never used within the UN, so its meaning was unknown. A preferred term was “indigenous or ancestral communities.” Furthermore, the phrase “whether use or exploitation is for gainful intent” had to be deleted. If one was speaking about remuneration, then of course it was about gainful intent and legal protection of TCEs. Therefore, there was no need to underscore it with “for gainful intent.” There was a lot of abuse and pillage of resources and that point had to be made in many articles in the instrument.
136. The Delegation of South Africa suggested that subparagraph 3(b)(iv) look more closely at the benefit-sharing aspect, as had been highlighted by the representative of the Saami Council. It proposed that the sentence start with “there should be equitable benefit-sharing,” while “remuneration” and “when the use or exploitation is for gainful intent” had to be deleted. Similarly, supporting the statements of the Delegation of the Russian Federation and of the representative of Tupaj Amaru, he requested clear definitions. It also supported the proposal by the African Group that the IWGs discuss definitions to find common ground regarding terminology. It indicated its preference to “indigenous peoples and local communities,” since that was the language used within the UN. The reference to “traditional and other cultural communities” had to be deleted, as that was likely to raise further questions. Furthermore, it disagreed with the comment made by the representative of Tupaj Amaru concerning the designated national authority.
137. The Delegation of the USA fully embraced the comments of the Delegation of the Russian Federation. The Delegation also embraced the spirit of the comments of the Delegation of South Africa, agreeing that a clear definition needed to be established and that the current definition of had gotten out of hand. It reiterated that it had urged to adopt a very simple phrase, such as “relevant community” or “right holder;” later, a proper definition, mindful of the UN concepts, could be worked out under Article 2. In terms of Article 4, it embraced the suggestion of the Delegation of South Africa that the proper wording had to be “equitable benefit-sharing,” deleting “remuneration.” Alternatively, it suggested the following change, “on terms designated by the relevant indigenous people or community in consultation with the designated national authority.” As many of the observers had stated, the emphasis had to be on the indigenous people and the community, their desires, and not on the desires of a designated national authority.
138. The representative of CISA repeated that it was unclear what entity would be addressing the issues. The problem of the use of proper governments remained. Based on what the Delegation of the Russian Federation and others had said, it had to be more than just a relevant authority, relevant community or right holder. It had to be the indigenous peoples themselves. There had to be recognition of the rights of indigenous peoples in their property, in order to prevent the creation of other institutions that would swindle the right or the use of property rights from the indigenous peoples. That had happened in Alaska. He suggested that people who were recognized at various levels and who wanted to assert those rights could be the

appropriate national authority. What needed to be avoided were so-called national authorities where the colonizer was effectively making the law and reducing the ability of the indigenous peoples to be protected. He stressed that the indigenous peoples were recognized as colonized peoples, and that national authorities were actually colonial authorities. Depending on their aspirations, rights-holding indigenous peoples had to be able to deal directly and equitably, as the Delegation of South Africa had said, without any limitation of the rights that they wished to exercise.

139. The representative of BGC commented on the problem of definitions. He alluded to his own intervention at the previous session of the IGC, when he had proposed that the IGC consider the services of anthropologists, social scientists and individuals who dealt with such terms. The BGC had also written to the Secretariat on that particular issue. He had then taken the initiative of circulating a questionnaire among a number of indigenous organizations around the world. He suggested that the questionnaire and its results be circulated and made available to the IGC in order to help deal with the confusion created by the different terms or concepts in the documents.
140. The Delegation of India reiterated that, with reference to subparagraph (b)(iv), the clause had to read “where the use of exploitation is for gainful intent there should be benefit sharing.” “Equitable remuneration” had to be struck out. The article recognized collective ownership and exclusive rights of the indigenous people over the TCEs/EoF.
141. The Secretariat, in response to a question posed by the representative of Tupaj Amaru, stated that the draft provisions were using an all-embracing term to describe the possible owners or beneficiaries of rights. The provisions used such a term precisely so as not to preselect a term or to define a single term. That was a policy matter for the IGC or national law to resolve; the terms used were not intended to reflect any consensus on their rightness or wrongness. The draft provisions derived from an extraction of many national laws and regional laws. Other sources such as glossaries had also been studied. UNESCO, for example, had produced a useful glossary in 2002 which had been used. Most of the terms came from those sources. The Secretariat added that Article 4 dealt with how and to whom authorizations to use TCEs/EoF were applied for, as well as related questions. The provisions as a whole envisaged the exercise of rights by the relevant communities themselves. However, in cases where the relevant communities were not able or did not wish to exercise the rights directly, the Article suggested, optionally, a role for an agency acting at all times at the request of, and on behalf of, relevant communities.
142. The Delegation of Egypt said that the Article only bore on the indigenous peoples and communities. It stated that there were countries, such as Egypt, where there was only one single community, because cultural harmony prevailed within the country. Egypt was a country whose history went back many years. It had a longstanding, rich and diverse culture which made for a harmonious and homogenous cultural weave. That was no doubt the case of other countries. For that reason, it wished to include in the document, when referring to indigenous peoples and communities, the term “nations.” Secondly, the Delegation repeated its view expressed earlier regarding the Arabic version of the text.
143. The Delegation of India said that the reference to an agency in Article 4 was unclear. It asked the Secretariat what it meant. The structure and nature of the agency was not clear, or whether it was a national, regional or local agency. Further, it asked whether the community would be represented in the agency.
144. The representative of the Saami Council stated, on behalf of the Pacific Indigenous Caucus and of the Arctic Indigenous Caucus, that they were satisfied with the provision. It struck an appropriate balance as it concerned authorization between indigenous peoples and communities, on the one hand, and the State, on the other. He pointed out that subparagraphs (a)(ii) and (b)(ii) were dealing with benefit-sharing, adding that it could help clarify the document if all

references to benefit-sharing were to be collected in one single article dealing with benefit-sharing, as was the case in the TK instrument. Finally, as mentioned by the Delegation of Zambia, management and rights were being dealt with, but only implicitly. He offered that it would be beneficial that both the TK and the TCE instrument begin with an article immediately setting out who the rights holders were, for ease of reading and understanding of the instrument.

145. The Delegation of Australia, agreeing with the comment made by the representative of the Saami Council, stated that clear and settled definitions of rights holders were needed. The first line of Article 4, subparagraph (a), dealt with the use of TCEs which appeared to mix both individual property rights and possible new collective rights. That raised important issues which required further discussion and clarification. In particular, the extinguishment of the rights of individual indigenous authors to control the exercise of their property rights in their own creations could not be extinguished without careful consideration. Also, in some countries, including Australia, there were already collective management arrangements that allowed for the use of individual copyright for particular public purposes such as education or teaching purposes. Interference with such arrangements could not be done lightly. It suggested that “to use” be replaced with “to do acts within the rights of indigenous peoples in TCEs,” in order to make clear that the management rights were the management of collective peoples’ rights, but not the management of individual creators’ rights.
146. The Delegation of Morocco supported the comment made by the Delegation of Egypt regarding the Arabic version of document WIPO/GRTKF/IC/16/4. Substantively, there were many matters which were not clear in the Arabic version as far as Article 4 was concerned. For example, the question of the rights, positive or negative, was unclear. It was also unclear what the nature of those rights was, whether they were collectively managed through a designated national authority. It asked whether it needed to be collectively or mutually accepted by the authorities and communities. Many countries were made up of one nation and therefore “nation” had to be in Article 4. Also, when reference was made to prior authorization, reference had also to be made to nation. As to subparagraph (i), the Delegation asked what kind of consultation was envisaged and when it had to take place.
147. The Delegation of the USA proposed that, in Article 4(a) and throughout the text, the word “national” be deleted. Indeed, it was possible that in some circumstances a regional or international authority such as OAPI or ARIPO be chosen by an indigenous or traditional community to be the designated authority. Secondly, under paragraph (b), it suggested taking “where so requested by an indigenous people and community and traditional and other cultural communities” and move it to the beginning of paragraph (b). There was no reason why the entire paragraph should not be conditioned on the request of the indigenous people or the community. Indeed the indigenous people or community could prefer in the case of secret TCEs that the designated authority not engage in awareness-raising.
148. The Secretariat responded to a question posed by the Delegation of India, as to what kind of agency was envisaged in Article 4. The article did not provide that kind of detail. It was intended to set out certain core principles only. The details would be established at the national level in accordance with national laws, national practices, and national customs. The office or agency could be an existing office such as the existing copyright office, or a new office established under a law pursuant to draft provisions; collecting societies could also play a role. A number of national and regional laws provided for an authority of some kind, such as the WIPO-UNESCO Model Law of 1982, the Philippines Act of 1997 and the Pacific Model Law of 2002.
149. The representative of the International Council of Museums (ICOM) stated, in a written intervention, that ICOM was, since 1946, the only international organization representing museums and museum professionals. It was committed to the conservation, continuation and communication to society of the world’s natural and cultural heritage, present and future,

tangible and intangible. As such, the objectives of ICOM were aligned with the goals and concerns of the Committee with regard to the protection of TCEs/EoF and TK. He suggested that the Committee recognize the role of museums and other heritage institutions as repositories and actors in the preservation of TCEs/EoF, thereby ensuring that the envisaged protection of TCEs/EoF would allow museums and related heritage and cultural institutions to play a role. In that perspective, he suggested that Article 5(a) (iii) be amended to include, as a second to last item: “the preservation of cultural items resulting, directly or indirectly, from TCEs/EoF in museums or other non-profit related cultural institutions. Such preservation should be aimed at conservation, continuation, communication to society, display to the public for educational, research and delight purposes of the world’s natural and cultural heritage, present and future, tangible and intangible. The above-mentioned preservation and its goals should always be subject to the rules of fair use.” Further, he proposed adding explicit reference to the museum, gallery and archive “community” within several of the Policy Objectives and General Guiding Principles.

150. The Delegation of Norway submitted a brief comment in writing regarding Article 1 “Subject matter of protection.” The Delegation wished to join those delegations that had commented on the relationship between new rights and conventional copyright law. The present article and document needed to address that boundary more clearly, in order to avoid confusion and unintended overlap with copyright and related rights under existing legal instruments. The Delegation claimed that it had consistently voiced the need for a clearer concept of what actual acts would constitute misappropriation and misuse. It supported the delegations that had commented on the article and on the public domain. The instrument to be created needed to be effective, and to reach that objective, it was necessary to have a clear demarcation between the object of a *sui generis* protection and the public domain. An extensive and rich public domain was a guarantee for the appearance of new voices, cultural innovation and cultural diversity. It had to be ensured that that would also be in a new instrument, regardless of its legal status.
151. The Delegation of Spain, on behalf of the EU and its Member States, said that some of the objectives and principles did not seem to concentrate on the mandate of WIPO, but rather on that of other international fora. For instance, the safeguarding of traditional cultures or communities and the respect among communities fell under the umbrella of different fora. As concerned Article 1, the Delegation expressed concerns regarding the definition, since some forms of TCEs included in the current wording could already be protected by IP rights. An open-ended definition would have the effect of impeding harmonization and transparency when determining the choice of terms at the national, regional or sub-regional level. Moreover, the definition had to include some exceptions, bearing in mind that certain forms of expressions foreseen in Article 1 could not be considered as TCEs. Finally, for the sake of coherence, some terms had to be interpreted through a glossary.

*Decision on Agenda Item 8:*

152. *The Committee invited the Secretariat to prepare and make available for the first session of the Intersessional Working Group a further draft of document WIPO/GRTKF/IC/16/4. The further draft should be made available by the Secretariat by June 19, 2010. This draft should clearly identify drafting proposals and comments made by Committee participants during the sixteenth session and proposals and comments submitted to the Secretariat*



*in writing before May 14, 2010.  
Specific drafting proposals should be attributed in footnotes. Comments made should be reflected, with attribution, in a commentary in the document. The draft should explain clearly how proposed additions, deletions, other amendments and comments have been reflected. Drafting proposals made by observers should be included in the commentary for consideration by Member States.*

## **AGENDA ITEM 9: TRADITIONAL KNOWLEDGE**

153. At the request of the Chair, the Secretariat introduced the working document prepared under agenda item 9, namely WIPO/GRTKF/IC/16/5. The Chair invited interventions on Article 3 (General Scope of Subject Matter) of the document.
154. The Delegation of Spain, on behalf of the EU and its Member States, considered that document WIPO/GRTKF/IC/16/5 was a good base for discussion. It was needed to ensure continuity in the substantive discussions. Yet the debate would also benefit from further discussion and consultation of other highly valuable documents in line with the mandate given by the General Assembly. The discussions should be based on the entire work carried out by the Committee, not excluding any document(s) in particular document WIPO/GRTKF/IC/13/5(b) Rev. containing a gap analysis and document WIPO/GRTKF/IC/12/7 entitled "*Recognition of traditional knowledge within the patent system*". It believed that Article 3 and 4 were particularly important in the instrument and were likely to be the subject of the work of the IWG. Therefore, it specifically requested that those two articles be discussed. It introduced the following language at the beginning of Article 3: "The protection of traditional knowledge should ensure (a) the safeguarding and preservation of traditional knowledge; (b) the recognition and respect for traditional knowledge; and (c) a balanced approach between the holders of traditional knowledge and the users, which should also consider the need to facilitate access and dissemination of traditional knowledge aiming at innovation, and the need to ensure the dynamic and vibrant nature of the public domain." TK had different meanings for different people in different fora. For the purposes of work of the Committee, the current definition of TK and the criteria for eligibility would benefit from an in-depth debate aiming at a better qualification, drawing a line between what would fall under the scope of the international instrument and what would be left outside. As a first step towards reaching internationally agreed working definition, the Secretariat was requested to complement the gap analysis carried out, with an analysis of categories of the different manifestations of TK. Such categorization would respond to the different ways in which such TK was maintained and transmitted, TK that was publicly available or publicly accessible, under the direct control of the indigenous and local community or not, already in the public domain but not previously commercialized, among other issues. Those questions could be used as criteria for a matrix in the categorization process. In the spirit of making real progress, the one-size-fits-all model of protection for one type of TK had to be abandoned. It noted that each of those categories might require a different consideration in the kind of protection received as decided by each country. Other concepts introduced in the current text might also require definitions. In that context, the international instrument would greatly benefit from the introduction of a glossary of technical terms. The Delegation also believed that any instrument developed in the Committee had to focus on IP aspects, avoiding elements already discussed and agreed in other fora. It

suggested that current policy objectives be clustered and redefined around those concepts. Considering the technical nature of the work, it suggested that the task be carried out by the IWG. It said that the concept of public domain was an important element in the discussion since it established a balance between the rights of IP owners and the rights of the third parties. What could be considered in the public domain in the area of TK might require more reflection. It recognized the need for a study of that issue and requested the Secretariat to prepare such a study for the next meeting of the Committee. Finally, it reaffirmed its commitment to achieving real progress and positive results and looked forward to hearing from other delegations and their response to these initial proposals. It reserved the right to intervene on specific issues as appropriate and timely.

155. The Delegation of Norway was pleased to see the outset of a more focused and text-based discussion on TK. At the ninth session of the Committee, it had submitted a proposal, in document WIPO/GRTKF/IC/9/12, to contribute in a concrete manner. This document was still on the table and could serve as one possible basis for an outcome. As several delegations had stated at the earlier sessions, there was a need for further clarification of what actually was the subject matter for protection, namely how protected TK should be defined. As a part of the clarification, it was especially important to find the right balance between TK that was subject to protection and knowledge which was or had become part of the public domain. In that context, there was not a coherent view on what the notion of public domain actually meant. In that regard, Articles 3 and 4 were crucial. These two articles had to be seen in connection to secure an adequate scope for the protection of TK. Article 4 was especially important. It believed that any international obligation on protection of TK should only apply for TK that was covered by the definition in Article 3 and in addition fulfilled all the criteria in Article 4. Consequently the criteria for eligibility for protection in Article 4 should be cumulative. A line had to be drawn between protected TK and knowledge which was a part of the public domain. The former wording of Article 4(ii) pointed at something essential with respect to the delimitation of the protection of TK. It therefore, opposed the proposed amendment of the deletion of “distinctively”. TK eligible for protection had to be distinctively associated with a traditional or indigenous community or people. This would ensure that knowledge which was a part of the public domain fell outside the scope of protection and could still be freely used by everyone. Firstly the criterion “distinctively associated” would imply that knowledge which was evolved separately by several traditional or indigenous communities or peoples and/or by people who were not a part of a traditional community or indigenous people, was part of public domain and could be used freely by anyone. The fact that the same knowledge was generated by several groups of people that had developed the knowledge independently indicated that it was not fair to recognize exclusive rights to the knowledge for a certain group. This was a clear example of knowledge that should be considered as a part of the public domain. That important point was not sufficiently expressed merely by the criterion “distinctively associated with a traditional or indigenous community or people”. It considered that the definition of TK should clearly state that knowledge which was evolved independently or held by several groups of people did not enjoy TK-protection. Secondly, the criterion “distinctively associated with a traditional or indigenous community or people” meant that knowledge that originally fulfilled the characteristics of protected TK would no longer enjoy protection once it had been widely known and used by a broader public for a certain time. According to Article 9, TK enjoyed protection as long as the criteria in Article 4 was fulfilled. That reflected the dynamic aspects of development and dissemination of knowledge. Knowledge that at a certain point in time was protected could at a later stage be disseminated to the public to such an extent that it was no longer reasonable to require consent for the use of such knowledge. It was crucial to also draw such a distinction between protected TK and knowledge that was free for all to use. However, it considered that the criterion “distinctively associated with a traditional or indigenous community or people” alone did not sufficiently safeguard that important distinction. The definition of protected TK should more explicitly clarify the criteria for when originally protected TK should be considered to have

become a part of the public domain. Thus, the essential criterion was the dissemination and use of the knowledge outside the community that had made the knowledge. It believed that the knowledge at least should be considered as a part of public domain when it had become widely known outside the community that had generated it and consequently was easily accessible by the public from other sources other than the community that had generated it or representatives for that community. The decisive criterion for when TK had become part of public domain would then be the level of dissemination and the knowledge outside the group that had developed it. How the knowledge had been disseminated should be irrelevant in that assessment, it should be a mere objective assessment. The idea to draw the line between protected TK and knowledge in the public domain based on the extent the knowledge was disseminated to the public did not imply that TK would lose its protection merely on the ground that someone outside the community had accessed the knowledge or the knowledge was accessible outside the community (*inter alia* through databases). It said that the intention was to avoid a situation where someone claimed rights to knowledge that had been so widely disseminated that it was fair to consider it free for all to access and use. If protected TK was accessible also outside the holder's community, as time passed situations would occur where the knowledge would become widely disseminated to an extent that implied that the knowledge was no longer distinctively associated with a certain group of people, and consequently was no longer protected. That was a consequence of the dynamic characteristics that was inherent in all knowledge. Knowledge which at one stage could represent an important contribution to the greater public would be a part of the common knowledge base after a while. That was reflected in the protection of other types of knowledge and works that were limited in time, for example the case for patents or copyrights.

156. The Delegation of India believed that Article 1 should at the very outset define the rights of TK holders. The impression given by Article 1 was that the instrument only covered protection against misappropriation and misuse. The approach was therefore very narrow especially in the context of the Policy Objectives and the General Guiding Principles. It asserted that the scope must be expanded in that Article or through a new article. The Article should first assert collective ownership of TK with the communities. That would clarify the positive protection of TK. As it stood currently, there were no positive rights to the owners of TK similar to that of TCEs. There was no justification for the different approach. Besides, the legal basis for taking action to prevent misappropriation was not expressly stated though it was implied. Minimum rights that the communities had in their TK should also be identified. These rights should include rights to collective ownership over TK, collective management of TK, the right prevent misappropriation, to insist on prior informed consent, to benefit sharing, to deny access and to recognize the identity of TK. In addition to the activities covered in Article 1, misappropriation should not be confined to commercial or industrial use but to all use identified in the treaty and national laws. The disclosure requirement should be for all forms of TK and should not be confined to TK associated with genetic resources.
157. The representative of the Tulalip Tribes made comments on the issue of the public domain, which it considered a core issue. When knowledge was shared, it was shared with responsibilities and obligations. These responsibilities and obligations would continue to exist into time unknown in the future. And those obligations included the use of the knowledge. That was a common indigenous world view concerned with their knowledge systems and there was substantive customary law related to that. He asserted that the public domain was a western concept that was designed for commerce and was a bargain that was set for a grant of private property rights for a limited amount of time after which knowledge would go into the public domain. Such a concept did not necessarily exist in indigenous knowledge systems. When making claims of public domain against TK, demands of very large societies superseded those of the small societies *i.e.* indigenous communities. He estimated that there were over 6 billion people on the planet out of which 20 million were indigenous peoples. He said those claims would put indigenous knowledge into the public domain, for example the criterion of

dissemination, where knowledge may have been leaked out and though limited in its distribution, could over time become more widespread. And if there were no protection mechanisms, that knowledge fell into the public domain. He stated that a healthy public domain should be supported, but those ideas should be constructed very carefully. He supported the EU's call for a report, but believed such a report should involve indigenous peoples and local communities in order to provide significant input.

158. The Delegation of Iran (Islamic Republic of) proposed to add "cultural expressions and" before "genetic resources" in the last line of paragraph 2 of Article 3. The reason being that TK may be merged not only in TK associated with GRs but also in association with folklore.
159. The Delegation of Canada suggested Article 3 defining the general scope of the subject matter, should come first, to be followed by the provision on the protection against misappropriation and misuse. The Delegation supported the proposal made by the Delegation of Spain on behalf of the EU and its Member States in paragraph (c) on the need for a balanced approach. It believed that that was a very useful addition and promoting respect for TK would only be possible if the views of all TK creators and users, as well as those of the public in general, were taken into account in that balanced approach. It proposed, after paragraph (b) as proposed by the Delegation of Spain on behalf of the EU and its Member States, to add "including through the dignity, cultural integrity and intellectual and spiritual values of the TK holders who conserve and maintain those systems, the contribution which traditional knowledge has made in sustaining the livelihood and identities of traditional knowledge holders, the contribution which traditional knowledge holders have made to the conservation of the environment, to food security and sustainable agriculture, and the progress of science and technology." It also proposed under the title to add an objective "encourage, reward and protect tradition-based creativity and innovation and enhance the internal transmission of traditional knowledge within indigenous and traditional communities."
160. The Delegation of the USA concurred with the proposal made by the Delegation of Norway in relation to protected TK and other TK. It suggested in paragraph 1 to insert the word "protected" before "traditional knowledge". As uses might not strictly speaking be within the traditional context, it suggested to delete "beyond its traditional context" in paragraph 1.
161. The Delegation of Indonesia proposed, after "pass between generations" in paragraph 2 of Article 3, to add "and continuously developed following any changes in the environment, geographical conditions and other factors".
162. The Delegation of South Africa made comments on the paragraph (c) proposed by the Delegation of Spain. In order to provide a balanced approach between the TK holders and the users, a clear distinction between the two was necessary and a balance should be provided by including the knowledge holders' interests. It therefore suggested to add "and ensure equitable benefit-sharing" at the end. With regard to paragraph 1, the use and misappropriation within the traditional communities was regulated by customary law within those communities. To delete "beyond its traditional context" meant that protection which was beyond its boundaries was actually being eliminated in that context. The Delegation suggested to retain "beyond its traditional context" because misappropriation and misuse occurred beyond the control of communities and thus needed protection.
163. The representative of the Tupaj Amaru believed that the Delegation of Spain speaking on behalf of the EU and its Member States had confused the different issues between public domain and users and the balanced or equitable terms of the use. He believed the proposed changes were removed from the issues. The very heart of the question behind Article 3 was the criteria of protection and public domain. TK had been used for many years and had been misused and misappropriated for at least 500 years. He noted that much of TK was secret even to the indigenous peoples. Some TK had been transmitted from generation to generation but not

- necessarily among indigenous peoples and it was kept at a secret place so it could not be disseminated or disclosed into the public domain.
164. The Delegation of Iran (Islamic Republic of) fully supported the intervention made by the Delegation of South Africa on the retention of the term “beyond its traditional context”.
  165. The representative of IPCB stated that Article 3, as originally drafted, was intended to prevent misappropriation and misuse of TK. Article 3, as amended, currently suggested that indigenous peoples would freely contribute their knowledge for use by others. The amended text in paragraph (c) therefore conflicted with the need to protect the rights of the indigenous knowledge holders first, rather than to prioritize or compromise the rights of indigenous peoples with the interest of the general public. She asserted that indigenous knowledge existed to benefit the peoples to whom the knowledge belonged and that indigenous knowledge systems were inherent, inalienable and intended to last in perpetuity as dynamic and evolving knowledge systems as long as the indigenous peoples existed. She suggested that Member States consider language that recognized rights holders or owners over TK and their right to protect that knowledge and within the context of their human rights. She also supported the comments made by the representative of the Tulalip Tribe of Washington that the concept of public domain did not fit well with indigenous peoples’ rights to control and protect their knowledge. She did not consider indigenous knowledge to be in the public domain, particularly if it had become publicly available without the explicit consent of the indigenous people.
  166. The Delegation of Ecuador believed the way in which the debate was being run was a sign of success. It also believed the work the Committee was doing was of fundamental importance. Regarding paragraph 1 of Article 3, the evolution of TK was permanent and there was a process behind that. The Delegation proposed to insert “process” between “evolving inter-generational” and “nature”.
  167. The representative of the Saami Council did not think it was helpful to add a number of objectives into each articles. It would be better to keep the current structure and to have the objectives in a separate section at the front. But Article 3 could be kept as it was at that moment. On the issue of public domain, it believed that the exact problem was that the public domain had been wrongfully defined and that concept had allowed misappropriation of TK of the indigenous people. It should be decided what sort of TK deserved to be protected and would therefore not be in the public domain rather than the other way around. It was also not helpful in paragraph (c) to discuss balancing of the interests which could be an objective but not a part of an operative paragraph. He also noted that it was not necessary to discuss how to define the subject matter and there were no need for balance, because it would be done when an agreement on the subject matter had been reached.
  168. The Delegation of Uruguay expressed its appreciation at the way which the Committee was being run. It would collaborate to ensure success. It had some comments on Article 1, Article 3 and Article 4 and would submit them in writing.
  169. The Delegation of Nigeria stated that a number of proposals were totally out of context with the general scope as originally intended. For example, all communities in Africa had TK for many years and TK was passed from generation to generation. Based on those new proposals, lots of TK from Africa which had been patented were currently in the public domain. Thus, it had been disconnected from the original communities. It therefore, suggested the deletion of paragraphs (b) and (c) which, it said should not even be negotiated. It did agree with the proposal made by the Delegation of South Africa because the abuse of TK was not within the traditional societies that had lost control of that knowledge.
  170. At the request of the Chair, the Secretariat introduced Article 4 (Eligibility for Protection), and the Chair invited comments thereon.

171. The Delegation of the USA was operating under the assumption that it did not need to reinsert text that was struck through, such as “should” was changed to “shall”. It proposed in paragraph (ii) to add “local community” after “indigenous community”. In line with proposals made by the Delegation of Norway, “distinctively” had a special meaning and showed that that TK was characteristically associated with the indigenous community and not the public as a whole. It proposed to insert the word “and” at the end of the paragraph (iii) and to add a new paragraph (iv) “has not been made public”.
172. The Delegation of India suggested including TK which was no longer confined to a community but was generally used. It said that codified knowledge systems included traditional medicine, agriculture and environment which were codified in ancient scriptures and were passed on from generation to generation on the basis of those scriptures or through recognized courses of study. Thus, it suggested keeping the words “at least” and to replace “is” with “satisfies any of the following”. It also proposed a new paragraph (v) “contained in codified knowledge systems;” and a new paragraph (vi) “passed through generations which may not be necessarily confined to a community.” It reiterated that satisfaction of any one condition should be adequate to qualify for eligibility for protection.
173. The representative of the Tulalip Tribes made comments on the proposal “has not been made public” made by the Delegation of the USA. That proposal seemed to be imposing conditions on indigenous peoples for the use of their knowledge. When indigenous peoples used the knowledge, they often made it public among themselves. For example, a family song that was held by a single family might be a song in public, others might know the song and they might know the music. Others from outside the community came in and viewed the ceremony which had been made public. But under customary law, that did not confer a right for others to use that family’s song. He therefore thought that that was a precondition on imposing external criteria through the indigenous knowledge systems and he hoped to have it withdrawn.
174. The representative of the Ethio-Africa Diaspora Union Millennium Council supported the statements made by the representative of the Tulalip Tribes. He noted that the relationship between communities, indigenous peoples and their knowledge had been complicated by the issue of the public domain. There was need for balance. However, the public domain could not be prioritized over rights.
175. The Delegation of Venezuela (Bolivarian Republic of) supported the statements made by the representative of the Tulalip Tribes and the representative of the Ethio-Africa Diaspora Union Millennium Council. It said that the notions of “public domain” and “private domain” actually referred to public and private property, including the legal right that had been discussed in the courts. There was no clarity about that. The laws on the notion of public or private domain varied from country to country and from society to society. It asserted that the introduction of discussions in this area would lead to conditions which were not favorable and not in line with the aims of the document.
176. The representative of the Saami Council believed that the criteria in paragraph (i) as currently formulated were restricting the application too much because they suggested that for TK to be protected had to be actively used in the community. He suggested before “generated” in the beginning to include the words “have been”. Paragraph (ii) and (iii) took care of the issue that TK should also be associated with the particular culture and people but it should not be active. So “is” had to be taken out from the chapeau and “is” would be added as stated the first word in paragraph (ii) and (iii).
177. The Delegation of Canada made comments on the placement. Since it suggested that Article 3 (General Scope of Subject Matter) should be Article 1, it suggested (Eligibility for Protection) should become Article 2. The definition of traditional or indigenous communities would clarify who was included in those groups and whether it excluded non-indigenous groups. It also thought that Article 4 would be inconsistent with the objective to promote innovation and

creativity and to enhance transparency and mutual respect as it provided for perpetual protection and did not contemplate entry into the public domain. Thus, significant concerns were raised for creators and users and this had implications for the broader public interest. There was need for some balance in that provision.

178. The Delegation of Venezuela (Bolivarian Republic of) along with two NGOs did not agree with the addition “has not been made public”.
179. The Delegation of Morocco supported the comments made by the Delegation of Canada on the point that Article 1 should deal with the subject matter and, logically, Article 2 should deal with eligibility for protection. It proposed in paragraph (i) to add “constituted, developed” after “generated” so there had to be compatibility between all those factors. As to paragraph (iii), the Delegation proposed to add the word “a nation” which was a part of the cultural identity of a people or a nation.
180. In response to questions from the floor on how comments were being reflected on a screen being used in the room, the Secretariat explained that text which was being added at that stage of the discussion had not necessarily been agreed upon and adopted. Text proposed to be added was being underlined. If a specific addition was contested, it would be bracketed. That text would be discussed again in the next round. A proposed deletion of existing text was being struck through. If that striking through was contested, it was being bracketed.
181. The Delegation of Norway proposed that instead of “has not been made public” paragraph (iv) could be “has not been made widely and voluntarily known outside that community”.
182. The representative of the Tulalip Tribes thanked the Delegation of Norway for its constructive attempt at modifying the language. He believed that there was still a problem and he hoped to have it bracketed because it was not clear. For example, where indigenous peoples had shared some knowledge with an academic researcher, but did not understand the publishing system or what would happen once the knowledge got published. Although, that had been voluntarily shared and was being disseminated, the question was whether that became eligible for protection. He repeated that if the ideas and the concepts of indigenous peoples needed to be reflected they needed to give PIC in the sharing. Voluntariness was an issue that needed to be looked at.
183. The Delegation of Venezuela (Bolivarian Republic of) suggested placing the proposal made by the Delegation of Norway in brackets. If “widely known” or “voluntary known” was used, the question would be: to be known by whom?, when? and where?. In this regard it sought to know how this issue was addressed in other regions.
184. The representative of BGC stated that the proposal made by the Delegation of Norway would definitely strike out the indigenous peoples of St. Lucia who could be found in 17 constituencies around St. Lucia. He had a great difficulty with that proposal because it was going pose some problems for them.
185. The Delegation of Turkey made comments on the procedure as well as content. It sought clarification on the manner in which proposals by Member States and objections to the same were being reflected in the text, noting that the session was a drafting exercise and flexibility was required. Therefore, proposed text should not be deleted simply because an objection had been raised. It supported the proposal made by the Delegation of Norway to put the word “distinctively” in brackets instead of being deleted. The Delegation also supported the words “has not been made widely and voluntarily known outside that community”.
186. The Delegation of Norway responded to the comments on “outside that community”. No suggestions had been made on how to define a community so it suggested working with language that took care of the problem raised by other delegations and representatives.

187. The representative of BGC appreciated the Delegation of Norway for recognizing the issue that he had raised. He would be willing to work with the Delegation of Norway to resolve that particular issue, because it was imperative that the developed countries understood exactly where he was coming from. From the Caribbean, they had a unique situation that must be taken into consideration.
188. At the request of the Chair, the Secretariat introduced Article 5 (Beneficiaries of Protection) and the Chair invited comments thereon.
189. The Delegation of India stated that even if TK had lost its community identity and was used by many peoples, the benefit must flow to the community. In such cases, the agency/authority identified by the national law should be the beneficiary and the benefit should flow from the agency/authority to the identifiable community or the communities that at present preserved, maintained, and transmitted the TK. The manner in which that was to be ensured might be left to national legislation. There should not be any reference to Article 4 if it was not broadened to cover all forms of TK. The principles to be followed were: (i) right to the community if identifiable with the TK; (ii) right of a national authority to be the beneficiary in case of TK not directly associated with a community and share the benefit with the community that originally developed protected and promoted the TK. It proposed to add a new paragraph in Article 5 as follows: "For codified traditional knowledge, either in the form of ancient scriptures or digital libraries of published texts, or if the knowledge is not confined to a community but is generally used, the relevant legislation of Member States shall provide for identification of the beneficiary."
190. The Delegation of the USA suggested inserting "protect" before "preserve" at the beginning of the line 2. If the knowledge was not protected within the indigenous and local communities, the international communities should not have an obligation to protect that information either. The Delegation also suggested replacing "take account of" with "be according to", because it should be the customary protocols that support the benefit of protection not necessarily national laws.
191. The Delegation of Peru while comparing the English and the Spanish texts, noted that in the Spanish version, it said that protection should accordingly benefit the indigenous and traditional communities who held TK in that manner. The Delegation thought that perhaps the word "*detienen*" in Spanish was not the most appropriate. It suggested using the word "*poseen*" instead. That was probably a translation issue which it hoped would be corrected.
192. The Delegation of Switzerland was not sure about the meaning of "who are associated with it and who identify with it in accordance with Article 4". It was not sure about what was the additional requirement compared to Article 4(ii) and (iii) where it said "associated with" and "cultural identity". It therefore proposed to delete "associated with it" as that was redundant compared to Article 4.
193. The representative of the Tulalip Tribes made comments on the proposal to insert the term "protect" and sought clarification on what was intended. By example he referred to situations where communities innocently shared knowledge without understanding the consequences of such an action. The question was whether it would be considered that they had not taken the necessary steps to protect their knowledge. The term "protection" assumed that somebody understood the consequences of sharing or transmitting knowledge. A lot of indigenous peoples had never had much contact with the western IP system. They did not understand that when knowledge was shared it immediately came under the western IP system and was fated to eventually fall in the public domain. He thought the use of that term in an unqualified way was problematic.
194. The Delegation of Zambia found ambiguity in the second sentence, the part that read as "recognized by individuals". It was not clear by whom the "individuals" were recognized,, according to what law and whether it could also be someone outside the community. The ambiguity was compounded by the last sentence which suggested that customary law was one of the laws that should be taken into account in identifying those individuals. Therefore, the



- Delegation proposed to replace “recognized individuals within these communities and peoples” with “individuals within the communities who are recognized under the customary laws, practices and protocols to hold the knowledge for the community, or who are designated as trustees of such knowledge by appropriate traditional policies, customs or institutions”.
195. The Delegation of Uruguay expressed its concern with the term “protection should accordingly benefit the indigenous and traditional communities”. In some parts of the document, the term “traditional communities and other local communities” was used. There was a difference between local and traditional communities. The Delegation suggested the insertion of the words “or local” just after “indigenous and traditional” until a definition of those different groups had been decided.
  196. The Delegation of Morocco stated that reference had already been made to beneficiaries of protection. It had to be absolutely clear from the very start of the Article who the beneficiaries were. The definition of the beneficiaries of protection should be in accord with Article 1, because the two articles were related. It should be very clear that those beneficiaries were going to benefit from protection as understood and defined in Article 1. Article 4 was much more detailed than Article 5. Article 5 referred only to indigenous and traditional communities. Whereas in other parts of the document, local communities, even peoples or nations were mentioned. It should therefore be ensured that the wording of Articles 4 and 5 was standardized.
  197. At the request of the Chair, the Secretariat introduced Article 6 (Fair and Equitable Benefit-Sharing and Recognition of Knowledge Holders) and the Chair invited comments thereon.
  198. The Delegation of Panama said that the word “fair” somewhat contradicted the right to direct participation or direct sharing because the indigenous community did not have direct access to those benefits. Thus, it proposed to replace the word “fair” with “direct” in the title of that article. The Delegation also amended the text of paragraph 1 by adding “of indigenous and local peoples” after “The benefits of protection of traditional knowledge”. Also, in paragraph 1, “commercial or industrial use” was replaced with the term “industrial marketing”. Furthermore, the Delegation suggested replacing “non-commercial” in paragraph 2 with “non-profit making”. In paragraph 3, the Delegation proposed to add “according to their nature” after “Legal means” and to replace “fair” with “direct”.
  199. The Delegation of Russian Federation proposed under paragraph 1, after “its holders” to add “or custodians”. Thus the holders or custodians of TK would be entitled to sharing of benefits of TK. But according to paragraph 2 of Article 7 only the holders could give prior informed consent to access to their TK or approve access by the competent national authority. The Delegation asked what the difference between those two subjects of protection was. It suggested that another definition or something in the glossary might be needed. Paragraph 5 of Article 6 was based on the customs of local and indigenous communities and the role and the standards of the norm-setting system of the holders. The question was whether that went beyond the ordinary law and what it was based on. Furthermore, on the issue of benefits, the Delegation noted that the issuance of a patent for the use of TK implied that permission had been given and that a benefit-sharing agreement had been signed for a maximum period of 20 years during which the TK could be used according to the existing patent system. After which it then became part of the public domain. In other words it could be used without limits within the full scope of protection provided under the patent. However, at the same time TK should be protected without limits on the term of protection. Therefore, it should be clarified which of those requirements should be fulfilled and it should be specified somewhere in the Article.
  200. The Delegation of Switzerland referred to Policy Objective (iv). To better reflect that important policy objective in the substantive provisions, it proposed to include part of that wording in paragraph 1 of Article 6. The suggested wording would be provided in writing. Secondly, based on the current wording of paragraph 1, it was assumed that benefit-sharing was part of the

protection of TK. It therefore suggested placing Article 6 after Article 3. Thirdly, in Article 6 and throughout the text, there seemed to be a distinction between “holders” and “beneficiaries”. It was not clear why and how the difference between “holders” and “beneficiaries” was made. In addition, in paragraph 1, 2 and 5, it proposed to delete the words “or custodians”. The reason being that, in paragraph (iii) of Article 4, communities were “holding the knowledge through a form of custodianship, guardianship, collective ownership or cultural responsibility”. So “custodianship” was just one form of holding TK and not something different. On paragraph 2, the Delegation did not see the need to limit consequences of non-commercial use to non-monetary benefits. It rather thought that that issue should be left to the MAT between holders and users. Paragraph 3 claimed respect for the cultural values of TK holders. Policy Objective (i) listed a number of values that TK holders had. Policy Objective (ii) enumerated important values of TK itself – not only cultural values, but also for example social, spiritual and ecological values. It therefore thought that those values should be added as well or, alternatively, the word “cultural” should be deleted. With regard to the use of terms, paragraph 4 begun with the expression “legal means” which was also used in some other Articles, while paragraph 1 of Article 2 spoke of “legal measures” and paragraph 3 of Article 7 spoke of “measures and mechanisms”. The expression “customary laws and normative systems of holders” was used in paragraph 5 of Article 6. In Article 4 it said “customary or traditional practices, protocols or applicable national laws”. Article 5 used other terms and Article 6 spoke of “customary laws and normative systems”. Thus, the Delegation suggested using uniform terminology throughout the text.

201. The Delegation of India suggested first defining the community where TK had been known and used generally and then kept in secret use. Secondly, benefit-sharing must reflect the assessment of value of the TK and the potential value of TK when it was commercialized and industrially used. There had to be a clear text on it. It should also cover non-commercial activities. It suggested that the redrafting of the Article with mandatory obligation reflecting the following principles: identification of the users where there was no obligation to give fair and equitable benefit sharing; uses that did not require benefit-sharing; and uses that required an acknowledgement. The Delegation also proposed to add “shall” after “entitled” in paragraph 1 and to replace the word “should” with “shall” in paragraph 4.
202. The Delegation of the USA suggested the deletion of “The benefits of protection of traditional knowledge to which” and replacing that text with “When traditional knowledge is protected,” and then after “are entitled”, the insertion of the word “to”. The text should say “When traditional knowledge is protected its holders are entitled to include...”. In paragraph 2 it suggested after “Use of” inserting the word “protected” and in the last line of paragraph 2 before “knowledge in research” it suggested inserting “protected traditional”. In paragraph 3 it proposed after “Those” to insert “other than the holder of the traditional knowledge”. In paragraph 4 after “to provide remedies for” it suggested deleting “traditional knowledge” and after “holders” it proposed to insert “of protected traditional knowledge”. In paragraph 5 before “traditional knowledge” in the last line it proposed to insert the word “protected”.
203. The Delegation of Canada echoed what the Delegation of Switzerland had said on the importance of Policy Objective (ii) about promoting respect in relation to Article 6. It believed that it was important to read Article 6 in conjunction with that objective and it also added the importance of Policy Objective (i) about recognizing the value. It repeatedly emphasized the importance of balance between the holders of TK and the interests of the broader society. It suggested between the title of the Article and paragraph 1 adding some text that would reflect its concern about the interest of general society and protecting the public domain. It suggested inserting the principle of equity and benefit sharing. Thus the drafting suggestion would be “Protection should reflect the need for an equitable balance between the rights and interests of those that develop, preserve and maintain traditional knowledge, namely traditional knowledge holders, and those who use and benefit from traditional knowledge.”

204. The representative of the Tulalip Tribes made comments on the text introduced by the Delegations of the USA and Canada. The comments were similar to those he had made earlier on the idea of protection. He noted that it seemed that the burden was being put on those who owned the property to protect their property and then the question arose to protect under what system? There were several ways that knowledge could get disclosed. It could be disclosed under naivety and it could be disclosed by those who swindled indigenous peoples out of their heritage. If it was *de facto* disclosed and that meant the rights to the knowledge were lost, cannot be accepted. Indigenous peoples were faced by new circumstances, the internet, the ability to copy things digitally, and the rapid transmission of their TK. They might not have those mechanisms of protection and might not understand the system against which they need to create mechanisms for protection. He said the concept seemed to be placing on the holders and owners of that knowledge a burden of protection. For the balancing criteria, it seemed that the user had rights to access TK. The holders of the knowledge who wished to deny access should therefore have that right. One example not in the intellectual property realm but in the physical realm was given. There was a decision in the Supreme Court on the case of fisheries. The Tribes of Washington State claimed a right to fish based on a treaty. The Supreme Court was interpreting treaty language "to fish in common" and the analysis was that 50% of the fish should go to the tribes, 50% of the fish should go to the United States. It was very clear that the property of the tribes belonged to the tribes and could not be balanced against citizens of the United States. The citizens had no claim on that 50% share. He thought the same principle applied to TK.
205. The Delegation of Zambia found the proposals made by the Delegation of the USA objectionable. TK was something that was owned by those communities. Therefore they had proprietary rights. If enjoyment of benefits was made subject to protection, it was difficult to understand and to accept. If someone had property, there were instances of property rights he or she enjoyed by virtue of being the owner of that property. It cannot be conditional that to enjoy benefits from one's own property, one had to keep it protected. For that reason, the Delegation suggested that the proposal made by the Delegation of USA where it was suggested to be conditional upon protection should be bracketed. For the same reason, the proposal made by the Delegation of Canada was not accepted. The instrument that the Committee was trying to generate was *sui generis*. It was not necessarily within the IP regime where the balance between users and the owners of that property had to be struck. Therefore it suggested that the whole motion of balance was perhaps displaced. TK was owned by those communities who should deal with it as they wished.
206. The representative of the Saami Council was generally agreeable with Article 6 and also in principle with the entire approach to the issue of benefit-sharing in the TK instrument. Reading the whole document, two kinds of benefit-sharing were dealt with and he believed that was the way it probably had to be. One was benefit-sharing that occurred on mutual agreed terms and second where there was an agreement of benefit-sharing by the TK being used by a non-holder. But the instrument also dealt with another sort of benefit-sharing - when it defined TK as not being subject to customary procedures but could be used because it was already publicly available. In such instances there should be benefit sharing. He believed that the definition of "protected TK" was too limited noting that there might be instances, though few, where ethnic procedures were difficult to get. Irrespectively, the principle of benefit-sharing had to be observed. The two different kinds of benefit-sharing, should probably be clearer in Article 6 and spelt out more explicitly. For that purpose it would be beneficial to do as the delegation of Switzerland had proposed - to connect the Article on benefit-sharing directly to the Article on customary laws to highlight the connection between consent procedures and benefit sharing arrangements. He did not agree to the proposal by the Delegation of the USA because the proposal took away that dual dimensional benefit-sharing. The proposal implied that the principle of benefit-sharing could only apply to "protected TK" *i.e* that the holder still controlled. As to the balancing issue suggested by the Delegation of Canada, he believed that it should be

discussed in a preambular paragraph under objectives and would not be necessary to restate it as a principle in the actual operative text. However if presented as a principle in an operative paragraph, that balance would have to be defined, and the rights that apply to the TK be explicitly stated.

207. The Delegation of India supported the intervention by the Delegation of Zambia to bracket “protected” as inserted by the Delegation of USA, because that definitely did not take into account different types of existing TK. As to the proposal made by the Delegation of Canada, there should be a clear definition of what the right of a TK holder is and that would take care of the balance. That particular inserted paragraph should not be part of the substantive provisions in a legal text. It should be in the guiding principles. In fact that whole issue needed further examination because balance could only be created when the rights had been defined. However these rights had not yet been defined in the text at all.
208. The Delegation of Australia supported the comments made by the Delegation of Canada regarding the need to reflect an equitable balance between rights and interests. It also considered Principle (i) regarding recognition of the specific characteristics of TK to be important. It suggested inserting “, according to national laws” at the end of paragraph 1. It also suggested inserting “reasonable” before “non-monetary benefits” in paragraph 2. In paragraph 3 it suggested inserting the words “as appropriate” prior to the word “manner”.
209. The Delegation of Bolivia (Plurinational State of) supported many other delegations on bracketing “protected” proposed by the Delegation of USA. It also suggested bracketing “When traditional knowledge is protected” in paragraph 1. Many delegations had dwelt on that and it agreed with those comments. With regard to the paragraph suggested by the Delegation of Canada, putting that in a preambular way perhaps might work. With regard to “according with national laws” proposed by the Delegation of Australia, it should go in brackets too. Because a global context of benefit-sharing was necessary, leaving national law to determine how that global framework would be expressed its laws.
210. The representative of CISA supported what other indigenous representatives had stated on the proposal made by the Delegation of USA. He also agreed with the Delegation of Bolivia (Plurinational State of) to bracket “national laws”. The reason to promote self determination is that development and exploitation could denigrate whole ecosystems. Therefore, the reference to national law proposed by the Delegation of Australia could not be accepted. With regard to the free and prior informed consent (FPIC) process, more discussion was needed to determine when and where benefit-sharing applied and to what degree that would be made available to states. He knew that there were international legislation rights based on human rights that made provision for protection while national law did not allow the protection. To put all custodians in brackets needed to be thought carefully. In the end, a balance was required.
211. The Delegation of South Africa supported the points raised by the representatives of the Tulalip Tribes, the representative of the Saami Council, the Delegations of Zambia and India on the intervention by the Delegation of USA on “protection”. It also supported the points raised by the Delegation of Bolivia (Plurinational State of) regarding the insertion by the Delegation of Australia on “according to national laws”. As an international norm the relevance of national laws did not arise. It also pointed out that the insertion in paragraph 2 “reasonable non-monetary benefits” was introducing a condition and should therefore be put in brackets. With regard to “non-profit making purposes” it appeared access to research left it open so that research could be for commercial as well as non-profit making research. It would be consistent if it was left open as “research” so that research for profit making would not need to be specified.
212. The representative of BGC, on behalf of the indigenous peoples in St. Lucia, indicated the opposition to the proposal “protected” by the Delegation of USA. He requested to make UN Declaration on the Rights of Indigenous Peoples available to the Committee. It had already

been established and accepted by States. He quoted Article 31 which stated indigenous peoples had the right to maintain heritage culture. However, the proposal by the Delegation of USA made it conditional that the TK had to be protected for benefit-sharing could occur. In raising his objection, he referred to Article 38 and 43 of UN Declaration on the Rights of Indigenous Peoples.

213. The Delegation of the USA addressed comments raised by the representative of BGC and the representative of the Tulalip Tribes as well as by the Delegations of Zambia, South Africa and India. Its intention in proposing the word “protected” was not to impose additional obligations on indigenous local or traditional communities but to clearly establish the reference to Article 4 and Article 5. Article 4 established eligibility for protection. Article 6 was titled “beneficiaries of protection”. Article 4 clearly was meant to define those things which were the subject of the legal protection. As the Committee was trying to establish an instrument which expressed new legal norms, it was very important to have cohesiveness and understandability. If the main disagreement was that Article 6 had no attachment to Article 4 and 5, the Delegation respectfully disagreed and it recommended to the Committee that that was not the appropriate way to craft an expression of international legal norms. Finally, the Delegation addressed the point made by the Delegation of Zambia who thought the concept of balance was misplaced. It respectfully disagreed. It agreed with the Delegations of Canada and Australia that balance was critical, as it was critical in all forms of property, whether the real property or the traditional intellectual.
214. The representative of CAPAJ thought that the creations of indigenous peoples were from the physical and spiritual contact with the earth. He thought non-monetary benefits should be recognized as mentioned in paragraph 2 of Article 6. What was to be protected was a matter that went beyond the individual human being and was a spiritual secret knowledge. For example, if the Aymara were recruited and their idea was used for building a house, they were only paid a regular wage without the payment for their knowledge which was not assessed. The problem would be how the Aymara could be compensated for loss of jobs because of devaluation of a knowledge which was a part of their heritage. He thought non-monetary compensations arose in such situations.
215. The Delegation of Yemen supported the deletion of the term “protected” because the deletion might enable indigenous people to continue to benefit from a certain degree of protection.
216. The representative of the Tupaj Amaru stated that indigenous peoples were calling for benefits of the use or misuse of their TK and not for protection. He thought it was necessary to redraft the text entirely. There were terms and subjects that were being confused and mixed up in the text. Secondly, the deletion of benefits made the text meaningless. The main issue to him was the mode of distribution of the enormous benefits that had been misappropriated by the very large corporations. With regard proposals made by the Delegation of Canada, he thought what should be protected was the intrinsic rights of indigenous peoples. The rights to participation and distribution of benefits should perhaps be in accordance with other instruments, such as the UN Declaration on the Rights of Indigenous Peoples e.g. Article 12. He suggested that all the provisions should fit with already existing texts because the words and terms that had no customary value had no source in UN legal texts.
217. The Delegation of Zambia, in response to remarks by the Delegation of USA, said it did consider that there were no rights that were absolute, even the right to life. If the rights of balance had to be respected, the question was what balance was being talked about. One of the fundamentals of the IP system was to strike a balance between society and those resources. But it thought that that approach was not the right approach. What the Committee was trying to solve was a novel idea which should not be borrowed from the IP system. It believed that those resources belonged to the peoples that owned them. They were their property. It was important to clarify what balance was struck.

218. The representative of IPCB was concerned about the wording in paragraph 2 of Article 6 regarding non-commercial use. Research that began as non-commercial or academic research could often result in privatization or commercial use. In fact in USA there was a national law that mandated academic researchers to seek IP protection when they discovered information or data that could be put in use commercially. That paragraph, as written, limited the nature of the kinds of benefits that the holders and owners of TK might receive as result of their participation in non-monetary benefit, access to the research outcomes, and/or involvement in research and educational activities. That was very restrictive. If TK holders were partners in research and they were participating with their FPIC, they brought valuable expertise and other resources to that partnership. Therefore, the nature of the benefits they might receive should not be limited by that instrument. She recommended bracketing the words non-monetary in paragraph 2. With regard to paragraph 3 of Article 6, that paragraph suggested that someone other than the holder of the TK could use that TK, as long as they acknowledged its holders and used it appropriately. That paragraph was very subjective, and there should be specific requirement of FPIC mentioned there. In fact, FPIC should be indicated as one of the operative principles that applied to the entire instrument.
219. The Delegation of Colombia stated that benefits from the use of TK would be established by the parties when they knew what use was made of the TK and by whom. With regard to non-monetary uses and non-monetary benefits, it believed communities had possibility to establish what the benefits arising from that use were. There was a lot of TK associated with genetic and biologic sources that were of great use for research. The Delegation suggested looking at research not for profit or commercial profit. The research not for commercial profit could be found very often in various case laws. There were some researches that initially were not considered as commercial ones but which later did become benefits from monetary use. Very often patents were given to research that initially started as non commercial research. The Delegation thought the paragraph was a bit restrictive and suggested bracketing “need only” and adding “may” before “give rise to”.
220. The Delegation of Peru supported the position expressed by the Delegation of Zambia and the Delegation of Bolivia (Plurinational State of) on the proposal by the Delegation of USA. It did not understand the reference to Article 4 because the phrase that the Delegation of USA wanted to add could be misinterpreted. Its understanding was that the TK holders had to comply to protect their TK. It believed that the said proposal should be in brackets. The Delegation also supported comments made by the representative of the IPCB and supported what the Delegation of Colombia had said.
221. The Delegation of Brazil believed that the word “protected” did not need to be included and requested that reference be made to Article 4. Article 4 was talking about some conditions of eligibility for TK to be protected and it understood the whole text was talking about exactly that. The Delegation questioned whether it was possible to keep the existing sentence and to make reference to Article 4. It thought that might solve the problem of conditioning protection.
222. The Delegation of the USA acknowledged the very helpful contribution from the Delegation of Brazil. Without proposing to add the language, the paragraph could be either “The benefits of protection of traditional knowledge as described under Article 4” or “When traditional knowledge is protected pursuant to Article 4”. That would provide the proper consistent linkage between those articles.

*Decision on Agenda Item 9:*

*223. The Committee invited the Secretariat to prepare and make available for the next session of the Committee:*

- *as a working document, a further draft of document WIPO/GRTKF/IC/16/5. The further draft should be made available by the Secretariat by September 30, 2010. This draft should clearly identify drafting proposals and comments made by Committee participants during the sixteenth session and proposals and comments submitted to the Secretariat in writing before July 31, 2010. Specific drafting proposals should be attributed in footnotes. Comments made should be reflected, with attribution, in a commentary in the document. The draft should explain clearly how proposed additions, deletions, other amendments and comments have been reflected. Drafting proposals made by observers should be identified in the commentary for consideration by Member States;*
- *as an information document for the next session of the Committee, a list and brief technical explanation of various forms in which traditional knowledge may be found (such as “codified/non-codified”, “disclosed”/“non-disclosed”);*
- *for the next session of the Committee, a technical information document on the meanings of the term “public domain” in the intellectual property system, with special reference to the protection of traditional knowledge and traditional cultural expressions.*

#### **AGENDA ITEM 10: GENETIC RESOURCES**

224. At the request of the Chair, the Secretariat introduced the working document prepared under agenda item 10, namely WIPO/GRTKF/IC/16/6.
225. The Delegation of Australia highlighted the importance of substantive discussions on GRs and welcomed the significant number of submissions on this agenda item, noting that it had also submitted one in the form of draft objectives and principles which had been informally discussed with a number of other Member States. A number of those objectives and principles would draw on main areas to be considered by the Committee including other bodies of the Committee. The objectives and principles would be proposed for consideration and as a working document on GRs for use by the Committee or its other bodies. This approach was supported by Canada, USA, Norway and New Zealand. The objective and principles were read out [Note from Secretariat: the submission was subsequently issued as working document WIPO/GRTKF/IC/16/7]. Going through the draft objectives and supporting principles, it reiterated that they were without prejudice to any positions developed to promote discussion

and debate. These objectives and underlying principles were to promote discussion and debate and as a good starting point for discussion accepting that not all members of the Committee had necessarily agreed with all those objectives and principles.

226. The Delegation of Canada strongly supported the paper as an important start to the work of the Committee on GRs. It proposed it as a working document to enrich discussions on GRs both at the IWGs and the next session of the Committee. In its understanding all the IWGs would address each substantive issue, including GRs. Therefore, the following list of issues on GRs should be taken into consideration as a distillation from the most important and not entirely new issues in document WIPO/GRTKF/IC/16/6. It proposed to discuss under Option 2, relating to disclosure requirements: national experiences on disclosure, alternative and complementary mechanisms, disclosure and relation to CBD, disclosure requirements and the FAO International Treaty, practical relevance of disclosure, disclosure and the public domain, as well as disclosure and rights of indigenous peoples. A second issue would be drawn from option 6, the extension of already approved defensive protection mechanisms for TK to address GRs, more specifically, including the review and greater recognition of further sources of already disclosed information about GR including databases and digital libraries. In this regard, it referred to the intervention made by India on the TKDL and its efficiency in recent months in preventing patents from being filed on the traditional Indian medicine. A similar scheme for GRs could be useful and should be further explored by the IWGs. Finally it emphasized under option 8, the extended use and accessibility of the online database on IP clauses in MAT for access and equitable benefit-sharing. It believed the IWGs should work on those options in order to enrich the discussion on GRs at the seventeenth session of the Committee.
227. The Delegation of Spain, on behalf of the EU and its Member States, stated that the extensive information provided by countries on the different national and regional legislative measures applied to GRs showed the high priority countries attached to this issue and it welcomed the revision and updating of the list of options provided in document WIPO/GRTKF/IC/16/6. Further consideration should be given to other documents prepared by the Committee as required and appropriate, for instance document WIPO/GRTKF/IC/8/9 updated by document WIPO/GRTKF/IC/13/8(b) containing a historical inventory of all the activities taking place in this and other fora. Document WIPO/GRTKF/IC/7/9 might also be relevant for further discussions on cluster C containing draft IP guidelines for access and equitable benefit-sharing and ensuring important coherence with the work carried out under the CBD. It strongly supported the promotion and sustainable use of GRs for the benefit of human kind and recognized that specific aspects needed to be considered at the interface with IP. As mentioned earlier, voluntary disclosure of origin of GRs in patent applications has been in place in some EU Member States for the last 12 years and had become mandatory in some countries since then. The EU and its Member States presented to the Committee a proposal, reproduced in document WIPO/GRTKF/IC/8/11, called disclosure of origin or source of GRs and associated TK in patent applications. It reaffirmed its full support of this proposal as a potential part of a balanced final solution. It also placed high priority to discussion of options in cluster A, in particular A.1, as an inventory of databases and information resources on GRs would strengthen defensive protection of GRs and facilitate the task of patent offices in identifying prior art. It welcomed the access agreement concerning the Indian digital library for TK that was signed with the EU, USA, the United Kingdom and Germany and welcomed further cooperation. It recommended the Secretariat to update the online database of IP clauses and MAT on access and benefit-sharing under option C.1. These updates would form useful discussions for a draft on guidelines for contractual practices in ABS contracts referred to in option C.2. In continuing this work the EU and its Member States strongly suggested that the Secretariat provide a glossary of terms so as to define *inter alia* what GRs were being referred to. This glossary would greatly facilitate interpretation of the scope of the options agreed. The Delegation thanked Australia for its interesting proposal, providing very interesting data, and



expressed the wish to look at it in detail in order to formulate a constructive approach to the debate.

228. The Delegation of the Islamic Republic of Iran highlighted the importance of GRs in particular as regards food security. The Islamic Republic of Iran while facing challenges in gene banking and plant engineering had approved an act for plant variety registration, control and certification of seed and plant material. This Act which comprised 14 articles and 14 notes had been certified by the Islamic Consultative Assembly, endorsed and certified by the Consul of the Guardians on July 2003. In addition, the Islamic Republic of Iran was preparing an Act on protection and utilization of agricultural GRs as a national system. Therefore, equitable attention should be given to these three elements, TK, TCE and GRs and particularly GRs, given the crucial role of GRs in eradication of hunger and poverty alleviation for present and future generations. It reiterated the necessity of establishing international binding instruments and *sui generis* systems for the protection of GRs, through strengthening the work of the IWGs and the collaboration with the FAO International Treaty and the CBD and also through encouraging involvement of all stakeholders in this international process. This would help alleviate poverty and hunger worldwide. Finally, the Committee should consider new IP issues that were arising in the work on plant genomic and its relation to ABS systems for food crops. Given the importance of these issues it should be analyzed in collaboration with the CBD and the FAO International Treaty.
229. The Delegation of Colombia reiterated its preparedness to make progress on this important issue of IP related to GRs, its derivatives and associated TK. In respect to the three major clusters of options with their subdivisions made available by the working document, it emphasized that these would be alternatives but not exclusive. As previously done, the work on the various options should be done harmoniously, without prejudging the work on other options. In particular in relation to cluster C, the Committee should work on this keeping in mind the sovereignty of respective countries over their GRs to establish the preconditions for access. And this meant as well establishing IP clauses in MAT under which access to these resources could be considered. Finally, it welcomed the new proposal on the table which should be considered during the intersessional written commenting process and expressed preparedness to consider this proposal and other new ones.
230. The Delegation of Japan highlighted the importance of GRs, as well as TCEs and TK. For this reason it reiterated its proposal of a database referring to option A.2 of document WIPO/GRTKF/IC/16/6 establishing a one-click database to improve the prior art search environment concerning GRs and TK, thereby preventing erroneous granting of patents. It attached great importance to establishing such a database which should be easily accessible to patent examiners by the initiative of WIPO, in order to make the database more effective and useful. A step forward towards the realization of this database should be made by deepening such discussion at WIPO. With regard to the concerns on the database expressed by the Tulalip Tribes that the database could disclose information more than necessary, namely provide access to third party, it pointed out that the proposal would take into account such a particular case. It was proposed that an IP (Internet Protocol) address authentication system be introduced. Using this system, the database portal site should be made accessible only to IP Offices with specific IP (Internet Protocol) addresses to prevent access by third parties.
231. The Delegation of Switzerland welcomed the substantial discussions on GRs and disclosure requirements that had taken place at the last and the present session of the Committee. The Delegation felt encouraged by the considerable number of documents that had been submitted for the current meeting of the Committee, in particular pointing out the Swiss submission in WIPO/GRTKF/IC/16/INF/14 which provided explanations with regard to the mandatory disclosure requirement introduced in Switzerland for patent applications in relation to GRs and TK. It would study these documents and wished to hear reflections of other Parties and to further discuss GRs and disclosure requirements in the Committee. In addition, Switzerland

had submitted proposals to WIPO on the disclosure of the source of GRs and TK in patent applications. The proposed amendment of the Regulations of the PCT would explicitly enable the national legislator to introduce such a disclosure requirement. To further strengthen the effectiveness of the proposed requirement, it proposed the establishment of an online-list of government agencies competent to receive information about patent applications containing a declaration of the source. Patent offices receiving such patent applications would inform the competent government agency in a standardized letter about the respective declaration of the source. Moreover, Switzerland had proposed the establishment of an international gateway for TK. This gateway, to be administered by WIPO, would electronically link existing databases and thus facilitate access to their contents by patent authorities. It submitted the mentioned proposals to WIPO in order to contribute in a constructive manner to the international discussions. It remained committed to discuss its proposals in the Committee, provided there was the political will to resolve the IP related issues arising in the context of access and benefit-sharing. Taking into account the introduction of disclosure requirements in various national patent laws, and bearing in mind the growing importance attached to GRs and TK in recent years, time might now be ripe to address these issues at the international level. It noted that it would be crucial to keep in mind that the disclosure of source requirement would by itself not be sufficient to resolve all issues arising in the context of access and benefit sharing. It was only one element to be integrated in a more global approach that would fully address the issues related to access and benefit sharing. In the view of Switzerland, additional measures had to be taken outside of the patent system in other fields of law. Such measures needed to be in harmony with and mutually supportive of the relevant international instruments and fora, including the decisions adopted by the CBD. Finally, Switzerland thanked Australia and the other co-sponsors for their initiative. It would study this document and wished to hear reflections of other Parties and to further discuss GRs.

232. The Delegation of New Zealand saw GRs as an important element of the Committee's work, and one that should be given equal attention. New Zealand supported the objectives and principles suggested by Australia as a useful framework to guide ongoing work on GRs. It also supported Canada's list of questions for referral to the IWGs. Concerning the three themes identified in document WIPO/GRTKF/IC/16/6, it supported further work on defensive protection, including options A.1, A.2 and A.3 to avoid misappropriation of TK and GRs through erroneously granted patents. Related to IP issues in MAT for fair and equitable benefit sharing it fully supported the options set out in C.1, C.2 and C.3. New Zealand was increasingly receiving requests for assistance from Maori indigenous organisations for guidance on how to proceed in contractual arrangements with research or other organisations. It had referred certain organisations to the online database of IP clauses, and their feedback was that the database could be more user-friendly. The option C.1 suggesting expanding the online database would be very useful. Option C.2, further elaboration and finalisation of the draft guidelines for contractual practices was an essential task to ensure that indigenous and local communities could have the benefit of this resource. The Delegation favoured stakeholder consultations. It proposed case studies on licensing practices in the field of GRs as suggested in option C.3, in particular those that extended the concepts of distributive innovation and open source. It attributed great merit to exploring alternative approaches, including those outside traditional IP. The Delegation saw option B.2, further examination of issues relating to disclosure requirements, as the ideal way to address disclosure requirements. Further consideration of technical issues raised in previous studies would be useful and discussion of these points as part of option B.2 would allow the Committee to proceed with disclosure on firm grounds. It highlighted the Swiss, EU and Norwegian proposals on disclosure, and any proposal tabled by other Delegations, as an important part of this task. It suggested that the various proposals be considered closely by the IWG on GRs issues.
233. The Delegation of Singapore welcomed, without prejudice to a further position on GR, the principles and objectives and issues shared by Australia and Canada.

234. The Delegation of Mexico highlighted that the options in cluster A, B and C presented in document WIPO/GRTKF/IC/16/6 complied with the mandate of this Committee to provide effective protection of GRs including protection against misappropriation. These measures were not exclusive and could be complementary. With regard to the options in cluster A on defensive protection of GRs, it believed that the options A.1, A.2 and A.3 could be complementary. Under option A there was a need for greater information on each of the specific subjects mentioned. Under the option A.1, inventory of databases and information resources on GRs, the following questions should be considered: How to broaden the mechanisms of defensive protection that had already been tried in the area of TK to address the issue of GRs? How and under what criteria to identify the sources of information that had already been disclosed on GRs? What was understood by GRs that had already been disclosed? In relation to the work of the Committee, a series of publications, databases and other sources of information on disclosed GRs could be catalogued. In this regard, the Delegation posed for the following questions: What would be the content of a database on GRs and what information would it contain? How to link the databases on GRs one hand with the databases on TK on the other? Would the databases provide free access or would access be restricted? Would the databases only be accessible to IP offices? What information on GRs would be useful for searches carried out by national patent offices? In the case of a centralized database, would WIPO centralize it or would it only administer it? It welcomed information about policies, measures and experiences in the area of IP and GRs. This information would allow the Committee to go into much greater detail in the list of options. It wondered how this information would be incorporated in the information and documents prepared for the Committee. With regard to cluster C, it was very important to continue integrating the experience on licenses practices on GRs. It proposed that the Secretariat could continue to integrate and analyze the online databases for IP clauses featuring MAT according to conditions governing access and benefit sharing on GRs. It said the Secretariat should continue to perfect the draft guidelines on contractual practices featuring in Annex of document WIPO/GRTKF/IC/7/9. The Secretariat could also continue its study on the practices of granting of licenses in the area of GRs.
235. The Delegation of the Russian Federation supported the format of the Revised List of Options proposed in document WIPO/GRTKF/IC/16/6 to examine possible alternative approaches to further work. In respect to cluster A, relating to defensive protection of GRs, it supported option A.1 conducting additional work to compile a list of existing periodicals, databases and other information resources documenting disclosed GRs for a discussion of a possible recommendation, whereby, certain periodicals, databases and information resources would be examined by international searching authorities for their inclusion in the PCT minimum documentation. It agreed with the proposal in A.2 to extend the previously created online portal of registers and databases by including therein existing databases and information systems for the provision of access to information on disclosed GRs, in particular with the creation of a new system which "has to be a one-stop system where GRs can be searched once and comprehensively". On option A.3, the Delegation approved the proposal for the possible devising of recommendations and guiding principles for search and examination procedures for patent applications to ensure that they better take into account disclosed GRs. On the options in cluster B, relating to disclosure requirements, the Delegation stated that there were a number of issues which should be clarified when examining the proposal made. Some of those issues had been outlined by the Delegation of the Russian Federation at the Committee's tenth session. It was necessary to discuss the issues listed in paragraphs 7 to 11 of document WIPO/GRTKF/IC/16/6 (page 8 of the Annex to the document), in particular relating to the range and term of obligations linked to GRs and TK in the country of origin and foreign jurisdictions, and also to what extent those obligations affected subsequent inventive activity and corresponding patent applications. Clarity was essential for patent or judicial authorities and also for patent applicants or patent owners, so that they know when the obligation for disclosure

entered into force, as well as, on the other hand, when the mutual relation between original GRs or TK was so remote and secondary that it could not bring such an obligation into effect. On cluster C, relating to IP issues in mutually-agreed terms for fair and equitable benefit sharing, the Delegation supported the examination of options for extending the use, scope and accessibility of the online database relating to IP provisions in mutually-agreed terms for access and fair and equitable benefit sharing proposed in C.1. On C.2, it supported the revision of the draft guiding principles on agreed practices on the basis of additional available information, which should be included in the online database. Finally, on C.3, it supported the collection of information characterizing the practice of licensing as it related to GRs.

236. The Delegation of India highlighted that not all issues inherent to the nature of GRs and associated TK could be subsumed in a single organization. Members should be aware of discussions taking place in the CBD and the WTO on these issues. The proposal before TRIPS called for an amendment to include a mandatory provision for disclosure, evidence of PIC and ABS. The proposal enjoyed support of over two thirds of WTO membership from both developed and developing countries including the EU and its Member States and Switzerland. Considering the discussion in the WTO and the CBD, norm setting in WIPO needed to be cognizant of developments in these fora. Concerning the proposal of Objectives and Principles presented by Australia at the present session, it stressed the need to examine in detail the proposal and would comment on it in another session of the Committee. It asserted that for constructive progress in the session, discussion should be on documents that had already been circulated by the Secretariat according to the agenda of the meeting. The earlier proposal of Switzerland making disclosure mandatory under the PCT had evolved and had been reflected in the proposal TN/C/W/52 in WTO calling for an amendment in the TRIPS agreement incorporating a disclosure requirement. The Delegation supported this proposal as useful to productive discussions on GRs. In addition, the issue of mandatory PIC and access ABS needed to be addressed simultaneously.
237. The Delegation of Argentina pointed out that it was essential to find a solution in the present session, to misuse and undue use of GRs in compliance with the new mandate to provide effective protection of GRs, TK and TCEs. The three options for preventive or defensive protection of GRs in document WIPO/GRTKF/IC/16/6, the inventory, the databases and sources of information on GRs and guidelines on preventive protection were effective measures to avoid misuse of GRs. It favored having a list of publications and databases on all sorts of sources of information on disclosed GRs as provided by the inventory of databases and information on GRs in option A.1. These databases and information systems on GRs should be accompanied by the creation of capacity building, training and technical assistance for developing countries having difficulties on access or processing of the information, based on the national requirements of receiving State. As regards option A.3, guidelines or recommendations on defensive protection, it suggested to pay attention to the risk involved in the possibility that national patent applications which have relationship with GRs, would be submitted to an international search. This is a topic which should be analyzed in detail to assess the implications for developing countries. On disclosure requirements, it would be useful to create as suggested an international information system specific to GRs as part of the state of art. As regards to the issue of IP and MAT, as well as fair and equitable sharing of benefits, it would be appropriate to continue the work carried out on this topic under cluster C. It suggested taking into account work carried out by the CBD hoping to reach the conclusion of an international system for ABS for the COP 10 to be held in October, 2010.
238. The Delegation of Brazil expressed the opinion that the working paper WIPO/GRTKF/IC/16/6 presented a list of options on how best to deal with the inter-connected issues of lawful access to GRs and of benefit sharing resulting from such access. With the vast majority of WTO member countries, Brazil favored an amendment to the TRIPS agreement including a provision on a compulsory disclosure of origin of GRs. It was of the opinion that this would be the most

effective way to address the issue of misappropriation of GRs. Key discussions on benefit sharing were taking place at the CBD. Given that membership of WIPO was not the same as those of both the WTO and the CBD, it would be important that future revisions of working paper WIPO/GRTKF/IC/16/6 include updates on relevant developments on negotiations being conducted outside WIPO. It noted with satisfaction that several countries had presented papers on their legal systems and frameworks on the interface between IP and GRs. Brazil's submission was contained in document WIPO/GRTKF/IC/16/INF/9. Its national legislation clearly established compulsory disclosure of origin as a pre-requisite for the granting of patents. Patent applicants were requested to indicate the number of the access permit given by the relevant national authority. Non-compliance may result in either administrative or criminal penalties. Similar legal provisions on mandatory disclosure of origin could be found in the submissions by the EU, Norway and Switzerland, for instance. It said this would be a good contribution to further work by the Committee on GRs. Since the Delegation of Australia circulated a draft proposal for GRs objectives and principles as a submission the same morning, on which it needed to, consult and seek instruction before making concrete comments, it proposed to revert to the proposal of Australia at the next session of the Committee. In conclusion, it requested the Secretariat to update the revised list of options taking into account all comments made during the present session of the Committee, preserving the current format which was concise and objective.

239. The representative of the Tulalip Tribes highlighted several issues relating to options in document WIPO/GRTKF/IC/16/6. With regard to multiple access levels in PIC, the representative did not dispute that national sovereigns had the right to control access to GRs of their non-indigenous citizens and to determine access to GRs of indigenous communities. This right was limited to restricting and denying access at the national level. However, he disputed the right of States to determine access to the GRs of indigenous peoples whether on or off their territories. The representative noted that in the ABS regime, creation of multiple levels of access and PIC had been supported. States had the right to control access and entry through their national borders. But indigenous peoples were the only ones who had the right to determine access to their own GRs and associated TK, to set the terms of access based on MAT, and only with their free prior informed consent. Another issue was the perception of TK and GRs and how they were treated. He stated that TK in the Western system was often used as information, which provided an indication of uses and properties of GRs. In the CBD negotiations on the international regime on ABS, indigenous peoples had consistently used the phrases, TK and associated GRs, and GRs and associated TK for two reasons. One being that in indigenous cosmo vision TK and GR could not be separated, but were inherently and inalienably connected. Another less recognized reason was the issue of embodied TK. TK had been applied to modify the course of evolution of many species, breeds, and plant varieties. He said regimes should acknowledge and address IPRs relating to ABS when these GRs were accessed either on or off territories of indigenous peoples. The case of migratory species raised the question of rights of indigenous peoples to migratory GRs. For example, Tulalip Tribes had bred a variety of salmon that were non-migratory. This was important because the salmon were adapted to a particular stream, in a particular hatry that was run by the Tulalip Tribes. This breed was adapted to higher levels of stream temperatures. However there was a phenomenon called salmon straying- as the salmon frequently migrated. This raised concerns as to the rights of indigenous people to GRs in the event the salmon strayed from its pool around the estuary where it had been bred, bearing in mind the knowledge applied by the indigenous community in developing the salmon variety. On defensive protection of TK, he took issue with the related cost of participation of indigenous peoples in the IP system. Currently the major cost of participation in Western IP was the public domain. IP rights were grants of rights with limited duration. Protection for patents for example, required disclosure, and upon exhaustion of the patent rights the knowledge and production of the patent fell into the public domain. In this case, the cost of indigenous participation in the system required that TK protected by customary

law since time immemorial would in a short time span fall into the public domain. The representative said defensive protection required some kind of disclosure, and many nations had public disclosure and freedom of information laws related to disclosed knowledge including TK. For example, if TK was incorporated into a patent, the public could have the right under statutory law to acquire that knowledge. This raised several cases that needed to be taken into consideration, like undisclosed TK, for instance due to spiritual, cultural norms and customary laws that prohibited disclosure. For this reason, a necessary distinction between *ex ante* remedies based on registration systems and *ex post* approaches to protection was proposed. With regard to the protection of TK revealed in prior art documentation, he highlighted the immense cost on indigenous people of defeating a patent by the disclosure of their TK, which would eventually fall into the public domain. This raised various issues relating to the protection of TK revealed in patents, and their status upon expiry of IPRs. He believed rights granted under customary laws were permanent. With regard to the protection of *ex-situ* GRs and associated TK in collections, and for migratory species, the question of whether protection should be limited to only GRs acquired on territories of indigenous people needed to be addressed. The protection of GRs of migratory species of indigenous communities acquired in *ex-situ* collections also required consideration. He stated that the world was not static and, if IPRs assumed a static state, it would lead to difficulties, for example with climate change and its current impacts of species-rain-shifts. When species shifted their range, they carried their GRs with them. This led to the question of determination of IPRs and rights to GRs in cases where species had been moved off through anthropogenic climate change. Also to be addressed was the protection of unsourced GRs and associated TK, for example where the material was recognized as TK but with no documentation of the source. On the issue of databases, he thanked Japan for their clarification and India for their interesting information on TKDL which was similar to the model presented by the Tulalip Tribes in its first presentation at a side event at the second session of the IGC in 2002. Protected forms of databases with information on TK and GR could be useful. However, issues such as ownership, custodianship and citing of those databases also needed to be addressed. In response to comments made by the Delegation of Mexico on licenses, a discussion on licenses versus contracts would be necessary. He said in the CBD there had been proposals for a licensing model for access to GRs. The representative further noted that the difference between a license and a contract was that a contract was an in-person transaction, where one had control over the MAT and the forms of benefit sharing. While a license was a pre-written contract which allowed the user to make the decision on compliance. Caution with licenses was required since in a traditional system where knowledge was shared or passed among the indigenous people, the person receiving the knowledge needed to be evaluated. This was a face-to-face interaction. However the licensing system removed the elders and the TK holders from that process. Therefore, further discussion, probably in the IWGs, was required.

240. The Delegation of Angola, on behalf of the African Group, appreciated the work being undertaken by WIPO within the new mandate and the substantive contributions of the Secretariat in the area of GRs related to IP. It acknowledged the negotiating process of the International Regime on ABS within the CBD and recalled the request from the CBD to the Committee for support of the work that was being undertaken with regard to the ABS Regime. With the aim to harmonize and systematize the work already in progress in other international and national fora, taking into account the proposals already submitted by the African Group and other Member States, the African Group was of the view that there were key linkages amongst the various international processes that needed to be harmonized in order to enhance better understanding and mutual support amongst these processes. It said future work within the Committee on GRs should take into account substantial developments within other international fora. The African group proposed various initiatives for consideration, which included: the development of a range of options for IP related aspects of ABS arrangements that could ensure benefit-sharing and the development of a structured menu of options to guide

custodians of GRs to facilitate their decision making process; the development of disclosure requirements and alternative proposals on the relationship between IP and GRs as requested by the CBD; the development of guidelines and procedures that would effectively deal with IP aspects of ABS arrangements; the support of demand and need driven capacity building initiatives in Africa in the area of IP and GR as well as the strengthening of existing linkages amongst WIPO, CBD, FAO and WTO to encourage active interaction and participation within their respective mandates; and to foster synergistic implementation of related activities. In respect to the proposal of draft objectives and principles presented by Canada, the Delegation noted that additional time for review and translation of the proposal in all the six UN was necessary and indicated it would submit comments in another session.

241. The representative of the Secretariat of FAO expressed its appreciation to the Committee and the Secretariat for the excellent work it had done on the three areas. The representative updated the Committee on recent developments under the International Treaty on Plant Genetic Resources for Food and Agriculture of the FAO of the UN and also on recent developments in FAO's Commission for GRs food and agriculture. Overall there were two pillars of the international Treaty which related to the work of the Committee. First was the multilateral system to ABS for plant GRs which was established by Treaty. Under this multilateral system it had established a global gene pool which currently included more than 1.3 million accessions of plant genetic material or the 64 most important food crops for global food security. Together, these 64 crops constituted more than 80% of the genetic base of our food from plants worldwide. All material within the multilateral system was transferred from providers to recipients under a standard material transfer agreement (SMTA). The conclusion of an SMTA was reported to the governing body of the Treaty via the secretariat. In the last 12 months it had had more than 440, 000 transfers of genetic material, from under SMTAs from the international gene banks of the CGIAR alone. The SMTA contained a number of IP related provisions which set out modalities for the acquisition and exercise of IP titles over genetic material. In particular, if a product resulted from the genetic material received from the system and if that product came under restriction for further research training and breeding, for example, if the product was patented, then the recipient of that genetic material from the system would pay 1.1% minus 30% of all net sales from that product to the benefit sharing fund of the Treaty. The fund also supported projects for the conservation and sustainable use of plant genetic diversity by farmers and other agricultural stakeholders in developing countries. The fund was the second pillar of the Treaty system. Thus when plant germ plasm was transferred and used under the Treaty system it generated benefits for food security that would be channeled back to support the conservation of GRs and genetic diversity in developing countries through this financial mechanism. He also reported on four recent developments in the implementation of the multilateral system that he thought might be of interest to the Committee. FAO had recently received the first germ plasm based payment to the benefit sharing fund of the Treaty, which resulted directly from genetic material transferred within the multilateral system of the Treaty. The payment related to a thematically breeding line transferred from the international gene bank maize simmet to Canada and which had recently been commercialized. The material had entered into trials in Canada and had been found to be well adapted. This payment was a voluntary payment because the material was at that time not under a patent claim, but it nevertheless as a first practical illustration indicated that the multilateral system and its benefit sharing mechanisms were well functioning. He stated that this may provide lessons learned on benefit sharing mechanisms involved also in the type of *sui generis* frameworks that were currently being developed for GR related TK under the previous agenda item. He also reported that it had just completed the information technology systems which would operate the multilateral system of ABS and were currently being installed in Geneva at the UN Information and Computing Centre following extensive consultations which it conducted amongst contracting parties of the Treaty and Gene bank managers. Following a few initial and final tests this system was expected to go on-line within the next two months in

the form of two main components. First the server would serve unique and permanent identifiers to users of the multilateral system so as to simplify, standardize and streamline their use of the SMTA. Second, global data store would receive the data on all the SMTAs entered into and would be accessed by the third party beneficiary of the SMTA for the resolution of any possible disputes which might arise from SMTAs. Part of this data store would be public and part of it would remain undisclosed under industry standard security protection. Disclosure of SMTA data in the public part of the data store was optional and the public data so far contained mostly data disclosed by the CGIAR. The public part of the Treaty and data store might very well interface with several options of the Committee's work on GRs, identified in document WIPO/GRTKF/IC/16/6. In particular, under option A.1 the public part of the data store could be considered by international search authorities of the PCT for integration into the minimum documentation list under the PCT rules. Under option A.3 the public part of the database could in principle be integrated into the search and examination procedures in particular integration in international type searches again under the PCT. And finally the publicly disclosed SMTA data of the data store of the Treaty's multilateral system could in principle potentially be hyperlinked to the one-step database for GR defensive protection that had been proposed under option 8.2. All of these options would have to be more closely examined but could in principle be considered by the treaty community. Further in response to statements by Canada in relation to Cluster B regarding disclosure requirements for GRs in patent applications relating to material received from the multilateral system of ABS of the Treaty, he noted that it would be useful if any such disclosure requirements, were it to be considered or developed, take into account that when genetic material is received from the multilateral system of the Treaty, the multilateral system would be identified as the source of the genetic material utilized in the invention that is claimed in an application. He also reported on Resolution 6/2009 adopted by the Governing Body of the Treaty on the implementation of farmers rights under Article 9 of the Treaty. The implementation of Article 9 was subject to national legislation. He noted that this was relevant to the work of the Committee as farmers' rights included *inter alia* the protection of TK relevant to plant GRs for food and agriculture. In the resolution, the governing body encouraged relevant organizations to submit views and experiences on the implementation of farmers' rights as set out in Article 9. In line with this and in the spirit of the provision of policy objective IX of document WIPO/GRTKF/IC/16/5, he invited the Secretariat to submit a progress report to possible consultations on farmers rights' on the work of the Committee to the governing body of the Treaty which will meet for its 4<sup>th</sup> session in 2011 in Bali. This would allow the work under the Treaty to take into account as appropriate the work of the Committee. He asserted that the adaptation to climate change for sustainability of food security was a recent development in the agricultural sector that had led to work on the International Treaty. In effect this would allow the adaptation and use of the Treaty's core systems in particular the multilateral system of ABS for adaptation of the key food crops to climate change. This would guarantee food security on an ongoing basis. This work would include work on the non-commercial benefit sharing mechanisms provided for by the Treaty that includes in particular exchange of information and technology transfer. He also noted that WIPO and the Committee were making considerable progress in the work on GRs. This affirmed the Committee's recognition of the special nature and needs of GRs relating to food and agriculture and importantly the need for specific solutions in this sector. The representative also confirmed FAO's willingness to cooperate with the Committee.

242. The Delegation of the USA emphasized that the revised list of options on GRs, contained in document WIPO/GRTKF/IC/16/6, was a useful basis for the Committee's work. It supported the creation of an objectives and principles document for GRs and suggested that the second objective be rephrased to change "patents" to "intellectual property rights" so as to capture the objectives of the Committee - that no IP right would be granted on inventions that were not created by the inventor *i.e.* on GRs or GRs associated with TK that existed before an invention was made. It also suggested that the second principle, "patent" be changed to "IP" and



proposed the addition of another objective that would prevent utility model applicants from receiving a monopoly on inventions that were not new. The Delegation stated it would be pleased to further discuss the proposal at the next session of the Committee and would submit written comments in this regard. It endorsed the statement made by Colombia to the effect that the Committee had several options, and because these alternatives were not exclusive, the Committee should be able to continue its work without prejudging its approach. As such the Committee could explore a number of options without committing to the approaches articulated in the options. It noted that a single approach may not be effective to accomplish the Committee's goal of preventing misappropriation and misuse of GRs. It said it would however, be useful to focus the Committee's work on some of the core options. The Delegation also confirmed its endorsement of the list of issues proposed by Canada. The Committee had heard that the work on GRs was not as advanced as the work on TCEs and TK. However, the work of the Committee if reviewed, it was evident that considerable work had been done on GRs. The Draft Intellectual Property Guidelines for Access and Equitable Benefit-Sharing in document WIPO/GRTKF/IC/7/9 was one example. Since this document was not finalized, it was in agreement with the Delegation of Spain on behalf of the EU, the Delegations of New Zealand, Mexico, and the Russian Federation, that the said document would form a useful component of the Committee's further work on GRs and requested that the document be updated. In this regard, as noted by the Delegation of New Zealand, the draft contractual provisions, although a useful database, could be more user-friendly and thus supported improvement and updating of the database. It encouraged the Secretariat to create an inventory of databases and information resources on GRs. The Committee could contribute productively to the creation and development of such databases by communicating best practices, such as the one-click idea suggested by Japan so that such practices would prevent unauthorized addition of TK and GRs in such databases. Also, the Committee could help communicate technical standards required to make the database more functional. This inventory could serve as a useful basis for answering the thoughtful questions posed by Mexico on databases. It appreciated the significant effort of many Member States in providing the informational documents for the IGC session on GRs and said it would continue to study the information documents and would have a number of questions that it would like to ask in relation to the documents. The Delegation proposed an intersessional comment period wherein Member States could submit questions on these documents, and these questions could be answered.

243. The Delegation of Norway thanked the Secretariat for updating document WIPO/GRTKF/IC/16/6 and all contributions in the information documents. It provided an amendment to document WIPO/GRTKF/IC/16/6 Annex 1 page 16. It drew the Committee's attention to the intervention by the representative of FAO's on disclosure and material from the international Treaty, and stated that according to the Norwegian Patents Act section 8(b) (3), if access to biological material had been provided pursuant to Article 12.2 and Article 12.3 of the International Treaty, it was sufficient for the applicant to submit with its patent application, a copy of the standard material transfer agreement (MTA), as stipulated in Article 12.4 of the Treaty.
244. The representative of IPCB noted that the interrelationship and consistency with international human rights laws regarding the rights of indigenous peoples to GRs and associated TK was essential and needed to be examined in the current document, particularly those laws that required parties to recognize and protect Indigenous peoples' rights to the GRs originating from their lands and territories, and their right to permanent sovereignty over natural resources. She said this body of law had been numerously mentioned in written and oral interventions by indigenous peoples and should be reflected in the working documents as a substantive issue that required further examination. Many Indigenous peoples did not wish to use registers or databases for various reasons. There were concerns related to the security of the data in these databases, or concerns about the public release of knowledge they did not want to share, or that the registers might become a one stop shop for bio-prospectors. She said if this instrument was to serve the purpose of preventing misuse or misappropriation of GRs, it must also contain

- options that recognized the rights of indigenous peoples to implement their own customary and codified systems of biological protection and management. It should not be assumed that all Indigenous people were interested in participating in the commercialization of their biological resources. In fact, the majority of indigenous people did not want to alienate their knowledge or biological resources through IP regime. The proposed instrument must also protect outside of the IP system giving due consideration to the integrity of the indigenous people.
245. The Delegation of China appreciated the proposals made by various delegations. It believed that the sources/origin disclosure requirements of GRs in patent applications worked in favor of not only an IP system but also in favor of a prior-informed-consent and benefit sharing approach. It said Chinese patent law had recently been amended and had gone through its third amendment entering into force in October 2009. Thereafter two additions had been made to the legislation clearly establishing a disclosure requirement. All of the details of that legislation could be found in document WIPO/GRTKF/IC/INF/27. In the future, China would continue to explore the experience gained in this area in order to find the best possible solutions to enable it to protect GRs through the IP system. The Delegation said it would like to have further exchanges and cooperation with other countries. It would specifically support the work of the Committee on the issue relating to the disclosure requirement, including exchanging information among countries and within regions, drafting principles and guidelines and further exploring the possibility of internationally binding rules in this area. It noted that although many international fora like CBD, FAO and TRIPs were presently looking at issues relating to the protection of GRs, they had a different approach and priorities. For that reason, Member States should make use of the advantages the Committee offered to do what they could in playing their unique role in promoting the protection of GRs.
246. The representative of CONGAF highlighted that TK as seen in civil society was something that encompassed a different type of knowledge. It certainly encompassed the knowledge and expertise that was held by indigenous peoples. It emphasized that indigenous peoples' knowledge of GRs was distinct and needed to be recognized as such. In this regard, he felt the Committee had been slow in tackling some of the key issues relating to that particular aspect of GRs. Noting developments made under the auspices of TRIPs in the area of GRs, he said one of the questions it had been raising every year since TRIPs entered into force was with regard to the progress made by the Committee, and whether such progress would have been different if TRIPs and the Treaty on phytogenetic resources were administered and managed by WIPO. These were questions that the Committee needed to reflect on. In speaking on behalf civil society in the African continent, he noted that many countries in Africa, though not members of the WTO, were negotiating with the WTO on certain important aspects of TRIPs since they were directly affected by it. However such processes were considered estoric and as a result local and indigenous peoples could not fully benefit from them. The representative noted that this issue was further compounded by the existence of other related independent initiatives at different fora. He informed that a document describing its views particularly on plant and phytogenetic resources had been submitted and was available and that he would also make available a paper on comparative analysis of CBD and TRIPs.
247. The Delegation of Chile reiterated the importance it assigned to discussions on GRs. Due to its relevance to Member States, it was essential to strengthen discussions within the Committee so that the topic of GRs would be at par with progress made in TK and TCEs. These discussions would inform and define national policies among the neighboring countries that lacked national laws in this area. It welcomed the document WIPO/GRTKF/IC/16/6 drawn up by the Secretariat, including comments and documents submitted by other Delegations, which enriched the discussions. The list of options was a very good basis for the work of the IWGs. Consequently, the work that the IWGs would carry out was essential in making headway towards a consensus in this field. It also welcomed the proposal made by Canada which would contribute to the work done by the Committee. Without prejudice to future comments it might

make on the document, the Delegation highlighted two objectives pointed out by Australia, which it thought were essential when looking at the relationship between GRs and IP, the proposed objectives number two and three. These proposed options would improve quality assessment ensuring that patents granted had an inventive level sufficient to warrant protection. It said constructive work should continue so as to comply with the mandate given by the General Assembly.

248. The representative of CISA said biocolonialism still existed and property rights of indigenous peoples continued to be violated. Currently national laws were discriminatory and failed to protect indigenous people. GRs were being extracted without the consent of indigenous peoples. Corporations were using institutions set up by States that had no right to consent to these patents. For example, USA had never allowed the Alaska peoples or other internationally recognized people to give consent without employing the fully informed consent principle under the United Nations decolonization process. That particular principle was being violated. He agreed with the intervention by the representative of IPCB that the permanent sovereignty over natural resources principles needed to be adhered to. It must be recognized that indigenous people could develop their own GRs if they so desired without it being extracted from them and developed without their consent. This was in line with the right to development of indigenous peoples as provided for in the Declaration and the existing obligations on national states. The representative agreed with the recommendation of Brazil that the working paper on on-going processes at the CBD and other negotiations outside WIPO be presented. As the work of the Committee progressed there was need for a broader level of participation and uniformity in the consent process to text proposed by indigenous peoples. On perusal of the proposal made by Canada, he disagreed with many of the proposals and recommendations noting that he would however review the proposals and comment on the presented recommendations.
249. The representative of BGC welcomed the provisions in document WIPO/GRTKF/IC/16/6. He said GRs, TK and TCEs went right across borders, were international in nature, and affected the lives of indigenous peoples all over the world. Due to such complexities, indigenous leaders realized the importance of collaboration among themselves in order to address issues related to GR, TK and TCEs, thus enabling them to actively participate in discussions at the Committee. This led to the formation of the organization "GRTKF" International in January 2010. The group comprised of both former and current members of the United Nations Permanent Forum on Indigenous Issues and indigenous leaders from different countries around the world. He emphasized the importance of co-existence between the Committee and the "GRTKF" organization saying that this co-existence would ensure wide distribution of information and would attract opinions of indigenous peoples from various countries. He informed the Committee that he would circulate documents and submit the organization's report to the Committee for information through the Secretariat or directly to the regional groups. The representative requested the Committee to look into ways of harmonizing the different initiatives.
250. The representative of CAPAJ said comments made by representatives of the indigenous delegation led one to believe that the existing databases like the American, the European and the Japanese databases were sufficient to combat bio-piracy. He said efforts towards the establishment of an indigenous database that transcended national borders should be made, where indigenous communities would also be able to provide data and information on existing GRs and TK in their territories. The database would be accessible to regional communities and peoples. This would in effect protect products of the indigenous peoples from bio-piracy. He said disclosure of origin of resources was highly necessary and should be done not only by countries but also indigenous communities, in particular the cross border indigenous communities. For instance, the community he represented, was found in the Northern part of Chile, South Peru, the East of the Plurinational State of Bolivia and the North of Argentina.

251. The representative of the Eurasian Patent Organization said that given that the rules governing access to GRs and TK were intended to serve as an effective means of protection from misappropriation and misuse, he considered the new requirements for disclosure of an invention relating to GRs or TK, namely compulsory reference to the country and/or other source of origin in patent application materials as being superfluous and would not help to achieve the stated aims. Patent laws in many countries in the world contained exhaustive rules for the compulsory disclosure of an invention in a patent application such that it could be carried out by a person skilled in the art. These rules undoubtedly also extended to inventions which related to the field of biology and biotechnology, in particular to the product containing or consisting of biological material or to the means of producing biological material, acting on it or using it. It was therefore appropriate to make amendments to existing rules regarding the examination of patent applications, *i.e.* to include therein the requirement for a special reference to the origin of TK or GRs, since such a reference should in principle be given for all applications concerning biological material. Document WIPO/GRTKF/IC/16/6 was a good basis for further work and the Delegation considered that the strengthening of protection of TK and GRs from the unlawful granting of patents and the devising of an agreed system for the fair and equitable joint sharing of benefits, resulting from the use of TK or GRs, should be prioritized. Finally, he thanked the Secretariat for the highly professional work it had done and the materials prepared for the sixteenth session of the Committee.

*Decision on Agenda Item 10:*

252. *The Committee invited the Secretariat to prepare and make available for the next session of the Committee:*

*- as a working document, a further draft of document*

*WIPO/GRTKF/IC/16/6. The further draft should include proposed amendments to and comments made by Committee participants during the sixteenth session of the Committee, as well as written comments on that document submitted to the Secretariat before July 31, 2010. The further draft of WIPO/GRTKF/IC/16/6 should also include a factual update on relevant developments in the CBD, FAO and the WTO;*

*- as an information document, an updated version of document WIPO/GRTKF/IC/7/9 ("Genetic Resources: Draft Intellectual Property Guidelines for Access and Equitable Benefit-Sharing");*

*- as an information document, a glossary of key terms related to intellectual property and genetic resources.*

253. *The Committee also requested the Secretariat to update the database of biodiversity-related access and benefit-sharing agreements currently online on the WIPO website and to report, in an information document, on such updating to the next session of the Committee.*

254. *The Committee invited IGC participants to provide written comments on document WIPO/GRTKF/IC/16/7 before July 31, 2010 and requested the Secretariat to compile such comments in an information document and to issue document WIPO/GRTKF/IC/16/7 as a working document for the next session of the Committee.*

#### **AGENDA ITEM 11: ARRANGEMENTS FOR THE INTERSESSIONAL WORKING GROUP SESSIONS**

##### *Decision on Agenda Item 11*

255. *The Committee agreed as follows:*

##### *Mandate*

*- The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) is the negotiating and decision-making body. The Intersessional Working Groups (IWGs) are to support and facilitate the negotiations of the IGC.*

*- The IWGs shall provide legal and technical advice and analysis, including, where appropriate, options and scenarios for consideration of the IGC. The IWGs shall report to the IGC on the outcomes of their work and submit recommendations and texts relating to the discussion in the IGC.*

##### *Subject Matter*

*- All three subjects of the IGC shall be treated on an equal footing and the total time for discussion allocated to each subject in the IGC and in the IWGs should be equal.*

*- The following subjects shall be considered at the respective IWG meetings:*

*IWG 1: TCEs*

*IWG 2: TK or GRs (to be decided at the 17<sup>th</sup> session of the IGC)*

*IWG 3: GRs or TK (to be decided at the 17<sup>th</sup> session of the IGC).*

*Composition*

*- Participation in the IWGs shall be open to all Member States and accredited observers. Each Member State and accredited observer shall be represented by one technical expert who shall participate in his/her personal capacity.*

*- Funding for each IWG shall be provided by WIPO for one representative each from 71 developing countries and countries with economies in transition, on a proportional basis, as follows: Africa: 25; Asia-Pacific: 17; Latin America and the Caribbean: 15; Central Europe and Baltic: 8; Eastern Europe and Central Asia: 5; and, China: 1. The names of the countries to benefit from the funding shall be communicated to the WIPO Secretariat by the representatives of the regional groupings in the usual way.*

*- The funding shall comprise travel in economy class on the most economical and direct route, hotel accommodation (bed and breakfast) and a daily stipend of 75 Sfr. Regarding hotel accommodation, WIPO shall directly cover the cost of hotel reservations for each of the funded participants. Funding shall not include a daily subsistence allowance, terminal expenses or any other incidental expenses. This funding arrangement for the IWGs does not constitute a precedent for other WIPO meetings.*

*- Indigenous representatives shall be funded by the Voluntary Fund as decided by the Advisory Board on the same basis as applicable to State representatives and subject to*

*availability of funds in the Voluntary Fund. The Secretariat is requested to prepare proposed administrative changes to Rules of the Voluntary Fund needed to implement this decision, for adoption by the WIPO General Assembly in 2010.*

*- Observers would participate in the same capacity as in the IGC.*

*- There will be a separate room at WIPO headquarters from where the discussions in the IWGs can be followed by representatives of Member States and accredited observers.*

#### *Methods of Work*

*- The IWGs will take, as a basis of their work, all WIPO working documents, including WIPO/GRTKF/IC/16/4, WIPO/GRTKF/IC/16/5 and WIPO/GRTKF/IC/16/6, as may be revised, in line with the IGC's current mandate. The working languages of the IWGs shall be the six official languages of the United Nations.*

#### *Chairmanship of the IWGs*

*- The Chair and Vice-Chairs of the IGC shall be invited to the IWG meetings. Each IWG shall elect its own Chair and Vice-Chairs.*

#### *Duration and Venue of Meetings*

*- The duration of IWG 1 shall be 5 days. Based on the experience of IWG 1, the duration of IWGs 2 and 3 could be adjusted as appropriate, but in no case would the duration be less than 5 days.*

*- The IWG meetings will take place at WIPO Headquarters, Geneva.*

256. The representative of IPCB welcomed proposals by Member States for the modification of the Voluntary Fund's rules, to facilitate participation of indigenous peoples in the upcoming IWG sessions. She was, however, concerned that the first IWG lacked funding mechanisms to support their participation. She, therefore, encouraged the Committee to find alternative mechanisms and funding that could facilitate their participation at the first IWG. She also noted that contributions to the Fund had dropped and specific negotiations were necessary to ensure participation indigenous peoples in the IGC process.

**AGENDA ITEM 12: ANY OTHER BUSINESS**

257. The representative of CISA said it would continue to push for greater support and participation of indigenous peoples. In this regard, it would submit a recommendation for the appointment of an indigenous co-chair at the IWGs. This statement was supported by the representative of the BGC.

**AGENDA ITEM 13: CLOSING**

258. The Delegation of Australia thanked the Chair and regional coordinators for their efforts in making the sixteenth session of the Committee a productive meeting. It also congratulated Ms. Patricia Adjei who was the current and second WIPO Indigenous Intellectual Property Law Fellow and the first Australian indigenous person to hold the position. Ms. Adjei was well-known and well respected in the IP community in Australia and had made a valuable contribution to discussions on TCEs and TK. The Delegation was confident that she would make an equally valuable contribution during her time at WIPO in advancing the work of the Committee.
259. Several delegations also thanked the Chair for his efforts and expressed their satisfaction with the results of the session, including the Delegations of El Salvador, on behalf of GRULAC, Switzerland, on behalf of Group B, Angola, on behalf of the African Group, Thailand on behalf of the Asian Group, China, Slovenia on behalf of the Central European and Baltic States and Yemen.
260. Representatives of certain NGOs took the floor, including CONGAF and the BGC, the latter on behalf of the Indigenous Peoples' Caucus. The representative of the BGC thanked the Chair and co-Chairs for a job well done and for their hard work. On behalf of the owners, custodians and holders of GRs, TK and TCEs, the representative expressed appreciation for the responses received from Member States and for the collaboration and efforts towards the achievements of the current session.
261. The Chair thanked all the Members of the Committee for their excellent cooperation, as well as the regional coordinators who had worked hard throughout the week to ensure that decisions were reached. He thanked the Vice Chairs for their work and assistance. The Chair also thanked the Secretariat who had worked around the clock to make sure that the meeting was a success and the NGOs for their valuable cooperation.

*Decision on Agenda Item 13*

262. *The Committee adopted its decisions on agenda items 2, 3, 4, 5, 7, 8, 9, 10 and 11 on May 7, 2010. It agreed that a draft written report, containing the agreed text of these decisions and all interventions made to the Committee, would be prepared and circulated before the first session of the Intersessional Working Group in accordance with the arrangements decided upon under Agenda Item 11. Committee participants would be invited to submit written corrections to their interventions as included in the draft report before a final version of the draft report would then be circulated to Committee participants for adoption at the next session of the Committee.*



263. The Chair closed the meeting.

[Annex follows]

## LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

### I. ÉTATS/STATES

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

#### AFRIQUE DU SUD/SOUTH AFRICA

Faizel ISMAEL, Chargé d'affaire a.i., Permanent Mission, Geneva

Yonah Ngalaba SELETI, Chief Director, National Indigenous Knowledge Systems Office, Pretoria

Simon QOBO, Economic Relations and Trade, Department of International Relations and Cooperation, Pretoria

#### ALBANIE/ALBANIA

Agim PASHOLLI, Minister Counsellor, Permanent Mission, Geneva

#### ALGÉRIE/ALGERIA

Mohamed BOUDRAR, directeur général, Office National des Droits d'Auteur et Droits Voisins (ONDA), Ministère de la Culture, Alger

Hayet MEHADJI (Mrs.), premier secrétaire, Mission permanente, Genève

#### ALLEMAGNE/GERMANY

Henning PLÖGER, Counsellor, Division for Patent Law, Federal Ministry of Justice, Berlin

Franck SCHMIEDCHEN, Senior Officer, Federal Ministry for Economic Cooperation and Development, Berlin

#### ANGOLA

Damiao PINTO BAPTISTA, National Director of Copyright, Luanda

Aguinaldo Guedes CRISTOVÃO, Director, Legal Cabinet, Ministry of Culture, Luanda

Sónia Ludmila DA SILVA DOMINGOS (Mrs.), Deputy Director, Ministry of Culture, Luanda

Makiese KINKELA AUGUSTO, Third Secretary, Permanent Mission, Geneva

#### ARABIE SAOUDITE/SAUDI ARABIA

Sami Ali ALSODAIS, Deputy Director-General, Technical Affairs, General Directorate of Industrial Property, King Abdulaziz City for Science and Technology, Riyadh

Mohammed Ali AL-MAHZARI, Patent Specialist, General Directorate of Industrial Property, King Abdulaziz City for Science and Technology, Riyadh

Emad ABU ALAMAH MOHAMAH, Ministry of Information, Riyadh

ARGENTINE/ARGENTINA

Inés Gabriela FASTAME (Srta.), Primer Secretario, Misión Permanente, Ginebra

AUSTRALIE/AUSTRALIA

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

Edwina LEWIS (Ms.), Assistant Director, International Policy Section, IP Australia, Canberra

Nicholas ROGERS, Director, International Intellectual Property Section, Services and Intellectual Property Branch, Department of Foreign Affairs and Trade, Canberra

Norman BOWMAN, Principal Legal Officer, Copyright and Classification Policy Branch, Attorney-General's Department, Canberra

AUTRICHE/AUSTRIA

Guenther AUER, Adviser, Federal Ministry of Justice, Vienna

Johannes WERNER, Austrian Patent Office, Head, International Relations, Austrian Patent Office, Vienna

AZERBAÏDJAN/AZERBAIJAN

Natig ISAYEV, Head, International Relations Department, Copyright Agency of the Republic of Azerbaijan, Baku

BARBADE/BARBADOS

Corlita BABB-SCHAEFER (Mrs.), Counsellor, Permanent Mission, Geneva

BÉLARUS/BELARUS

Natallia BARKUN (Mrs.), Deputy Director General, National Center of Intellectual Property, State Committee on Science and Technologies, Minsk

BELGIQUE/BELGIUM

Natacha LENAERTS (Mme.), attaché, Affaires juridiques et internationales, Office de la propriété intellectuelle, Service public fédéral, économie, petites et moyennes entreprises, classes moyennes et énergie, Bruxelles

Katrien VAN WOUWE (Mme.), attaché, Affaires juridiques et internationales, Office de la propriété intellectuelle, Service public fédéral, économie, petites et moyennes entreprises, classes moyennes et énergie, Bruxelles

Marc THUNUS, conseiller, Mission permanente, Genève

BOLIVIE (ÉTAT PLURINATIONAL DE)/BOLIVIA (PLURINATIONAL STATE OF)

Horacio Gabriel USQUIANO VARGAS, Jefe, Unidad Derecho Económico Internacional,  
Ministerio de Comercio Exterior e Integración, La Paz

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

BOSNIE-HERZÉGOVINE/BOSNIA AND HERZEGOVINA

Ines SUŽNJEVIĆ (Mrs.), First Secretary, Permanent Mission, Geneva

BOTSWANA

Sejo MONTSHO, Minister Counsellor, Permanent Mission, Geneva

BRÉSIL/BRAZIL

Claudia YUKARI ASAZU (Mrs.), Foreign Trade Analyst, Secretariat of Industrial Technology,  
Ministry of Development, Industry and Foreign Trade, Brasilia

Rosa Miriam DE VASCONCELOS (Mrs.), Lawyer, Ministry of Agriculture, Brasilia

Ana Carolina ALBERO BELISARIO (Mrs.), Analyst, External Trade, Ministry of Agriculture,  
Brasilia

Erika BORGES (Miss), Patent Examiner, Biotechnology Division, National Institute of Industrial  
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Foundation for Aboriginal and Islander Research Action (FAIRA)

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International Commission for the Rights of Aboriginal People (ICRA)

Cyril COSTES (Direction juridique, Strasbourg); Héloïse CLAUDON (Ms.) (stagiaire juridique, Strasbourg)

International Committee for the Indians of the Americas (Incomindios)/Comité Internacional para los Indios de las Américas (Incomindios)

Maria BAYER (Mrs.) (Legal Expert, Zürich); Corinne TRESCHER (Miss) (Intern, Zürich)

International Council of Museums (ICOM)

Stanislas TARNOWSKI (Director of Programs, Paris)

International Seed Federation (ISF)

Marcel BRUINS (Secretary General, Nyon)

International Trademark Association (INTA)

Bruno Machado (Representative, Geneva)

International Union for Conservation of Nature (IUCN)

Constanza MARTINEZ (Mrs.) (Senior Policy Officer, Global Policy Unit, Gland); Elizabeth REICHEL (Mrs.) (Member, Commission on Environmental, Economic and Social Policy (CEESP), Geneva)

International Video Federation (IVF)

Benoît MÜLLER (Legal Advisor, Brussels)

IQ Sensato

Daphne ZOGRAFOS (Ms.) (Director, Geneva)

Kanuri Development Association

Babagana ABUBAKAR (Vice President, Maiduguri)

Knowledge Ecology International (KEI)

Thiru BALASUBRAMANIAM (Representative, Geneva)

Natural Justice

Olivier RUKUNDO (Lawyer, Monreal)

Nigeria Natural Medicine Development Agency (NNMDA)

Tamunoibuomi F. OKUJAGU (Director General and Chief Executive, Lagos); Stella N. MBAH (Ms.) (Senior Legal Officer, Desk Officer on IPR, Lagos)

Norwegian Council for Traditional Music and Traditional Dance

Egil BAKKA (Director, Trondheim)

Organization for Social Action and Development (OSAD)

Chowdhuri ATAUR RAHMAN (Programme Coordinator, Dhaka)

Queen Mary Intellectual Property Research Institute (QMIPRI)

Luo LI (Miss) (Researcher, London); Semra SEVIM (Ms.) (Researcher, London)

Rromani Baxt

Leila MAMONI (Mlle.) (Paris)

Russian Association of Indigenous Peoples of the North (RAIPON)

Polina SHULBAEVA (Ms.) (Member, Moscow)

Saami Council

Mattias AHRÉN (President, Stockholm)

Samburu Women for Education and Environmental Development Organization (SWEEDO)

Jane Naini MERIWAS (Ms.) (Programme Coordinator, Nanyuki)

The Sudanese Association for Archiving Knowledge (SUDAAK)

Badreldin HAG MUSSA (Projects Officer, Khartoum); Samia Babiker Mohamed ELHASSAN (Mrs.) (Assistant Projects Manager, Directory of Projects, Khartoum)

Traditions pour demain/Traditions for Tomorrow

Christiane JOHANNOT-GRADIS (Mme.) (secrétaire générale, Rolle); Marie BOILLAT (Mme.) (Collaboratrice, Rolle)

Tulalip Tribes of Washington Governmental Affairs Department

Preston HARDISON (Policy Analyst, Tulalip)

Union internationale des éditeurs (UIE)/International Publishers Association (IPA)  
Jens BAMMEL (Secretary General, Geneva); Antje SÖRENSEN (Mrs.) (Deputy Secretary  
General and Legal Counsel, Geneva)

West Africa Coalition for Indigenous Peoples' Rights (WACIPR)  
Joseph OGIERIAKHI (Programmes Director, Benin City)

**VI. GROUPE DES COMMUNAUTES AUTOCHTONES ET LOCALE/  
INDIGENOUS PANEL**

Gulnara ABBASOVA (Ms.), Foundation for Research and Support of Indigenous Peoples of Crimea, Crimean Tatar Community, Simferopol

Hajara HAMAN (Mrs.), African Indigenous Women's Organization, Central Africa Network, Yaoundé

**VII. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE  
DE LA PROPRIÉTÉ INTELLECTUELLE (OMPI)/  
INTERNATIONAL BUREAU OF THE  
WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)**

Francis GURRY, directeur général/Director General

Christian WICHARD, vice-directeur général/Deputy Director General

Naresh PRASAD, directeur exécutif, chef de Cabinet, Cabinet du directeur général/Executive Director and Chief of Staff, Office of the Director General

Wend WENDLAND, directeur, Division des savoirs traditionnels/Director, Traditional Knowledge Division

Begoña VENERO (Mme./Mrs.), chef, Section des ressources génétiques, des savoirs traditionnels et de la biotechnologie, Division des savoirs traditionnels/Head, Genetic Resources, Traditional Knowledge and Biotechnology Section, Traditional Knowledge Division

Simon LEGRAND, conseiller, Section de la créativité, des expressions culturelles et du patrimoine culturel traditionnel, Division des savoirs traditionnels/Counsellor, Traditional Creativity, Cultural Expressions and Cultural Heritage Section, Traditional Knowledge Division

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