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

Twenty-Third Session
Geneva, February 4 to 8, 2013

DRAFT REPORT

Document prepared by the Secretariat

1. Convened by the Director General of WIPO, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ("the Committee" or "the IGC") held its Twenty-Third session ("IGC 23") in Geneva, from February 4 to 8, 2013.

2. The following States were represented: Algeria, Angola, Argentina, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Bulgaria, Burundi, Cameroon, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Czech Republic, Cuba, Democratic People's Republic of Korea, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Estonia, Finland, France, Georgia, Germany, Greece, Guatemala, Guinea, Haiti, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Lebanon, Lithuania, Madagascar, Malaysia, Maldives, Mauritania, Morocco, Mexico, Monaco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Sudan, Senegal, Serbia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Togo, Turkey, Uganda, Ukraine, United Kingdom, Uruguay, United Arab Emirates, United Republic of Tanzania, United States of America, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam, Zambia and Zimbabwe (110). The European Union ("the EU") and its 27 Member States were also represented as a member of the Committee.

3. The following intergovernmental organizations ("IGOs") took part as observers: Association of South East Asian Nations (ASEAN), African Regional Intellectual Property Organization (ARIPO), African Union (AU), European Patent Office (EPO), International Organization of La Francophonie (OIF), Food and Agriculture Organization of the United Nations (FAO), International Union for the Protection of new Varieties of Plants (UPOV), Organization of Eastern Caribbean States (OECS), Patent Office of the Cooperation Council for the Arab States of the Gulf (GCC Patent Office), Secretariat of the Convention on Biodiversity (SCBD), United Nations Environment Program (UNEP), United Nations Permanent Forum on Indigenous Issues (The Permanent Forum), United Nations University (UNU), World Trade Organization (WTO) and South Centre (15).

4. Representatives of the following non-governmental organizations ("NGOs") took part as observers: Adjmor; African Indigenous Women Organization; Art Law Centre; Assembly of Armenians of Western Armenia; Assembly of First Nations (AFN); *Associación Kunas unidos por* Napguana/Association of Kunas United for Mother Earth (KUNA); Biotechnology Industry Organization (BIO); *Centrale sanitaire Suisse Romande* (CSSR); Centre for International Intellectual Property Studies (CEIPI); Health and Environment Program (HEP); International Trade Center for Development (CECIDE); Chamber of Commerce and Industry of the Russian Federation (CCIRF); Civil Society Coalition (CSC); *Comisión Jurídica para el Autodesarollo de los Pueblos Originarios Andinos* (CAPAJ); *Confederación de Nacionalidades Indígenas* (CONAIP); *Cooperativa Ecológica de las Mujeres Colectoras de la Isla de Marajó* (CEMEN); Coordination of African Human Rights NGOs (CONGAF); CropLife International; Culture of Afro-indigenous Solidarity (Afro-Indigène); Foundation for Aboriginal and Islander Research Action (FAIRA); Fridtjof Nansen Institute (NFI); Friends World Committee for Consultation (FWCC); Graduate Institute for Development Studies (GREG); Ibero-Latin-American Federation of Performers (FILAIE); *Incomindios* Switzerland; Indian Council of South America (CISA); Indian Movement "*Tupaj Amaru*"; Indigenous Peoples' Center for Documentation, Research and Information (doCip); *Institut du développement durable et des relations internationales* (IDDRI); *Instituto Indígena Brasileiro para Propriedade Intelectual* (InBraPI); Intellectual Property Owners Association (IPO); International Center for Trade and Sustainable Development (ICTSD); International Chamber of Commerce (ICC); International Federation of Pharmaceutical Manufacturers Associations (IFPMA); International Federation of

Intellectual Property Attorneys (FICPI); International Society for Ethnology and Folklore (SIEF); International Trademark Association (INTA); International Video Federation (IVF); Knowledge Ecology International (KEI); Maasai Cultural Heritage Foundation (MCHF); Maasai Experience; Nigeria Natural Medicine Development Agency (NNMDA); Research Group on Cultural Property (RGCP); Rromani Baxt; Solidarity for a better World (SMM); Third World Network (TWN); Tin-Hinane; Traditions for Tomorrow; World Trade Institute (WTI) (50).

5. The list of participants is annexed to this report.

6. Document WIPO/GRTKF/IC/23/INF/2 Rev. provided an overview of the documents distributed for the Twenty-Third session.

7. The Secretariat noted the interventions made, and the proceedings of the session were communicated and recorded on webcast. 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 Twenty-Third session of the Committee.

AGENDA ITEM 1: OPENING OF THE SESSION

9. The Director General, Mr. Francis Gurry, opened the session and welcomed the participants. He took note of the extensive participation at the session. He reminded the Committee that its mandate for the 2012-2013 biennium was to expedite its work on text-based negotiations with the objective of reaching agreement on a text or texts of an international legal instrument or instruments which will ensure the effective protection of genetic resources (GRs), as well as traditional knowledge (TK) and traditional cultural expressions (TCEs). He recalled that the General Assembly in October 2012 had agreed, in accordance with the mandate for the 2012-2013 biennium, to continue intensive negotiations and decided that three thematic sessions, building on the existing texts which had been submitted by the IGC to the Assemblies, would be held in 2013. This was the first session of the IGC under the work program for 2013. The second session for the year would take place from April 22 to 26, 2013 and would address TK. The third session would be, as decided by the General Assembly, an eight-day session (July 15 to 24, 2013), with five days devoted to TCEs and three days set aside for the IGC to "review and take stock of the text(s) of the international legal instrument(s) ensuring the effective protection of TCEs, TK and GRs and make a recommendation to the General Assembly". The General Assembly taking place in September 2013 would take stock of and consider the text(s), progress made and decide on convening a diplomatic conference. The Director General recalled that at the eight-day session in February 2012, the IGC had produced, for the first time, a single, consolidated text relating to intellectual property (IP) and GRs. He reminded the IGC that, as the consolidated document stated clearly, it was a work in progress, without prejudice to the positions of the participants. It was submitted to the present session as document WIPO/GRTKF/IC/23/4. He referred to the re-submission of a "Joint Recommendation on Intellectual Property and Genetic Resources and Associated Traditional Knowledge", submitted as document WIPO/GRTKF/IC/23/5 by the Delegations of Canada, Japan, Norway, the Republic of Korea and the United States of America. He called upon Member States to implement the mandate, show flexibility and pragmatism and to really engage in the negotiations. He acknowledged the important contribution that indigenous and local community participants made to the process. The WIPO website now contained an Indigenous Portal, specifically to facilitate access to information useful for and related to indigenous peoples and local communities. He made a plea to all the Member States to make a contribution to the WIPO Voluntary Fund that was running out of money. Based on the most recent assessment, funds available could only cover two or maybe three applicants in view of IGC 24, but not beyond this number or this session. He recalled that he had recently addressed letters

to all Member States and several foundations and funds, but no new contributions had been forthcoming. He reiterated a strong plea for voluntary contributions to the Fund. He acknowledged the presence of the United Nations (UN) Special Rapporteur on the Rights of Indigenous Peoples, Prof. James Anaya from the United States of America, Dr. Anil Gupta from India, Ms. Tarcila Rivera Zea from Peru and Mr. Godber Tumushabe from Uganda, who would participate in the session's Indigenous Panel. He expressed his gratitude to His Excellency Ambassador Wayne McCook from Jamaica, for his tireless commitment to the IGC process.

10. The Chair, His Excellency Ambassador Wayne McCook of Jamaica, thanked the coordinators of the regional groups for their guidance in preparing the present session. He thanked the Vice Chairs, Ms. Alexandra Grazioli from Switzerland and Mr. Bebeb A. K. N. Djundjunan from Indonesia, for their support. He reminded the Committee that he had also met with the Indigenous Caucus and thanked indigenous representatives for their useful inputs and suggestions. He announced he would meet with the Chair of the Indigenous Caucus again in the margins of the present session. He advised that the Secretariat had provided a briefing for Member States on the IGC documents and logistical arrangements for the session on January 18, 2013 and that the Secretariat would offer a similar briefing for all observers on the first day of the present session. He informed the IGC that the present session would be accessible on live webcast on the WIPO website for openness and inclusiveness. He called on delegations, individually and in their various groupings, to discuss substantive issues with each other, especially inter-regionally. He encouraged the observers, especially the custodians of TK, the indigenous and local communities, and the Member States to engage with each others. He reminded the participants that the session was a negotiation and that only through discussion, mutual respect and constructive pragmatism on all sides could agreement be reached. In this regard, he thanked the Government of India for having convened an informal meeting on the IGC in New Delhi the week before, and for having kindly invited him to be present. He believed that a useful and frank conversation had taken place there among the experts present. He strongly encouraged such Member State-led informal engagement. He hoped the momentum would not be lost and that there would be follow-up meetings of a similar nature. He said that he could not initiate such processes himself, but that he was always available to assist if so desired. As for the proposed working methodology and program for the present session, especially for Agenda Item 6 dealing with GRs, he referred to the formal consultations with the regional coordinators that had taken place on December 14, 2012 and on January 16, 2013, the second meeting including the regional coordinators plus four Member State delegates per regional group. He described what had been agreed upon as follows. A twin approach, combining, in a complementary manner, the plenary (formal) and an expert group (informal) would be employed. Facilitators would also be used. The plenary would be intended for the formal presentation of views, positions and drafting proposals and be led by the IGC Chair with the assistance of facilitators. The Secretariat would be on hand to assist the facilitators in keeping note of the discussions. The plenary would review the text three times, but without live drafting, and could, on the third occasion, be invited to correct any obvious errors in the text, make other comments on the text, note the text and transmit it to IGC 25, scheduled for July 15 to 24, 2013. Discussions and comments on the text in the plenary would be reported as usual in the full report of the session. The expert group process would be to facilitate, in a smaller and informal setting, the reaching of compromises and the reduction in number of options. It would be structured and led by the IGC Chair, with the assistance of the facilitators. The Secretariat would be on hand to assist the facilitators in keeping note of the discussions within the expert group. Each regional group would be represented by six experts. The six experts from each regional group could include the group's regional coordinator or not, subject to a decision that each group would take in this regard. If the regional coordinator of a particular group would not be one of the experts, the presence of the regional coordinator in the meeting room would be important to provide a bridge from the smaller expert process to the rest of the members of the group. A regional group could, however, decide to nominate a lesser number of experts, and this would be welcomed so as to keep the expert group as small as possible. In order to increase transparency, other Member State representatives would be permitted to sit in on the meetings of the expert group. These representatives would observe

only and not have direct speaking rights, but seek instead to channel observations, if necessary, through relevant experts. The indigenous representatives would be invited to nominate an expert representative to participate in the expert group as an observer, and an additional representative to sit in on the meetings without speaking rights [Note from the Secretariat: by agreement of the Member States, two indigenous experts and two additional indigenous persons were part of the expert group]. A regional group could change the composition of its experts, as it wishes, depending on the article or issue being worked on. To facilitate this, the Chair would endeavor to make available a tentative schedule for the expert group discussions prior to the commencement of each discussion. The experts forming the expert group would be able to take the floor and make drafting proposals during meetings of the expert group. The text would be up on a screen for ease of reference and drafting proposals would be entered on the screen. However, the editing and final preparation of the text to be considered by the plenary would be done by the facilitators on the basis of these inputs. The text would be addressed by issue, rather than in a sequential, article-by-article manner. The Chair would make specific proposals in this regard. The expert group would meet in Room B, where interpretation into and from English, French and Spanish would be available. There would also be a live audio feed of the proceedings of the expert group to Room A, and the text which would be on the screen in Room B should also be visible on the screen in Room A. The Chair requested that the integrity and informality of the smaller expert group be respected and maintained. He recalled that the audio feed to Room A would be provided in the interests of transparency. However, as the discussions of the smaller group were to be informal, all participants, whether in Room A or Room B, were requested not to communicate to the public, whether 'live' or at any future time, the content or nature of the discussions taking place in the smaller group, whether in general terms or by way of quoting specific individuals or delegations. In the event that this request would not be observed, the Chair would reserve the right to seek the consent of the Committee to take such action as may be necessary to preserve the integrity of the process. Regarding the three facilitators, the Chair explained that they would help to guide and moderate the plenary and the expert group. They would undertake drafting so as to record views, positions and drafting proposals made in the plenary, as well as make proposals and implement any compromises and reductions in options reached by the expert group. The three facilitators for the session would be from the delegations of South Africa, Australia and India respectively. The facilitators' work would be based upon discussions both in plenary and in the expert group. Notwithstanding the above, the Chair would retain the discretion to break the plenary for informal consultations at any time. He warned though against excessive fragmentation of the process. As to the sequence of the work, the Chair proposed an initial discussion in plenary, followed by the expert group process, followed by a second round of discussions in plenary. The plenary would be involved throughout and the expert group would report to the plenary. The plenary would have the time to review the text and make decisions as to the status of the text and its treatment by the IGC in view of the upcoming General Assembly in September 2013. As for a program for the week, the Chair recalled the consultations he had with the regional coordinators and other delegations. He announced that a draft program would be available shortly in hard copy. He added that the program as envisaged was a roadmap, but that the process was dynamic, and could be revisited and adjusted as the session would progress. Regarding the session as a whole, the Chair expected the same constructive working atmosphere that had prevailed in previous sessions. He recalled that no opening statements were provided for in the Agenda. He offered the possibility for regional groups or Member States wishing to make general opening statements to hand such statements to the Secretariat in order to have them reflected in the report as was the case in previous sessions. He recalled that the present session was a five-day session as mandated by the WIPO General Assembly. He said that the Committee, as it went along, should reach an agreed decision on those agenda items which required a decision and that the decisions as already agreed would be circulated for formal confirmation by the Committee on February 8, 2013. The report of the session would be prepared after the session and circulated in all six languages of the UN to all delegations for comment and adoption at IGC 25. He reminded that IGC documents were made available in all six languages of the UN.

AGENDA ITEM 2: ADOPTION OF THE AGENDA

Decision on Agenda Item 2:

11. The Chair submitted the draft agenda circulated as WIPO/GRTKF/IC/23/1 Prov. 2 for adoption and it was adopted. The Committee noted that a further version of the agenda, WIPO/GRTKF/IC/23/1 PROV. 3, would be issued during the session to reflect new documents submitted by Member States.

AGENDA ITEM 3: ADOPTION OF THE REPORTS OF THE TWENTY-FIRST AND TWENTY-SECOND SESSIONS

12. [Note from the Secretariat: The Vice-Chair, Ms. Alexandra Grazioli from Switzerland, was chairing the session at this point].

Decision on Agenda Item 3:

13. The Vice-Chair submitted the revised draft reports of the Twenty-First and Twenty-Second Sessions of the Committee (WIPO/GRTKF/IC/21/7 Prov. 2 and WIPO/GRTKF/IC/22/6 Prov. 2, respectively) for adoption and they were adopted.

AGENDA ITEM 4: ACCREDITATION OF CERTAIN ORGANIZATIONS

Decision on Agenda Item 4:

14. The Committee unanimously approved accreditation of all the organizations listed in the Annex to document WIPO/GRTKF/IC/23/2 as ad hoc observers, namely: Association Guinéo-Maghrébine pour la promotion économique et culturelle (Guinean-Maghreb Association for Economic and Cultural Promotion); Association Tayafout; Aube nouvelle pour la femme et le développement (ANFD) (New Dawn for Women and Development) (NDWD); Cameroun Terre Nouvelle (Cameroon New Earth); Consejo de Ayllus y Markas de Cochabamba (Cochabamba Council of Ayllus and Markas) (COAMAC);

Corporación Red Nacional de Mujeres Comunales, Comunitarias, Indígenas y Campesinas de la República de Colombia (REDCOMUINCACOL); Kuru Family of Organisations (Custodian Unit); Moanoghar; Organización de la Nación Aymara (Aymara Nation Organization) (ONA); Societá Italiana per la Museografia e i Beni Demoetnoantropologici (SIMBDEA); The London School of Economics and Political Science, Department of Law (LSE); The National Association for Consumer Protection and Promotion of Programs and Strategies from Romania (ANPCPPS).

AGENDA ITEM 5: PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES: VOLUNTARY FUND

15. The Vice-Chair introduced documents WIPO/GRTKF/IC/23/3 and WIPO/GRTKF/IC/23/INF/4. The Vice-Chair recalled that the General Assembly had decided in 2005 to create a Voluntary Fund to support the participation in the IGC of indigenous and local community representatives of accredited NGOs. Since its establishment, the Fund had benefited from different contributors: SwedBio, France, the Christensen Fund, Switzerland, South Africa, Norway, and Australia. Most agreed that the Fund had operated successfully; it had been widely regarded as transparent, independent and efficient. As repeatedly stated, the Fund would basically run short of funds after IGC 24. Based on the most recent assessment, funds available could only cover two or three applicants in view of IGC 24, but not beyond this number or this session. This regrettable situation was described by the Vice-Chair as a great shame and would attract attention from indigenous observers. It could have the effect of harming the credibility of the IGC which had repeatedly committed itself to supporting indigenous participation. The Secretariat had initiated a fund-raising drive, as letters with a "Case for Support" sent out to Member States and foundations had illustrated. Other options, such as inviting Member States who have Funds-in-Trust with WIPO to divert some of these funds to the Voluntary Fund, as well as seeking the assistance of prominent indigenous representatives in interceding with their governments for funds, had also been pursued. Unfortunately, despite these efforts of the Secretariat, no additional funds had been pledged so far. The Vice-Chair recalled that the Fund had been created by Member States as a voluntary contribution fund that could not draw on the WIPO budget, on the understanding that Member States would voluntarily and in a timely manner contribute to it and keep it afloat. Member States had been repeatedly urged therefore to contribute to the Fund. She reminded the IGC that the Fund did not need vast sums of money: the financing of five applicants each at IGC 24 and IGC 25 this year would require an amount of approximately 35,000 Swiss francs in total. Should Member States not be ready to contribute voluntarily, alternate financing solutions should be envisaged. The IGC might have to reflect on the possibility of inviting the WIPO General Assembly to amend the rules of the Fund in order to enable the regular WIPO budget to make a contribution to the Fund under conditions to be defined. She invited IGC delegates to consult quickly and seriously about this regrettable situation with their capitals and among the groups. She drew the Committee's attention to document WIPO/GRTKF/IC/23/INF/4, which provided information on the current state of contributions and applications for support as well as on document WIPO/GRTKF/IC/23/3 which concerned the appointment of members of the

Advisory Board. The IGC would later on in the week, by the end of Tuesday, at the latest, be invited to elect the members of the Board. The IGC would, therefore, revert to this question later. The Vice-Chair informed the Committee that she had been requested by the Chair to chair the Advisory Board. The outcomes of the Advisory Board's deliberations would be reported later in the current session of the Committee in document WIPO/GRTKF/IC/23/INF/5.

16. In accordance with the decision of the IGC at its seventh session (WIPO/GRTKF/IC/7/15, paragraph 63), the Twenty-Third session was preceded by a half-day panel of presentations, chaired by Ms. Lucia Fernanda Inácio Belfort, Executive Director of the Brazilian Indigenous Institute for Intellectual Property (INBRAPI), Brazil. The presentations were made according to the program (WIPO/GRTKF/IC/23/INF/6). The Chair of the Panel submitted a written report on the Panel to the WIPO Secretariat which is contained below as edited:

"WIPO Indigenous Panel
Intellectual Property and Genetic Resources:
Prospects for Indigenous Peoples and Local Communities.

> The main speaker was Professor James Anaya, United Nations Special Rapporteur on the Rights of Indigenous Peoples and Regents' Professor of Human Rights Law and Policy, University of Arizona, United States of America. The speaker referred to the changes put forward in the historical context of international law from the classical era and its development toward contemporary law, and emphasized the need to review the concepts of ownership under the rights currently recognized for indigenous peoples in international law. The speaker referred to the principles of sovereignty of States and to the law of ownership as key concepts of the conventional international legal system, within which, under the doctrine of *terra nullius,* rights of indigenous peoples in their territories and resources were not recognized, since they were considered to be unoccupied lands. The first IP systems created in the colonial period and at the beginning of the post-colonial period introduced the concept of the public domain. International law has advanced greatly in recognizing specific rights for indigenous peoples from 1980 onwards. The adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) by the United Nations General Assembly in 2007 was a symbol of definitive change in the international paradigm of rights for indigenous peoples. The UNDRIP reflected a general consensus on the rights which indigenous peoples considered relevant in the international legal context and was consistent with International Labour Organization (ILO) Convention 169, which was the main binding international instrument for protection of the rights of indigenous peoples. He reminded that the recognition of the right to free determination and self-government for indigenous peoples was contained in Articles 3 and 4 of the UNDRIP. The right to their lands and territories included natural resources and the territories occupied or used by indigenous peoples, in accordance with Article 26. This consolidated the rights already recognized for indigenous peoples in the specific international human rights system. Article 31 of the UNDRIP established the right of indigenous peoples to maintain, control, protect and develop their cultural heritage, including GRs and TK. The right to free prior informed consent (PIC) derived from the recognized rights of indigenous peoples to free determination and the resources existing on their territories. Interpretation thereof must not be isolated from these rights. The speaker mentioned his report to the United Nations Human Rights Council (document A/HRC/21/47), which contained references to the principle of free PIC, in particular paragraphs 47-53. He stated that GRs frequently originate from a specific territory which may be cross-border in nature, something which did not damage the rights of indigenous peoples to these resources. He said that guaranteeing these rights was precisely the task entrusted to the IGC negotiations. Thus, the principles of States' sovereignty, the concepts of ownership and public domain, which formed the basis of the IP system, needed to be harmonized with the new principles and paradigms of contemporary international law, and the way they were reflected legally speaking, which required reforming the concept of public domain, as it related to the knowledge, innovations and

practices of indigenous peoples. With regard to the IGC, the speaker emphasized that the negotiations provided the possibility of devising a legal instrument on IP rights in GRs, which guaranteed the rights of indigenous peoples as lawful owners of rights in TK and GRs, in addition to the fair and equitable sharing of the benefits generated by the commercial use of GRs and TK for the benefit of the different parties involved. The establishment of rules for the granting of access and the conditions for the fair and equitable sharing of benefits were rights derived from the sovereignty of States in their biological and genetic resources, but it was the responsibility of States to recognize the rights of indigenous peoples in TK and GRs, in accordance with the international standards in the national laws that regulated access to the TK and GRs of indigenous peoples.

The Chair of the panel commented that Indigenous peoples were aware of the advances in international law under the specific system of human rights for indigenous peoples, mainly from the 1980s onwards. Indigenous peoples considered that the creation of the United Nations Permanent Forum on Indigenous Issues (the Permanent Forum) and the approval of the UNDRIP represented signs of the progress achieved in the international legal context. The right to sovereignty of States and the application of the concepts of ownership and public domain might not exclude the rights of indigenous peoples to free determination, to free PIC and fair and equitable sharing of benefits. Indigenous peoples hoped that WIPO could apply the principles of harmonization and complementarity of international law in order to update the IP system and promote a future *sui generis* system of rules to ensure protection of TK, GRs and TCEs, with the full and effective participation of indigenous peoples and local communities throughout the process.

The first panelist to intervene was Dr. Anil K. Gupta, Vice Executive President of the National Foundation for Innovation in India and Coordinator of the Society for Research and Initiatives for Sustainable Technologies and Institutions (SRISTI) and the Honey Bee network. The *Honey Bee* network was created between 1987 and 1988 and strengthened with the creation of SRISTI, a voluntary development organization, created in 1992 with the task of supporting basic innovators, conserving biodiversity and developing sustainable solutions for local problems. Poor people often benefitted from knowledge but the use of TK should be encouraged, albeit with respect for ethical principles such as PIC. He referred to the diversity of TK based on plants, like grass-based products for agricultural use, medicines against fever (*Ephelixin 3-D*) and medicines for the treatment of mastitis, (*Mastiherb*), and highlighted the fact that products were commercialized throughout India and part of the profit shared with communities. He emphasized tht TK together with technology created innovations. Both needed to be enhanced jointly, mentioning a product with pesticide properties developed from the combination of active ingredients of a plant with an animal, for which a patent application had been filed by the National Innovation Foundation in India (NIF). TK of a quack doctor on the use of plants to treat typhoid fever facilitated progress in contemporary medicine and prevent resistance to drugs. The panelist emphasized the need to create platforms and benefit-sharing mechanisms for the benefit of communities whose knowledge had been used in the development of new products. In this regard, he highlighted that TK was not uniformly distributed within and among neighboring communities. He also noted that there was an enormous difference between those who had the knowledge but could not use it and those who could. He said that benefit-sharing should form an ethical value chain that was transparent and respectful of TK. He recalled that the people who worked for the sake of their own survival needed to have an incentive to produce knowledge, while private firms should not use the TK of individuals without their consent. Joint agreements in using and license derivatives from TK should accommodate the right for the members of the community and other independent workers to copy and adapt them for their own survival. PIC, monitoring and compensation mechanisms must be achieved throughout the different stages. He referred to the NIF in India as having developed good practices in this regard.

He made a plea for the unification of formal and informal science in order to create really valuable IP and TK. He emphasized what he called the golden triangle made up of investment, innovation and enterprises. The panelist presented initiatives such as the techpedia.in portal on the SRISTI website, involving institutions and young people from India. He asked the Committee to reflect on its degree of willingness to support innovators who generated green innovations based on TK for inclusive development.

The Chair commented that the application of the concept of public domain to GRs, associated TK and TCEs of indigenous peoples and local communities was not acceptable without implementation of the principles of free PIC and the fair and equitable sharing of benefits, already broadly established by the Access and Benefit Sharing (ABS) system of rules. In her view, the use of the public domain concept in isolation from these principles characterized misappropriation of TK, GRs and TCEs, especially by means of the patent system.

The second panelist was Mrs. Tarcila Rivera Zea, founder and Executive Director of the Center for Indigenous Cultures of Peru and President of the Governing Body of the International Indigenous Women's Forum (IIWF). She referred to the duality of approach regarding the relationship between TK, GRs and IP, that is, between what belonged to the community and what belong to individuals. The challenge for the IGC was to define the rights of the different parties involved. The nature of the IP system, that was based on segmented knowledge, commercial pricing, a term of validity and capital investment, did not coincide with the way on which TK was created, transmitted and developed among indigenous peoples. She emphasized that the common feature of TK was the community. The use of IP mechanisms by indigenous peoples had encountered a series of obstacles such as the difficulty of systematizing the knowledge for which protection was sought, the financial costs and the mechanism for monitoring protected knowledge. She referred to the TK that continued to generate innovations, as the use of minerals and knowledge of GRs for food. She noted that the enhancement of species of potatoes had generated 4,000 varieties of potatoes from a single variety. Regarding the IGC, she suggested the creation of mechanisms that would guarantee the full and effective participation of indigenous peoples in the negotiations; the recognition of the rights of indigenous peoples in their knowledge and GRs, as owners, holders and custodians of knowledge systems that generated innovations; the recognition of the collective nature of TK and GRs of indigenous peoples under the IP system; the recognition of the complementarity between the PIC granted by States and the PIC that must be assigned by indigenous peoples, in accordance with their representative organizations and customary law; the creation of new laws that incorporated the progress made in international law and recognized the historical contributions of indigenous peoples to biological and genetic diversity as well as the value of TK, and their innovations on an equal footing with IP rights; the institutionalization of indigenous participation on a similar basis to that established in the CBD, the FAO and the International Fund for Agricultural Development (IFAD) processes; gender balance for indigenous women in these processes; disclosure of the origin of the GR and TK in order to monitor implementation and identify the holders of rights in terms of ABS.

The Chair of the panel commented that the IGC must make progress in creating mechanisms that would guarantee the collective rights of indigenous peoples and local communities in their TK, GRs and TCEs, with emphasis on the role of women. It should set up compliance and monitoring mechanisms, such as the disclosure of origin of GRs, at the international and national levels.

The third panelist was Mr. Godber W. Tumushabe, Executive Director of the Advocates Coalition for Development and Environment and Assistant Lecturer, Faculty of Law of the University of Makerere. Uganda. In his view, the debate on local communities and TK was not making progress owing to a lack of political will. He referred to the publication "*Our Common Future*", published in1987, which stated the following: "these communities are the repositories of vast accumulations of traditional knowledge and experience that links humanity with its ancient origins. Their disappearance is a loss for the larger society, which could learn a great deal from their traditional skills in sustainably managing very complex ecological systems. It is a terrible irony that as formal development reaches more deeply into rain forests, deserts, and other isolated environments; it tends to destroy the only cultures that have proved able to thrive in these environments." The panelist emphasized that a quarter of a century had been spent seeking solutions that were found too late. The UN Conference on Environment and Development resulted in documents such as Agenda 21, the CBD, with emphasis on Article 8(j) thereof and the Rio Declaration. Other international instruments such as Article 9.2 of the International Treaty on Plant Genetic Resources for Food and Agriculture bore witness to the efforts of the international community to avoid the responsibility of promoting the protection of TK. International instruments in the context of the CBD were the result of years of negotiations, but leaving decisions to be taken by national legislation. He mentioned Article 8(j) of the CBD and the Nagoya Protocol. He noted that the WTO TRIPS Agreement avoided taking a stance. He urged the IGC to be more creative. He emphasized the contradictions that were inherent to a regime where global rules on IP and GRs must interact with national legislation on TK. He stated that it was common practice that the areas subject to national law were those which showed limited progress in terms of implementation. In his view, TK had remained orphaned in the international forums. He highlighted that the definition of TK must not be limited by the concepts prevalent in pre-existing instruments like the CBD or the FAO Treaty, since TK existed prior to all known international instruments. Referring to the negotiating document WIPO/GRTKF/IC/23/4, he stated that Objective 1 should refer to the need for implementation of national and international laws on free PIC, mutually agreed terms (MAT) and ABS. He said that the rights of indigenous peoples and local communities should be based on the right to free determination. He urged that the procedural burden lay on patent applicants and not those who sought to protect or benefit from TK. It was necessary to protect the interests of the providers of GRs that incorporated TK and to separate roles and rights between parties. In his view, the rights in indigenous knowledge were not necessarily related to the roles exercised by a Party to the international instrument. He requested clarity as to whether or not the negotiated instrument under discussion in the IGC would be an instrument for protecting TK instead of protecting patents. With regard to Objective 2 as drafted, the instrument should define the rights of the holders of TK that might not be appropriated by patent owners. He said that the principle that dealt with patents of life forms was not clear and asked how it was related to the rights existing in other instruments. The principles within this Objective were particularly odd in his view, given that they impacted on the rights of the holders of TK, instead of protecting such holders. He proposed that the negotiated instrument recognize the following in favor of TK holders: the right to preserve, use, exchange and sell preserved agricultural seeds; the potential for joint ownership of breeder's rights; a ban on the use of sterile or *terminator* technologies; rules that would govern the use of varieties by farmers in cultivation; compulsory licenses for the production of varieties that incorporate indigenous knowledge for purposes of food security and correct market shortcomings; potential establishment of a compensation mechanism for indigenous knowledge in support of development funds.

The Chair of the panel commented that the beneficiaries of a *sui generis* international instrument for protection of TK, GRs and TCEs should be the indigenous peoples and local communities, as the owners, holders and custodians of rights in GRs and related TK in their territories as well as in the TCEs that formed part of their cultural heritage, in accordance with Article 2 of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.

A round of questions was raised with the panelists by the Delegations of Australia and Jamaica. The Chair of the Panel closed the Panel by expressing thanks in the Kaingáng language: *Inhmyhá ti!* The Chair wished *Tope*, meaning that “the Creator gives his blessings to all”.”

17. The Advisory Board of the WIPO Voluntary Fund met on February 6, 2013 to select and nominate a number of participants representing indigenous and local communities to receive funding for their participation at the next session of the IGC. The Board’s recommendations were reported in document WIPO/GRTKF/IC/23/INF/5 which was issued before the end of the present session.

Decision on Agenda Item 5:

18. The Committee took note of documents WIPO/GRTKF/IC/23/3, WIPO/GRTKF/IC/23/INF/4 and WIPO/GRTKF/IC/23/INF/5.

19. The Committee strongly 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.

20. The Chair proposed, and the Committee elected by acclamation, the following eight members of the Advisory Board to serve in an individual capacity: Mr. Mohamed Ag Abba, Representative, ADJMOR, Tombouctou, Mali; Mr. Nelson De León Kantule, Representative, Association of Kunas United for Mother Earth (KUNA) (Asociación Kunas unidos por Napguana), Panama; Mrs. Natasha Gooneratne, Second Secretary, Permanent Mission of Sri Lanka, Geneva; Ms. Sophia Knight, Executive Officer, International Intellectual Property Section, Office of Trade Negotiations, Department of Foreign Affairs and Trade, Canberra, Australia; Mr. Mandixole Matroos, Second Secretary, Permanent Mission of the Republic of South Africa, Geneva; Ms. Natalia Buzova, Deputy Head, Legal Division, Federal Institute of Industrial Property, Federal Service for Intellectual Property (ROSPATENT), Moscow, Russian Federation; Mr. Justin Sobion, First Secretary, Permanent Mission of

Trinidad and Tobago, Geneva; Mr. Jim Walker, Representative, Foundation for Aboriginal and Islander Research Action (FAIRA), Brisbane, Australia. The Chair of the Committee nominated Ms. Alexandra Grazioli, Vice-Chair of the Committee, to serve as Chair of the Advisory Board.

AGENDA ITEM 6: GENETIC RESOURCES

21. [Note from the Secretariat: The Chair was chairing the session again at this point.] The Chair welcomed the participants and recalled the methodology and work program for the session. He reminded delegations that the methodology and work was flexible and could be adjusted, if needed, in the course of the session. He drew the attention of delegations to the working documents which were available for discussion under item 6; the Consolidated Document related to Intellectual Property and Genetic Resources (WIPO/GRTKF/IC/23/4), a Joint Recommendation on Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/23/5), a Proposal for the Terms of Reference for the Study by the WIPO Secretariat on Measures Related to the Avoidance of the Erroneous Grant of Patents and Compliance with Existing Access and Benefit Sharing Systems (WIPO/GRTKF/IC/23/6) and a Joint Recommendation on the Use of Databases for the Defensive Protection of Genetic Resources and Traditional Knowledge Associated with Genetic Resources (WIPO/GRTKF/IC/23/7). He also referred delegations to the three information documents available: the Report on the Implementation of Cluster C Activities (WIPO/GRTKF/IC/23/INF/7 Rev.), the Glossary of Key Terms Related to Intellectual Property and Genetic Resources (WIPO/GRTKF/IC/INF/8) and an information document from the Delegation of Norway which described its national disclosure system (WIPO/GRTKF/IC/23/INF/10). The Chair introduced an informal paper on the key issues for negotiation. He clarified that this was not a working document, but rather an informal paper for reflection on the issues as he saw them. Summarizing his paper, the Chair explained that, with respect to IP and GRs, Member States could choose to consider what options required international agreement at WIPO, as well as whether there were options that were more practical in nature which could be implemented within the existing international legal framework. He noted that the relevant international frameworks for regulating access to, and benefit-sharing, in GRs were the Convention on Biological Diversity (CBD), the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (the Nagoya Protocol) and the International Treaty for Plant and Genetic Resources for Food and Agriculture (ITPGRFA) of the Food and Agriculture Organization (FAO). He noted that GRs were different from the other two subjects being dealt with by the IGC, namely TK and TCEs, because while TK and TCEs were developed by the human mind and could, therefore, be considered IP suitable for direct protection by IP instruments, GRs were not produced by the human mind and, therefore, raised distinct IP issues. The Chair explained that TK was often associated with a GR. With respect to the IP issues associated with GRs, inventions which were based on or developed using GRs could be patentable. He pointed out that some Member States were concerned about patents which were being granted over inventions that were based on or developed using GRs and associated TK, and which did not fulfill the existing patentability requirements of novelty and inventiveness. Some other Member States considered that the defensive protection of GRs should also address the implications on applications for IP rights that did not evidence compliance with ABS obligations, specifically those which were related to prior informed consent (PIC), mutually agreed terms (MAT), equitable benefit-sharing and disclosure of origin. He explained that a number of countries had enacted domestic legislation which put into effect the ABS obligations under the CBD. This required that access to a country's GRs should

depend on securing that country's PIC as well as the agreement on fair and equitable benefit-sharing through MAT. He observed that many delegations felt that the patent system, in particular, should support and assist in the implementation of the ABS obligations such as through enabling the tracking of compliance with the obligations. Some delegations believed that all IP rights ought to be covered, including plant varieties, although UPOV and not WIPO, was the competent organization in that regard. The Chair further noted that the IGC had identified five main policy objectives in its search for appropriate ways in which to regulate the interface between IP and access to and benefit-sharing (ABS) in GRs. So far, there seemed to be convergence around two of these objectives: ensuring that IP offices had appropriate information on GRs and associated TK to make proper and informed decisions in granting IP rights; and, preventing the grant of patents or IP rights which involved the access to, and utilization of, GRs that did not fulfill the existing requirements of novelty and inventiveness. The Chair noted that there was a menu of options under consideration with respect to the solutions proposed to deal with these issues. Some of these options included databases, disclosure requirements and the use of contracts. With respect to contracts, the Chair highlighted the significance of WIPO/GRTKF/IC/23/INF/7 Rev. and explained that the IGC had discussed the role of IP in MAT for fair and equitable benefit-sharing. WIPO had been engaged in the development of clauses which could be considered for inclusion in contractual agreements. A database of existing ABS agreements had also been created under the IGC's oversight as a capacity building tool. The IGC had previously recognized that these were non-normative and practical tools which had been developed some time ago and were already being updated and improved upon. IGC 19 had requested the Secretariat to finalize and update the activities, and provide information thereon to the IGC. The Secretariat had done so at IGC 20, and again at IGC 23, in document WIPO/GRTKF/IC/23/INF/7 Rev. The Chair further noted that the Committee had examined guidelines or recommendations on defensive protection, for example, which helped to guide patent authorities when examining TK or GR related applications, and helped decrease the likelihood of the grant of patents in respect of inventions which did not fulfill patentability requirements. There had also been discussions on improved classification, search and examination. The Chair noted that new subclasses had been introduced several years ago into the International Patent Classification (IPC) to facilitate the identification of relevant prior art when TK related applications were being dealt with. This was to help patent examiners find relevant prior art and avoid the granting of erroneous patents. Furthermore, certain TK journals were accepted as part of non-patent literature for patent examination purposes. These were practical steps taken early on, which could be revisited and expanded upon. The key normative issue was a proposal for a disclosure requirement. This was not to suggest that the other steps were not valuable or necessary as they might have been necessary to complement and implement a disclosure requirement. They were, however, practical initiatives that could be undertaken by Member States and others within their existing international legal frameworks. On the proposal for a disclosure requirement, the Chair stated that he had identified a number of issues in his paper, such as, subject matter, nature of the obligation, information to be disclosed, triggers for disclosure and consequences of noncompliance, all of which required careful consideration by delegations. He concluded by suggesting that the immediate issues for delegations to consider were: which issues and options needed to be addressed through international norms in an international legal instrument to be developed at WIPO; at what level of detail these issues and options were to be regulated; how much policy space needed to be left for implementing Member States; what working methodology was to be utilized to facilitate the achievement of agreement on these issues and options; which of the proposed solutions, that were more practical in nature, should be developed and implemented further; how and by whom. The Chair drew the attention of delegations to the glossary, as contained in WIPO/GRTKF/IC/23/INF/8, and noted that it was simply a resource document and not intended to be adopted in any form. The Chair requested that the proponents of WIPO/GRTKF/IC/23/5, WIPO/GRTKF/IC/23/6 and WIPO/GRTKF/23/7, the three additional working documents submitted for the Session, be prepared to introduce the documents later in the Session, to enable delegations study their contents. The Chair informed the plenary that the facilitators for the Session were Mr. Ian Goss from Australia, Mr. Biswajit

Dhar from India and Mr. Emmanuel Sackey from ARIPO. The Chair opened the floor for substantive cross cutting comments on the issues under negotiation.

22. [Note from the Secretariat: the following statement was submitted in writing.] The Delegation of Peru thanked the Chair and expressed its satisfaction with the manner in which the Chair had directed the proceedings so far. It pledged its support to the successful conclusion of deliberations at the session. The Delegation reiterated its position, which was shared by many other developing countries which represented a major source of biological and cultural diversity, that it was vital that the Committee achieved an ambitious outcome with the adoption of an international legal instrument (or instruments) which would ensure the protection of GRs, TK and folklore. The Delegation was of the view that the IP system owed its importance to the recognition of the fact that, by fostering and promoting innovation, IP served as a fundamental vehicle for the economic, social and cultural development of States. This was particularly true for mega-diverse countries, which were the source of a myriad of TK and TCEs. This situation had led Peru to make countless efforts to ensure the preservation, protection and promotion of its resources, as well as to combat acts of biopiracy which involved biological resources of Peruvian origin and the collective knowledge of the indigenous peoples of Peru. It cited examples of such work to include: the establishment of the National Anti-Biopiracy Commission, which was responsible for protecting the interests of the State with respect to acts of biopiracy involving biological resources of Peruvian origin as well as collective knowledge of the indigenous peoples of Peru; the adoption of various regional and national standards which were linked to the protection of GRs and associated TK, such as the Decision 391 on a Common Regime on Access to Genetic Resources, Decision 486 on a Common Intellectual Property Regime of the Andean Community (CAN), Law 28216 on the Protection of Access to Peruvian Biological Diversity and the Collective Knowledge of Indigenous Peoples, Law 27811 which established the Regime for Protection of the Collective Knowledge of Indigenous Peoples Linked to Biological Resources, the Regulations on Access to Genetic Resources, among others. It noted, however, that such efforts had proven to be insufficient at the national level as it had continued to record various cases which involved the use and misappropriation of TK, some of which were associated with GRs, and expressions of culture and folklore.
The Delegation pointed out that its country harbored legitimate aspirations concerning the establishment of a legally-binding international instrument that would ensure the protection of its biodiversity and associated knowledge. It further noted that the protection of IP and GRs was an extremely complex issue that needed to be treated as a priority. It observed that the text had yet to reach the level of maturity as attained by the other texts which were under negotiation and urged delegations to move quickly in addressing the substantive aspects of the negotiations as there was only a limited amount of time which remained to carry out the work. It advised the plenary against being bogged down in procedural aspects of the negotiations or having its focus shifted away from the consolidated document, especially to the extent that this document contained all of the contributions and proposals that had been discussed by the plenary over the last few years. The Delegation expressed its support for the working methodology as proposed by the Chair and observed that such an approach sought to speed up negotiations through the establishment of a group of regional experts. The Delegation of Peru signified its readiness to proceed and offer its constructive contributions to the negotiations. It urged all the other Member States to display the required flexibility to ensure that the mandate of the Committee was fulfilled and that the Committee could present to the 2013 General Assembly a mature text on the protection of GRs that could be submitted for consideration at a Diplomatic Conference. It further urged delegations to remember that the Committee's ultimate goal was to develop an improved IP system for the benefit of all. It expressed its confidence that a successful outcome to the negotiations would enable the Committee to achieve this aim and this would be of particular benefit to the poorest local and indigenous communities in the developing countries.

23. The Delegation of Brazil believed that it was time to further explore the building blocks of the future instruments on GRs. It noted that frank and constructive discussions on the basic elements regarding the role to be played by the IP system in the fight against misappropriation of GRs, would help to find common ground and also to make real progress towards an effective

and reliable solution to the matter. Member States should engage in informal consultations to discuss these building blocks so as to expedite the work of the IGC. The discussions on the building blocks would best be focused on how disclosure should be defined, what its requirements should be, including what kind of information should be required by the disclosure mechanism. Other issues, such as, the defensive measures to avoid the granting of erroneous patents, as well as sanctions that should be applicable to violations of the disclosure requirements, should be tackled after Member States had agreed on the basic elements of the disclosure requirements. The Delegation opined that it would be helpful to hear the views of Member States on how the disclosure requirement should work. The instrument to be developed by WIPO should be consistent with the international regime which had already been consolidated by the CBD and its Nagoya Protocol. This meant that concepts and principles which were already agreed on, under the CBD regime, were not be reopened or reviewed by the WIPO discussions. This also meant that the plenary should focus its discussions on the role of the patent system with regard to the enforcement of the ABS norms. The protection of GRs was a matter for the CBD regime. The matter that needed to be tackled by WIPO was the misappropriation of GRs, its derivatives and associated TK by patents which were granted without the necessary verification on whether ABS norms were fulfilled in accordance with the national legislation of the providing country and also with the CBD regime. The Delegation was of the view that the mandatory disclosure requirement was the most effective solution to the fight against this kind of misappropriation. It finally expressed its support for the building of an effective, reliable, reasonable and practical mechanism that allowed the patent system to contribute to the enforcement of the ABS legislations. It observed that the system should not, however, create an unjustifiable burden for the patent system and for innovators. To this end, the Delegation urged delegations to pursue a balanced solution that guaranteed transparency and legal certainty for the benefit of providers and users of GRs and associated TK.

24. The Delegation of the Plurinational State of Bolivia thanked the Chair and emphasized its position, as had been expressed in other forums, regarding the non-violation of IP, GRs and TK. It noted that parts of the existing text had language that addressed this concern. It requested that such language be maintained for the time being. The Delegation stated that it was working on language that reflected the interest of its country and other countries as well. It further underscored its commitment to working hard with other delegations to find alternatives that could make it possible to find solutions for countries such as its own within the negotiations. The Delegation was of the view that the protection of GRs meant that forms of life were not patented. It encouraged all the delegations to demonstrate some flexibility so as to arrive at an agreement that addressed the concerns of one and all and which remained beneficial to its people.

25. The Delegation of Belgium, speaking on behalf of Group B, noted that the IGC had already accomplished important progress in exploring national practices and clarifying differences in positions. However, it was convinced that further work was required in order to overcome the divergent, and sometimes conflicting, policy objectives and guiding principles in accordance with the mandates of the IGC for 2012 and 2013 as well as the 2013 work plan of the IGC. In this regard, it stated that the subsequent work of the IGC should remain inclusive, member-driven and participatory. It called for delegations to listen to the interests and priorities of all stakeholders, including Member States, indigenous peoples and the business community. It also encouraged the plenary to strive for a balanced outcome, which provided sufficient certainty and flexibility in the field of GRs. It expressed its commitment to undertaking further work towards the conclusion of the text or texts of an international instrument(s) pursuant to the General Assembly mandates. The final results should be a solution which practically and substantially achieved the objectives without providing adverse effects on innovation. It expressed its commitment to contributing constructively for the attainment of a positive result.

26. The Delegation of Algeria, speaking on behalf of the African Group, thanked the Chair and recalled that the work of the IGC was still guided by the mandate adopted by the General Assembly in 2011 and enriched by the decision of the General Assembly in 2012. It noted that

both of these decisions underlined the importance of intensive negotiations, political will and engagement in good faith towards concluding a text for an international legal instrument or instruments, which would ensure effective protection of GRs, TKs and TCEs. It reiterated its commitment to reaching agreement on a legally binding treaty which was based on a mandatory disclosure for GRs, TK and TCEs, to ensure effective protection and to contribute to innovation and creativity in Africa. It expressed the view that the time had come to finalize the negotiations, and to present the text of a treaty to the General Assembly so as to call for a Diplomatic Conference in 2014.

27. [Note from the Secretariat: The following statement was submitted in writing.] The Delegation of the EU, speaking on behalf of the EU and its Member States, extended its thanks to the Chair, the facilitators and the WIPO Secretariat. It welcomed the continued involvement of facilitators and noted their valuable contribution to the advancement of the discussions as well as their assistance with the convergence of the various texts at IGC 20. It hoped that delegations could continue to engage positively in a spirit of compromise and that real progress could be achieved on a broad range of outstanding issues. The Delegation noted that the nature of the legal instrument that would emerge from this session of the IGC and the other IGCs remained undecided at this point. With this in mind, it considered that, in the best interests of advancing discussions at IGC 23, the primary focus should remain on clarifying and refining the objectives and principles of the text and the policy options contained therein. It stressed the importance of discussions remaining within the scope of IP and GRs, as per the IGC mandate. It noted that the inclusion of other wider issues, irrespective of their own merits, could encroach on the competences of other international bodies and could serve to hinder timely agreement among delegations. In addition, it felt that the best option for advancing these discussions was to ensure that discussions on GRs remained separate from the other IGC strands of TK and TCEs. Each of the IGC strands were at different stages of maturity, and related to separate, though linked, subject matter. Merging these would be counterproductive, and was not something that the EU and its Member States could agree to. The Delegation reiterated its long-stated position, as contained in WIPO/GRTKF/IC/8/11, with regard to the disclosure of origin. This position was conscious of the importance of not introducing fresh burdens to innovation, and, more specifically, the patent examination process. Disclosure requirements should also not place an unfair burden on applicants or patent offices.
The Delegation stated that disclosure of origin should be a set of formal requirements, rather than an issue which required scrutiny during the patent examination process. Issues which arose from difficulties with this method of disclosure were best remedied at the national level. The Delegation expressed its view of this approach as being a fair, balanced and proportionate approach to ABS.

28. The Delegation of Cuba expressed its appreciation and support for the ongoing work at the IGC. The Delegation aligned itself with the statements made by the Delegations of Brazil and the Plurinational State of Bolivia. It considered it very important that attention was paid to the particular interests of each and every country represented, especially countries in development, as the protection of GRs was very important for development and the public interest.

29. [Note from the Secretariat: the following statement was submitted in writing.] The Delegation of Sri Lanka, speaking on behalf of the Asian Group, offered its support to the methodology proposed by the Chair. It agreed that the balance of both plenary and informal sessions would greatly aid in progressing the work at hand. It was appreciative that all Member States would still be able to follow the informal deliberations even if they were not at the main negotiating table. It pointed out that the richness, vastness and biological diversity in the Asian region had long been known and noted that countries belonging to the Asian region had long been providing GRs to the world. These GRs continued to be an essential factor of its TK and resource base which was why the discussions were of utmost importance to the Asian Group. The Group explained that the benefits derived from GRs and associated TK, had over the years been exploited. It was of the view that the need to effectively address the

misappropriation of GRs should be the foremost concern of the plenary. In this regard, many Member States of the Asian Group believed that it was necessary for the Committee to focus on agreeing on an effective mandatory disclosure requirement, which offered protection against the misappropriation of GRs, their derivatives, and associated TK and which allowed for fair and equitable ABS. Some other Member States, however, felt it was necessary to further understand the feasibility of such mandatory disclosure requirements. The Delegation noted the importance of establishing databases and other information systems with IP offices, in order to further avoid the granting of erroneous patents. Given the importance and complexity of the discussions, it stated that Member States of the Asian Group would intervene, as necessary, in their national capacities, during the substantive discussions. It expressed its commitment to the deliberations within the IGC and its expectations for a successful outcome.

30. [Note from the Secretariat: The following statement was submitted in writing.] The Delegation of Indonesia, speaking on behalf of the Like-Minded Countries (LMCs), expressed its support for the proposed work program and methodology for the Session. It was of the view that IGC 23 needed to pave the way for the future sessions of the IGC in 2013. It noted that the negotiation had to be concluded through progressive work on the basis of a single text. It noted the inseparability of GRs, derivatives and TK associated with GRs and expressed its support for the idea of their protection. The Delegation also noted that the protection of GRs should comply with other international mechanisms which supported the concept of a disclosure requirement as the disclosure requirement constituted the basic foundation of the concept of transparency. It was of the view that support for the concept of ABS with PIC and MAT was important as these provisions were in line with other international agreements. It noted that these provisions would, at a later stage, support the certainty of rights within the Intellectual Property Rights (IPRs) system by ensuring that IPRs were not given in error and that the IP system prevented the misappropriation of GRs. Taking this into account, the Delegation highlighted the need to address the role of the IP offices so as to ensure that they were properly equipped to arrive at proper decisions regarding the grant of IPRs to individuals and/or other subjects permitted by any system. There was also the need to define the role of the IP system. The IP system could be used to support the effective protection of GRs while at the same time performing its functions of promoting innovation, knowledge and the transfer of technology. The Delegation expressed its support for the creation of databases in furtherance of the protection and utilization of GRs. It noted that this constituted one useful tool for promoting the defensive protection for GRs, TK, and TCEs. This was however a complementary process to the creation of an international legal instrument(s) which would ensure the effective protection for GRs, TK and folklore. It recalled that the Committee had managed, till date, to narrow down the differences in the deliberations on GRs by simplifying the working documents into one single consolidated document. It noted that any attempt to slow down and prolong the completion of the international legal instrument should not be entertained. It further urged the Committee to make real progress, reach compromises, and reduce the number of options as any further delay would prolong the legal lacuna and support misappropriation.

31. The Delegation of the Russian Federation was of the view that GRs were not the result of intellectual activity and could therefore not be classified under IP. The Delegation noted the critical issue to be the protection of GRs so as to avoid the erroneous granting of patents for GRs and associated TK which were not in accordance with the current criteria. It pointed out that there was a need to look at TK based on GRs within the object of the consolidated document. It observed that there had been no agreement on the format of the document and, therefore, the discussions on articles were premature. The Delegation noted that there had been a development of the basic aims and principles regarding IP and GRs within the consolidated document. It was however of the view that as there was no agreement or consensus on the aims and principles, a discussion on the document would be difficult. The Delegation finally highlighted the importance of keeping the provisions developed in document WIPO/GRTKF/IC/23/4 within the mandate of the Committee and of WIPO.

32. The Chair opened the floor for a first read-through and comments on the consolidated text (Annex to WIPO/GRTKF/IC/23/4), starting with matters relating to Objectives and Principles.

33. The Delegation of the United States of America observed that Objective 1 asserted compliance with international and national laws relating to PIC, MAT, ABS and disclosure. It believed that this objective was outside the scope of the mandate of the IGC. The IP system, and especially the patent system, was designed to promote the prompt disclosure and dissemination of technical information so as to promote the progress of science and technology. It pointed out that it had laws related to MAT and other more specialized agreements, such as those pertaining to ABS. It disagreed with the view that the patent system should be used as a mechanism to enforce contracts. It could not support the use of the patent system to ensure compliance with the requirements on the disclosure of the source or origin of GRs in patent applications. In order to promote prompt disclosure and incentivize innovation, the requirements placed upon the patent applicant must not be burdensome. Burdens must only be those that were necessary to ensure that ordinary skilled persons in the same area of technology could remake the invention, or burdens that were required to ensure clarity in the claims of the patent application so that the scope of the claims could be understood. The Delegation reiterated its aversion to the use of the patent system to promote compliance with national and international laws within the guiding principles of Objective 1. It recognized, however, that there were a variety of ownership arrangements pertaining to the rights over GRs. It noted that its national park systems, for instance, had policies with respect to GRs which were found within the parks. It was of the view that the patent system provided for private rights with respect to GRs that were created by an inventor. The scope of the rights with respect to these created GRs was clear. It expressed its concern with the expansion of the scope, where reference was made to derivatives and associated TK. The Delegation explained that the issue of derivatives raised a number of questions: What was a derivative? Would a synthetic compound that was the result of a study of a naturally occurring compound, always be considered to be a derivative? Would wine be considered to be a derivative of grapes? It noted that the scope of TK was also very broad. Consequently, should a community be entitled to claim knowledge as its own, if such knowledge was widely disseminated? Should it be required that TK be protected before a person or group could claim the right to insist upon PIC and MAT? The Delegation expressed its general support for paragraph 1.3 though it noted its inability to see how information about PIC or benefit-sharing could be a reasonable requirement for a patent application. It noted that this information had no bearing upon the scope of the claims or on how to make or use the invention, and therefore was not relevant to patentability. The Delegation observed, regarding paragraph 1.4, that a contract-based ABS regime could require disclosure to authorities of any commercial use of the GRs or associated TK. Such disclosure would be directly linked to access to the GRs or associated TK and thus would only be made when necessary, and not in a wide variety of situations, where the GRs or associated TK were not accessed. With such a narrow set of disclosures, the authorities would not be burdened with unnecessary disclosures when they ensured monitoring and transparency for the use of the resources or knowledge. The Delegation pointed out that it could not support Objective 2, as the language, “from being granted in error”, was vague, and appeared to suggest that an inventor could only file a patent application when PIC had been received. This was contrary to the patent system’s goal of providing a timely disclosure. It stated that clarification was still needed on what was meant by the phrase, "certainty of rights for legitimate users of GRs" within the guiding principles of Objective 2. It stressed that it could not support the use of the patent system to enforce other laws and therefore, could not support the use of the patent system to enforce the requirement that only inventors, who had shown an authorization to use a GR, could legitimately develop inventions from such GRs. The Delegation observed that the use of the word “legitimate” appeared to suggest that some users could be considered illegitimate or unauthorized, and thus not have their rights respected. This would not be consistent with the goal of the patent system which was to allow all to invent and to promote a timely disclosure. The Delegation noted that the phrase could be reasonable if its intention was to note that the patent system was to provide certainty of rights for legitimate users of GRs concerning their entitlements to patents. It however pointed out that it could not

support the phrase if the intention was to ensure that the patent system provided certainty of rights for legitimate users of GRs in spite of patents held by others. It concluded that without a complete understanding of the language, it could not support either option. It also indicated that it could not support the use of the term, "shall", or any other language that would be indicative of a legally binding instrument. The Delegation stated that it could not support the language contained in paragraph 2.6. It explained that new patent disclosure requirements would undermine the objectives of PIC and benefit-sharing by discouraging research which involved GRs due to legal uncertainties. Such requirements would hurt the economic, scientific and commercial interests of several stakeholders. The Delegation indicated that it could not support the first option in paragraph 2.7 as the reference to life and life forms implied that such inventions based on life and life forms were not novel or lacked inventive step. The Delegation noted that this might not be true. It pointed out that this option also raised serious questions with respect to the consistency of this provision with the United States of America's law as well as the WTO TRIPS agreement. It expressed support for option 2 of paragraph 2.7. The Delegation stated that it could support Objective 3 with reference only to the patent system. It suggested that this objective could be merged with Objective 5, as ensuring that IP offices had the required information to make proper decisions, was integral to the promotion of innovation. It observed that the issuance of erroneous patents could have the effect of discouraging innovation and thus proposed that the two objectives be merged. The Delegation proposed the insertion of "should consider" in place of the term "must" within the guiding principles of Objective 3. It also expressed its reservations regarding the use of the term "intellectual property rights" in this context, as it believed it to be too broad. The Delegation believed that the aim of paragraph 3.2 was to achieve the goal of preventing erroneously granted patents. It identified the main issue of disagreement as being whether a proposed disclosure requirement could prevent erroneous patents. It stressed, in this regard, that new patent disclosure requirements could not ensure compliance with patentability requirements, such as, proper inventorship, novelty, and inventive step. It observed that the disclosure of source or origin could be expressed in a wide variety of ways. It proposed a focused measure that would improve the quality of patent examination, and ensure that challenges regarding prior art were addressed. The Delegation stated that it could not support paragraph 4.4 as it could not promote supportive relationships with international agreements that were not yet in force and to which it was not a party. The Delegation reiterated its view that Objective 3 and Objective 5 be merged. It noted that Objective 5 had paragraphs that supported the role of IP in promoting innovation and the dissemination of knowledge. It stated that it could not support this objective as it was a selective version of Article 7 of the WTO TRIPS Agreement tailored to address GRs and TK. The Delegation was unclear as to how the IP system contributed towards the protection of GRs, derivatives of GRs, and associated TK. It noted that if the contribution was that the IP system could be used to enforce PIC and MAT, it could not support the objective. The Delegation stated that it could not support paragraph 5.3 which stated that the IP system had a role in the protection of TK, GRs and their derivatives, TCEs, and the fair and equitable sharing of benefits. It clarified that it could not accept this objective to the extent that this paragraph could be read to mean that the IP system contributed to such protection by enforcing non-IP laws. The Delegation noted that the transparency provision in paragraph 5.5 was important, and it expressed its support for the requirements that promoted transparency. It believed, for example, that a contractual requirement could be useful in promoting transparency if it required a report to be made to a specified authority where a patent application was filed relating to the subject matter of the contract. It however pointed out that a requirement to disclose the country of origin or source of GRs which were somehow related to an invention, irrespective of how or where obtained, would provide IP offices with extraneous information and would not promote transparency. It stated that it could not support the language of paragraph 5.5 as it would be operationally impractical, and sometimes infeasible, to ascertain the country of origin or source, whenever this country or source was not the same as the provider of the GRs. It was of the view that there were various non-uniform ways through which information could be disclosed such as through databases, publications, or ex-situ collections. It noted that although the objective of increased transparency concerning the origin or source of material would be difficult or impossible to achieve, transparency concerning the use of the GRs and associated TK could be achieved through effective PIC and ABS systems outside of the patent system.

34. The Delegation of Nigeria expressed its support for the mandatory disclosure requirement. It observed that some of the principles and objectives in the consolidated document seemed to combine both principle and methodology. The Delegation noted that this could expand the scope of the disclosure requirement to a degree that may not be consistent with the ultimate objective of the Committee. The Delegation expressed its support for Objective 1 to the extent that it sought to reinforce the benefits of the international patent system, with a specific focus on innovation. It pointed out that there were several disclosure mechanisms in the patent system and that these varied from country to country. The patent document itself contained various sections that were all aimed at disclosure to different degrees and for different ends. The Delegation believed that it was important to understand what was meant by disclosure as well as which facets of the patent system could facilitate disclosure for the purposes of ensuring the integrity of the patent and the legitimacy of the efforts of the inventor. This clarification was necessary to the extent that Objective 1 dealt with compliance in the sense of disclosure. The Delegation highlighted the importance of distinguishing between those concerns that dealt with the commercialization of the invention and those that dealt with innovation in itself, within the guiding principles of Objective 1. It supported the mandatory disclosure requirement to the extent to which disclosure enabled patent offices and IP offices to identify the precise innovation that laid at the heart of the patent, and to which it ensured that details such as prior art as well as the specifications and descriptions, as contained in the patent document, had been obtained legitimately. The Delegation stressed that to the extent to which discussions were made on disclosure as a means of supporting innovation, the above distinction was important in Objectives 1, 2 and 3. Regarding Objectives 3 and 4, the Delegation stressed the view that it was important to distinguish between, on the one hand, the norms that facilitated transparency and encouraged innovation as well as disclosure at the international level and, on the other hand, the consequences of those norms when they became applicable at the national level. It noted that there was a difference between these two standards. It believed that in Objective 4, for instance, it was important, for coherence purposes, to ensure that the disclosure requirements were consistent with other patent doctrines such as prior art, the grace period and some of the mechanisms that identified who the first inventor of a product was. The Delegation observed that regarding the relationship between international and regional agreements, instruments and treaties, it would be helpful to distinguish between those treaties that were merely procedural and those that actually dealt with substantive norm-setting. It noted that it was important to think about the principle of disclosure as a norm, but pointed out that the principle of disclosure as part of the patent application process, could appear different across jurisdictions. It was concerned regarding Objective 4 and wished to make sure that the implementation of disclosure for administrative purposes would not unduly interfere with its role in supporting innovation. It recognized that some delegations were not members to international instruments that dealt with GRs and that there would be differences in the degree in which different countries would implement these various treaties. The standing principle of international law was, however, that there was to be reconciliation, to the best possible extent, where there was tension in the implementation of the treaties in domestic law. It therefore believed that the distinction between the substantive norms and the norms as they operate in the administration of the national systems could not be overemphasized.

35. The Delegation of China was of the view that the introduction of disclosure requirements with respect to the origin of GRs in patent applications would be a further improvement for the existing IP system. This would help align the IP system with the CBD, as well as promote the implementation of PIC and benefit-sharing in the use of GRs. It expressed therefore its support for the inclusion of the disclosure requirement in Objective 1. The Delegation also stressed the importance of compliance with domestic legislation in Objective 1 and expressed its support for the Option 1 of the guiding principles on Objective 1 as it reflected more comprehensively the

principle of the sovereign rights of States. It expressed its support for the inclusion of the expression “[where] national law and requirements are not satisfied” in Objective 2.1(b).

36. The representative of FAIRA expressed his satisfaction with Objective 1 and the guiding principle 1.1.2 especially as it related to the protection of indigenous peoples and local communities. He noted however that the guiding principles 1.2 and 1.3 raised concerns with respect to the protection of indigenous rights within the IGC. He noted that there had been no mention of the protection of indigenous rights within the cross cutting comments made by Delegations and further expressed concerns that their rights as indigenous peoples were being eroded by some of the comments being made. He stated that the negotiations were about indigenous rights and urged delegations to bear this in mind in the course of the negotiations especially as the lives and livelihoods of the indigenous peoples were in the hands of the delegations.

37. The Delegation of Peru thanked the Delegation of the United States of America for its detailed intervention and expressed its hope that such detailed discussions would also be carried out within the expert group. It noted that formulating a general policy principle was difficult and controversial, as what was sought was to express a principle of law. It pointed out that, as a principle, access to GRs should comply with the corresponding relevant national legislation. As pointed out by the Delegation of Nigeria, national legislations varied from country to country. The Delegation was of the view that this was quite a general principle and recommended that better wording be found for it, as the current wording was redundant. The Delegation noted that conceptually, the trilogy of GRs, derivatives and TK associated with GRs, all existed jointly. It stated that there were significant financial implications for the three pillars, as well as political difficulties behind these financial issues, but observed that the world was moving towards a greater understanding on the need for regulating this kind of activity for the benefit of all. The Delegation of Peru explained that, in its national experience, it was a witness to multiple patents which had been granted in error even though patent examinations were carried out in good faith. It explained that those erroneous patents did not include the necessary inventive step and that the reason for which the patents were granted was that inadequate information was provided to the patent examiners. The Delegation, therefore, noted that the principle of disclosure, as part of patent applications, was vital and necessary to implement MAT and benefit sharing. Disclosure made sure patent offices knew whether there was an adequate inventive step to grant a patent. The Delegation argued that this determination could only be achieved through a disclosure requirement. It noted that the IP office in Peru performed the role of a check-point and that this role was absolutely vital. It conceded that the patent office could not actually apply the law and make sure that it was implemented at a national level. However, it was essential for the IP office to be a control point, because this was where the decision would be made on whether or not a particular product could be commercialized.

38. The Chair closed the floor for comments on the Objectives and Principles and opened the floor for comments on Article 1.

39. The Delegation of Brazil expressed its support for Article 1 being renamed as an objective. It was unable to understand how the current instrument that was being discussed at the IGC was related to the protection of GRs. It believed that the protection of GRs had already been regulated by the CBD and the Nagoya Protocol. It proposed a substitution of the term “utilization of intellectual property rights” with the term “patent” as it was of the view that the discussions were focused on the patent system and not on IPRs as a whole.

40. The Delegation of the United States of America noted that it could not support the text of paragraph 1.1 as the use of the term "protection" suggested the creation of a new right for non-patent holders and involved a broad subject matter beyond patents. Similarly, the use of the term "protect" implied that the purpose of the text was to provide a new exclusive right for GRs and associated TK, when this was not a shared objective. Regarding the amendment to

the text as proposed by the Delegation of Brazil, the Delegation of the United States of America noted that it wished to ensure that it understood the meaning of any terms such as “utilization”, if they were included in the text.

41. The Delegation of Mexico was of the view that every time the words “traditional knowledge” occurred in the English version, it should also be reflected as “associated TK” in Spanish. It also suggested that the title of Article 1 should be “Object of Protection” in order to promote uniformity with the draft articles on TK. The Delegation finally expressed its support for the elimination of the word “protection” and the inclusion of “the utilization of” as well as “their derivatives”, and requested that these be kept in square brackets.

42. The Delegation of Nigeria aligned itself with the Delegation of Mexico in expressing its support for the removal of the word “protection”. It associated itself with interventions made by other delegations which indicated that the instrument was not about protection as such. Should there be a mandatory disclosure requirement, the notion of protection would be even less relevant because, in the event of disclosure, national laws that dealt with the protection of GRs would be immediately rendered effective. The Delegation reiterated its earlier intervention made with respect to the distinction between principles and methodology. It encouraged discussions towards areas where there was some convergence on principles. It finally observed that the current language had not contributed positively to the delineation of the boundaries of the forthcoming instrument.

43. The Delegation of Namibia was of the view that, in the compilation of the text, the placing of “utilization of” in square brackets before “intellectual property rights” was probably an editorial mistake. It made much more sense to talk about any IPR derived from the utilization of GRs and associated TK. The Delegation understood that IPRs went a lot further than the patent system, and that the Committee's mandate not only extended to the patent system, but also to other forms of IPRs, specifically to plant breeder's rights. It noted real reluctance on the side of the Delegation of the United States of America to move ahead with the negotiations and sought clarity, with regards to WIPO’s General Rules of Procedure, on whether there was a mechanism, such as a vote, for other delegations to proceed in such circumstances.

44. The Delegation of Canada aligned itself with the comments made by the Delegation of the United States of America with respect to the clarity of the term “protection”. It noted that if it was to talk of the protection of GRs *per se*, it would be talking basically about environmental conservation issues, which were not within the scope of the negotiation. It opposed the use of the term “derivatives”, again on clarity grounds. The Delegation preferred the use of the term “TK associated with GRs”, instead of “associated TK”. It finally requested that the term “intellectual property right(s)” be replaced with “patents”.

45. The Delegation of the EU, speaking on behalf of the EU and its Member States, noted that it had explained its general view regarding Article 1 in its opening statement and reserved its right to make further detailed observations on the articles during the expert group meetings.

46. The Delegation of Peru supported the intervention made by the Delegation of Namibia and said that it was looking at more than just one single type of protection of IP, beyond patents. It noted that protection of GRs, their derivatives and associated TK would not be entirely ensured by the patent regime. A *sui generis* regime was needed. The Delegation pleaded for a broader approach to the issue of the protection of GRs, as it did not want to limit itself to patents, but include IPRs as it was the case now in the text. It recognized though that the scope of protection could be further refined at a later stage of the negotiation. The inclusion of derivatives in the scope of protection should be kept in the text, since fifty percent of the economic benefits accruing from GRs actually accrued from derivatives thereof.

47. The Chair said that the choice between a reference to IPRs in a broader sense or patents would be further shaped as the negotiations evolved.

48. The Delegation of South Africa insisted on the fact that the work and final result of the present negotiations should be consistent with the present mandate of the IGC. It requested that the present purpose of Article 1 in the text remain as it is, namely "subject matter", and not the "objective of the instrument".

49. The representative of CAPAJ supported the statement made by the representative of FAIRA and said that TK and TCEs associated with GRs, as well as the GRs themselves, had been developed by indigenous peoples throughout ancestral knowledge and constant dialogue with mother nature well before modern states were created, including Peru. He noted that despite this fact, States claimed their full sovereignty over GRs in Article 1. He requested that sovereignty over GRs should be shared and recognized in favor of indigenous peoples.

50. The Chair reminded the participants of the need to focus on Article 1 and noted that this Article did not deal with sovereignty. He stated that matters of concern for indigenous peoples and local communities of this sort should influence the text in cross-cutting fashion and not be repeated for each article.

51. The Delegation of the Islamic Republic of Iran recognized that Article 1 was not an easy matter as it was related with the scope and objective of the instrument. It did not share the assumption that GRs were raw material not subject to IP, since they had been developed by generations for peoples, be they breeders or fishers. Those peoples owned IPRs on those GRs that they had been developing over centuries. It was not advisable to restrict the scope of protection of GRs to patents and the Delegation referred to plant breeding. It reiterated that this article was narrowly related with the scope of protection and requested that both elements be kept as open as possible. It reminded that many elements of the text should take on board what had already been dealt with in other forums.

52. The Chair opened the floor on Article 2.

53. The Delegation of Mexico preferred Option 1. Regarding paragraph 2.1, it would like that "for the benefit of country providing such resources and knowledge" be replaced by "for the benefit of the country providing such resources and the indigenous peoples and local communities providing such associated traditional knowledge". Regarding paragraph 2.2, it requested that the term "domestic" and "existing" be deleted, and "in force" added after "treaties". The Delegation asked that paragraph 2.3 be deleted.

54. The Delegation of the United States of America did not support either option, as the scope of beneficiaries was limiting and failed to recognize the importance of the patent system and effective ABS mechanisms in the promotion of benefit-sharing. It had an alternative to offer but wished to reserve it for the expert group.

55. The Delegation of Japan was of the view that discussions on the exclusive rights in paragraph 2.3 were premature and should be left for a later stage, since the definition of beneficiaries of GRs as such was still vague. It requested that paragraph 2.4 be deleted as it rested on the premise of the introduction of mandatory disclosure requirements.

56. The Delegation of South Africa, speaking on behalf of the African Group, stated that the protection that was sought should aim at GRs and associated TK, as both were linked. The definition of the beneficiaries was, therefore, clear and called for a preference for Option 1.

57. The Delegation of Namibia believed that it would be useful if paragraph 2.1 replicated the language of the Nagoya Protocol, which made it very clear that "the country providing such resources" was either the country of origin or the country that had acquired the GRs in accordance with the CBD. That would be helpful for implementation after its entering into force and under a material transfer agreement with the PIC of the country of origin.

58. The representative of INBRAPI thanked the Chair for leading the process where there was a great diversity of opinions. She supported the Delegation of Mexico that it was necessary to include indigenous peoples and local communities as beneficiaries. She highlighted that Article 8(j) of the CBD and Articles 6 and 7 of the Nagoya Protocol recognized the rights of indigenous peoples and local communities over their GRs and TK. Regarding Article 2.3, she noted that subparagraphs (a), (b) and (c) dealt with the nature of GRs and associated TK while subparagraph (d) dealt with the rights of indigenous peoples and local communities, and they were different issues.

59. The Chair opened the floor on Article 3.

60. The Delegation of Japan, on mandatory disclosure requirements, strongly believed that the ABS issue should be continuously considered in the context of implementation of the Nagoya Protocol. Additionally, there was a grave concern that mandatory disclosure requirements could have a chilling effect on industries' motivation for applying for patents, due to the legal uncertainty on patentability of patent applications, the validity of patents and the patent prosecution procedure. They could harm industries' motivation for innovation, which was accomplished with their ceaseless research and development (R&D) efforts driven by the incentive granted by the patent regime. If industry's motivation for innovation utilizing GRs declined, benefit-sharing could also become unsuccessful. The Delegation pointed out that the risks involved in identifying source or origin in patent applications was enormous and the difficulties of traceability could render the patent system one that discouraged rather than promoted innovation. Industries might hide their inventions as trade secrets rather than filing patent applications. That was why mandatory disclosure requirements were not an appropriate measure for the problem of misappropriation of GRs, especially if there was no sanction for failure to meet mandatory disclosure requirements. Regarding defensive protection, the Delegation remarked that, if the proposal as submitted in WIPO/GTKF/IC/23/7 became true, erroneously granted patents could be diminished. A patent granted through the one-stop-portal database as proposed by the Delegation of Japan would have stable patentability, which would lead to the promotion of innovation and expect the benefit-sharing based thereon. Therefore, the Delegation believed that it was highly worthwhile for the Secretariat to consider exploring the development of such a database.

61. The Delegation of Canada could not accept the language in Article 3 that contemplated mandatory disclosure requirements nor the options and sub-options that assumed the implementation of such requirements. However, it had previously supported and proposed alternatives to disclosure requirements.

62. The Delegation of the United States of America could not support the current text of Articles 3.1 and 3.2. GRs were not knowledge systems. In addition, mankind had not always treated TK as a knowledge system with the right to exclude others from access to that knowledge, and there was much TK that had been documented and widely shared and thus was understood to be in the public domain. The protection of GRs and associated TK through the patent system must meet eligibility requirements for patentability, such as novelty and inventive steps. A right-based system for the protection of GRs and associated TK without meeting criteria for patentability would be inappropriate. Nonetheless, as one of the top 20 mega-diverse countries, the United States of America recognized the value which biodiversity contributed towards society. Regarding Articles 3.6 and 3.7, the Delegation generally supported Option 3 with mandatory language removed. The word "shall" should be changed to "should". Regarding Articles 3.8 to 3.11, the Delegation could not support them without further study on the impact that disclosure requirements had on national patent systems and the overall costs and benefits in adopting such a new disclosure system. It was deeply concerned that a new patent disclosure requirement would add new uncertainties to the patent system. Particularly where the sanctions for non-compliance included invalidation of a patent, this would create a "cloud" of uncertainty over the patent right by opening a new avenue for litigation and other uncertainties that would undermine the role of the patent system in promoting innovation and

technological development. Binding or mandatory norms on GR disclosure in patent law would limit each country's policy space and a "one-size-fits-all" approach had been frequently criticized by Member States. The Delegation could not support Articles 3.12 to 3.24. As indicated during the discussion of Objective 5 concerning transparency, it was operationally impractical and scientifically infeasible to ascertain the country of origin or source whenever it was not the same as the provider of GRs. Moreover, there were various non-uniform ways that information could be disclosed, such as through databases, publications or *ex situ* collections. The objective of increased transparency concerning the origin or source of material or knowledge would be difficult or impossible to achieve. However, transparency concerning the use of GRs and associated TK could be achieved through effective PIC and ABS systems. Regarding Articles 3.25 to 3.28, the Delegation could not support that section concerning IP Office actions to implement disclosure requirements. There had been cases where erroneous granting of patents had occurred, even when disclosure of source or origin had occurred,. The real issue was to improve prior art search systems currently used by IP Offices around the world. Regarding Articles 3.35 to 3.50, the Delegation supported Option 1, which was a comprehensive and practical approach concerning the creation of a GR and associated TK database for Member States to utilize for search and examination in order to avoid the erroneous granting of patents. Option 2 was not complete, and Option 3 would trigger concerns regarding disclosure of source and language accessibility.

63. The Delegation of Brazil could not support the language which excluded disclosure requirements, especially the one which excluded the mandatory nature of disclosure requirements. Disclosure requirements were the key normative issue. Therefore, Article 3 should deal with disclosure requirements. Other measures such as defensive measures were complementary. It was not sure whether they should be included in Article 3, but it had flexibility to discuss this later. The Delegation believed that what patents should be covered by disclosure requirements were those involving access to GRs, their derivatives and GRs associated TK, in accordance with the CBD and national legislation.

64. The Delegation of Switzerland said that two different questions were addressed under the heading "Types of intellectual property/patent right applications relevant to disclosure requirements/Trigger points". One question referred to whether the requirement applied to GRs, their derivatives, TK and associated TK, or only non-human GRs, etc. That could also be called the scope of the requirement. The other question regarded the trigger of the requirement, which showed the relation between the invention and the type of application. The Delegation wondered whether the invention had to be directly based on GRs, which would be the approach it would support, whether "utilization" was the trigger or whether the applicant had to disclose when his or her invention involved GRs. The Delegation was not sure whether an additional sub-heading would make sense, but it believed that it was important to highlight that there were actually two issues under that heading.

65. The Delegation of the Republic of Korea reiterated its concerns about mandatory disclosure requirements. Regarding Article 3.4, the Delegation shared its experience in defining GRs in patent applications. In 2012, the Korea Intellectual Property Office (KIPO) had spent six months figuring out what kinds of GRs were used in Korean patent applications. More than 100,000 patent applications were filed at the KIPO yearly. The scope of the study was restricted to biotechnology according to the IPC. Even with that restriction, there had been still an overflowing number of applications. Therefore, the study was further restricted to the past two years. The results of the study showed that the patents regarding GRs needed a systematical database. Most of the GRs in patent applications were disclosed in several ways, including academic terms in Latin, typical names and even terms used by local communities. Thus, patent examiners needed to search more than 5,000 GRs one by one to clarify which specific GR was used. The origins of the used GRs were usually unclear with some coming from traditional markets, mountains or regular companies. Even with the restrictions, the study required lots of resources from the KIPO to finger out the type of the used GRs. Therefore, the study could not be extended to include other IPCs over a longer period of time because of the

overwhelming amount of resources that was needed. Thus, the Delegation was very concerned about disclosure requirements in a practical sense. If mandatory disclosure requirements were adopted, it would be a great burden on the IP offices of Member States.

66. The Delegation of the Plurinational State of Bolivia highlighted that “life forms, or parts thereof, in the form of biological or genetic resources as they are found in nature” as indicated in Articles 3.27 and 3.56 were not inventions.

67. The Delegation of China supported the amendment of the relevant provisions of the WIPO Patent Law Treaty (PLT) and Patent Cooperation Treaty (PCT) to include relevant disclosure requirements on the origin of GRs. If an invention was directly based on GRs, the applicant should indicate the origin of GRs and TK when or after the international application entered the national phase of the PCT procedure. Meanwhile, the Delegation hoped to see mutual support and facilitation between the discussions under PL and PCT and the work of IGC, which would contribute to the solution of relevant issues. Regarding databases, the existing four options in the text reflected the outcome of the positive negotiations among Member States; nevertheless, it was to be noted that, without the simultaneous implementation of protection measures, databases would lead to abuse of GR information, and the key to protection was to establish a system of disclosure requirements for the origin of GRs. Therefore, the Delegation believed that the protection of GRs should be a prerequisite and a safeguard for the establishment of databases.

68. The representative of INBRAPI proposed to add “of indigenous peoples and local communities” after “intellectual heritage” in Article 3.1(c).

69. The Delegation of the Bolivarian Republic of Venezuela supported the suggestion made by the representative of INBRAPI. It also supported the statement made by the Delegation of the Plurinational State of Bolivia that GRs were not inventions.

70. The Delegation of South Africa was delighted to see that the text regarding “legal protection” was not being contested. It highlighted that Article 3.1(b) was particularly important because it showed the link between TK and GRs. Regarding disclosure requirements, it summarized that three areas were covered by Article 3: first, mandatory disclosure requirements; second, introducing mandatory disclosure requirements into national laws; and third, no mandatory disclosure requirements. There were too many options in the text and there was too much repetition. For example, there were six options regarding “content of the disclosure”, of which some elements were same. The Delegation believed that the issue of databases was not a normative issue. Databases were merely a vehicle to assist the normative work. It proposed to focus on the normative issues which were legal protection and disclosure requirements; however, it did not dispute the usefulness of databases and welcomed interventions on establishing databases.

71. The Delegation of Namibia strongly supported mandatory disclosure requirements which would apply in all jurisdictions. When the Nagoya Protocol was being negotiated, it was informed that the IGC was the place to deal with disclosure requirements. It was not acceptable that some Member States were not prepared even to discuss mandatory disclosure requirements. It was not true that a disclosure requirement would have a chilling effect on research. In the 1960s, when oversight had been introduced over human medical research and when the principle had been established not to do research on humans without their consent, it was predicted that it would be the end of medical research. Everyone knew that medical research had not been stopped. Similarly, uncertainty in the patent system had not stopped innovations. Disputes and legal uncertainty were not the end of the biotech industry either. It recognized though, that the IGC should be realistic about what can be achieved. One of the points that the IGC needed to bear in mind and had to be realistic about was what patent examiners could examine and verify. It was necessary to make a clear distinction between administrative disclosure requirements, which could be used for tracking and monitoring

utilization on the one hand, and substantive disclosure requirements, which would affect the rules of patentability on the other hand.

72. The Delegation of the Islamic Republic of Iran believed that there was too much information in Article 3. Article 3 could be separated into two or three articles. For example, legal protection could stand as one article and mandatory disclosure requirements could be another article. The Delegation thought that legal protection in Article 3.1 should cover not only GRs and associated TK, but also their derivatives. There was no need to describe the characteristics of GRs and associated TK. The Delegation believed that the core of this instrument would be mandatory disclosure requirements and this instrument would mean nothing without mandatory disclosure requirements.

73. The Delegation of Nigeria strongly supported mandatory disclosure requirement as being integral both for the sustainability of the patent system and for the international instrument. It supported the comment made by the Delegation of Switzerland regarding the trigger versus the substantive requirement of disclosure. It suggested structuring Article 3 in a way that made sense and in a way that perhaps might alleviate some of the concerns about the scope.
The Delegation highlighted that the consolidated document must reflect a principle that had permeated all IP treaties since 1883. That principle was nondiscrimination or equality. The consolidated document was endeavoring to recognize the intellectual contribution of indigenous peoples and local communities in traditional societies, and was intended to eliminate free riding on those intellectual contributions. The consolidated document should not simply say that the patent system was invalid or should be burdened extraordinarily. To that extent, the Delegation believed that the patent system should include a mandatory disclosure requirement. Every researcher and innovator knew exactly where he or she got the resource. Requiring disclosure was not an extra burden. The present patent system was the most expensive IP system. There had already been enormous burdens on the patent system identifying where the innovation came from. Therefore, where the resources came from was no more than adding a straw on a bale of hay. It was important to note that Article 3 attempted to ensure transparency.
The Delegation was concerned about the database provision, because it moved the burdens from the innovation system to indigenous peoples and local communities. The decision to pursue patent protection was a decision to abandon trade secret protection. Having a database forced countries and indigenous peoples and local communities to opt between the two. That seemed quite fundamentally incompatible with the particular systems which indigenous peoples and local communities might choose to pursue, and incompatible with an IP system.

74. The Delegation of Peru supported mandatory disclosure requirements. Regarding Article 3.4, it supported Option 2. It did not think that disclosure requirements would be an additional burden for a patent office. In contrary, disclosure requirements would give more clarity. Every country had different bodies that were responsible for checking whether or not a given resource originated from one country or another, and deciding whether the access was legal. The patent office was like a checkpoint.

75. The Chair opened the floor on Article 4.

76. The representative of the Health and Environment Program supported the content of Article 4 and asked that all brackets be removed.

77. The Delegation of Japan believed that the database proposal was sufficient to protect GRs, and would like to delete “complementary” in the title of Article 4. With regard to a database, the Delegation would submit a proposal (document WIPO/GRTKF/IC/23/7) later during the session which had been based on and slightly modified from the Japanese database proposal (document WIPO/GRTKF/IC/11/11), to take a firm step forward in an appropriate and practical direction.

78. The Delegation of the United States of America supported Option 1, with "should" instead of "shall" and with "countries" instead of "contracting parties".

79. The Delegation of Canada supported Option 1.

80. The Delegation of Australia wondered what information was relevant in Option 1. Its difficulty came from the discussion on confidentiality of information. Information which would be included in prior art databases should be in public domain or publicly available information by its nature. Regarding Option 2, it noted that it was important to look for efficiency and Option 2 noted an existing international institution.

81. The Delegation of Switzerland supported Option 3, as it believed that a publicly available list of government agencies would help in further enhancing transparency in that regard.

82. The Chair opened the floor on Article 5.

83. The Delegation of the United States of America could not support Article 5.3 on disclosure. It could not support Article 5.2 as the United States of America was not a party to of the CBD. Furthermore, the Nagoya Protocol was not in force yet.

84. The Delegation of Switzerland proposed to replace "including" with "with the inclusion of" and to add "arising from these agreements" at the end in Article 5.3.

85. The Delegation of Japan could not support Article 5.2 because it rested on the premise of the amendment of the WIPO PLT and PCT, and also because the CBD and the Nagoya Protocol were not essentially related to patent issues. Therefore, it supported Article 5.1.

86. The representative of CAPAJ stated that Article 5.1 would be the proper option, because it dealt with IP rights and the use of GRs.

87. The Chair opened the floor on Article 8.

88. The Delegation of Japan noted that all the options of "Sanctions, Remedies and Exercise of Rights" were provided on the premise of the introduction of mandatory disclosure requirements and strongly reiterated that such requirements should not be introduced.

89. The Delegation of Brazil supported the inclusion of effective and dissuasive sanctions. It proposed that the following text be included as a new sub-option under Option 1: "Parties shall put in place appropriate, effective and proportionate measures so as to permit effective action against the non-compliance with the obligations set out in Article 3. Patent applications shall not be processed without completion of the disclosure obligations set out in Article 3. If it is discovered after the grant of a patent that the applicant failed to disclose the information set out in Article 3, or submitted false and fraudulent information, or it is demonstrated by evidence that the access and utilization of genetic resources, their derivatives and/or associated traditional knowledge violated the relevant national legislation of the country providing genetic resources, their derivatives and/or traditional knowledge, Parties shall impose sanctions, which may include administrative sanctions, criminal sanctions, fines and adequate compensation for damages. Parties may take other measures and sanctions, including revocation, against the violation of the obligations set out in Article 3."

90. The Delegation of the United States of America could not support the options, as they were predicated on the establishment of a disclosure requirement. Further, those options would require a patent office to take on a new role as an enforcement agency to regulate non-patent related issues such as source or origin of a GR and associated TK, PIC or MAT. The patent examination process was not a suitable mechanism for ensuring compliance with unrelated regulatory requirements. The origin of GRs had as much of a rational relationship to the patent system as tax filings, vehicle permits, and workplace safety rules; in other words, no relationship

at all. Instead, the role of the patent system was to encourage innovation. The Delegation believed that Member States could facilitate actions outside of the patent system to address conduct and use of GRs and associated TK.

91. The Delegation of China stated that Article 8 contained specific measures for the protection of GRs, and it was happy to see the many constructive contributions by different Member States. It supported Option 3 by adding the following: "An invention based on genetic resources acquired or used in an illegal manner in violation of national laws and requirements should not be granted patent rights, and there should be a procedure for the invalidation of any such rights granted."

92. The Delegation of Nigeria stated that it was important to note that the Delegation of China supported a mandatory disclosure requirement, given that it was the largest office processing patent applications as of 2012. It also supported the proposal made by the Delegation of Brazil, which reflected both flexibility and sufficient principles to be consistent with other international agreements. The Delegation believed that Article 8 was in fact consistent with a mandatory disclosure requirement in the same way that the European Patent Convention and the US patent law required assessments of morality of a patent as part of its issuance process. A disclosure requirement was another example on the grounds of its misappropriation basis and the nondiscrimination basis.

93. The Delegation of South Africa suggested restructuring and shortening Article 8. Option 1 seemed to seek legal and judicial sanctions, which culminated in the revocation of a patent. There were some repetitions which needed to be cleaned up. Option 2 sought for administrative sanctions which might not result in the revocation of a patent. Option 3 tried to condense the options into one and might be showing a way forward. It highlighted that it supported legal and judicial sanctions.

94. The Delegation of Australia stated that the revocation of patents would make the information available to the public for free. That would prevent the sharing of benefits to the providers. Therefore, revocation would set off the perverse consequence of defeating benefits-sharing.

95. The Chair opened the floor on Article 6.

96. The Delegation of the United States of America could not support a mandatory disclosure requirement without further study on its impact. Improved prior art search systems might be part of the solution.

97. The Delegation of Japan pointed out that Article 6 rested on the premise of the introduction of mandatory disclosure requirements. It proposed to delete all the text.

98. The Chair opened the floor on Article 7.

99. The Delegation of the United States of America supported trans-boundary cooperation. However, it might be premature to include it in the text, as the scope of the text was still under discussion.

100. The Delegation of Japan believed that, at that stage, it was difficult to consider what kind of measures should be taken as trans-boundary measures. Therefore, it considered that discussions on Article 7 were premature and should be left for a later stage.

101. The representative of CAPAJ stated indigenous peoples had existed and had had their knowledge since ancestral times. He said that they were divided into different states because of colonization. He reminded the IGC that the Aymara people living in Argentina, the Plurinational State of Bolivia and Peru previously had their own territory and were part of the ancient nation of Incas. Therefore, he believed that their rights should be trans-boundary.

102. The Delegation of South Africa supported trans-boundary cooperation, considering that South Africa was the third most biodiverse country. Some of GRs in South Africa could also be found in the neighboring countries, such as Namibia. So Article 7 became such a necessary requirement to set the norms and standards. The Delegation asked the Delegation of Norway to share its experience on the issue of trans-boundary cooperation.

103. The Chair recalled that the document regarding the Norwegian experience had been circulated as document WIPO/GRTKF/IC/23/INF/10. Should the IGC initiate a technical discussion on this issue, that document could be discussed, as necessary.

104. The Chair opened the floor on Article 9.

105. The Delegation of the United States of America was a strong supporter of technical assistance, cooperation and capacity building. However, at that stage, it was not possible to know what technical assistance would be necessary. It stated that it might be premature to include it in the text.

106. The Delegation of Japan believed that, at that stage, it was difficult to consider what sort of technical assistance would be necessary and it was premature to insert it in the text. Therefore, it suggested bracketing the whole text.

107. The Delegation of South Africa strongly supported technical assistance and cooperation. Considering the complexity of such a treaty and the burdens that were being raised, such as databases which would be imposed on developing countries, it was of the view that Article 9 was a useful element to keep in. Technical assistance, cooperation and capacity building was a two-way approach. Both developed countries and developing countries needed each other in ensuring to build an effective system of mutual dependency and transparency.

108. The Delegation of the Bolivarian Republic of Venezuela pointed out that there was only Article 9.1 in Article 9, but no Article 9.2. Therefore, there was no need to index this article by sub-paragraphs.

109. The Chair closed the first read-through of the consolidated document as contained in the Annex to document WIPO/GRTKF/IC/23/4.

110. [Note from the Secretariat: the following discussion took place in plenary after a first round of meetings of the expert group and issuance by the facilitators of a revised version of the Consolidated Document relating to Intellectual Property and Genetic Resources (Rev. 1) dated February 5, 2013. The Vice-Chair, Ms. Alexandra Grazioli, was chairing the session at this point].

111. Upon invitation by the Vice-Chair, one of the facilitators, Mr. Ian Goss of Australia, speaking on behalf of the three facilitators, presented the Rev. 1 to the plenary of the IGC. He stated that many delegations recalled the work from IGC 20. For those who were new to the discussions, the text in the Annex to document WIPO/GRTKF/IC/23/4 had been a faithful reproduction of text proposals and information papers from the past 10 years of IGC work, in excess of 500 pages. Hence it had been long, unstructured and a combination of concepts and textual proposals presented by Members States, including at least four disclosure proposals, many of which were minor variations of each other, and many delegations at the time had had strong ownership of their particular words. The expert group's first task, guided by the Chair and the expert group, was to improve that document with a focus on substantive and material issues. As facilitators, their focus was to give clarity to those issues, through: first, capturing experts' key concepts and proposals; second, importantly, identifying areas of convergence and divergence in relation to substantive issues; third, improving the content and structure, in particular removing repetition and commentary and attempting to merge common themes; fourth, identifying issues that might not be relevant to the subject matter for Member States' consideration; and fifth, importantly representing all positions within the text. In relation to the

text, there were two parts, namely the revised text and an annex with all deleted texts reproduced. The revised text aimed to reflect comments made in the plenary on February 4, 2013 and expert groups' discussions on February 5, 2013. That text was essentially a clean text for clarity with some brackets around language where there had been consistent disagreement, such as in respect of derivatives, IP offices and patent offices. However, it was without prejudice and it did not represent an agreed revision. It simply tried to document the key outcomes of the discussion. In producing that text within a limited time and noting the breadth of discussion in the expert group, the facilitators apologized in advance if there were omissions or Member States' views had not be fully and accurately represented. In relation to the text, the facilitators had changed the definition regarding "Genetic Resources" and modified the options relating to "Associated Traditional Knowledge". They had also identified that, within the Objectives section, there had been many overarching or declaratory statements, which were relevant to all three texts under negotiation. The facilitators had established a preamble section to address that issue. Objectives had been reduced to two core objectives, only reflecting the essence of what the IGC was attempting to achieve: first, compliance with ABS; second, ensuring IP/patent offices had the required information to prevent the granting of erroneous patents and misappropriation and enhance transparency. The facilitators had made some revisions to Articles 1 and 2. Article 3 was the area of major change. In particular, they had replaced "Legal Protection" with "Scope of Instrument", focusing on what measures the instrument would deliver to achieve the objectives. Importantly, they had then established two core options reflecting convergence in the expert group on the appropriate mechanisms to achieve the objectives: Option 1 "Formalities Requirements for Disclosure" and Option 2 "No Disclosure of ABS Information", essentially a defensive protection approach to deliver the objectives. Option 1 essentially worked through all the key elements of a disclosure regime which were "Triggers", "Exclusions", "Content of Disclosure", "Actions of the Office", "PCT and PLT" and "Sanctions". It had to be noted that, within Option 1, sub-options relating to triggers reflected different proposals, and a menu of options had been established to reflect the myriad of original options. The "Exclusions" section was simply a cut and paste from the original text because it had not been discussed. Regarding "Contents of disclosure" and "Sanctions", the expert group had not discussed them in detail yet. Option 2 focused on ensuring that the patents offices had the appropriate information to achieve Objective 2 and did not establish a direct link between the IP system and compliance with ABS regimes, but recognized the importance of benefit-sharing. Its focus was on databases and establishing appropriate information flows.

112. The Vice-Chair opened the floor for comments on Rev. 1 of the consolidated document. She said that the facilitators would take note of the comments made. After the read-through of Rev. 1, the expert group would meet again and the facilitators would issue a Rev.2 of the consolidated document. [Note from the Secretariat: all delegations that made a statement thanked the facilitators for preparing Rev. 1.]

113. The Delegation of Peru highlighted that, as indicated by Mr. Goss, certain parts of Rev. 1 had not been discussed in the expert group. One example was the preamble. The Delegation was ready to intensify consultations and discussions on those parts.

114. The Delegation of Brazil expressed its concerns on those parts which had not been discussed in the expert group, such as exclusions and sanctions. It would be happy to discuss those later in the expert group. The Delegation raised one question regarding Article 1. According to Article 1 as drafted, that instrument applied to IP or patent rights which had been granted. However, it was concerned that the instrument actually applied to patent applications and patent examinations too. It did not have a proposed language at that stage, but it expected that the expert group could consider its concern.

115. The Delegation of South Africa supported the comment made by the Delegation of Peru that the preamble had not been discussed yet. Regarding the title of Article 1, it noted that "protection" had been replaced by "instrument", which was not defined in the list of terms.

It was important to define “instrument”, if the term was used in the text. It believed that “protection” was a key for the Delegation and other delegations of the African Group. The Delegation pointed out that there were some omissions. For example, it should be “associated traditional knowledge” instead of “associated knowledge” in Article 2.3.

116. The Delegation of the Plurinational State of Bolivia stated that, according to Article 1, the current text appeared only to be relevant to a later process when a patent had already been granted. It proposed to include an additional wording which dealt with patent applications and examinations. The issue of exclusions had not been discussed in the expert meeting. That part should be in brackets until the IGC had a better understanding.

117. The Delegation of the EU, speaking on behalf of the EU and its Member States, requested more time to consider Rev. 1. In the interim, it referred to the preamble. It could not accept the first paragraph of the preamble because some of its Member States did not recognize the collective rights of peoples in their constitutions. It believed that the sixth paragraph of the preamble was unclear. Regarding the term “associated traditional knowledge” in the list of terms, it did not believe that there was a clear link between GRs and TK. It preferred to have a definition of TK itself. Regarding Articles 1 and 3, it welcomed the limitation of the subject matter to the instrument rather than the subject matter of protection or the scope of protection.

118. The Delegation of Kenya wondered where national legislation would come in regarding Article 6 “Trans-boundary Cooperation”. For example, the Maasai community could be found in both the United Republic of Tanzania and Kenya.

119. The representative of Tupaj Amaru stated that it was necessary to reduce the number of square brackets and options. He highlighted that there were other problems which concerned indigenous peoples, such as biopiracy and the piracy of TK.

120. [Note from the Secretariat: Upon request from the Delegation of the EU, speaking on behalf of the EU and its Member States, and the Delegations of South Africa, Oman, Nigeria, Canada, the United States of America and Kenya for more time to study Rev. 1, the Vice-Chair suspended the plenary. The following discussion took place after resumption of the plenary. The Chair was chairing the session again at this point.]

121. The Chair opened the floor on both the List of Terms and Preamble in Rev.1.

122. The Delegation of the Dominican Republic, speaking on behalf of GRULAC, stated that the Preamble should be clarified at the end of negotiations, taking into account the Objectives and Principles. It agreed with the content in principle. However, since the Preamble had not been actually discussed, the Delegation proposed to bracket it at that stage.

123. The Delegation of Canada reiterated its previously expressed preference for the term “traditional knowledge associated with genetic resources”, and would like that term to be included as an alternative to all instances of the term “associated traditional knowledge” throughout the text. In the List of Terms section, the Delegation noted that the definition of “traditional knowledge associated with genetic resources” did not reflect its full proposal presented in the expert group, and therefore omitted the phrase “and which directly leads to a claimed invention”. The Delegation also noted that a number of terms listed in the facilitators’ text, namely, “biotechnology”, “country of origin”, “*in situ* conditions”, “internationally recognized certificate of compliance”, “physical access”, “source and utilization”, had not been discussed in the expert group. Accordingly, it would like those terms to be put in square brackets, and reserved the right to comment on those terms later on once the expert group would have an opportunity to discuss them.

124. The Delegation of Japan stated that Paragraph 5 of the Preamble was the same as Option 2 of Article 2 of the Annex document WIPO/GRTKF/IC/23/4 and rested on the premise of introduction of mandatory disclosure requirements. It proposed to delete it.

125. The representative of FAIRA stated that the definition of "source" was not clear enough to link to "resource holders" in Article 2. He suggested including a definition of "resource holders".

126. The Delegation of the United States of America wished to discuss the options for "Associated Traditional Knowledge" or "Traditional Knowledge Associated with Genetic Resources". The Delegation preferred Option 2 and supported the language proposed by the Delegation of Canada. Regarding the definition of "biotechnology", it preferred to have an option that did not specifically refer to the CBD. On the definition of "country of origin", it preferred Option 3 for its legal certainty, and regarding the definition of "in situ conditions" under "Genetic Resources", the Delegation also preferred a definition that did not specifically refer to the CBD. On the definition of "source", it preferred Option 1. Regarding the definition of "utilization of genetic resources", it wished to bracket the words "their derivatives and associated traditional knowledge including through the application of biotechnology" in order to create greater clarity and legal certainty.

127. The Delegation of France, with regard to Rev. 1, informed the Committee that, although it obviously deemed it important to take into account the aspirations expressed by the indigenous populations, this had to be done in accordance with the constitutional principles of equality (and therefore of non-discrimination) and indivisibility of the French Republic. To that extent, it said that it could not recognize the collective rights of a community or group defined according to ethnic, linguistic or cultural criteria. The Delegation therefore requested that the term "peoples" contained in the phrase "indigenous peoples and local communities", which appeared at several different points in the next consolidated document, should be placed between square brackets. Given the limited amount of time available to examine the revised consolidated document, that remark applied not only to the List of Terms part of the revised version on the definition of "Associated Traditional Knowledge/Traditional Knowledge Associated with Genetic Resources" in Option 2, but also to the first paragraph of the "Preamble", as well as to Article 2, 2.2. and Article 6, 6.1.

128. The Chair asked the Delegation of France whether it would be possible, as he had asked in the discussion on TCEs, to consider language that might allow compatibility between the specific constitutional limitations of France and the opposite circumstances of other countries. The Chair wondered whether the principle of doing no harm could be applied so that nothing would be implied that would limit France to deal with the indivisibility of the communities in the way it did but by the same token would not prevent others who required this to apply it. The Chair asked the Delegation of France if it could help the Committee find some way of expressing this that balanced these two critically important considerations.

129. The Delegation of France, following the question asked of the Delegation, indicated, in a constructive spirit in terms of the work of the Committee, that a text incorporating wording employed in relevant existing instruments, such as the CBD, might appear to be acceptable, as well as ensuring that there was coherence between instruments. The Delegation indicated that elements of language that would take up references that were already in existing texts, such as the text of the CBD, could be appropriate.

130. The Chair invited the Delegation of France to continue its reflection and discuss this matter with the facilitators.

131. The Delegation of Brazil had some comments on the list of terms. On the concept of "Genetic Resources", it noted that the text under this term currently referred to two different concepts, that of "genetic resources" and that of "genetic material". It suggested that this concept be divided because these were two different concepts and it was not sure why they had

been mixed in one concept. The Delegation further wished to bracket the concept of "Physical Access" as it found it limitative with respect to the concept of access as such and it was not similar to the understanding that Brazil had in its national legislation. Finally, with respect to the concept of "Utilization", it wished to bracket the expression "including commercialization". The concept of utilization, as foreseen in the Nagoya Protocol, did not include this reference.

132. The Delegation of the EU, speaking on behalf of the EU and its Member States, regarding "Associated Traditional Knowledge" and taking into account the comments made by the Delegation of France, wished to see a link between GRs and TK and therefore suggested language similar to that proposed by the Delegations of the United States of America and Canada, adding the words "that can lead to an invention". Regarding the terms "biotechnology", "internationally recognized certificate of compliance" and "utilization", either these terms did not appear in the text or the Delegation asked for more clarity on them. It preferred that they be either removed or placed in brackets at this stage. Regarding the term "derivative", the Delegation agreed with the language used in the text but wished to withhold its comments on how it would be used within the text. The Delegation also welcomed the definition provided under "Genetic Resources". It pointed out that it had further comments on the definitions of "country of origin" and "source", but since these had not yet been discussed in the expert group, it would save them for that time. Regarding the preamble, it could not accept the reference to PIC and MAT in the first paragraph of the preamble and also sought clarity on the sixth line of the preamble. The Delegation indicated that it would have further comments on the preamble but would withhold them at this stage and would perhaps present them in the expert group.

133. The Delegation of Canada welcomed the idea of a preamble. It pointed out, however, that many elements included in the facilitators' text's preamble had not been discussed during the previous day's expert group session. There was, for instance, no agreement on the inclusion of a reference to the UNDRIP and the Delegation also disputed the characterization of that text as an agreement. It thus requested that the first paragraph of the preamble be put in square brackets. Similarly, in the third paragraph of the preamble, the Delegation noticed that the concept of transfer of technology was another element that had not been discussed in the expert group and therefore requested that the terms "transfer and dissemination of technology" be put in square brackets. The Delegation noted that there was no consensus on the principles underpinning the fifth paragraph regarding a global and compulsory system and wished to put that paragraph in square brackets. Indeed, there was no agreement that the instrument being negotiated should address ABS. The Delegation of Canada did not fully understand the intent of the language in the sixth paragraph of the preamble and wished to put that paragraph in square brackets until a clarification was provided.

134. The Delegation of the Plurinational State of Bolivia reiterated the point made by the Delegation of the Dominican Republic on behalf of GRULAC with regard to the preamble because many elements were still lacking. Therefore, it wished to bracket the preamble and considered that more work was needed on it, but it would be possible to do this at the end of the process. With regards to the list of terms, on the definition of "genetic resources", the Delegation wished to have the same wording as in the Nagoya Protocol and thought that "genetic resources" should be separated from "genetic material" as having them together created confusion. With regard to "traditional knowledge associated with genetic resources", the Delegation did not support any of the options provided. It did not feel that they were adequate as definitions.

135. The representative of Tupaj Amaru supported Option 2 in relation to the definition of "genetic resources". However, he considered that the text needed to quote the text which appeared in the CBD as far as the definitions of "genetic resources" and "genetic material" were concerned. In addition, the representative pointed out that he was not in agreement with the Delegation of France's proposal. He said that this Delegation knew that the UNDRIP had recognized the collective rights of indigenous peoples. This was an international instrument that had been agreed and international norms prevailed over national legislation. It was therefore

not possible to go backwards and try to redefine indigenous peoples and deny them their collective rights. He said that there had been twenty years of discussion on that and the Delegation of France had been present at those discussions. The representative therefore demanded the inclusion of collective rights of indigenous peoples in all the paragraphs where they featured.

136. The Chair recalled that he had asked the Delegation of France to reflect on this and come back to the Committee at a later stage.

137. The Delegation of the Bolivarian Republic of Venezuela had a comment on the term "indigenous peoples". This term as well as the collective rights of indigenous peoples had been agreed in the IGC two and a half to three years ago. Therefore it considered that the Committee should not come back to discussing it. The Delegation requested the Delegation of France to think very carefully about this.

138. The Delegation of South Africa, speaking on behalf of the African Group, had some observations on the list of terms and the preamble. It wished to bracket the definition of "traditional knowledge associated with genetic resources" as it considered that this definition needed to be reexamined. It also wished to bracket the definition of "derivatives". It further noted that there was an omission of terms. There was a definition of "in situ conditions", but it also wished to see a definition for "ex situ conditions" included in the list. Concerning the definition of "physical access", it agreed with the submission of the Delegation of Brazil. This was narrow and it should be bracketed. Further, if the Committee was discussing an "instrument", this term also needed to be defined within the list of terms and this definition should be aligned with the renewed mandate of the IGC, which talked about an international legal instrument. Concerning the preamble, it understood that there might be some concerns that had not been yet cleared but some of the issues concerning the preamble had been discussed at great lengths the previous day.

139. The Delegation of the United States of America had some concerns about the preamble. It believed that the preamble may be used to define the text. As the text was still under negotiation, it wanted to make sure that the preamble did not prejudice the outcome and therefore preferred to keep it under brackets at that point in time.

140. The representative of the ICC had specific comments on the term "country of origin". This was a term which was absolutely vital to the working of any arrangement that came out of the Committee's discussions. He suggested that none of the definitions given in Options 1, 2 or 3 were at all easy to work. In some cases it was possible without a doubt to know what the country of origin was. It had been suggested that if one collected samples in the Sahara, it would be known what the country of origin was and that was undoubtedly true, but in many cases, the origin of samples was much less clear. So the alternative was to provide for a disclosure of the source and that, the representative suggested, was very frequently useless for the main objectives of this arrangement. For that reason, it was vital to define "country of origin" properly. Option 1 implied that there was a unique country which possessed the genetic resources, which was sometimes the case but generally speaking would not be. So that option would not do as such. As to Option 2, it might be very difficult to know whether the GRs had been acquired in accordance with the CBD and there was legal confusion, as well as factual confusion in that option. The representative did not understand Option 3. He hoped that the IGC could get an option which would be generally applicable and provide a workable arrangement.

141. The Chair asked the representative of the ICC whether his concern was more the inability in some circumstances to define the country of origin, or the definition of "country of origin" itself.

142. The representative of ICC was concerned with both the formal definition of "country of origin" and the practical problems that a formal definition may give rise to. If the text had a water-tight definition of "country of origin", that would be good, but it would not be much good if the person who had to declare what the country of origin was could not determine the facts.

143. The Delegation of Switzerland supported the introduction of a Preamble. It agreed with other colleagues that it should not prejudge the outcome of the document, but it could still be useful as a place holder where such preamble language could be parked. Other concepts that might be considered in the preamble were the promotion of mutual trust between providers and users, as well as the enhancement of traceability of GRs and associated TK. With regard to the question of how the terminology and the objectives were going to be treated from a methodological point of view, the Delegation was interested in having these paragraphs also becoming articles in the near future. At this time, it refrained from detailed comments regarding the terminology and indicated that it might come back to some specific points during discussions in the expert group.

144. The Delegation of Peru had some comments on the List of Terms and the Preamble. The preamble of an international instrument was like the introduction to an amazing book. In a way, it was telling the end of the story and for that reason it had to be written at the end.
The Delegation therefore agreed with those countries that were of the opinion that the preamble should be examined at the end, when the document was ready. With regard to the list of terms, in relation to the definition of "associated traditional knowledge", it undoubtedly preferred Option 1 but could consider working on the basis of Option 2, even with the addition suggested by the Delegation of Canada, as long as the words "uses of genetic resources" were followed by the words "and their derivatives" in the second line. It was indeed important, when talking about links to a claimed invention, to show that there was an immense variety of derivatives of GRs. With regard to the term "country of origin", the Delegation felt that Options 1 and 2 should both be present. They were not mutually exclusive. They had different functions, in fact, and there were indeed cases where GRs did not come from a particular country but came through a third party, had been held in this third country, and could have gained beneficial characteristics from being kept in that third country. That kind of GRs also needed to be covered. With regard to the definition of "genetic resources", the Delegation agreed with the Delegation of Brazil, that there was a need to separate "genetic resources" and "genetic material", and in order not to have two different standards at an international level, it also agreed with the representative of Tupaj Amaru that the wording that had already been used and agreed in the CBD should be included. Further, the Delegation pointed out that the IGC was talking about an international instrument and that it needed to ensure not only respect for the rights of indigenous peoples, but also for the rights of states. In addition, at the end of the first paragraph of the Preamble, which read "in accordance with international agreements" the Delegation pointed out that the UNDRIP was not actually an international agreement, but a Declaration. It did not have a legally binding nature, as international agreements do. Finally, and with the greatest respect, it listened to the problems raised by the Delegation of France and suggested that that Delegation could use the wording that was being used for these communities in the CBD, such as in Article 8j, as this was an international instrument to which France was a full party.

145. The Chair opened the floor on Policy Objectives 1 and 2.

146. The representative of IPO supported Objective 2 as it did not feel that the IP system was capable of ensuring compliance with rules associated with ABS.

147. The Delegation of Canada welcomed the streamlining of the policy objectives section. However, while it recognized that the two objectives now listed did reflect the varied views of Member States, it wished to stress that these two objectives were not complimentary and represented stand alone options of which Canada could only support Objective 2. Further, the Delegation requested that footnote 3 be put in square brackets as no discussion had yet taken

place in the expert group session on the issue of customary norms being part or not of national law.

148. The Delegation of Japan believed that the patent system should focus on proper granting of patents by preventing erroneous patents and that misappropriation and transparency in the context of benefit sharing were independent from the patent system. For this reason it believed that the text of the last part of Objective 2 from “prevent” to the end of that objective should be deleted.

149. The Delegation of the EU, speaking on behalf of the EU and its Member States, did not believe that Option 1 reflected the discussions that had taken place in the expert group the previous day. It did not adequately express a link between the patent system and the ABS regime. The Delegation felt that it should do so, but not go into the details of how that link should be achieved. Regarding Option 2, it disagreed with the words "prevent misappropriation" and thought that they should be removed or placed in square brackets in the text.

150. The Delegation of Algeria, speaking on behalf of the African Group, supported both objectives. However, it recognized that the final language still needed to be negotiated. It believed that a general principle of international law was that all international instruments ought to be mutually consistent. This was a general objective as far as it was concerned.

151. The Delegation of Namibia supported Objectives 1 and 2. It believed that in the balance between these two objectives lay the germ of an agreement and a deal that could be made in the IGC.

152. The representative of Tupaj Amaru wished to remind the Committee that it was a democratic principle for indigenous peoples to be able to have the opportunity to provide consent or not to the use of their resources and their lands and it was important that PIC be maintained in all articles. This was also mentioned among the guiding principles of Objective 1.

153. The Chair asked the representative of Tupaj Amaru to clarify if he opposed or supported Objectives 1 and 2. Alternatively, if there was something missing from either objective, to indicate what was missing.

154. The representative of Tupaj Amaru said he could not answer with a yes or no to the question whether he opposed or supported Objectives 1 and 2. He explained why he was not in agreement with the option. He did not recognize the fact that States were sovereign over natural resources and GRs under their territory. Resolutions adopted by the UN General Assembly recognized the permanent sovereignty of indigenous peoples on their natural resources. He said that States had to administrate the resources and equitably distribute them to their people, but GRs were the property of indigenous peoples and States could not be allowed to take over the rights of the indigenous peoples and their associated TK.

155. The Chair asked the representative of Tupaj Amaru if it would be sufficient to see that the States or the instrument did not deprive the rights holders of their rights. In other words, if indigenous peoples had vested rights in the GRs in areas under their control, nothing should be done to prejudice this. The Chair noted that there was a general view that rights holders would be respected in whatever was accorded. He asked the facilitators to take note of the specific observation made by the representative of Tupaj Amaru and consider that nothing should be done to deprive right holders of their rights.

156. The Delegation of the Plurinational State of Bolivia believed that the objectives had been looked at through various eyes and had benefited from inputs. However, it felt that they certainly should in any case address the prevention of erroneous patents and also the misappropriation of GRs and that those elements should stay in the text. With respect to the title of Objective 2, it suggested introducing the word "and" instead of "to" in the second line so

that the title would read “ensuring intellectual property [patent] offices have the required information and make proper decisions in granting intellectual property [patent] rights”. The use of “and” clarified the different options in the text and it felt that this word would be more appropriate.

157. The Delegation of Peru requested that Objective 1 state that this instrument should be applicable to applications related to IPRs, and not just patents.

158. The Chair opened the floor on Article 1.

159. The Delegation of Algeria, speaking on behalf of the African Group, proposed a change of title, so that the title should no longer read “subject matter of instrument” but be replaced by “subject matter of protection”. As regards the article itself it wished to replace the words “this instrument”, at the beginning of the article, with “this protection”. Finally, it indicated that when the text referred to the word “instrument”, the words “international legal instrument” should be used instead so as to reflect the negotiating mandate.

160. The Delegation of Japan wished to bracket the whole text of Article 1.1, and especially the word "shall".

161. The representative of Tupaj Amaru supported Article 1 but suggested the following amendment which would read “this international instrument shall apply to the protection of any intellectual property right on the use of genetic resources that are intrinsically linked to the use and management of genetic resources considered as vital for the conservation and sustainable use of biological diversity”.

162. The Chair noted that there was no support from Member States regarding this suggestion.

163. The Delegation of the EU, speaking on behalf of the EU and its Member States, supported the title of Article 1. It indicated that the instrument should apply to any patent application, rather than any patent, because the set of patent applications was broader than the set of granted patents. For that reason, the instrument should apply to any patent application directly based on the utilization of GRs.

164. The Chair opened the floor on Article 2.

165. The Delegation of Cameroon was concerned by Article 2 and the definition of beneficiaries. It found that it was rather odd that the beneficiaries listed in the article were, in fact, everyone, including the public, the resource holders, the providers and the users of the resources. The Delegation considered that this “melting pot” definition required the Committee to have another look at this definition or even perhaps put it aside.

166. The Delegation of the Dominican Republic, speaking on behalf of GRULAC, suggested that in paragraph 2.3, the word “utilization” should be used instead of the word “use” because that was the term that the Committee had been using. It considered that it was the more correct term to use.

167. The Delegation of the United States of America supported paragraph 2.1. It indicated that paragraph 2.2 appeared to be too limited regarding the scope of the beneficiaries. Paragraph 2.3 on the other hand appeared to be creating an exclusive right in the context of beneficiaries.

168. The Delegation of Jamaica supported the concerns raised by the Delegation of Cameroon with respect to paragraph 2.1. It was too wide and the Delegation thought that it was not workable in the context of the instrument. It found that paragraph 2.2 was appropriate and wished to bracket paragraph 2.1.

169. The Delegation of the EU, speaking on behalf of the EU and its Member States, issued a quick correction on Article 1 and stated that it did not support the word "utilization". Regarding Article 2 the Delegation struggled to see how, if there was no *sui generis* form of protection, there could be beneficiaries. In any case, it did not support paragraphs 2.2 and 2.3 as they were very limited. The Delegation supported paragraph 2.1 provided that it read "this instrument should be beneficial to the public, resource holders, providers, and users of the resources" as both Articles 1 and 3 also related to the instrument.

170. The Delegation of Brazil supported the proposal of the Delegation of the Dominican Republic, on behalf of GRULAC, regarding the change of the term "use" for "utilization".

171. The Delegation of the Plurinational State of Bolivia indicated that it had a couple of problems with Article 1 as it understood that this would be an option that was different from paragraphs 2.1 and 2.3. If the present wording was kept, then the text would be granting rights to authorize access or deny access to the users of the system. The consolidated document therefore had to be tidied up and reworded. The Delegation considered that beneficiaries should be the supplier or provider countries and the indigenous people and local communities.

172. The Chair reminded the Committee that there would be opportunity for further exchanges on the technical aspects in the expert group and encouraged delegations to focus more on their main views on the text.

173. The Delegation of Canada was concerned that Article 2, as drafted, only referred to ABS and neglected to reflect the fact that there was no consensus on the negotiated instrument having any relationship to ABS. This article also failed to reflect interventions by several Member States during the expert group to the effect that the prevention of the erroneous granting of patents benefited everyone. The Delegation wished to bracket the entire Article 2 and preferred all references to the ABS, the CBD or the Nagoya Protocol to be put in square brackets in the revised version to reflect the lack of consensus on any link between these concepts or treaties and the instrument that was currently being negotiated.

174. The Delegation of Japan supported the statement made by the Delegation of Canada. The Delegation considered that paragraph 2.3 was a new text and wished to bracket it so it could be considered at a later stage. It wished to delete paragraph 2.1 because ABS was independent of the patent system.

175. The Delegation of Trinidad and Tobago wished to echo the statement of the Dominican Republic, on behalf of GRULAC, with respect to paragraph 2.3 to the effect that the word "utilization" should be used instead of "use". The Delegation also supported the statement by the Delegation of Jamaica with respect to paragraph 2.1 and wished to bracket that paragraph.

176. The Chair opened the floor on Article 3.

177. The representative of the BIO supported Option 2, paragraph 3.17 but with the following modification. She suggested deleting the words "unless such information is material to the patentability criteria of novelty, inventive step or enablement" and replacing them with "in patent applications". Industry already complied with all relevant ABS requirements related to the sourcing and use of GRS. The representative believed that the addition of a disclosure requirement in the patent system would only serve to weaken the patent. This was due to the inability to clearly define origin because of the nature of the development process which depended upon multiple collaborators and the testing and research of typically between 5,000 to 10,000 compounds. Accordingly, a disclosure requirement was not needed to ensure compliance and would only serve to chill R&D and related benefits. Moreover, some delegations had suggested harmonization of national laws on the topic of disclosure. She did

not support such an approach because it would only serve to widespread such laws and create uncertainty, and unnecessary litigation around the world.

178. The Delegation of the United States of America supported the suggestion by the representative of the BIO.

179. The representative of INBRAPI had some comments on the exclusions in paragraph 3.5. Letter (d) mentioned “traditional knowledge in the public domain”. However she considered that the concept of TK in the public domain should take into consideration the principle of PIC and just and equitable sharing of benefits. If these two principles were not taken in to account, there was an instance of misappropriation. It was not acceptable to have the concept of TK in the public domain without respect of PIC and just and equitable sharing of benefits.

180. The Delegation of Algeria, speaking on behalf of the African Group, indicated that it was not satisfied by the title of Article 3. It considered that the title should reflect the legal and political obligation of protection and therefore it preferred the title "legal obligations". The Delegation further indicated that it was in favor of Option 1. However it reserved the right to comment further in the expert group.

181. The Delegation of Namibia thought that it was really very good progress to have two clear options, one for disclosure requirement and one without it. It was the sort of thing that should be put on the table at a Diplomatic Conference and resolved politically. It reiterated its support for the disclosure requirement option. The Delegation believed that exclusions from a disclosure requirement would defeat the purpose of the instrument. Whether the ABS regime applied to certain categories of GRs was immaterial to whether they needed to be disclosed in IP applications. It wished to revisit that at a later stage.

182. The Delegation of Nigeria supported the disclosure requirement. In particular, it considered it critical to have an international legal instrument that prohibited free riding on the work and the contributions of traditional and indigenous communities. It was important with respect to Article 3, specifically, that this disclosure requirement reflect, like all other IP agreements, a principle that benefited other systems around the world in which disclosure was meant to enhance innovation and ensure the integrity of the patent system in particular. Without prejudice to its positions on the substance of the rest of Option 1, the Delegation thought that this disclosure requirement at a minimum should reflect where the GRs had been obtained.

183. The representative of the Health & Environment Program wished to comment on the use of the word “protection”. Throughout the document, reference was made to indigenous peoples and local communities, but there were many Africans who were excluded from this categorization. There were other people who had TK but were neither indigenous peoples nor local communities and this created discrimination. Further, the representative indicated that she was in agreement with the proposals for modifications put forward by the Delegation of Algeria on behalf of the African Group.

184. The representative of Tupaj Amaru supported paragraph 2.2 with the suggested addition of the following words at the end: “in virtue of the present international instrument, the beneficiaries of genetic resources and associated traditional knowledge are indigenous peoples and local communities who have traditional systems of life based on biological resources and ancestral practices for the conservation of biological diversity and sustainable utilization of their knowledge”. He said that the wording was taken from the CBD which had been recognized by 160 countries.

185. The representative of IFPMA supported the comments made by the representative of the BIO. At the side event held the previous day, representatives of academia, Government institutions, research institutions and IFPMA’s member companies fully supported the objectives

of the CBD. But they also agreed that any new provision, such a disclosure requirement in the patent system, would create significant levels of legal uncertainty and undermine R&D efforts in natural products. Therefore he remained concerned that the ultimate objective of sharing benefit and developing new products for society could be eroded as R&D might not take place in the first place. For these reasons he still supported Option 2. The representative also believed that such provision could be supported by the establishment of a database as a defensive protection tool.

186. The Delegation of Japan indicated that paragraphs 3.1 and 3.18(c) should be deleted, since it considered that the CBD and the Nagoya Protocol were independent of the patent system. Regarding the title of Option 2, it wished to bracket the words “of ABS information”. Finally, in paragraph 3.23, it wished to delete the words starting from “and mutual trust” up to the end of the sentence.

187. The representative of the IPO could not support Option 1. She supported the transparency objectives incorporated in the document; however, she did not believe that this could be achieved through the patent system. The provider of GRs was the most qualified to determine if information shared was consistent with the MAT arrived at in the ABS agreement. Even under the assumption that patent disclosure would constitute a simple “check the box” exercise, as proposed by some Member States, patent examiners would simply not be qualified to determine whether the information would be correct or whether the terms of an ABS agreement would have been satisfied or not. The representative supported the notion of ensuring transparency in front of a competent national authority. But she did not believe that the patent system could serve that role. In addition, placing such a burden on the patent system simply increased the uncertainty of the value of those patents and discouraged innovation.

188. The Delegation of Canada noted that in paragraph 3.1, while the reference to the prevention of the erroneous granting of patents which reflected Objective 2 was in square brackets, the reference to ABS regimes which reflected Objective 1 was not. It requested the reference to ABS to be put in square brackets. Further, to reflect the previous day’s discussions in the expert group, the Delegation proposed the inclusion of the phrase “material patentability” to be added following the phrase "the provision of information" in paragraph 3.1. In the heading of Option 2, which it supported, the phrase “of ABS information” should be deleted and replaced with “requirement”. The way the heading was currently drafted did not reflect discussions in the expert group. The heading should thus read “no disclosure requirement”. Finally, as there had been no discussion on paragraphs 3.18 onwards, the Delegation wished to refrain from commenting at this point but reserved the right to return to that part of the text later once the expert group had the chance to discuss it.

189. The Delegation of Jamaica supported Option 1 and the requirement for disclosure. On the triggers, it supported sub-option 2 in paragraph 3.4. Under exclusions in paragraph 3.5, it wished to see brackets around “derivatives”, “traditional knowledge in the public domain” and “genetic resources found outside of national jurisdictions”. The Delegation supported paragraph 3.8 as well as the section on sanctions generally. In addition, it could see how the use of databases could also be of valuable assistance in the process.

190. The Delegation of Brazil supported Option 1 but had some comments in this regard. It supported the proposal made by the African Group regarding the title of the article. It also supported the statement of the Delegation of Nigeria. It considered that the instrument would be effective to combat free riders that were affecting Brazil’s GRs and TK. Regarding the triggers it supported sub-option 2. It also supported the comments made by the Delegation of Jamaica. The Delegation had problems with paragraph 3.5 on exclusions. It was not convinced that there should be an article on exclusions. It could raise many comments regarding the list in that paragraph but in principle it did not agree with the exclusions and wished to bracket

paragraph 3.5. The Delegation reserved its right to make comments on defensive protection after it had been discussed in the expert group.

191. The Delegation of the Plurinational State of Bolivia supported Option 1 with the addition of the suggestions made by the Delegation of Algeria on behalf of the African Group and with the exception of paragraph 3.5 which had not yet been discussed in the expert group. It believed that paragraph 3.5 should be removed.

192. The Delegation of Peru supported paragraph 3.1 and Option 1. With respect to the triggers, it supported sub-option 2. It also supported the request made by other delegations to put paragraph 3.5 within brackets in its entirety, and this partly because this paragraph had not yet been discussed in the expert group. In particular, it wished the reference to “human pathogens” to be put into separate square brackets in paragraph 3.5(a) and also to bracket “derivatives” under letter (b). The Delegation supported the statement by the representative of INBRAPI with regard to TK in the public domain. Further, it was in agreement with paragraph 3.6 on the contents of disclosure. It also agreed with the reactions on paragraph 3.10 with regard to the patentability of products of nature. Regarding paragraph 3.12 on the PCT and PLT, the Delegation considered that this would need to be examined at the end of the negotiations on the instrument. For the time being it had no disagreement with that paragraph. The Delegation reserved the right to come back to Article 3 with more specific comments within the expert group.

193. The Delegation of the United States of America proposed alternative language to paragraph 3.1 which read: "Member States may consider implementing national laws outside the patent system to regulate conduct and manage access to genetic materials." It indicated that it had proposed this language earlier in the week but it had not yet been incorporated. The Delegation also wished to bracket Option 1 as it did not support mandatory disclosure requirements. It could support Option 2 with the amendment proposed by the representative of the BIO. Further, it supported paragraph 3.18 but wished to delete or bracket all the language after “IP offices” in the first line, since the three subparagraphs appeared to be objectives. Finally it supported paragraphs 3.19 through to 3.23.

194. The Delegation of China supported Option 1. It was in favor of compulsory disclosure requirement. However, it was against paragraph 3.5. Regarding sanctions, it noted that the expert group had not touched on this point yet. With regard to paragraph 3.4, the Delegation noted that in the first day of the meeting it had indicated that it did not wish to grant patents to invention that had violated the regulations on GRs and others, which meant that its language was more restrictive than the current language. It was stricter. Finally, if the use of the GRs was illegal, it was not legal to grant patents in that case.

195. The Delegation of Switzerland suggested the addition of some wording in the chapeau of paragraph 3.2 after "patent applications that claim inventions that ". It wished to add the words "are directly based on". The two sub-paragraphs (a) and (b) would then follow after this addition. In the section on sanctions, it wished to add a reference to the sanction of the publication of the ruling by the judge. Moreover it wished to add a reference to the proposed establishment of an international gateway on TK in the section on defensive protection. Such a reference was currently only contained in paragraph 3.45 of the annex of Rev. 1.
The Delegation indicated that it may have additional comments later on, especially with regard to the text components contained in the drafting annex of Rev. 1. These concerned in particular text on amending the PCT.

196. The Delegation of the EU, speaking on behalf of the EU and its Member States, supported the wording of Article 3, scope of instrument. Regarding paragraph 3.1, it suggested that the content of this paragraph related more to objectives, and that some of the wording used there might be better employed within the objectives’ section. With regard to the options, the Delegation was prepared to adopt Option 1, however there were a number of points which had

not been discussed in the expert group, and it reserved the right to address these issues within the expert group.

197. [Note from the Secretariat: the following statement was submitted in writing.] The representative of the ICC acknowledged that there was a problem with illegal access to GRs. But he wondered whether it was large and would be materially assisted by compulsory disclosure of origin. He reminded that some facts were available from the researches of Dr. Paul Oldham as reported to at a side-event on “Biodiversity and the Origins of Genetic Resources in Patent Applications” that was organized by the UN University and the United Kingdom IP Office on the margin of the IGC on February 6, 2013. He said that Mr. Oldham had done exhaustive research on GRs in published patents. Mr. Oldham reported that disclosures were found in respect of “a small number of species, typically widely distributed' and estimated that these related to one percent of global biodiversity. The representative of the ICC recognized that there were, certainly, cases of illegal access where country legislation on access was flouted, but added that they were relatively few. The question was whether this illegal access justified imposing requirements on all patent applications disclosing GRs. The paradigm case was “bioprospecting” where an inventor went to a country to collect GRs. In such a case, should the country control such access, as it was fully entitled to do under the CBD and the Nagoya Protocol, while many countries would not implement such control, the inventor would properly make an ABS agreement. He added that such an agreement could readily be disclosed in any detail. An arrangement limited to bioprospecting would be at least practical, though there might be other objections to it. He emphasized though that the vast majority of patent applications did not arise from bioprospecting, but related to inventions using GRs that were accessed locally, or which were widely circulating in commerce, or both. In such a case, the patent applicant might be totally unclear as to where the GRs came from originally, whether the Nagoya permission to research on it was required, and who, if anyone, was entitled to give such permission. He said that there would be uncertainties of both law and fact. He recognized that a large international company could probably live with this. But he added that smaller inventors could not. In his view, to require 'disclosure of origin' for all patent applications disclosing GRs was totally disproportionate and impractical. He said that ICC accordingly opposed any universal mandatory disclosure of the source or origin of GRs in patent applications.

198. The Chair opened the floor on Article 4.

199. The Delegation of Japan supported paragraph 4.1. It indicated that paragraphs 4.2 and 4.3 which were considered as the alternatives to paragraph 4.1 should be deleted.

200. The Delegation of Brazil supported the inclusion of an article that established the relationship with other international agreements. It was concerned with paragraph 4.1 and sought clarification on what would be “a coherent system”. The Delegation understood that the Committee was trying to promote a mutually supportive relationship with these other international agreements but it was afraid that coherence would mean a hierarchy and that was a matter of concern.

201. The Delegation of the United States of America could not support any of the three alternatives in Article 4. It was only able to support the original paragraph 4.1 in the previous draft. The Delegation was concerned that the United States of America did not belong to all existing international agreements and treaties referred to. For that reason, it could not necessarily support a mutually supportive relationship with those agreements.

202. The representative of INBRAPI, with respect to paragraph 4.2, highlighted the importance of taking into consideration Article 31 of the UNDRIP which featured in the preamble, even if this was a declaration of principles. This was the most complete statement in the international arena on GRs. For that reason she wished that it be taken into account.

203. The Delegations of the Plurinational State of Bolivia and Jamaica supported the suggestion made by the representative of INBRAPI.

204. The Chair opened the floor on Article 5.

205. The Delegation of the EU, speaking on behalf of the EU and its Member States, reserved its right to comment on Articles 4 through 7 in the expert group.

206. The Delegation of the United States of America could not support Article 5 because it did not support mandatory disclosure requirement.

207. The Delegation of Japan indicated that the last sentence of Article 5, which was the same as the original version of paragraph 4.4 of the original text in the Annex to document WIPO/GRTKF/IC/23/4, should be deleted.

208. The Delegation of South Africa sought clarity on the methodology as this article had not been examined in the expert group.

209. The Chair indicated that the text in front of the Committee was a revised consolidated document and that delegations could share observations on this text at that stage. There would be more detailed discussions in the next meeting of the expert group.

210. The Chair opened the floor on Article 6.

211. The Delegation of the United States of America indicated that although it supported trans-boundary cooperation, it was premature to include this paragraph in the text as the nature of the text and the instrument that may be created was not clear. It preferred to keep this paragraph in brackets.

212. The representative of the Health and Environment Program was in favor of trans-boundary cooperation. She indicated that the UNDRIP had no political value in Africa because several African people had not been recognized as indigenous people and they had been unjustly excluded. For that reason she preferred not to have a reference to the UNDRIP. She indicated that there should be a reference to peoples who hold the knowledge rather than indigenous peoples and local communities because she wanted all African people to have their fair share in the instrument.

213. The representative of CAPAJ found that Article 6 had condensed the interests of many peoples in many states because ecosystems crossed borders and provided a whole wealth of TK which went back a long time before state borders had existed. This article coincided with Article 36 of the UNDRIP which emphasized that indigenous peoples could cooperate over borders, and states could do the same too. The representative proposed that at the end of the wording proposed by the experts, the following words should be added “in line with Article 36 of the UNDRIP” which precisely dealt with trans-boundary cooperation.

214. The Chair asked whether Member States would support the suggestion made by the representative of CAPAJ.

215. The Delegation of the Plurinational State of Bolivia supported the suggestion made by the representative of CAPAJ.

216. The Delegation of Brazil supported the inclusion of an article on trans-boundary cooperation. This was an important issue that had been agreed on in the Nagoya Protocol. It wished to make some textual suggestions to make the article consistent with what was in the Nagoya Protocol. In the first sentence, it wished to replace “in instances where genetic resources” by “in instances where the same genetic resources”. Further, in that same

sentence, it wished to bracket the words “located in territories of different” and replace them by the words ”found in *in situ* conditions within the territories of different contracting parties”.

217. The Chair opened the floor on Article 7.

218. The Delegation of Japan pointed out that Article 7 came from Article 9 of the previous draft. The Delegation had made a statement on the first day of the session that the whole text of the original Article 9 should be bracketed but this had not been reflected in the revised text. Therefore, it wished to bracket the whole text of Article 7.

219. The representative of the Health and Environment Program was surprised that the Chair had asked if any Member State supported the suggestion of the representative of CAPAJ. She recalled that she did not support referring to UNDRIP in Rev. 1. Nevertheless, she noted that the Chair had not asked whether a Member State supported her suggestion.

220. The Chair clarified that the representative of the Health and Environment Program had made a general statement about the desirability of the reference and the impact it had, but she had not made a specific suggestion. The representative of CAPAJ, on the other hand, had made a specific suggestion and asked for Member State support. The Chair asked the representative if she was asking support from Member States regarding a specific suggestion.

221. The representative of the Health and Environment program stated that her suggestion was, instead of putting the words “indigenous peoples and local communities” in square brackets, to replace them by the word “persons”.

222. The Chair noted that there was no support for this suggestion.

223. The Delegation of the United States of America was a strong supporter of technical assistance, cooperation and capacity building. Nevertheless, it preferred to bracket Article 7 until the Committee had defined the instrument it was negotiating.

224. The Chair re-opened the discussion on Objectives and on Article 1.

225. The representative of the Assembly of Western Armenians was concerned that some parts of the objectives that were set out in the initial text of document WIPO/GRTKF/IC/23/4 no longer existed in Rev. 1. He said that this was more of a hindrance than helpful.

226. The Delegation of the Russian Federation wished to comment on the List of Terms. It wished to suppress support for Option 2 of the definition of “associated traditional knowledge”. The Delegation welcomed the preamble of the document, but questioned the wording of paragraphs 1, 3 and 6 of that preamble. More work needed to be done on those paragraphs. On the objectives, it supported Objective 2 provided that there should be further discussion on the concept of misappropriation.

227. The Delegation of the United States of America supported proposed alternative language for Objective 2 which read: "Recognize the need for Patent Offices to have access to the appropriate information on genetic resources and traditional knowledge associated with or needed to make proper and informed decisions in preventing grants of patents that do not comply with novelty, inventive step and utility requirements." The Delegation preferred to bracket Objective 1. It could support Article 1 with the substitution of “should” for “shall”. Finally, it had a preference for the term "patent" over “intellectual property”.

228. The representative of CISA supported the statement of the representative of Tupaj Amaru on the Articles. He also supported the statement of the representative of CAPAJ on Article 7.

229. The Delegation of Brazil supported the comments made by the Delegation of Peru on Article 1. It wished to see it reflected that the Committee was talking about patent applications and granting patents.

230. The Delegation of the Plurinational State of Bolivia also supported the statement by the Delegation of Peru about including the request that was the initial step.

231. The representative of the Assembly of Western Armenians supported the statements by the representative of Tupaj Amaru.

232. The Chair re-opened the floor on Article 2.

233. The Delegation of the Dominican Republic wished to replace "use" by "utilization".

234. [Note from the Secretariat: The Chair suspended the plenary in view of the second round of informal discussions of the expert group and the preparation of a second revision of the consolidated document by the facilitators.]

235. The Chair opened the floor on the "Joint Recommendation on Genetic Resources and Associated Traditional Knowledge" (document WIPO/GRTKF/IC/23/5).

236. The Delegation of the United States of America reminded the Committee that this Delegation, jointly with the Delegations of Canada, Japan, Norway and the Republic of Korea had tabled a joint recommendation on GRs and associated TK at IGC 20 (document WIPO/GRTKF/IC/20/20/9 Rev.). This joint recommendation was now resubmitted to the Committee as document WIPO/GRTKF/IC/23/5. It hoped that this joint recommendation could be used as a confidence-building measure to help the Committee to move forward on key issues concerning GRs and associated TK. It believed that the joint recommendation captured key objectives and facilitated the establishment of effective mechanisms for the protection of GRs and associated TK. The Delegation recognized the value biodiversity contributed towards society, as the United States of America was one of the top twenty megadiverse countries. It supported the objective of utilizing national laws to promote biodiversity, fair and equitable benefits-sharing as well as requirements for PIC and MAT. It said that the proposed joint recommendation facilitated clear procedures for obtaining authorized access to GRs in exchange for equitable monetary or non-monetary benefits. It believed that such access and benefits-sharing procedures should be entirely independent of the filing of the patent application. It emphasized that the enforcement of PIC and MAT due to the IP system was unnecessary. It agreed though, that patent offices should have the kinds of information available to enable examiners to make proper decisions on patentability. It said that this included comprehensive prior art relating to GRs. It agreed as well that patents should only be granted for inventions that were new, involved inventive step and unique standards for utility. In this regard, it believed national databases of GRs and related TK helped to prevent the erroneous granting of patents and played a pivotal role in addressing patent quality concerns. It believed that this joint recommendation would help to address concerns relating to the erroneous granting of patents while complementing the existing patent system. It was looking forward to discussing the joint recommendation at the present session.

237. The Delegation of Algeria, speaking on behalf of the African Group, thanked the Delegation of the United States of America for the clear and concise presentation of document WIPO/GRTKF/IC/23/5. It reminded that the mandate of the Committee was to work on a legal text that would ensure effective protection of GRs. It requested clarification as to whether there was a link between the proposed joint recommendation and the mandate of the IGC. It also wondered whether the joint recommendation prejudged the outcome of the Committee's work or not. It also stated that the submitted document did not reflect the positions of all Member States, contrary to what the Delegation of the United States had stated in its presentation of the document. It added that those comments did not affect its final position on the document.

238. The Delegation of South Africa supported the statement made by the Delegation of Algeria on behalf of the African Group and requested clarification as to how the document could articulate with the IGC negotiation process and contribute to confidence-building. It noted that the document did not include any element from the list that the demandeurs had submitted in the context of the IGC negotiations. It added that the consideration of a joint declaration could be perceived as a diversion from the mandate of the IGC. Should it be so, the document would not meet the support of the Delegation of South Africa.

239. The Delegation of Namibia supported the statement made by the Delegation of Algeria on behalf of the African Group. It recognized that all Member States of WIPO had an interest in preventing erroneous grant of patents. It welcomed any measures in that regard and said that they could be part of a balanced result as consensus building elements. In the interim, it asked the proponents how these databases could be populated, if not through a disclosure provision and how they could be used to determine novelty and non-obviousness, if not through the examination of the disclosure that would be made into those databases. It said that depending on the answer, a discussion could be initiated or not about differences between databases and a disclosure provision.

240. The Delegation of the EU, speaking on behalf of the EU and its Member States, welcomed the opportunity to consider document WIPO/GRTKF/IC/23/5. It was of the view that while the consolidated document relating to IP and GRs had emerged from IGC 20 (Annex to WIPO/GRTKF/IC/23/4), other texts, including this joint recommendation, remained relevant.

241. The Delegation of the Russian Federation found the joint recommendation to be a very useful document, both for the Committee's work and for the patent offices of Member States. It noted that it contained sections such as definitions, objectives and principles and prevention of the erroneous grant of patents, opposition measures and supporting measures, regarding the development of guidelines for the protection of GRs as well as guidance for normative documents that might be acquired. It said that it could improve the work of the patent offices in preventing erroneous grant of patents and could be used as guiding principles for the protection of GRs by Member States. The Delegation considered that this document was a good basis for discussion under item 6 of the Agenda.

242. The Delegation of Nigeria commended the delegations that had produced the proposal. It empathized with many of the arguments that had been given about why this might be a pathway to consider. It was puzzled though by the document, to the extent that, if enough consensus could be built around this sort of joint recommendation, then the Committee could generate enough consensus to finalize the task of an international legal instrument as well. It said that it would be an unfortunate and unnecessary diversion of resources to begin to work towards a joint recommendation that may in fact have substance and was intended to benefit the purposes of the mandate. There was some value in a joint recommendation after conclusion of the international legal instrument. Such a joint recommendation might, for example, shed more light on the purposes and the different reasons why Member States had concluded the international legal instrument. Such a recommendation might give some direction for offices who were seeking to implement the international legal instrument. This was not an idea that should necessarily be discarded, but one that was too early to be useful, and might even unfortunately terminate what was already an important and progressive and forward-looking process. It thought that it was important also for the delegations that had indicated the need for such proposal to contribute with the same arguments in the process toward the legal instrument that the Committee was negotiating. It also wondered how such a proposal could be discussed as such without diverting from the mandate of the IGC and how this discussion could still be done within the General Rules of Procedures of WIPO.

243. The representative of Tupaj Amaru was surprised to have to consider a simple recommendation that would replace an international legally binding instrument. He reminded the Committee that its mandate was to draw up a legal instrument or instruments for the

effective protection of GRs. He said that the Committee could not depart from its mandate and that the proposal was a diversion from it.

244. The Delegation of Brazil thanked the proponents of the document. It fully supported the statement made by the Delegation of Algeria on behalf of the African Group and shared the concerns that it expressed. The Delegation considered these defensive measures as complementary measures, not a substitute for the mandatory disclosure requirement. It emphasized any recommendation that would just deal with defensive measures would not meet the most important questions raised by this Committee. It added that at this juncture the Committee should not prejudge the results of the process and the nature of the instrument that was negotiated, since the IGC had not yet defined the nature of the instrument. Even if the Delegation of Brazil supported a binding instrument, it would therefore refrain from submitting a document which sought to be the base for a treaty at the present stage. It was concerned that the joint recommendation included elements that were already incorporated in the consolidated document that was being negotiated. It noted that all delegations had the opportunity to present their proposals in this context. It noted as well that the proponents would have a further opportunity in plenary to include their proposals. The Delegation insisted that the IGC agree to work on a single document and did not understand why two different processes should be created.

245. The Chair reminded the IGC that, in accordance with the current mandate of the Committee, its work "will build on the existing texts submitted by the IGC to the General Assembly (Annex A, Annex B, and Annex C of document WO/GA/41/15)." Since document WIPO/GRTKF/IC/23/5 was not part of those annexes, this document was not part of the negotiating process and was being discussed independently and in its own context.

246. The Delegation of Canada welcomed the statement made by the Delegation of Algeria on behalf of the African Group and by the Delegation of Brazil, as they made clear that they did not wish to preempt the outcome of the negotiation. It shared this intention. It noted that an international legal instrument or international legal instruments that might arise from this negotiation could take different forms. They could be a treaty or some other type of instrument. The joint recommendation reflected some common ground and emphasized areas where the IGC had agreed, that is, on preventing the erroneous grant of patents.

247. The Delegation of Egypt supported the statement made by the Delegation of Algeria on behalf of the African Group. It referred to the report of IGC 20 (WIPO/GRTKF/IC/20/10) which reflected that this joint recommendation had been already discussed. It said that what was needed from the proponents was to incorporate it in the consolidated document to be negotiated. It noted that the co-sponsors would have a further opportunity to do so when the revised version of the consolidated document would be submitted for further consideration by the plenary. This methodology would make sure that the IGC struck a proper balance and took into account the interests of all parties. Further discussion on this joint recommendation would reopen a number of issues relating to political objectives and be prejudicial to the process and it was not the appropriate time to do so.

248. The Delegation of India thanked the proponents of this document and associated itself with the statements made by the Delegations of Algeria on behalf of the African Group, and Brazil. The present mandate requested the Member States to focus on the consolidated text in realizing the goal of reaching an international legal instrument for the effective protection of GRs, TK and TCEs.

249. The Delegation of the Republic of Korea, as a co-sponsor of the joint recommendation, recognized the economic and scientific value of GRs, TK associated with GRs, and the role of the IP system in promoting innovation and preventing erroneously granted patents. It was vitally important for patent offices to have access to information on GRs and TK associated with GRs to achieve transparency in the process of granting patents. It believed that the most

effective way of ensuring the actual sharing of benefits was to implement a truly prospective regime based on MAT, ABS terms between the transferor and the transferee of a GRs and a clear understanding of each party's rights and responsibilities. Other measures outside of patent laws, like civil or criminal sanctions, might be more beneficial and represented a better use of resources to improve compliance with ABS regimes. PIC and benefit-sharing requirements should be implemented through a contractual system rather than within the patent system. It was of the view that the best way to control and monitor the use and patenting of GRs was through contractual arrangements between those granting access to the resources and those to whom access is granted. Databases of TK would greatly assist in preventing the granting of erroneous patents. These databases should take into account international patent classifications (IPC) and be easily accessible over the Internet for patent examiners around the world. It added that to avoid misuse of documented TK, restricting access to such databases should be considered thoroughly. The Delegation recommended that each Member State consider the joint recommendation as a promising solution for the IGC.

250. The Delegation of Peru was surprised at the reintroduction of this document and its concepts, because, as the Delegation of Egypt had pointed out, it had been already discussed. It was also puzzled by the fact that this document selected some elements and left out others that were important for a large number of Member States. It welcomed the condensed-down version of the consolidated document that was on the table and noted that it already reflected, in a very skillful way, a number of documents that had been looked at already. It said that it would be ready to revisit the concepts that were flagged in the joint recommendation in the context of the consolidated document, but not in the framework of a parallel process.

251. The Delegation of Chile thanked the co-sponsors for the submission of this document. It was of the view that it reflected the importance that those delegations attached to GRs and TK. A joint recommendation, as its name indicated, would not reflect all the interests expressed and would not lead to a common understanding by all members on this subject. It joined the Delegations of Brazil, Algeria on behalf of the African Group and others that noted there was no consensus on the contents of this recommendation. It invited the co-sponsors to take on board the elements that were important for other delegations and concentrate on the consolidated document.

252. The Delegation of Japan, as a co-sponsor of the document, associated itself with the introductory statement made by the Delegation of the United States of America. It noted that views had been expressed that the discussion should be dealt with at a later stage of negotiation. It recognized that Member States had to concentrate on the text-based negotiation according to the mandate of the IGC. It was, however, of the view that the joint recommendation included items such as erroneously granted patents, database and so on which were included in the consolidated document. It believed, therefore, that parallel discussion of the document WIPO/GRTKF/IC/23/5 contributed, from a practical point of view, to the text-based negotiation.

253. The Delegation of the United States of America wished to touch on a few of the points that had been made. The joint recommendation was not divergent from the IGC's mandate since a joint recommendation was an international legal instrument and the mandate referred to an instrument or instruments in the plural. Pursuant to the mandate, this document would build upon the existing work of the Committee. It added that WIPO/GRTKF/IC/23/5 did not prejudge the outcome of the consolidated document but the adoption the recommendation would build confidence in an on-going process. It also noted that the Delegation of Algeria on behalf of the African Group and other delegations were concerned that their position was not reflected in the recommendation. But at the same time, the Delegation of the United States of America emphasized that all delegations supported eliminating the improper grant of patents.

254. The Chair opened the floor on a "Proposal for the Terms of Reference for the Study by the WIPO Secretariat of Measures Related to the Avoidance of the Erroneous Grant of Patents and

Compliance with Existing Access and Benefit-Sharing Systems" (document WIPO/GRTKF/IC/23/6).

255. The Delegation of the United States of America introduced document WIPO/GRTKF/IC/23/6, which was co-sponsored by the Delegations of Canada, Japan, and the Republic of Korea. It indicated that it had been in discussion with the Delegation of the Russian Federation which had provided additional questions to the co-sponsors, which they were in the process of incorporating into the present document. It was its understanding that the Delegation of the Russian Federation would wish to join as co-sponsor. It explained that this proposal was modeled upon other studies that had been recently conducted to support the norm-setting work of WIPO. It would help to gather relevant information to support the work of the IGC. This proposal was also drafted in consideration of Development Agenda recommendation 15, which provided that norm-setting activities of WIPO should reflect a balancing of the costs and benefits. Although the IGC was considering a disclosure requirement as a possible outcome of its work, the IGC had not yet fully informed this recommendation by determining how existing disclosure requirements and ABS systems worked at the national level. This was why, as the work of the IGC continued, the co-sponsors proposed a study of options that were being considered. As with the joint recommendation (WIPO/GRTKF/IC/23/5), it believed this study would not detract from the work of the Committee. It would be the responsibility of the WIPO Secretariat and would supplement the IGC's work. The Delegation noted that it had had constructive discussions throughout the present session about national laws and how disclosure requirements and ABS systems functioned. It said that those discussions had helped to progress the Committee's work on the text. This study would carry forward that work without slowing down the work of the Committee. It invited other delegations to express their support for this proposal and welcomed any additional questions or improvements upon the study that other Member States might have.

256. The Delegation of the Russian Federation confirmed its interest in conducting a study on the issue raised by WIPO/GRTKF/IC/23/6. It had raised with the Delegation of the United States of America a number of questions that would be included in a proposal for a study. It reminded that those questions were not new, since they had already been raised at a previous session of the Committee. However, the Delegation did not get answers to all of its questions during the Committee's discussions. It was for this reason that is supported the initiative of having a detailed study in this area.

257. The Delegation of Japan, as a co-sponsor, recognized the discrepancy among Member States regarding a disclosure requirement. In its view, one of the main reasons was the lack of fact-based analysis. The effectiveness and burden of the system should have been thoroughly analyzed and illustrated based on evidences. Otherwise Member States could not be certain that a mandatory disclosure requirement would contribute to the achievement of the shared objectives, including benefit-sharing. Since a mandatory disclosure requirement was a relatively new concept, it was not introduced in many countries, which was why there was little knowledge grounded on real cases. From a logical standpoint, such factual analysis should be planned and conducted by the Secretariat as soon as possible. There was no fact-based evidence to examine how mandatory disclosure requirement, should it be introduced, would be actually working in practice. The impact of mandatory disclosure requirements had not been analyzed yet. It noted that before new norms were introduced WIPO and in the national legislations, evidence had always been gathered in support. It was necessary to assess the impact on changing systems that had a long history such as patent, design, trademark and copyright systems, not to mention the impact on introducing new concepts such as GRs. No such evidence existed to support GRs-related disclosure requirements. It stated that such a simplistic approach was no longer tenable in the IP system. It also requested that all stakeholders be listened to, including the business community. It expressed its appreciation for the dedicated efforts made by the Delegation of the United States for introducing the terms of reference of the study. Since it believed that the proposal was crucial to help the Committee's discussion to move forward, it had co-sponsored the proposal. The Delegation was of the view

that the study would be more useful by focusing more on the quantitative analysis, so as to analyze the impact of the mandatory disclosure requirement, such as changes in the numbers of access to GRs before and after introducing the mandatory disclosure requirement and changes in the number of inventions and applications related to GRs before and after introducing the mandatory disclosure requirement. Cases were reported that companies withdrew their local research institutions after the strict requirement had been introduced. This was one of the undesirable examples of the chilling effect. It hoped that Member States, especially demandeurs, would provide the industries with the information that the voluntary disclosure was an advantage to the patent applicants and not just intended to impose an obligation and penalty thereon.

258. The Chair requested from the Delegation of Japan further clarification as to whether the conducting of the study was intended as a condition precedent for the negotiation of mandatory disclosure.

259. [Note from the Secretariat: The Delegation of Japan first stated that the study was seen as such a condition precedent. Subsequently, the Delegation of Japan withdrew this statement, explaining that it had resulted from a misunderstanding and made the following statement that it submitted also in writing.] The Delegation of Japan did not intend that a factual study was a condition that should precede negotiations regarding a mandatory disclosure requirement.

260. The Chair suspended the plenary for consultations on the proposal in document WIPO/GRTKF/IC/23/6. Subsequently, he asked the proponents to update the Committee on the state of their consultations.

261. The Delegation of the United States of America thanked all of those who had made comments on this proposal. In light of some of the comments that it had heard during those consultations, and perhaps some misunderstandings, it requested more time to meet in informal consultations to carry forward the discussion, and perhaps resolve outstanding questions, and reach agreement amongst Member States on the terms of reference for the study. It indicated that it had talked to several delegations and had resolved some questions that some delegations had posed. In order to flesh out a better understanding of the study and to incorporate some of the questions raised with respect to the proposal, it wished to continue those consultations to have a more collaborative approach in moving the study forward at the next IGC session in April 2013.

262. The Chair encouraged Member States to engage informally with the proponents on WIPO/GRTKF/IC/23/6. The IGC would re-address the proposal for a study when co-sponsors and consulted parties felt that there was sufficient comfort in doing so at a future meeting of the IGC. He closed discussion on WIPO/GRTKF/IC/23/6 and opened the floor on a "Joint Recommendation on the Use of Databases for the Defensive Protection of Genetic Resources and Traditional Knowledge Associated with Genetic Resources" (document WIPO/GRTKF/IC/23/7).

263. The Delegation of Japan introduced document WIPO/GRTKF/IC/23/7 that was co-sponsored by the delegations of Japan, Canada, the Republic of Korea, and the United States of America. With a view to deepening mutual understanding on the fundamental issues, it reiterated that it might be useful to shed light on the one-click database proposal. It referred to documents WIPO/GRTKF/IC/20/INF/9, which was originally WIPO/GRTKF/IC/9/13, and WIPO/GRTKF/IC/20/INF/11, which was originally WIPO/GRTKF/IC/11/11, submitted in previous IGC sessions. WIPO/GRTKF/IC/23/7 was based on and slightly modified from the original one, namely WIPO/GRTKF/IC/11/11. The co-sponsors had added a preamble and paragraphs 15 to 17 at the end of the original document. Other parts were the same as the original one, while some small refinements of languages had been made. The Delegation emphasized that this recommendation was not intended to prejudice the IGC's ongoing work on the consolidated document. Rather, the

adoption of the recommendation would contribute to diminishing erroneously granted patents by improving the search environment for prior art concerning GRs and TK associated with GRs, which must be suitable to GRs holders. In addition, a patent granted through the one-stop-portal database that would be created in accordance with this proposal would have stable patentability, which would lead to the promotion of innovation and expectation of benefit-sharing based thereon. It believed it highly worthwhile for the Secretariat to consider exploring the development of such a database. It recalled that the database proposal had been broadly supported by Member States in previous sessions. The Delegation hoped that this proposal would contribute to taking a firm step forward in an appropriate and practical direction.

264. The Delegation of the Republic of Korea thanked the Delegation of Japan for its preparation and presentation of the joint recommendation on the use of databases for the defensive protection of GRs and associated TK. It wished to share its experience in establishing databases of TK, which had been shown to be useful in preventing the granting of erroneous patents. Since 2001, the IGC had been directing discussions on the worldwide protection of the TK of each country. In February 2003, at the Seventh session of the Meeting of International Authorities under the PCT, the participants had agreed in principle that documentation on TK should be included in the non-patent literature section of the PCT minimum documentation. WIPO also presented a set of criteria for such inclusion. In line with this international protection momentum, KIPO had decided in 2004 to formulate a strategy for the building of a database of TK. The database, which had been compiled between 2005 and 2007, was based on traditional Korean medicine. A search service of the database was added in December 2007. Currently, KIPO's database of TK has more than 258,000 documents on old Korean and Chinese medicine and current patent articles, containing TK from the past and the present. The database was presented on-line through the Korean Traditional Knowledge Portal (KTKP). The database was made publicly accessible for the following reasons: first, to lay the foundations for international protection of Korean TK, thereby preventing unauthorized use of patents inside and outside the country; second, to provide an abundance of information on TK and related research, thereby expediting the development of related studies and industries; third, to provide essential information for patent examinations, thereby enhancing the quality of IP applications for TK. The Delegation was convinced that the defensive protection of TK had been successful in its country. From its previous experience with databases of TK, the Delegation believed that databases of GRs and TK would greatly assist in preventing the granting of erroneous patents.

265. The Delegation of Algeria, speaking on behalf of the African Group, thanked the Delegation of Japan for its joint recommendation. Regarding this joint recommendation, it wished to reiterate the general comments it had made on WIPO/GRTKF/IC/23/5. It was of the view that discussion regarding the use of database had already taken place, and should be further discussed in the context of the negotiations on the consolidated text.

266. The Delegation of the EU, speaking on behalf of the EU and its Member States, considered the revised proposal formulated in WIPO/GRTKF/IC/23/7 to be of interest and thanked the proponents. In view of the recent submission of the document, it required more time to consider it fully.

267. The Delegation of Canada reiterated its support for the proposal as presented by the Delegation of Japan. It said that the databases represented a key avenue for the defensive protection of GRs against their being patented in error. It believed that this proposal for a joint recommendation provided concrete means and avenues to that end.

268. The Delegation of Peru thanked the proponents of the joint recommendation. It recognized that the contents of the document were of great importance and that there was no doubt that databases were an important tool, not the only one though, for preventing the erroneous grant of patents. At the same time, it supported the statement made by the

Delegation of Algeria on behalf on the African Group that this issue should be part of the discussions that were already being carried on the consolidated text.

269. The Delegation of the United States of America supported the proposal contained in document WIPO/GRTKF/IC/23/7. It noted that its degree of specificity and technical nature made it a valuable supplement to the work of the Committee. Furthermore, the database system that was provided under this proposal would help to avoid the erroneous grant of patents via a mechanism that was not anticipated in the consolidated text.

270. The representative of Tupaj Amaru associated itself with the statements made by the Delegations of Algeria on behalf of the African Group and Peru. This subject had already been discussed in the past at various sessions and it had reappeared again at a time when the IGC was studying the consolidated document. The proponents were simply trying to divert the substance of the debate, instead of concentrating on the consolidated document. He invited the proponents to add their proposal to the consolidated document, in order to avoid further delay in the IGC work.

271. The Delegation of Egypt supported the statement made by the Delegation of Algeria on behalf of the African Group. It wondered why the proponents did not unify WIPO/GRTKF/IC/23/5 and WIPO/GRTKF/IC/23/7, since they both related to databases. It was unclear whether the Committee was requested to come up with one or a set of recommendations. It was also unclear about the relationship between this topic and the IGC negotiations. It recalled that WIPO had already undertaken some effort to facilitate the creation of databases.

272. The Delegation of Chile reiterated its recognition of the importance of databases for preventing the erroneous grant of patents. It added that they would be useful as well to warn the patent offices that GRs were being used and whether or not the requirements of inventiveness and patentability had been met. Its country was working on incentives for creating this type of database. It thanked the Delegation of Japan for its presentation of the proposal. It was of the view, though, that discussion of its elements should be part of the negotiations on the consolidated text.

273. The representative of FAIRA noted that the proposal took into account some sensitive aspects, such as consideration of customary law. added that this one-click mechanism could fit into disclosure requirements under Option 1 of the consolidated document. He suggested that the access to and use of databases through an electronic portal be complemented by means to allow indigenous management and control of access to TK, like secret and sacred knowledge of indigenous communities.

274. The representative of INBRAPI supported the statement made by the representative of FAIRA and reminded the IGC that the indigenous peoples of Brazil had had many difficulties regarding the issue of databases. She believed that the IGC should first guarantee the respect and recognition of the rights of indigenous peoples on GRs and TK and the right to control access to them where necessary. She recognized that databases could contribute to protecting GRs and TK and bring about more legal certainty. She asked that this take place in the framework of an existing binding international legal instrument for protection of GRs and TK that would be consistent with the progress made in other international fora regarding ABS. She pleaded for a harmonization of the international ABS and IP systems that would precede any discussions on databases. She warned against a situation where databases would be created without making clear that TK and GRs were not in the public domain but were part of the indigenous peoples' heritage. She pleaded for caution in this area and reminded that there were prerequisites to the creation of databases.

275. The Delegation of India thanked the proponents of this proposal and associated itself with the statements made by the Delegations of Algeria on behalf of the African Group and Egypt

and some other countries which had stated that the subject of this proposal was already part of the discussion concerning the consolidated text. It would be a loss of energy and time to address this issue in a separate context. The Delegation reminded the IGC that its country had developed the TKDL and, as such, was one of the leading countries in setting up databases in this connection.

276. The Delegation of South Africa realized the importance of databases. It reported that when the Director General of WIPO had visited its country on the subject of patents, the competent Minister had emphasized the importance of databases and explained the indigenous knowledge recordal system and the country's readiness to help other African countries to acquire such a database at no cost. The database was state-of-the-art and was used as a semantic Web site. The one-touch database that was under discussion at the IGC was already in existence in its country. That said, the Delegation considered databases as a complementary measure that would assist in fulfilling international obligations. To that extent, it supported the statement made by the Delegation of Algeria on behalf of the African Group that urged that this discussion should not delay the IGC, that the issue should be dealt with within the context of the negotiations on the consolidated text and seen as a complementary measure.

277. The Delegation of the Plurinational State of Bolivia thanked the Delegation of Japan for its proposal. Like other delegations, it believed that the database did not create confidence as such in terms of protection, as WIPO did not have yet a real instrument providing for protection or disclosure of origin. It was also concerned that databases might lead to a misunderstanding, as the data contained in the database might be considered to be in the public domain or to be fully available. It also noted that databases involved costs to developing countries, from the setting up of the database to the gathering of the information. It noted that paragraph 15 of WIPO/GRTKF/IC/23/7 dealt with this issue. While it recognized that the issue deserved further debate, it said that it should be included in the consolidated text as a complementary idea.

278. The Chair closed discussion on document WIPO/GRTKF/IC/23/7.

279. [Note from the Secretariat: the following discussion took place in plenary after a second round of meetings of the expert group and issuance by the facilitators of a revised version of the consolidated document relating to Intellectual Property and Genetic Resources (Rev. 2) dated February 7, 2013.]

280. The Chair opened the floor on Rev. 2. As per the methodology and the work program agreed on, the Chair invited the Committee to correct any obvious errors or omissions in Rev. 2. Any substantive comments, including textual proposals, would be recorded in the full report of the session. The Chair added that, at the end of the discussion and based on the discussion, Rev. 2 would be noted and transmitted to the General Assembly taking place in September 2013. [Note from the Secretariat: The Rev. 2 to be transmitted would bear the date of February 8, 2013, being the last day of the session]. The Chair recalled that three extra days would be included at IGC 25 at which horizontal issues might be discussed. However, the transmission of the Rev. 2, which would come from the present session, would be for the attention of the General Assembly. He reiterated that Rev. 2 of the consolidated document would not be adopted, but simply noted and transmitted. He emphasized that it was a negotiating text that would be the subject of further work. He invited the facilitators to introduce Rev. 2.

281. One of the facilitators, Mr. Ian Goss of Australia, speaking on behalf of the three facilitators, explained that Rev. 2 attempted to capture comments, concepts, and issues raised in plenary and within the expert group. Those discussions and commentary were wide ranging and dealt with minor textual issues and fundamental policy issues. Within the limited time available and utilizing the records available, the facilitators had tried to faithfully capture them in the revised text. He noted that, as facilitators, they were not conducting a textual drafting exercise and that their focus had been to give clarity and focus to the substantive issues that were being negotiated, attempting to merge converging positions and to ensure clarity in

respect of divergent positions, taking account of the broad and substantive discussions held within the expert group. He apologized if there were any omissions. They had tried to be impartial and represent all Members States' and observers' views. He pointed out that the facilitators had removed the Rev. 1 Annex, on which there had been no commentary or discussion during the plenary or the expert group, except when the Member States had asked the facilitators to consider looking at a specific paragraph or incorporating it in the clean text. The text had an increased number of brackets reflecting sections which did not have consensus and divergent positions. The facilitators had made changes to the "List of terms", in particular "TK associated with GRs". They had introduced "*ex situ* conservation" and bracketed definitions where there was no consensus regarding inclusion and/or definition. They had put a place holder for the term "genetic resources associated with traditional knowledge", noting the Delegation of Canada's comments in that area. They had retained the Preamble, noting consensus for doing so and had introduced the idea of mutual trust and included brackets on issues where there was no consensus. They had noted the general view that that section would be finalized once negotiations were completed, but it was retained to provide a place holder for guiding principles. Under the Objectives, they had introduced brackets in relation to areas where there was no agreement and they had introduced an additional option within Objective 2 reflecting divergent views on the detail. In articles 1 and 2, they had reintroduced the term "Protection" and incorporated minor textual changes and additional brackets. He noted that further work was probably required in relation to that area. They had significantly revised Article 3, including reintroducing the term "protection" and including the terms "legal obligations". They had included an additional option at 3.2, reflecting the divergent positions. They had noted some convergence on triggers and had revised those in a single option. In doing so, they had removed an option suggested by the Indigenous Caucus regarding disclosure being triggered when patenting of GRs would cause harm to the interests of indigenous peoples and local communities. In part that was because they had had some difficulty in identifying how that could be practically implemented. It could perhaps be considered as a principle in the Preamble. The facilitator said that the Indigenous Caucus, with the support of a member state might wish it reinserted. The facilitators had retained the Exclusions but bracketed the whole text. The next key area of change concerned Sanctions. Based on the discussions within the expert group, the facilitators had attempted to detail three options. Sub-Option 1 reflected a more general statement similar to the Nagoya Protocol, which provided flexibility in relation to national implementation, but was not prescriptive regarding the nature of sanctions or remedies. Within that option, the facilitators had included dispute resolution. Sub-Option 2 added to the first by incorporating minimum sanctions that should be applied by all parties. Sub-Option 3 added to Sub-Option 2 by incorporating a statement that attempted to establish a maximum standard. The facilitators had had some difficulty with that latter issue, as it was difficult to come up with words which would provide some legal certainty and would not include ambiguity. The minimum and maximum sanctions were included as examples only for further discussion, as they had not been discussed in detail in the expert group, with the exception of the concern regarding the impact of revocation of the patent or IP right on innovation and benefit-sharing. The facilitators noted that that was a core issue which would require further negotiation. The facilitators had not made significant changes to Option 2, with the exception of some bracketing. Supporters of that option might wish to make further changes. Regarding Article 4, they had attempted to address a key concern, namely that the instrument did not impose obligations on parties to the instrument relating to other international instruments/agreements that they were not parties to. They had also reinserted a previous paragraph from the Annex in Rev. 1 relating to that article, which provided more clarity regarding related instruments, including the UNDRIP. The facilitators had reworked Article 6, taking account of the expert group discussions including comments by the indigenous observers. In part, Rev. 2 replicated language of Article 11 of the Nagoya Protocol. Mr. Goss thanked the Chair and the Member States for their support and encouragement, and for their trust in them. He hoped that the facilitators had repaid that with a text which was not perfect but was in a state that could enable the Committee to significantly advance the negotiations. The facilitators also wished to note the positive engagement from

Member States across all regional groupings to develop convergence in positions through reaching out to each other. Mr. Goss described it as a major step forward.

282. The Chair opened the text for comments on the basis of the methodology agreed. [Note from the Secretariat: Most participants who took the floor expressed their gratitude to the facilitators, the Chair and the Secretariat for their work and for the manner in which the discussions during the week had taken place].

283. The Delegation of the Dominican Republic, speaking on behalf of GRULAC, indicated that it had wished that the whole Preamble be put within square brackets. However, it noted that the last paragraph of the Preamble was not in square brackets.

284. The Delegation of the EU, speaking on behalf of the EU and its Member States, pointed out some omissions in Rev 2. It wished to introduce in the text the Chairman's note included in document WIPO/GRTKF/IC/23/4, characterizing the consolidated text as a work in progress without prejudice to the positions of the participants. It also noted that it was without prejudice to the nature of the text and to the final outcome on the instrument. Concerning the terminology throughout the text, it wished to see reflected in all relevant provisions, between brackets, alternatives for the expressions “IP rights”, “IP applications” or “IP offices”, and “patent rights”, “patent applications” or “patent offices”. Concerning the term “peoples”, it wished to see bracketed throughout the text. It also wished to bracket in every occurrence the terms "derivatives", "utilization", and "misappropriation". It agreed to retain the definitions of the terms "derivatives", "utilization" and "misappropriation" in the List of terms, with the understanding that they were bracketed, reflecting that not all delegations agreed on the relevance of those terms being used in the instrument. It supported the intervention made by the Delegation of the Dominican Republic, on behalf of GRULAC, to have the Preamble bracketed, since its content would be discussed at a further stage. Regarding the Policy Objectives, it wished to have Objective 1 bracketed, because it could not agree with the text as it stood. It had alternative language but would keep it for later in the discussions. Concerning Article 1, which was a key provision for the EU and its Member States, it wished to have an alternative, between brackets, to "derived from utilization of genetic resources": "directly based on," as it had constantly advocated throughout the week. Regarding Option 1 of Article 3, it understood that the facilitators had tried to come up with a really short and synthetic provision on Trigger in paragraph 3.3, but there were elements missing that were included in document WIPO/GRTKF/IC/23/4, paragraph 3.8 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.10 in Rev. 2 dated February 8, 2013], subparagraphs (a) and (b). It had sent the text to the facilitators and considered that it needed to be reflected. Paragraph 3.11 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.13 in Rev. 2 dated February 8, 2013] should be bracketed, because there was no agreement at that stage among delegations on whether an instrument could decide to amend the PCT and PLT. It considered that it was not for a separate instrument to decide that. As regards the sanctions, it could work on the basis of Sub-Option 3, as it stood, and would make a suggestion on that at a further stage. On Article 4, in paragraph 4.1, instead of “intellectual property rights involving the utilization of genetic resources”, it wished to see the alternative text: “patent rights directly based on genetic resources and associated traditional knowledge”. It also wished to bracket the end of that paragraph, starting from: "but will not create a hierarchy." It could not agree with that new text at that stage. It wished to see Article 6 bracketed.

285. The Chair replied that he did not intend to include a Chairman’s note on the revised consolidated document as transmitted to the General Assembly. The transmittal of the document was in the hands of the Member States, as well as the form of words for its transmittal.

286. The Delegation of India pointed out some omissions and suggested some minor editorial changes in the text: It wished to add, within brackets, “intellectual property”, where only “patent” was mentioned, and “intellectual property”, where only “invention” was mentioned, throughout

the document. In the definition of “country of origin”, it wished to delete “those”, where it read "those genetic resources". In the definition of "misappropriation", it wished to add “knowledge” after “associated traditional”, "in accordance with national legislation", and to replace “or” with “and”. In Article 2, it wished to add "genetic" before "resources" in the second line of 2.1, and to replace “the” by “such” in the last line. In Article 3, in 3.1, Option 1, it wished to replace "information on", in the second line, with "country of source and origin of", as well as to add, in the fourth line, "and" before "misappropriation." In subparagraph 3.5 (f) [Note from the Secretariat: The subparagraph mentioned corresponds to subparagraph 3.7 (f) in Rev. 2 dated February 8, 2013], it wished to replace "inventor" with "developer of IP". In Sanctions and Remedies, in Sub-Option 1, paragraph 3.12, in Sub-Option 2, paragraph 3.13, and in Sub-Option 3, paragraph 3.14 [Note from the Secretariat: The paragraphs mentioned correspond to paragraphs 3.14, 3.15 and 3.16 in Rev. 2 dated February 8, 2013], it wished to replace "accessible", in the third line, with "transparent, predictable." In Option 2, on Defensive Protection, in subparagraph 3.17 (a) [Note from the Secretariat: The subparagraph mentioned corresponds to subparagraph 3.19 (a) in Rev. 2 dated February 8, 2013], it wished to add in the end "and prevent misappropriation". In subparagraph 3.17 (b) [Note from the Secretariat: The subparagraph mentioned corresponds to subparagraph 3.19 (c) in Rev. 2 dated February 8, 2013], it wished to bracket "free" before "prior informed consent". In paragraph 3.22 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.24 in Rev. 2 dated February 8, 2013], it wished to replace, in the first line, "ensure the free prior informed consent” with “prevent misappropriation”, and also, in the second line, to replace “related” with “associated”. In paragraph 3.23 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.25 in Rev. 2 dated February 8, 2013], it wished to bracket "prior art", in the fourth line, and to add “this relevant information" just after that expression.
The Delegation of India understood that the document was still an open document and it reserved its rights to have further comments in the future.

287. The Delegation of Algeria, speaking on behalf of the African Group, thanked the facilitators for their excellent work. On the List of terms, there was a problem with clarity of definitions. A definition of “associated traditional knowledge” which did not include a reference to GRs would be useless. It wished to combine the definitions of “associated traditional knowledge” and “traditional knowledge associated with genetic resources” on the basis of the definition of “associated traditional knowledge” with a few changes. It suggested replacing “that subsist in”, in the last line of the definition of “associated traditional knowledge’, with “that are associated with genetic resources”. The definition of “associated traditional knowledge” would remain and the definition of “traditional knowledge associated with genetic resources” would be dropped out. Regarding the definition of “Country of origin”, it would be clearer to have two different definitions: a definition of “country of origin” on the basis of Option 1, and a definition of “providing country” on the basis of Option 3, because they were not the same thing. In the first line of the definition of “misappropriation”, it wished to replace “or” with “and”, and to add “knowledge” after “traditional". In the second line of Article 3, Option 1, paragraph 3.1, it wished to replace “information on” by “origin of”. It wished to have Option 2, paragraph 3.2, deleted. It pointed out that paragraph 3.4 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.6 in Rev. 2 dated February 8, 2013] would be better placed under Option 2, rather that under Option 1 of Article 3. With regard to Sanctions and Remedies, it supported Sub-Option 2 and wished to have Sub-Option 3 placed in square brackets.
It supported the proposal of the Delegation of India to include references to the IP system, where there were references to the patent system. It could not support the proposal made by the Delegation of the EU to have a Chairman's Note. It wished the text to be transmitted to the General Assembly without any reference to its nature.

288. The Delegation of Switzerland thanked the facilitators for taking into account the diverging views expressed by the various delegations. It considered that the obligation to have a disclosure requirement in place, stated in paragraph 3.3, should be with the States, rather than with the IP offices. In line with other paragraphs of the text, it proposed to replace the wording "Intellectual property offices" with the wording "Each party/country". In that same paragraph,

the invention rather than the patent application should have the required relationship with GRs and TK. It proposed to add “for inventions”, so that the text read "patent applications for inventions that". It wished to add “are” in the square brackets that read “directly based on”, so that the square brackets read “are directly based on”. It wished to add square brackets around the words "utilization of", so that the various concepts for triggers were more clearly distinguishable from each other. It noted that the more detailed definition of “directly based on”, included in paragraph 3.2 (a) and (b) of Rev. 1, had been deleted from the text. Since it considered a clear definition of the triggers to be crucial, it reserved its right to reintroduce that more detailed definition later. As regards to Sanctions and Remedies, it favored Sub-Option 3, which reflected the “floor and ceiling approach” with minimum and maximum sanctions. The wording of that Sub-Option was still rather broad and would have to be further specified later, in particular the specific sanctions allowed under the instrument. An element missing in the draft was that if the patent application did not meet the disclosure requirement, the patent office should set a time limit for the patent applicant by which the deficiency had to be remedied. That element could be added in the section on Actions of the Office or in the section on Sanctions and Remedies. It noted that there would be no Chairman's Note. Notwithstanding, it held that the document represented work in progress and was thus without prejudice to the positions of the participants.

289. The Delegation of the Syrian Arab Republic thanked the facilitators for their efforts. It noted that paragraph 1.1.3 Option 3 under the Guiding Principles of Objective 1 in document WIPO/GRTKF/IC/23/4 was completely absent from Rev. 2. It wished that text to be reflected in Rev. 2 and proposed to put it in the Preamble.

290. The representative of Tupaj Amaru thanked the facilitators for their impartiality and the consistency with which they had worked on the text. However, he regretted that there were even more square brackets in the text and therefore more obstacles to the process of finalizing the document. He referred to the suggestions he had made on Article 1 to have the text of the definition that appeared in the CBD, and noted that his proposal had not been added, although it had been supported by the Delegation of the Bolivarian Republic of Venezuela. Regarding the statement of the Delegation of the EU, he emphasized that the term "indigenous peoples" had been recognized by the United Nations. He supported the proposal made by the Delegation of Algeria on behalf of the African Group and also the proposal made by the Delegation of the Syrian Arab Republic. He pointed out that the text ought to be similar to what had been adopted in previous sessions on TK and TCEs, in that any infringement or misappropriation should be sanctioned both under criminal and under civil law.

291. The Chair referred to the methodology and procedures. He encouraged the observers to respect the integrity of the process and not compromise a Member State by citing its support when it had not extended it.

292. The representative of CAPAJ, speaking on behalf of the Indigenous Caucus, said that the Indigenous Caucus was an organism recognized within the process. It worked as a collective body and attempted to come to unity with a common position that the different indigenous peoples’ representatives agreed to send to the IGC. He said that the Indigenous Caucus had reached consensus on the following. The Indigenous Caucus recognized the very hard work that had been done by the Chair, the team of facilitators and experts. A strengthening of the participation of indigenous peoples was necessary, and it depended on the support that they could get from the WIPO Voluntary Fund. The Indigenous Caucus wished to thank all the Member States who had to date given voluntary support through the Voluntary Fund, and to thank the WIPO Secretariat for administrating those funds. He exhorted those countries who were able to continue supporting the Voluntary Fund, so that indigenous peoples had effective representation within the IGC. The Indigenous Caucus wished to see reflected in the Preamble a general statement along the following lines: the GRs and the TK associated with GRs of the indigenous peoples had cultural and economic value and required protection against misappropriation and misuse; indigenous peoples had the right to use, possess, control and

transmit to the future generations their GRs and TK associated with GRs; indigenous peoples had processes related to the transmission of their TK associated with GRs within their own communities and within the framework of their own cultures to the future generations, as well as laws and rules with regard to the transmission of TK associated with GRs to third parties outside of the communities; these laws and rules needed to be respected and accepted by the States. The representative added that parties to the forthcoming instrument should take note of the UNDRIP, specifically Article 31, and ensure the respect of the rights of indigenous peoples and local communities to their GRs and TK, including the right to PIC, MAT and fair and equitable benefit-sharing.

293. The Delegation of the Islamic Republic of Iran supported the proposal of the Delegation of the Syrian Arab Republic.

294. The Delegation of the Holy See regretted that Rev. 2 did not contain any reference to paragraph 2.7.1, included in document WIPO/GRTKF/IC/23/4 and in Rev. 1. It emphasized that patenting of life forms could sometimes serve as a tool to support biotechnologies that were problematic both from an ethical point of view and from the point of view of a “development-friendly” IP system. Article 4 of the Universal Declaration on the Human Genome and Human Rights stated that the human genome in its natural state should not give rise to financial gains. Article 21 of the Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the application of biology and medicine stated that the human body and its parts should not, as such, give rise to financial gains. For that reason, it requested the reinsertion in the Preamble of the same language included in paragraph 2.7.1 of document WIPO/GRTKF/IC/23/4. Consistent with the proposal of the Delegation of the Dominican Republic made on behalf of GRULAC and the Delegation of the EU, made on behalf of the EU and its Member States, it wished to put the Preamble in square brackets.

295. The representative of INBRAPI said that the definition of “associated traditional knowledge” in the List of terms had not considered Article 31 of the UNDRIP, Article 8 j) of the CBD, and Article 7 of the Nagoya Protocol. She said that TK belonged to indigenous peoples and local communities. That was not reflected in the definition of “associated traditional knowledge”. The recognition of the holders of TK needed to be clearly stated in the text. She supported the statement made by the representative of CAPAJ on behalf of the Indigenous Caucus. She thanked those Member States, particularly countries from GRULAC and the African Group, who had supported the inclusion, in Article 2, of indigenous peoples and local communities as beneficiaries. However, in paragraph 2.1, beneficiaries of the instrument appeared to be everyone. That paragraph needed to be improved, for legal certainty. She was concerned about paragraph 3.4 on Exclusions [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.6 in Rev. 2 dated February 8, 2013], and wished to put into square brackets the reference to TK in the public domain. She did not understand why TK in the public domain had been included without taking into account free PIC and fair and equitable benefit-sharing. Regarding paragraph 3.13 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.15 in Rev. 2 dated February 8, 2013], she thanked the Delegation of South Africa for including a mechanism for dispute resolution, which was very useful for indigenous peoples who did not always have the financial resources to go to court to claim their rights. With regard to paragraphs 3.21 and 3.24 [Note from the Secretariat: The paragraphs mentioned correspond to paragraphs 3.23 and 3.26 in Rev. 2 dated February 8, 2013], those mechanisms were complementary and needed to be discussed after the beneficiaries, the subject matter of protection and the recognition of the rights of the different parties had been defined. Only after that, databases could be discussed. Regarding paragraph 4.2, she thanked those parties who had supported the inclusion of Article 31 of the UNDRIP, because it was the framework for a change of paradigm in the international scenario.
On trans-boundary cooperation, she thanked the Delegations of Algeria, on behalf of the African Group, and Switzerland for their support.

296. The Delegation of China thanked the Chairman, the facilitators and all Member States for their tireless efforts, which had produced a relatively simple document. It needed more time for further study and consultation with capital. Significant changes had been made, and many parts had been removed from the Objectives and Principles. The principles of national sovereignty and benefit-sharing were both very important. It wished to see them included in the Preamble. On Sanctions and Remedies, it proposed to amend all three Sub-Options by adding “and under national laws and requirements” after “under this international legal instrument”, in the second line. It supported Sub-Option 2, in principle, but reserved its right to make further comments. It wished to have the possibility of invalidation added in subparagraph 3.13 (d) [Note from the Secretariat: The subparagraph mentioned corresponds to subparagraph 3.15 (d) in Rev. 2 dated February 8, 2013].

297. The Delegation of Brazil supported the statement made by the Delegation of the Dominican Republic on behalf of GRULAC. It congratulated the facilitators for the excellent work they had done in preparing Rev. 2. It was pleased to see the progress made by the Committee, due to the methodology adopted by Member States under the guidance of the Chair. Rev. 2 was cleaner and fairly reflected the different positions among Member States. To make more precise the definition of "traditional knowledge associated with genetic resources", it suggested to insert the expression "held by indigenous peoples and local communities" after "substantive knowledge" and to delete that expression from the end of that definition. It reserved its rights to submit further comments regarding the definition of "misappropriation", since it was a new definition. On a preliminary basis, it wished to substitute the term "acquisition" with "utilization", to include “competent authorities” after “consent of”, and to add in the end "in accordance with the national legislation of the country of origin or providing country". It wished to bracket the definitions of “physical access” and “source”, since it understood that they were not agreed yet. In paragraph 2.1, it wished to put in brackets the expression “resource holders, supplier countries” and to substitute it with “country of origin and country providing”, as included in the List of terms. Regarding Defensive Protection in Article 3, it had many concerns regarding the establishment of databases and wished to reserve its rights to make further comments in that point in other meetings. In Article 6, it wished to include the term “conditions” after the expression "*in situ*".

298. The Delegation of Sri Lanka thanked the facilitators for their untiring efforts and the Chair for his guidance. It reserved its right to come back with suggestions once it had consulted with its capital. It had taken note of the concerns expressed by the Delegations of Algeria and India and would study them carefully. However, it partly endorsed those statements. It thanked the Secretariat for its dedication, all the delegates, in particular the members of the LMCs Group, as well as the countries of the Asian Group. It also recognized the contributions made by the various representatives of indigenous groups.

299. The Delegation of Colombia thanked the Chair for his excellent leadership and the Secretariat for its support throughout the process. It recognized the excellent work done by the facilitators, despite the complexity of their task. With regard to the Relationship between PCT and PLT, it wished to put paragraph 3.11 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.13 in Rev. 2 dated February 8, 2013] in brackets, since it would prefer that issue to be discussed at a later date. With regard to Sanctions and Remedies, it appreciated the choice of the facilitators to include the three sub-options that were discussed in the expert group, but Colombia would support Sub-Option 2. It wished to include in that sub-option the possibility to revoke patents that had not included disclosure of source, in similar terms as those included in the final phrase of Sub-Option 3. The addition to Sub-Option 2 would read: “(e) Office can consider the disclosure requirement shall affect the validity or enforceability of granted patents.”

300. The Delegation of Canada thanked the facilitators for having prepared Rev. 2. It wished to place on record its understanding that the term "Negotiating text" used on page 2 did not preclude other texts from being considered negotiating texts. It also wished to place on record

its understanding that the consolidated document before the IGC represented a work in progress and was without prejudice to the positions of the Member States, and that where one or more options were presented on any issue, it was understood that the possibility remained for there to be a new option or additional options on the issues. On page 3, it believed that there might have been a misunderstanding regarding one of its previous interventions. The Delegation of Canada had not requested to have the expression “genetic resources associated with traditional knowledge” included in the List of terms, but rather to have as an option throughout the text, to the expression “associated traditional knowledge”, the expression “traditional knowledge associated with genetic resources”, which was already defined on page 2. The term “genetic resources associated with traditional knowledge” could be struck out. It wished to have all instances of the term "associated traditional knowledge" to be supplemented by the additional option of the term "traditional knowledge associated with genetic resources”, in a manner that consistently indicated that there were two options in terms of the choice of terms. It requested that the references to the UNDRIP be square bracketed. It noted that, in the sixth paragraph of the Preamble, a square bracket appeared to be missing at the beginning. It wished to place in square brackets the last paragraph of the Preamble. Regarding Policy Objectives, the Delegation wished to place Objective 1 in square brackets and reiterated its previous request that all references to ABS, the CBD and the Nagoya Protocol be placed in square brackets throughout the text. It requested that all mentions of “intellectual property” or “patent” offices be made, so that there were always two terms, in a way that consistently indicated that there were two options. Regarding Article 1, the subject matter of protection of any instrument should address what was to be protected and not the manner or the scope of protection, which should be dealt with under Scope of protection. The Delegation wished to place in square brackets paragraph 2.2 in its entirety. It reiterated that it did not support Option 1. In paragraph 3.17 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.19 in Rev. 2 dated February 8, 2013], reference should be made to databases of associated TK or TK associated with GRs, and not just databases of TK. It wished to place in square brackets subparagraph 3.17 (c) [Note from the Secretariat: The subparagraph mentioned corresponds to subparagraph 3.19 (d) in Rev. 2 dated February 8, 2013], in line with its previous comments regarding the CBD and the Nagoya Protocol. Paragraph 3.18 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.20 in Rev. 2 dated February 8, 2013] should be completed with the phrase "in accordance with national law" at the end or at the beginning. It wished to square bracket paragraph 3.24 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.26 in Rev. 2 dated February 8, 2013], at least until clarification on that point was provided. The Delegation also wished Article 6 to be placed in square brackets, as in Rev. 1 of the consolidated document. It also wished to square bracket all references to the PCT and the PLT throughout the text.

301. The Delegation of Kenya thanked the Chairman, the Secretariat and the facilitators for their hard work. It supported the views taken by the Delegation of Algeria on behalf of the African Group. Disclosure was necessary in IP applications or systems. On Sanctions and Remedies, it supported Sub-Option 2, which encompassed varying degrees of sanctions based on different violations or situations. It was very pleased with the inclusion of measures that included customary laws and protocols in Article 6.

302. The Delegation of the United States of America thanked the facilitators for coming up with a cleaner text. It supported the statement of the Delegation of the EU concerning the reproduction in Rev. 2 of the Chairman's Note included in document WIPO/GRTKF/IC/23/4. It also supported the substantive comments of the Delegation of Canada. It emphasized that IGC 23 had been operating under the guidance provided by the Chairman’s Note, and requested that it be attached to Rev. 2. It wished to see the title in page 2 bracketed, particularly before the colon and after the word "text". As indicated by the Delegation of Canada, it did not wish the implication to be that the consolidated document was the only text for negotiation. It requested that the definition of “associated traditional knowledge” continue to be bracketed. It wished to bracket the definitions of “misappropriation” and “physical access”,

as indicated in the past. On page 3, Option 2 should continue to be bracketed. It wished to bracket the fourth paragraph of the Preamble, since it was new language and it needed time to consider it. The same applied to the seventh paragraph, which should also be bracketed. The Delegation wished to see Objective 1 bracketed, since it did not wish to have an objective linking the CBD and the patent system. On Article 3, Option 1, it wished that the entirety of paragraph 3.1 be bracketed. It recalled that it had indicated its concern about really finding the purpose of the instrument and whether it was to enforce ABS systems, and also that it had indicated its objection to a new disclosure requirement. Consistent with its previous comments, it requested the bracketing starting from “Disclosure Protection” through paragraph 3.14 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.16 in Rev. 2 dated February 8, 2013]. It pointed out a technical correction that should be made in the second line of paragraph 3.16: to insert “in patent applications” after "genetic resources". It wished to see paragraphs 4.1 and 6.1 bracketed, as indicated before. It noted that there was an open bracket in the Drafting Annex. It supported the idea of that area being bracketed, as those proposals had not been agreed to.

303. The Delegation of Peru thanked the facilitators for the efforts they had made in preparing Rev. 2, which was clearer. The terms needed to be dealt with in a consistent and unified manner. It had requested the inclusion of the term “derivatives” throughout the session. It had noted it was absent in paragraphs 2.2 and 2.3, and in Article 6. It shared the concerns of the Delegation of Brazil and of the representatives of indigenous peoples regarding paragraph 2.1, since the scope of beneficiaries seemed to be too broad. During the discussions about sanctions in the expert group, the possibility of revocation of granted rights had been considered. However, that possibility was absent in Rev. 2. It suggested adding in Sub-Option 2, paragraph 3.13 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.15 in Rev. 2 dated February 8, 2013], a new (e) to include the possibility of revocation of granted patents.

304. The Delegation of Cameroon requested the deletion of paragraph 2.1, to clean up the text both in substance and in form. In Sanctions and Remedies, Sub-Option 2 gave Member States the possibility of establishing a minimum and a maximum, and thus it was superfluous to indicate that States should not be obliged to impose a maximum. The last phrase of Sub-Option 3 was also superfluous, since many delegations had already recalled that they had the possibility of revocation within their national legislation. Superfluous phrases should be removed. In Articles 5, 6, and 7, since they only had one paragraph, those paragraphs might not need to be numbered as 5.1, 6.1, 7.1. With regard to databases, it noted that they were not a panacea. Only once a text was adopted, the implementation of databases could be envisaged. It emphasized that there would not be retroactivity.

305. The Delegation of South Africa wished to raise a procedural issue relating to the mandate. Some comments had been raised that there were other texts besides Rev. 2 for negotiating. The mandate stipulated very clearly which were the texts before the Committee in terms of negotiations. It wished to seek clarification on that. In the discussion that took place the day before, the documents that were submitted were for noting, and they were not considered to be text for negotiating.

306. The Delegation of Japan thanked the facilitators for their excellent work of refinement of the text. It supported the statements made by the Delegations of Canada and the United States of America in principle. In the title of the Rev. 2 in page 1 and the top of page 2, it wished to insert the word "patent" after “intellectual property”, both words bracketed. The expression “Negotiating text” at the top of page 2 might prejudice future discussions. In that regard, it shared the concerns presented by the Delegations of Canada and the United States of America. It suggested the deletion of the definition of "associated traditional knowledge" in the List of terms, since it included vague words such as “dynamic and evolving” or “from generation to generation”, as well as the deletion in the whole text of the expression "associated traditional knowledge". It wished to bracket the definition of "misappropriation", since it was new text and

should be left for a later stage. The seventh paragraph of the Preamble, which was the same as Objective 2.6 in document WIPO/GRTKF/IC/23/4, and which rested on the premise of introduction of a mandatory disclosure requirement, had to be deleted. In the first and second lines of Objective 2, it suggested the bracketing of the words "intellectual property". It had requested the bracketing of Article 1, but that had not been incorporated in Rev. 2, though it might be a clerical error because the left side paired to the last bracket had been missed.
In Article 3, it wished to replace "intellectual property offices" with "patent offices" throughout the whole text, including the first line of paragraph 3.17 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.19 in Rev. 2 dated February 8, 2013]. It wished to see paragraph 3.24 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.26 in Rev. 2 dated February 8, 2013] bracketed, since it was new text and should be left for a later stage. It had requested the bracketing of articles 5, 6 and 7. Articles 5 and 7 had been bracketed. Article 6 should be bracketed.

307. The Delegation of Egypt thanked the Chair and the facilitators for their hard work, which had allowed the IGC to end up with a revised text that was a great stride forward in accordance with the mandate given by the General Assembly. It endorsed the statement made by the Delegation of Algeria on behalf of the African Group. It wished to lay particular emphasis on Option 2 on page 15 in document WIPO/GRTKF/IC/23/4, and particularly the way it needed to link up to the PCT. It was necessary to make that clear in the documents submitted to the General Assemblies. It greatly appreciated the constructive spirit that had prevailed at the meeting and the way everyone had made positive contributions allowing to take items in positive, constructive criticism. It believed that the Committee could now move forward towards its objective, to submit an appropriate text to the General Assemblies and thereby contribute to international work intended to protect cultural heritage.

308. The Delegation of Australia made a proposal that would follow on from paragraph 3.3, and was a response to a request from the representative of FAIRA, namely to reinsert the reference to a trigger that was in Rev. 1 regarding disclosure in the instances of harm to indigenous peoples and local communities. It wished to put on record that it supported references in the appropriate places to Article 31 of the UNDRIP.

309. The Delegation of the Plurinational State of Bolivia acknowledged the work of the facilitators and felt that an important change had been made in the text since IGC 20. The first impression was that it was shorter and easier to read. A number of square brackets had been introduced. The criteria for having brackets in some places and not in others were not clear. For instance, it did not recall having heard any delegations requesting square brackets around paragraph 3.9 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.11 in Rev. 2 dated February 8, 2013]; thus it requested their removal. Bolivia had been constantly a victim of biopiracy and therefore the process was very important for its government. In a constructive spirit, it had shared its concerns, with a view to prevent that IP rights, particularly patents, be granted on GRs and their derivatives as they appeared in nature or simply isolated. That measure was aimed at combating biopiracy, and at reducing misappropriation, and it complemented the proposal of disclosure of origin of GRs.
Its implementation would not lead to administrative burdens for the IP offices. In the definition of “misappropriation”, it wished to replace “acquisition” with "utilization" in the first and second lines, to insert the word "knowledge" after "traditional", and to use the expression "prior informed consent" rather than “consent”. As indicated by the Delegation of the Dominican Republic on behalf of GRULAC, the Preamble needed to be worked on at the end of the process. There were elements that were lacking. It wished the entire Preamble to be put in brackets, particularly the third paragraph. It supported the statement of the Delegation of the Holy See, and wished to have a paragraph in the Preamble about non patentability of life and its implications. It noted that the possibility of revoking a patent in case of fraud had been removed. Wording on that was needed in the text, not in an annex. It had many concerns regarding the issue of databases. If they were not accompanied by a solid, legal regime, they could lead to an increase in biopiracy, rather than to protect GRs.

310. The Delegation of Jamaica said that the definitions of “associated traditional knowledge” and “traditional knowledge associated with genetic resources” could be merged, keeping the elements of the last half of the second as part of the first. It noted the concern expressed by the Delegation of Algeria on behalf of the African Group and tended to agree that “provider country” could be separately defined from “country of origin”. Regarding misappropriation, it shared the concerns of the Delegation of Brazil that “acquisition” should be replaced by “utilization”. It also had concerns about the definition of “physical access”, needed more time to look at it, and wished it to be bracketed. It supported the request made by the Delegation of the Dominican Republic on behalf of GRULAC to bracket the entire Preamble. Article 2 needed to be very clear and concise, and was still in need of significant work. It added that the formulation of 2.1 was too wide. It had to be clear that the primary beneficiaries would be the providing countries and the indigenous and local communities. The word "derivatives" should be added in 2.3, along with GRs and associated TK. Paragraph 3.3 could be rearranged to read better. It wished to put in brackets paragraph 3.11 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.13 in Rev. 2 dated February 8, 2013], since it needed more discussion. Regarding Sanctions and Remedies, it shared concerns that revocation had not been retained in the text, because it was vitally important for a sufficient protection of GRs and associated TK. It also shared concerns that databases, though helpful, should not be mandatory, and that clear provisions related to PIC of the provider countries and the indigenous peoples and local communities were needed, so as to further the objects and not to aggravate misappropriation. It saw some value in the proposal of the Delegation of Switzerland that, in some cases, the use of the terms "Country or State" may be more appropriate than "IP offices."

311. The Delegation of the Republic of Korea appreciated the hard work done by the facilitators and the Chair. It supported the statements of the Delegations of Canada and Japan in principle. It considered that the seventh paragraph of the Preamble had to be deleted since it dealt with the disclosure requirement, which was not agreed by all Member States. It wished to bracket paragraph 3.11 [Note from the Secretariat: The paragraph mentioned corresponds to paragraph 3.13 in Rev. 2 dated February 8, 2013]. Regarding defensive protection, even though it strongly supported the establishment of databases of TK and GR, it wished to delete subparagraph 3.17 (c) and paragraph 3.22 [Note from the Secretariat: The subparagraph and paragraph mentioned correspond to subparagraph 3.19 (d) and paragraph 3.24 in Rev. 2 dated February 8, 2013], because they mentioned the Nagoya Protocol, which was not appropriate. It wished to bracket Article 6 on trans-boundary cooperation in its entirety, since it was a very complicated issue that still needed discussion.

312. The Delegation of the Democratic Republic of the Congo supported the statement made by the Delegation of Algeria, speaking on behalf of the African Group. It endorsed the statement made by the Delegation of Kenya, Cameroon, South Africa and Egypt. It emphasized the need to retain in the text the concept of disclosure of origin of GRs. That would be in line with the principles of the IP system, and the Nagoya Protocol.

313. The Chair closed discussions on Rev.2 of the consolidated text.

314. The Chair reopened the floor on the draft decision of the Committee regarding Agenda item 6, after consultations had taken place in this regard.

315. The Delegation of Canada was of the view that the mandate contemplated a stock-taking at IGC 25 and wished to know how this aspect of the mandate would be reflected in the decision. It was concerned, and sought clarification on whether the direct transmittal of the text to the General Assembly by the plenary would preclude stock-taking in July.

316. The Chair clarified that the three day additional session in IGC 25 would allow for stock-taking and noted that this would likely involve horizontal discussion of the texts that had emerged from the three IGC sessions. He, however, noted that there was no stipulation that the Twenty-Fifth session would decide on the transmittal of the text. He clarified that, although

the present decision to transmit the text to the GA did not prevent future discussion on the text, it was not indicated that those additional three days would involve the renegotiation of any text.

Decision on Agenda Item 6:

317. The Committee developed, on the basis of document WIPO/GRTKF/IC/23/4, a further "Consolidated Document Relating to Intellectual Property and Genetic Resources". The Committee decided that this text, as at the close of the session on February 8, 2013, be transmitted to the WIPO General Assembly taking place in September 2013, in accordance with the Committee's mandate contained in document WO/GA/40/7 and work program for 2013 as contained in document WO/GA/41/18.

318. The Committee also took note of documents WIPO/GRTKF/IC/23/5, WIPO/GRTKF/IC/23/6, WIPO/GRTKF/IC/23/7, WIPO/GRTKF/IC/23/INF/7 Rev., WIPO/GRTKF/IC/23/INF 9, WIPO/GRTKF/IC/23/INF/9 Add. and WIPO/GRTKF/IC/23/INF 10.

AGENDA ITEM 7: ANY OTHER BUSINESS

319. There was no discussion under this Agenda Item.

AGENDA ITEM 8: CLOSING

320. The Delegation of Belgium, speaking on behalf of Group B, expressed its appreciation to the Chair for his efficient chairing of the session. It also extended its appreciation to the facilitators and the Secretariat for their hard work. It observed that there had been substantial progress towards overcoming divergent and, sometimes, conflicting policy objectives and guiding principles. It noted that that the text-based negotiation, in accordance with the mandates for the IGC for 2012 and 2013, and the 2013 Work Plan for the IGC, had generated a revised consolidated document. Several proposals had also been tabled and discussed. It looked forward to IGC 25 which would enable the WIPO membership to review and take stock of the text of one or more international instruments which ensured the protection of GRs and also to make a recommendation to the General Assembly.

321. The Delegation of the EU, speaking on behalf of the EU and its Member States, thanked the Chair, the facilitators, the Secretariat and the interpreters for the work that had been accomplished at the session.

322. The Delegation of Poland, speaking on behalf of the Group of Central European and Baltic States, expressed its appreciation to the Chair for his wise and skillful stewardship of the Committee, noting that his rational, wise and impartial guidance had helped to resolve many disagreements during the negotiations. It thanked the facilitators and the Secretariat for their contribution to the success of the session. It welcomed the approach adopted by the Committee which had allowed it to make substantial progress. It observed that though significant improvement had been achieved in the objectives and principles as well as the preamble, which were now shorter and more concise, there were still some important divergent positions regarding the Rev. 2 of the Consolidated Document. It welcomed the streamlined language related to the disclosure protection and sanctions. It looked forward to further in-depth and productive discussions on the basis of the consolidated document as well as to the stock-taking at IGC 25.

323. The Delegation of Algeria, speaking on behalf of the African Group, thanked the Chair for his sound stewardship and strong commitment to the process. The Group also extended its gratitude to the Secretariat and the facilitators for the work done and drew the attention of the plenary to three main points. First, with respect to the procedure, it expressed its delight to witness a constructive spirit among delegations even though, on occasions, there were still instances where the plenary was unable to go the extra mile in working on the process. With respect to the documents that were submitted, it noted that it found the documents a lot more concise and targeted and noted that this would serve to assist in arriving at a consensus in the future. Thirdly, it reiterated the position of the African Group, pointing out that, as a Group, it wanted to complete the negotiations before 2014, for the holding of the Diplomatic Conference that would adopt the binding treaty to protect TK, GRs and folklore.

324. The Delegation of Sri Lanka, speaking on behalf of the Asian Group, thanked the Chair for his continued commitment. It also extended its gratitude to the facilitators, the Secretariat and the interpreters for their work. It expressed the view that though there were still differences and a lot of work to be done, the discussions through the session had shown that delegations could eventually arrive at some form of consensus. With respect to the path ahead, it noted the importance of the spirit of compromise.

325. The Delegation of the Dominican Republic, speaking on behalf of GRULAC, expressed its gratitude to the Chair for the way in which he had conducted the session. It thanked the Secretariat and facilitators and noted its delight at the consolidated document. It reaffirmed its commitment to the process and expressed its belief that the Committee was clearly on the right path to reach the objective which had been set and which would be acceptable to one and all.

326. The Delegation of South Africa aligned itself with the intervention of the Delegation of Algeria on behalf of the African Group. It expressed its gratitude to the Chair as well as the Secretariat for the successful meeting and further thanked delegations for the depth of substantive discussions that were held in the expert group meetings. It similarly notified the plenary of its intention to conduct informal bilateral consultations with the hope of arriving at consensus. It was of the view that a sustained approach in the direction in which the Committee was headed would result in solutions amicable to all. It looked forward to informal cooperation with other delegations before IGC 24. It finally expressed its gratitude to the interpreters for their support and reiterated the desire, as expressed by the Delegation of Algeria on behalf of the African Group, to achieve the goal of an international legal binding instrument.

327. The representative of Tupaj Amaru expressed his gratitude to the Chair for his efforts. He stated that the legal content, the nature and the political scope of the document seemed to be shrinking at every session and observed that it was necessary to have more transparency in the discussions as well as more democratic participation. He therefore requested the Chair to change the working methods that were being used. He finally expressed his disappointment

that the suggestions put forward by Tupaj Amaru were not adequately reflected in the reports of IGC 21 and 22.

328. The Delegation of Nigeria aligned itself with the other delegations in expressing its gratitude to the Chair, the facilitators, the interpreters, the Secretariat, the technical unit and the printing unit. It thanked the other delegations that were frank and that had expressed their positions with forthrightness. The Delegation thanked the indigenous peoples that were represented and the various NGOs, and noted that though it had been a long road, the session had witnessed significant progress. The Delegation was particularly reflective about the importance of the process and of the deliberations that had been held during the session. The Delegation noted that this was a process that was important to the IP system, to the administration of patent law and important for institutional coherence. It was of the view that this was a process which, perhaps, for the first time in the history of WIPO and certainly in the history of IP, reflected fundamental principles of law and equity. It believed that the draft with which the session had ended, covered the core minimal elements that were necessary to ensure that the demands, hopes and fears of those whose intellectual commitments and resources were reflected in GRs and associated TK would become a formal part of the global innovation system. It believed that the task was doable and that the end was foreseeable. It noted that the ultimate objective and hope was that the innovation process as well as all of the legal systems put in place to respect the investments made by firms, by individuals, by communities and by indigenous groups would be reflected in an instrument that was both binding but, most importantly, in an instrument that reflected the aspirations of all human communities, namely that all were able to live in an environment not marked by division but instead one defined by mutual respect for one another.

329. The Delegation of Australia aligned itself with other delegations and thanked the Chair for his significant and strong leadership throughout the IGC session. It expressed its support for the statement by the Delegation of Belgium on behalf of Group B, and noted the significant outcomes which had been achieved at the meeting. It believed that these outcomes had only been achieved through all members reaching out to each other and reiterated its view that progress could only be achieved if members began to understand each other’s positions. This was the significant contribution of the expert group meetings. The Delegation also noted the significant contribution made by, in particular, the recent informal meeting which was held in New Delhi (India) prior to the session and which was a follow on from the LMCs meetings which meeting and looked forward to future events of this nature. The Delegation advised the indigenous observers and interested Member States, that there would be a World Indigenous Network (WIN) conference on Connecting Indigenous Peoples and Local Communities, Land and Sea Managers Network. It stated that this initiative arose from Rio + 20 discussions and would be hosted by Australia in May 2013. The Delegation requested for papers and presenters for this event, including requests for financial assistance noting that requests for financial assistance would close on February 20, 2013. The Delegation finally conveyed, on a personal note, the respects of Ms. Kim Connolly Stone of New Zealand to WIPO. It recalled that she was the only facilitator for the TCE text. It was of the view that she had made a significant contribution to the Committee and the progress of the work with respect to the TCE text. It informed the plenary that she had, however, advised that she would no longer be working in this area. The Delegation, in the light of her decision, wished to recognize her efforts.

330. The representative of the Health and Environment Program expressed her gratitude to the Chair for all the work done and noted that a lot more work still needed to be done to ensure that the rights of the African peoples, who were not recognized as indigenous peoples and who needed protection as local communities, were protected.

331. The Delegation of the United States of America thanked the Chair for his constructive approach, strong management skills and leadership throughout the course of this session as well as past sessions. It aligned itself fully with the statement made by the Delegation of

Belgium on behalf of Group B. It also thanked the Secretariat, the facilitators, the interpreters, and all observers including indigenous groups and industry representatives. The Delegation noted that it remained willing to engage constructively moving forward. It pointed out that it had co-sponsored three proposals during the session which reflected its continued commitment to the process. It expressed its desire to engage with other Member States over the course of the next weeks and months to work on all of the documents which had been currently tabled at the session. It appreciated the sharing of experiences at the national level and was of the view that these had contributed to a better understanding of the issues that were up for discussion. It reiterated its commitment to the productive work of the Committee.

332. The representative of INBRAPI aligned herself with other delegations to thank the Chair for the way he had led the work and observed that the outcome seemed to be a good follow-up to the previous IGC sessions. She believed that the session had led to a product which was more concrete. She pointed out that it was not everything that everyone wanted that was in the document but was grateful for the progress made. The representative thanked the Secretariat, facilitators and the indigenous peoples' caucus for their speeches and solidarity. She asked Member States to harmonize the various positions so that they could come up with an international instrument. She hoped that parties would be able to invite indigenous groups so that they could continue to take part in the sessions.

333. The Chair noted that his country was currently most known for its capacities in athletics. Based on athletics imagery, the Chair noted that outcomes were only secured through tough, hard work. He expressed his preference for the four-by-100 relay because it blended blistering individual capacity with team work. He likened the IGC process to a relay and pointed out that each time a leg was completed, the efforts and attitude needed to be focused on the next leg. He identified the most significant moment in a relay as being the change of the baton and expressed his commitment to the task at hand with the hope that whoever eventually took over, would succeed in running even faster than he had been able to do. He had been very focused on the mandate and the fact that he had assumed the responsibility over a process that was over a decade old, noting that this represented an awesome responsibility which required awesome actions. On the importance of the discussions, the Chair reminded delegations that the presence of each delegation at the negotiations represented a significant cost to taxpayers and, therefore, it was critical that the efforts put in were made to count, as any time wasted was actually the time of the citizens of the countries and communities represented at the negotiations. He noted that the time would come when tough decisions would need to be made and stressed that it was better, in such circumstances, to make those tough decisions, than to continue an endless work with no clarity as to what the outcomes would be. The Chair indicated his commitment to the methodology developed for the session and applauded delegations that had done serious work, those that had exercised flexibility when flexibility was warranted, and those that had been clear about their limitations when they had no flexibility. The Chair reiterated the view that an outcome by consensus could only be attained by delegations making conscious efforts to pull each other along in the same direction. He expressed his gratitude to the Vice-Chairs, Ms Alexandra Grazioli from Switzerland and Mr. Bebeb Djundjunan from Indonesia, who had allowed him to multitask during the course of the session. He also thanked the WIPO Secretariat for their work as well as encouragement and support. He thanked the interpreters for the patience and cooperation. The Chair expressed his gratitude to the regional coordinators who probably had the second most difficult job in the undertaking, especially as they often had to coordinate delegations that had vastly different perspectives and agendas. He appreciated them for their efforts in bridging the gaps and helping the Committee to achieve the best compromises with respect to procedure and other difficult issues. The Chair thanked the observers, the indigenous caucus and other members who had reached out to the Chair and consulted from time to time. He reminded delegations that he maintained an open door policy and expressed his gratitude to stakeholders who had taken time to share knowledge and discuss their perspectives on the issues under discussions. In conclusion, he noted that delegations and stakeholders were all at a point of shared discomfort and that this was an important point in the negotiations. This point of shared

discomfort, he explained, was where everybody felt that they did not have exactly what they wanted, and everybody also had concerns that they were not holding on to what they originally had wanted to. He, however, reminded delegations that negotiations were about give and take. He finally bade everyone farewell and encouraged that the consultation requests that had been proposed, by some delegations, be given the fullest support.

334. The Chair closed the session.

Decision on Agenda Item 8:

335. The Committee adopted its decisions on agenda items 2, 3, 4, 5, 6, and 8 on February 8, 2013. 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 March 28, 2013. 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 Twenty-Fifth Session of the Committee.

[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

Yonah Ngalata SELETI, Chief Director, National Indigenous Knowledge Systems Office, Department of Science and Technology, Pretoria, yonah.seleti@dst.gov.za

Elena ZDRAVKOVA (Ms.), Senior Manager, Patents and Designs Department, Companies and Intellectual Property Commission (CIPC), Pretoria, ezdravkova@cipc.co.za

Simphiwe NCWANA (Ms.), Director, Department of Trade and Industry (DTI), Ministry of Trade and Industry, Gauteng, sncwana@thedti.gov.za

Suhayfa ZIA (Ms.), Director, Department of International Relations and Cooperation (DIRCO), Pretoria, zias@dirco.gov.za

Boitumelo Brenda MOSITO (Mrs.), Deputy Director, Companies and Intellectual Property Commission (CIPC), Department of Trade and Industry (DTI), Pretoria

Meshendri PADAYACHY, Assistant Director, Department of Trade and Industry (DTI), Ministry of Trade and Industry, Pretoria, m.padayachy@thedti.gov.za

Metsi LETLALA (Ms.), Foreign Service Officer, Department of International Relations and Cooperation (DIRCO), Pretoria, letlalam@dirco.gov.za

ALGÉRIE/ALGERIA

Ahlem Sara CHARIKHI (Mlle), attaché, Mission permanente, Genève

ALLEMAGNE/GERMANY

Pamela WILLE (Ms.), Government Director, Patent and Trademark Law, Ministry of Justice, Berlin

ANGOLA

Alberto Sami GUIMARAES, Second Secretary, Permanent Mission, Geneva

ARABIE SAOUDITE/SAUDI ARABIA

Mohammed ALYAHYA, Deputy Director General of Technical Affairs, Patents Department, General Directorate of Industrial Property, King Abdulaziz City for Science and Technology (KACST), Riyadh

Mohammed MAHZARI, Head, Patent Department, General Directorate of Industrial Property, King Abdul-Aziz City for Science and Technology (KACST), Riyadh

ARGENTINE/ARGENTINA

María Inés RODRÍGUEZ (Sra.), Consejera, Misión Permanente, Ginebra

Rodrigo BARDONESCHI, Primer Secretario, Misión Permanente, Ginebra

AUSTRALIE/AUSTRALIA

Ian GOSS, General Manager, Strategic Programs, IP Australia, Canberra

Sophia KNIGHT (Ms.), Executive Officer, International Intellectual Property Section, Office of Trade Negotiations, Department of Foreign Affairs and Trade, Canberra, sophia.knight@dfat.gov.au

Steven BAILIE, Assistant Director, International Policy and Cooperation, IP Australia, Canberra

David KILHAM, First Secretary, Permanent Mission to the World Trade Organization (WTO), Geneva

AUTRICHE/AUSTRIA

Hildegard SPONER (Ms.), Examiner, Austrian Patent Office, Vienna

BAHREÏN/BAHRAIN

Lulwa AL KHALIFA (Ms.), Second Secretary, Permanent Mission, Geneva

BARBADE/BARBADOS

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

BÉLARUS/BELARUS

Aleksandr PYTALEV, Third Secretary, Permanent Mission, Geneva

BELGIQUE/BELGIUM

Natacha LENAERTS (Mme), attaché, Office de la propriété intellectuelle, Service public fédéral, économie, Bruxelles, natacha.lenaerts@economie.fgov.be

Mathias KENDE, deuxième secrétaire, Mission permanente, Genève

BÉNIN/BENIN

Charlemagne DEDEWANOU, attaché, Mission permanente, Genève

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

Angélica NAVARRO LLANOS (Sra.), Embajadora, Representante Permanente, Misión Permanente, Ginebra, contact@mission-bolivia.ch

Horacio Gabriel USQUIANO VARGAS, Jefe de Unidad, Viceministerio de Comercio Exterior e Integración, Ministerio de Relaciones Exteriores, La Paz, horaciousquiano@gmail.com

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

Laurent GABERELL, Asistente Técnico, Misión Permanente, Ginebra

BOSNIE-HERZÉGOVINE/BOSNIA AND HERZEGOVINA

Irma DELIBASIC (Ms.), Trademark Expert, Institute for Intellectual Property of Bosnia and Herzegovina, Sarajevo

BRÉSIL/BRAZIL

Carlos Roberto FONSECA, Deputy Head, Office for International Affairs, Ministry of the Environment of Brazil, Brasilia, carlos.fonseca@mma.gov.br

Milene DANTAS (Ms.), International Advisor, National Institute of Industrial Property (INPI), Rio de Janeiro, mdantas@inpi.gov.br

Victor FARIA, IP Researcher, National Institute of Industrial Property (INPI), Ministry of Development, Industry and Foreign Trade, Rio de Janeiro, vgenu@inpi.gov.br

Mayara NASCIMENTO SANTOS LEAL (Ms.), Secretary, Ministry of Foreign Affairs, Brasilia

Marcelo DELLA NINA, Counsellor, Permanent Mission to the World Trade Organization (WTO), Geneva

BULGARIE/BULGARIA

Galya AYGAROVA (Mrs.), Junior Examiner, Directorate Inventions, Utility Models and Industrial Designs, Patent Office of the Republic of Bulgaria (BPO), Sofia

BURUNDI

Espérance UWIMANA (Mme), deuxième conseillère, Mission permanente, Genève, uwi_esp@hotmail.com

CAMEROUN/CAMEROON

Rachel-Claire OKANI ABENGUE (Mme), enseignante, Faculté de sciences juridiques et politiques, Université de Yaoundé II, Ministère de l'enseignement supérieur, Yaoundé

Félix MENDOUGA, cadre, Division des nations unies et de la coopération décentralisée, Ministère des relations extérieures, Yaoundé

CANADA

Nicolas LESIEUR, Senior Trade Policy Advisor, Intellectual Property Trade Policy Division, Ministry of Foreign Affairs and International Trade, Ottawa

Nadine NICKNER (Ms.), Senior Trade Policy Advisor, Intellectual Property Trade Policy Division, Ministry of Foreign Affairs and International Trade, Ottawa

Sara AMINI (Ms.), Senior Policy Analyst, Strategy and Planning Directorate, Ministry of Industry, Canada

Sophie GALARNEAU (Mrs.), Second Secretary, Permanent Mission, Geneva

CHILI/CHILE

Luz SOSA (Sra.), Jefa, Departamento de Propiedad Intelectual, Ministerio de Relaciones Exteriores, Santiago

Andrés GUGGIANA, Consejero, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

CHINE/CHINA

LI Zhao (Ms.), Official, Legal Affairs Department, State Intellectual Property Office (SIPO), Beijing

WANG Yi (Ms.), Second Secretary, Permanent Mission, Geneva

COLOMBIE/COLOMBIA

Andrea BONNET LÓPEZ (Sra.), Asesora, Dirección de Asuntos Económicos, Sociales y Ambientales Multilaterales, Ministerio de Relaciones Exteriores, Bogotá D.C., andrea.bonnet@cancilleria.gov.co

María Catalina GAVIRIA BRAVO (Sra.), Consejera, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

Juan Camilo SARETZKI, Primer Secretario, Misión Permanente, Ginebra, juan.saretzki@misioncolombia.ch

CONGO

Celestin TCHIBINDA, deuxième secrétaire, Mission permanente, Genève

COSTA RICA

Manuel B. DENGO, Embajador, Representante Permanente, Misión Permanente, Ginebra, manuel.dengo@ties.itu.int

Sylvia POLL (Sra.), Embajadora, Representante Permanente Alterna, Misión Permanente, Ginebra, sylvia.poll@ties.itu.int

Norman LIZANO, Ministro Consejero, Misión Permanente, Ginebra, norman.lizano@ties.itu.int

Wendy CAMPOS (Sra.), Pasante, Misión Permanente, Ginebra, wendy.campos@gmail.com

CÔTE D'IVOIRE

Kumou MANKONGA, premier secrétaire, Mission permanente, Genève

Tiémoko MORIKO, conseiller, Mission permanente, Genève

CUBA

Mónica RODRÍGUEZ (Sra.), Primera Secretaria, Misión Permanente, Ginebra

DANEMARK/DENMARK

Heidi Bech LINAA (Mrs.), Special Legal Adviser, Danish Patent and Trademark Office, Ministry of Business and Growth, Taastrup

Signe Louise HANSEN (Ms.), Legal Adviser, Danish Patent and Trademark Office, Ministry of Business and Growth, Taastrup

ÉGYPTE/EGYPT

Wafaa BASSIM (Mrs.), Ambassador, Permanent Representative, Permanent Mission, Geneva

Osama EL NAHAS, Director General, Department of Repatriation of Antiquities and International Organizations, Ministry of State of Antiquities, Cairo

Hassan BADRAWY, Officer, Ministry of Justice, Cairo

Mohamed Sayed AL-HOMELY, Officer, Ministry of Culture, Cairo

Mokhtar WARIDA, First Secretary, Permanent Mission, Geneva

EL SALVADOR

Martha Evelyn MENJIVAR CORTÉS (Srta.), Consejera, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

ÉMIRATS ARABES UNIS/UNITED ARAB EMIRATES

Rita SAYAH (Mrs.), Coordinator, Permanent Mission to the World Trade Organization (WTO), Geneva

ÉQUATEUR/ECUADOR

Juan Carlos SÁNCHEZ TROYA, Primer Secretario, Misión Permanente, Ginebra

ESPAGNE/SPAIN

Ana URRECHA ESPLUGA (Srta.), Jefa de Servicio, Oficina Española de Patentes y Marcas (OEPM), Ministerio de Relaciones Internacionales, Madrid

Xavier BELLMONT, Consejero, Misión Permanente, Ginebra

ESTONIE/ESTONIA

Kaia LÄÄNEMETS (Ms.), Adviser, Legislative Policy Department, Ministry of Justice, Tallinn

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Dominic KEATING, Director, Intellectual Property Attaché Program, United States Patent and Trademark Office (USPTO), Washington D.C.

Deborah LASHLEY-JOHNSON (Mrs.), Attorney-Advisor, Office of Policy and External Affairs, Department of Commerce, United States Patent and Trademark Office (USPTO), Alexandria

Karin L. FERRITER (Ms.), Attaché, Intellectual Property Department, Permanent Mission, Geneva, karin_ferriter@ustr.eop.gov

ÉTHIOPIE/ETHIOPIA

Gebremariam BERHANU ADELLO, Director General, Ethiopian Intellectual Property Office (EIPO), Addis Ababa

Girma Kassaye AYEHU, Minister Counsellor, Permanent Mission, Geneva

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Larisa SIMONOVA (Mrs.), Deputy Head, Federal Institute of Industrial Property, Federal Service for Intellectual Property (ROSPATENT), Moscow

Natalia BUZOVA (Ms.), Deputy Head, Legal Division, Federal Institute of Industrial Property, Federal Service for Intellectual Property (ROSPATENT), Moscow

Irina GAVRILOVA (Mrs.), Chief Research Fellow, Institute of Sociology, Russian Academy of Science, Moscow

Alexey AVTONOMOV, Chief Research Fellow, International Law Section, Institute of State and Law, Russian Academy of Science, Moscow

Arsen BOGATYREV, Attaché, Permanent Mission, Geneva

FRANCE

Olivier HOARAU, chargé de mission, Service des affaires européennes et internationales, Institut national de la propriété industrielle (INPI), Paris

Nestor MARTINEZ-AGUADO, juriste, Direction générale de la mondialisation, du développement et des partenariats, Ministère des affaires étrangères, Paris

Olivier MARTIN, conseiller affaires économiques et développement, Département du pôle économique, Mission permanente, Genève

GÉORGIE/GEORGIA

Khatuna TSIMAKURIDZE (Mrs.), Officer, International Affairs Department, Intellectual Property Office, Mtskheta, ktsimakuridze@sakpatenti.org.ge

GRÈCE/GREECE

Matina CHRYSOCHOIDOU (Ms.), Lawyer, Hellenic Industrial Property Organization, Athens, mchr@obi.gr

GUATEMALA

Marina GIRÓN SAENZ (Sra.), Subdirectora General, Registro de la Propiedad Intelectual, Ministerio de Economía, Ciudad de Guatemala

GUINÉE/GUINEA

Aminata KOUROUMA-MIKALA (Mme), conseillère économique, Mission permanente, Genève

HAÏTI/HAITI

Rodrigue JOSAPHAT, directeur, Ministère du commerce et de l'industrie, Port-au-Prince

HONDURAS

Noema Elizabeth LAGOS VALERIANO (Sra.), Registradora, Instituto de la Propiedad, Dirección General de Propiedad Intelectual (DIGEPIH), Tegucigalpa

HONGRIE/HUNGARY

Krisztina KOVACS (Ms.), Head, Industrial Property Law Section, Hungarian Intellectual Property Office, Budapest

INDE/INDIA

Biswajit DHAR, Director General, Research and Information System for Developing Countries, Ministry of External Affairs, New Delhi

Danda Venkateshwar PRASAD, Joint Secretary, Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, New Delhi

Kosalai Pargunam RAGHURAM, Technical Officer (Benefit Sharing), National Biodiversity Authority, Ministry of Environment and Forests, Tamiwadu

Alpana DUBEY (Mrs.), First Secretary, Permanent Mission, Geneva

INDONÉSIE/INDONESIA

Aslam HASAN, Deputy Director for Horticulture Industry and Beverages, Directorate of Beverages and Tobacco, Ministry of Industry, Jakarta

Fitria WIBOWO (Ms.), Head of Section for Trade Cooperation, Development and Environment, Directorate for Trade, Industry, Investment and Intellectual Property Rights, Ministry of Foreign Affairs, Jakarta

Agus JARWANTO, Head of Sub Division, Ministry of Industry, Jakarta

Bebeb DJUNDJUNAN, Adviser, Directorate of Economic, Social and Cultural Treaties, Ministry of Foreign Affairs, Jakarta

Estu NUGROHO, Researcher Genetic, Ministry of Marine Affairs and Fisheries, Jakarta

Christina Maria RANTETANA (Mrs.), Expert Staff, Coordinating Ministry for Political, Legal and Security Affairs, Jakarta

Willyam SAROINSONG, Officer, Directorate of Economic, Social and Cultural Treaties, Ministry of Foreign Affairs, Jakarta

Jati YUSTINUS (Ms.), Officer, Law Affairs Department, Ministry of Marine Affairs and Fisheries, Jakarta

Nugroho MUJIANTO, Staff, Coordinating Ministry for Political, Legal and Security Affairs, Jakarta

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

Javad MOZAFARI HASJIN, Director, National Plant Gene-Bank, Karaj

Mohammad GHORBANPOUR NAJAFABADI, Legal Expert, Ministry of Foreign Affairs, Tehran

Mahmoud KHOUBKAR, Second Secretary, Permanent Mission, Geneva

IRAQ

Imad M. AL-LAITHI, Second Secretary, Permanent Mission, Geneva

IRLANDE/IRELAND

Gerard CORR, Ambassador, Permanent Representative, Permanent Mission, Geneva

Fergal BRADY, Senior Patent Examiner, Irish Patents Office, Department of Jobs, Enterprise and Innovation, Kilkenny

Niall O'MUIRCHEARTAIGH, Administrative Officer, Intellectual Property Unit, Department of Jobs, Enterprise and Innovation, Dublin, niall.omuircheartaigh@djei.ie

Cathal LYNCH, Second Secretary, Permanent Mission, Geneva, cathal.lynch@dfa.ie

ISRAËL/ISRAEL

Omer CASPI, Minister Counsellor, Deputy Permanent Representative, Permanent Mission, Geneva

Moshe LEIMBERG, Patent Examiner, Israel Patent Office, Jerusalem

Yotal FOGEL (Ms.), Adviser, Permanent Mission, Geneva

ITALIE/ITALY

Ivana PUGLIESE (Mrs.), Senior Patent Examiner, Ministry of Economic Development, Rome

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

Pierluigi BOZZI, Researcher, Research Centre of Development Studies (SPES), Sapienza University of Rome, Rome

Tiberio SCHMIDLIN, Counsellor, Permanent Mission, Geneva

JAMAÏQUE/JAMAICA

Wayne McCOOK, Ambassador, Permanent Representative, Permanent Mission, Geneva

Marcus GOFFE, Trademarks, Designs and Geographical Manager, Jamaica Intellectual Property Office (JIPO), Kingston

JAPON/JAPAN

Hiroki KITAMURA, Director, Multilateral Policy Office, International Affairs Division, General Affairs Department, Japan Patent Office (JPO), Tokyo

Kazuhide FUJITA, Deputy Director, International Affairs Division, General Affairs Department, Japan Patent Office (JPO), Tokyo

Kenji SAITO, Deputy Director, Intellectual Property Affairs Division, Ministry of Foreign Affairs, Tokyo

Kunihiko FUSHIMI, First Secretary, Permanent Mission, Geneva, kunihiko.fushimi@mofa.go.jp

JORDANIE/JORDAN

Moh'd Amin ALFALEH ALABADI, Director General, Department of the National Library, Ministry of Culture, Amman

KENYA

Catherine BUNYASSI KAHURIA (Mrs.), Senior Legal Counsel, Legal Department, Kenya Copyright Board, Nairobi, cbunyassik@yahoo.com

LIBAN/LEBANON

Fayssal TALEB, General Director of Culture, Ministry of Culture, Beirut

Bachir SALEH AZZAM, First Secretary, Permanent Mission, Geneva

LITUANIE/LITHUANIA

Dovile TEBELSKYTE (Ms.), Deputy Head, Law and International Affairs Division, State Patent Bureau of the Republic of Lithuania, Vilnius, dovile.tebelskyte@vpb.gov.lt

MADAGASCAR

Haja RASOANAIVO, Counsellor, Permanent Mission, Geneva

MALAISIE/MALAYSIA

Shaharuddin ONN, Deputy Permanent Representative, Permanent Mission, Geneva

Kamal BIN KORMIN, Head, Patent Examination Section Applied Science, Intellectual Property Corporation of Malaysia (MyIPO), Ministry of Domestic Trade, Cooperatives and Consumerism, Kajang, kamal@myipo.gov.my

Nurhana IKMAL (Ms.), First Secretary, Permanent Mission, Geneva, nurhana@kln.gov.my

MALDIVES

Abdulla AMEEN, State Minister, Ministry of Economic Development, Malé

MAROC/MOROCCO

Amal NHAMI (Mme), chef de service, Direction de la coopération multilatérale, Ministère des affaires étrangères et de la coopération, Rabat, anhami@maec.gov.ma

Salah Eddine TAOUIS, conseiller, Mission permanente, Genève

MAURITANIE/MAURITANIA

Mohamed BARKA, conseiller juridique, Ministère de la culture, de la jeunesse et des sports, Nouakchott, medsix@yahoo.fr

MEXIQUE/MEXICO

Gabriela GARDUZA ESTRADA (Sra.), Directora, Área de Asuntos Internacionales, Comisión Nacional para el Desarrollo de los Pueblos Indígenas (CDI), México D.F., ggarduza@cdi.gob.mx

Emelia HERNÁNDEZ PRIEGO (Sra.), Subdirectora de Examen de Fondo, Dirección de Patentes, Instituto Mexicano de la Propiedad Industrial (IMPI), México D.F., ehpriego@impi.gob.mx

Elleli HUERTA OCAMPO (Srta.), Coordinadora de Recursos Biológicos y Genéticos, Coordinación General de Corredores y Recursos Biológicos, Comisión Nacional para el Conocimiento y Uso de la Biodiversidad (CONABIO), México D.F., elleli.huerta@conabio.gob.mx

Juan Carlos MORALES VARGAS, Especialista en Propiedad Industrial, Dirección de Relaciones Internacionales, Instituto Mexicano de la Propiedad Industrial (IMPI), México D.F., jmorales@impi.gob.mx

Lucila NEYRA GONZÁLEZ (Sra.), Especialista en Recursos Biológicos y Genéticos, Coordinación General de Corredores y Recursos Biológicos, Comisión Nacional para el Conocimiento y Uso de la Biodiversidad (CONABIO), México D.F., lucila.neyra@conabio.gob.mx

José Ramón LÓPEZ DE LEÓN, Segundo Secretario, Misión Permanente, Ginebra

MONACO

Gilles REALINI, deuxième secrétaire, Mission permanente, Département des relations extérieures, Genève

MOZAMBIQUE

Olga MUNGUAMBE (Mrs.), Counsellor, Permanent Mission, Geneva

MYANMAR

Lynn Marlar LWIN (Ms.), First Secretary, Permanent Mission, Geneva, myan.development@myanmargeneva.org

NAMIBIE/NAMIBIA

Simon M. MARUTA, Chargé d’affaires, Permanent Mission, Geneva

Selma NGHINAMUNDOVA (Ms.), First Secretary, Permanent Mission, Geneva

Absalom NGHIFITIKEKO, First Secretary, Permanent Mission, Geneva

Stella KATJINGISIUA (Ms.), Second Secretary, Permanent Mission, Geneva

NÉPAL/NEPAL

Rishikech DHUNGEL, Director, Department of Industry, Ministry of Industry, Kathmandu

NICARAGUA

María José ANDINO GRIJALVA (Srta.), Asesora Legal, Registro de la Propiedad Intelectual, Ministerio de Fomento, Industria y Comercio, Managua, mandino@rpi.gob.ni

Jenny ARANA (Sra.), Primera Secretaria, Misión Permanente, Ginebra

NIGER

Amadou TANKOANO, professeur de droit de propriété industrielle, Faculté des sciences économiques et juridiques, Université de Niamey

NIGÉRIA/NIGERIA

Ruth OKEDIJI (Mrs.), Professor of Law, University of Minnesota, Minneapolis, United States of America

NORVÈGE/NORWAY

Magnus Hauge GREAKER, Acting Deputy Director General, Legislation Department, Norwegian Ministry of Justice and Public Security, Oslo

OMAN

Fatima AL GHAZALI (Ms.), Minister Plenipotentiary, Permanent Mission, Geneva

Khamis AL-SHAMAKHI, Director, Cultural Relations Department, Ministry of Heritage and Culture, Muscat

Yousuf ALBUSAIDI, Research Director, Program and Research Department, The Research Council, Muscat, yousuf.albusaidi@trc.gov.om

Haitham Saif ALAMRI, Head, Public and International Relations Department, Public Authority for Craft Industries, Muscat, hsk588@hotmail.com

OUGANDA/UGANDA

Eunice KIGENYI (Mrs.), Counsellor, Permanent Mission, Geneva

OUZBÉKISTAN/UZBEKISTAN

Sevara KARIMOVA (Ms.), Head, Scientific and Technical Expertise of Inventions and Utility Models, Agency on Intellectual Property of the Republic of Uzbekistan, Tashkent, s.karimova@ima.uz

PAKISTAN

Ahsan NABEEL, Second Secretary, Permanent Mission, Geneva

PAYS-BAS/NETHERLANDS

Margreet GROENENBOOM (Ms.), Policy Advisor, Innovation Department, IP section, Ministry of Economic Affairs, The Hague

PARAGUAY

Raúl MARTÍNEZ, Primer Secretario, Misión Permanente, Ginebra

PÉROU/PERU

Elmer SCHIALER, Director de Negociaciones Económicas Internacionales, Dirección de Asuntos Económicos, Ministerio de Relaciones Exteriores, Lima, eschialer@rree.gob.pe

Luz CABALLERO (Sra.), Ministra, Misión Permanente, Ginebra, lcaballero@onuperu.org

Aurora ORTEGA (Sra.), Ejecutiva 2, Dirección de Invenciones y Nuevas Tecnologías, Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI), Lima

Luis MAYAUTE, Consejero, Misión Permanente, Ginebra, lmayaute@onuperu.org

PHILIPPINES

Joséphine REYNANTE (Mrs.), Minister, Permanent Mission, Geneva

Rosa FERNANDEZ (Mrs.), Intellectual Property Rights Specialist IV, Intellectual Property Office of the Philippines (IPOPHIL), Taguig City

POLOGNE/POLAND

Remigiusz HENCZEL, Ambassador, Permanent Representative, Permanent Mission, Geneva

Jerzy BAURSKI, Minister Counselor, Permanent Mission, Geneva

Ewa LISOWSKA (Ms.), Senior Policy Advisor, International Cooperation Unit, Patent Office of the Republic of Poland, Warsaw, elisowska@uprp.pl

Malgorzata POLOMSKA (Ms.), Counsellor, Permanent Mission, Geneva, malgorzata.polomska@msz.gov.pl

PORTUGAL

Raquel ANTUNES (Ms.), Patent Examiner, Directorate of Trademarks and Patents, National Institute of Industrial Property (INPI), Lisbon, rantunes@inpi.pt

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

SONG Kijoong, Deputy Director, Korean Intellectual Property Office (KIPO), Daejeon

LEE Hyun Song, Deputy Director, Biotechnology Examination Division, Korean Intellectual Property Office (KIPO), Daejeon, hyunsong@kipo.go.kr

RÉPUBLIQUE DOMINICAINE/DOMINICAN REPUBLIC

Ysset ROMAN DE SÄGGO (Sra.), Ministra consejera, Misión Permanente, Ginebra

RÉPUBLIQUE POPULAIRE DÉMOCRATIQUE DE CORÉE/DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

Tonghwan KIM, Counsellor, Permanent Mission, Geneva

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Lucie ZAMYKALOVA (Ms.), Senior Officer, International Affairs Department, Industrial Property Office, Prague, lzamykalova@upv.cz

Jan WALTER, Third Secretary, Permanent Mission, Geneva, jan_walter@mzv.cz

RÉPUBLIQUE-UNIE DE TANZANIE/UNITED REPUBLIC OF TANZANIA

Leonila Kalebo KISHEBUKA (Mrs.), Deputy Registrar, Business Registration and Licensing Agency (BRELA), Dar es Salaam

ROUMANIE/ROMANIA

Constanta MORARU (Ms.), Head, Division for Legal Affairs and International Cooperation, State Office for Inventions and Trademarks (OSIM), Bucharest, moraru.cornelia@osim.ro

ROYAUME-UNI/UNITED KINGDOM

Karen Elizabeth PIERCE (Mrs.), Ambassador, Permanent Representative, Permanent Mission, Geneva

Hywel MATTHEWS, Senior Policy Advisor, Intellectual Property Office (IPO), Newport

Beverly PERRY (Ms.), Policy Advisor, International Policy Department, Intellectual Property Office (IPO), Newport

Jonathan JOO-THOMPSON, First Secretary, Permanent Mission, Geneva

Nicola NOBLE, Second Secretary, Permanent Mission, Geneva

Selby WEEKS, Third Secretary, Permanent Mission, Geneva

Grega KUMER, Senior IP Adviser, Permanent Mission, Geneva

SAINT-SIÈGE/HOLY SEE

Silvano M. TOMASI, nonce apostolique, observateur permanent, Mission permanente, Genève

Carlo Maria MARENGHI, attaché, Mission permanente, Genève

SÉNÉGAL/SENEGAL

Ndèye Fatou LO (Mme), première conseillère, Mission permanente, Genève

SERBIE/SERBIA

Jelena TOMIĆ KESER (Ms.), Senior Counsellor, Patent Department, Intellectual Property Office, Belgrade, jkeser@zis.gov.rs

SOUDAN/SUDAN

Salma RADWAN SALMEEN (Mrs.), Legal Advisor, Intellectual Property Department, Ministry of Justice, Khartoum

Osman MOHAMMED, Counsellor, Permanent Mission, Geneva

SRI LANKA

Lalith KANNANGARA, Secretary, Ministry of Indigenous Medicine, Colombo, kannangara.lalith@yahoo.com

Newton Ariyaratne PEIRIS, Advisor, Intellectual Property Division, Ministry of Indigenous Medicine, Colombo, drnewton.mim.sl@gmail.com

Thushara Sandaruwan LIYANNALAGE, Advisor, Ministry of Indigenous Medicine, Colombo, thusharasandaruwan72@yahoo.com

Natasha GOONERATNE (Mrs.), Second Secretary, Permanent Mission, Geneva

SUÈDE/SWEDEN

Patrick ANDERSSON, Senior Patent Examiner, Swedish Patent and Registration Office, Söderhamn

SUISSE/SWITZERLAND

Martin GIRSBERGER, chef, Développement durable et coopération internationale, Institut fédéral de la propriété intellectuelle (IPI), Berne

Alexandra GRAZIOLI (Mme), conseillère juridique senior, Relations commerciales internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne

Benny MÜLLER, conseiller juridique, Développement durable et coopération internationale, Institut fédéral de la propriété intellectuelle (IPI), Berne

THAÏLANDE/THAILAND

Thani THONGPHAKDI, Ambassador, Permanent Representative, Permanent Mission, Geneva

Patravee SOISANGWAN (Ms.), Director, Bureau of Pathogen and Animal Toxin Control, Department of Medical Sciences, Ministry of Public Health, Nonthaburi, patravee.s@dmsc.mail.go.th

Napavarn NOPARATNARAPORN (Mrs.), Senior Bio-Resources Expert, Biodiversity-Based Economy Development Office, Bangkok, napavarn.n@gmail.com

Mingquan WICHAYARANGSARIDH (Mrs.), Executive Board Member, Biodiversity-Based Economy Development Office, Bangkok, mingquan.w@hotmail.com

Chuthaporn NGOKKUEN (Ms.), Second secretary, Department of International Economic Affairs, Ministry of Foreign Affairs, Bangkok, twinjeab@gmail.com

Pisanu THANADOLSATHIEN, Patent Examiner, Patent Office, Department of Intellectual Property, Ministry of Commerce, Nonthburi, zealiga@gmail.com

Natapanu NOPAKUN, Counsellor, Permanent Mission, Geneva

Kanita SAPPHAISAL, First Secretary, Permanent Mission, Geneva

Thanavon PAMARANON, Second secretary, Permanent Mission, Geneva

TOGO

Essohanam PETCHEZI, premier secrétaire, Mission permanente, Genève

TRINITÉ-ET-TOBAGO/TRINIDAD AND TOBAGO

Justin SOBION, First Secretary, Permanent Mission, Geneva

TURQUIE/TURKEY

Kemal Demir ERALP, Patent Examiner, Patent Department, Turkish Patent Institute, Ankara, kderalp@gmail.com

Emre ÖCALAN, Patent Examiner, Patent Department, Turkish Patent Institute, Ankara

Hasan CELEN, Expert, Seed Department, Ministry of Food, Agriculture and Livestock, Ankara

UKRAINE

Maryna BRAGARNYK (Ms.), Chief Expert, Biotechnology Division, State Enterprise, Ukrainian Industrial Property Institute, Kiev, bragarnyk@uipv.org

URUGUAY

Carmen Adriana FERNÁNDEZ AROZTEGUI (Sra.), Asesora en Patentes de Invención, Dirección Nacional de la Propiedad Industrial (DNPI), Ministerio de Industria, Energía y Minería, Montevideo

Gabriel BELLON, Consejero, Misión Permanente, Ginebra

VENEZUELA (RÉPUBLIQUE BOLIVARIENNE DU)/VENEZUELA (BOLIVARIAN REPUBLIC OF)

Oswaldo REQUES OLIVEROS, Primer Secretario, Misión Permanente, Ginebra

VIET NAM

DO Duc Thinh, Official, National Office of Intellectual Property of Viet Nam (NOIP), Hanoi, doducthinh@noip.gov.vn

MAI Van Son, Counsellor, Permanent Mission, Geneva

ZAMBIE/ZAMBIA

Lillian BWALYA (Mrs.), First Secretary, Permanent Mission, Geneva

ZIMBABWE

Innocent MAWIRE, Principal Law Officer, Policy and Legal Research Department, Ministry of Justice and Legal Affairs, Harare

Rhoda NGARANDE (Mrs.), Counsellor, Permanent Mission, Geneva

II. DÉLÉGATION SPÉCIALE/SPECIAL DELEGATION

UNION EUROPÉENNE/EUROPEAN UNION

Delphine LIDA (Ms.), First Counsellor, Intellectual Property Division, European External Action Service, Geneva

Michael PRIOR, Policy Officer, European Commission, Brussels

III. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/ INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

ASSOCIATION DES NATIONS DE L'ASIE DU SUD-EST (ANASE)/ASSOCIATION OF SOUTH EAST ASIAN NATIONS (ASEAN)

Pornsun KOONTHONSURAKARN, Head of Legal Bureau, Royal Forest Department, Natural Resources and Environmental, Bangkok

CENTRE SUD (CS)/SOUTH CENTRE (SC)

Carlos CORREA, Special Adviser, Trade and Intellectual Property Department, Geneva

Alexandra BHATTACHARYA (Ms.), Intern, Innovation and Access to Knowledge Program, Geneva, bhattacharya@southcentre.org

L'UNION AFRICAINE (UA)/AFRICAN UNION (AU)

Georges NAMEKONG, Minister Counsellor, Geneva

OFFICE DES BREVETS DU CONSEIL DE COOPÉRATION DES ÉTATS ARABES DU GOLFE (CCG)/PATENT OFFICE OF THE COOPERATION COUNCIL FOR THE ARAB STATES OF THE GULF (GCC PATENT OFFICE)

Rashid AL GHATARIFI, Deputy Director, Substantive Examination Directorate, Patent Office, Riyadh

ORGANISATION DES ÉTATS DES ANTILLES ORIENTALES (OEAO)/ORGANIZATION OF EASTERN CARIBBEAN STATES (OECS)

Natasha EDWIN-WALCOTT (Mrs.), Second Secretary, Permanent Delegation to the United Nations, Geneva

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

Shakeel BHATTI, Secretary, International Treaty on Plant Genetic Resources, Plant Production and Protection Division, Rome

ORGANISATION EUROPÉENNE DES BREVETS (OEB)/EUROPEAN PATENT ORGANISATION (EPO)

Ernico LUZZATO, Director, Directorate of Pure and Applied Chemistry, Munich

Marko SCHAUWECKER, Lawyer, Directorate Patent Law, Munich, mschauwecker@epo.org

ORGANISATION INTERNATIONALE DE LA FRANCOPHONIE (OIF)/INTERNATIONAL ORGANIZATION OF LA FRANCOPHONIE (OIF)

Anis HARABI, stagiaire, Genève

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

Hannu WAGER, Counsellor, Intellectual Property Division, Geneva

Jayashree WATAL (Ms.), Counsellor, Intellectual Property Division, Geneva

Xiaoping WU (Ms.), Counsellor, Intellectual Property Division, Geneva

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

Emmanuel SACKEY, Chief Examiner, Search and Examination Section, Harare

PROGRAMME DES NATIONS UNIES POUR L'ENVIRONNEMENT (PNUE)/UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP)

Barbara RUIS (Ms.), Legal Officer, Division of Environmental Law and Conventions, Geneva, barbara.ruis@unep.org

UNION INTERNATIONALE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES (UPOV)/INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (UPOV)

Fuminori AIHARA, Counsellor, Geneva, fuminori.aihara@upov.int

UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES

Bertie XAVIER, Member, Guyana

UNITED NATIONS UNIVERSITY (UNU)

Paul OLDHAM, Researcher, Institute of Advanced Studies, Yokohama

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

ADJMOR
Hamady AG MOHAMED ABBA (Member, Essakane)

African Indigenous Women Organization (AIWO)
Hajara HAMAN (Ms.) (Member, Geneva)

Arts Law Centre of Australia
Patricia ADJEI (Ms.) (Indigenous Solicitor, Sydney)

Assembly of First Nations
Stuart WUTTKE (General Counsel, Ottawa)

*Asociación Kunas unidos por Napguana/*Association of Kunas United for Mother Earth (KUNA)
Nelson DE LEÓN KANTULE (Vocal-Directivo, Panamá)

Centrale sanitaire suisse romande (CSSR)
Anne GUT (Mme) (délégué, Genève, anne.gut@gmail.com); Bruno VITALE (délégué, Genève, vitalebru1929@yahoo.co.uk)

Centre d'études internationales de la propriété intellectuelle (CEIPI)/Centre for International Intellectual Property Studies (CEIPI)
François CURCHOD (chargé de mission, Genolier, francois.curchod@vtxnet.ch)

Centre du commerce international pour le développement (CECIDE)/International Trade Center for Development (CECIDE)
Biro DIAWARA (représentant, coordinateur de programmes, Genève, cecide.icde@gmail.com)

Centre international pour le commerce et le développement durable (ICTSD)/International Center for Trade and Sustainable Development (ICTSD)
Daniella ALLAM (Mrs.) (Junior Programme Officer, Geneva, dallam@ictsd.ch); Marie WILKE (Mrs.) (Programme Officer, Geneva, mwilke@ictsd.ch)

Chambre de commerce internationale (CCI)/International Chamber of Commerce (ICC)
Tim ROBERTS (Patent Attorney, Bracknell); Daphne YONG-D'HERVÉ (Mrs.) (Chief Intellectual Property Officer, Policy Department, Paris)

Chamber of Commerce and Industry of the Russian Federation (CCIRF)
Elena KOLOKOLOVA (Mrs.) (Representative, Geneva)

Civil Society Coalition (CSC)
Marc PERLMAN (Fellow, Providence); Susan STRBA (Mrs.) (Fellow, Geneva)

Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos (CAPAJ)
Tomás Jesús ALARCÓN EYZAGUIRRE (Presidente, Tacna, capaj_internacional@yahoo.com); Rosario LUQUE GIL (Sra.) (Especialista, Tacna, rosario.gilluquegonzalez@unifr.ch)

Comité consultatif mondial des amis (CCMA)/Friends World Committee for Consultation (FWCC)
Caroline DOMMEN (Mrs.) (Representative, Geneva)

Confederación de Nacionalidades Indígenas (CONAIP)
Natalia Teresa KUONG RODRÍGUEZ (Srta.) (Asesora Legal, Lima, nkuongr@gmail.com)

Consejo Indio de Sud América (CISA)/Indian Council of South America (CISA)
Tomás CONDORI (Representante, Bolivia); Roch MICHALUSZKO (Consejero Jurídico, Ginebra); José GOYES (Miembro, Cauca Colombia)

Cooperativa Ecológica de las Mujeres Colectoras de la Isla de Marajó (CEMEM)
Edna María DA COSTA E SILVA (Sra.) (Presidente, Ponta de Pedras – Marajó)

Coordination des organisations non gouvernementales africaines des droits de l'homme (CONGAF)
Djély Karifa SAMOURA (président, Genève)

CropLife International
Dominic MUYLDERMANS (Senior Legal Consultant, Brussels)

Culture of Afro-indigenous Solidarity (Afro-Indigène)
Ana LEURINDA (Mme) (présidente, Genève, afroindigena2000@hotmail.com); José Alejandro LOZANO LAMUS (membre, Genève)

Fédération ibéro-latino-américaine des artistes interprètes ou exécutants (FILAIE)/ Ibero-Latin-American Federation of Performers (FILAIE)
Luis COBOS (Presidente, Madrid); Jose Luis SEVILLANO (Presidente, Comité Técnico, Madrid); Miguel PEREZ SOLIS (Asesor Jurídico, Madrid, mps@aie.es); Paloma LÓPEZ (Sra.) (Asesora Jurídica, Madrid); Carlos LÓPEZ (Miembro, Madrid)

Fédération internationale de la vidéo (IFV)/International Video Federation (IVF)
Benoît MÜLLER (Legal Advisor, Brussels, benoit.muller@benoitmuller.ch)

Fédération internationale de l'industrie du médicament (FIIM)/International Federation of Pharmaceutical Manufacturers Associations (IFPMA)
Andrew JENNER (Director, Innovation, Intellectual Property and Trade, Geneva); Axel BRAUN (Head International Developments, Basel); Chiara GHERARDI (Ms.) (Policy Analyst, Geneva)

Fédération internationale des conseils en propriété intellectuelle (FICPI)/International Federation of Intellectual Property Attorneys (FICPI)
Claudio GERMINARIO (Member of CET5, Rome)

Foundation for Aboriginal and Islander Research Action (FAIRA)
Jim WALKER (Research Officer, Brisbane, jim.walker@csiro.au)

Fridtjof Nansen Institute, The (NFI)
Ane JOREM (Ms.) (Research Fellow, Lysaker, aej@fni.no); Morten Walløe TVEDT (Senior Research Fellow, Lysaker, mwt@fni.no)

Graduate Institute for Development Studies (GREG)
Diego SILVA (assistant de recherche, Genève, diego.silva@graduateinstitute.ch)

Programme de santé et d'environnement (PSE)/Health and Environment Program (HEP)
Madeleine SCHERB (Mrs.) (Executive President, Geneva, madeleine@health-environment-program.org); Pierre SCHERB (Counselor, Geneva, pierre@health-environment-program.org)

Incomindios Switzerland
Alexandra BÜCHLER (Ms.) (Intern, Zurich); Victoria GRONWALD (Ms.) (Intern, Gempen); Nora MEIER (Ms.) (Intern, Zurich)

Indian Movement "*Tupaj Amaru*"
Lázaro PARY ANAGUA (General Coordinator, La Paz); Marie-Constance KAIFLIN (Ms.) (Member, Geneva); Denis SAPIN (Member, Geneva)

Indigenous Peoples' Center for Documentation, Research and Information (doCip)
David MATTHEY-DORET (directeur, Genève); Pierrette BIRRAUX (Mme) (conseillère scientifique Genève); Tamara JEITLER (Mme) (coordinatrice, Genève); Anabelle LABBE (Mme) (traductrice, Genève); Luisa PORTOCARRERO (Mme) (interprète, Genève); Alejandro RAMOS (interprète, Genève); Nathalie STITZEL (Mme) (Interprète, Genève); Katherine ZUBLIN (Mme) (Interprète, Genève); Nathalie GERBER MCCRAE (Ms.) (assistante, Genève)

Indigenous Peoples (Bethechilokono) of Saint Lucia Governing Council (BCG)
Albert DETERVILLE (Executive Chairperson, Castries)

Institut du développement durable et des relations internationales (IDDRI)
Claudio CHIAROLLA (expert, Paris)

Instituto Indígena Brasileiro para Propriedade Intelectual (InBraPI)
Lucia Fernanda INACIO BELFORT (Ms.) (Executive Director, Chapecó)

Intellectual Property Owners Association (IPO)
Manisha DESAI (Ms.) (Assistant General Patent Counsel, Eli Lilly and Company, Indianapolis)

International Trademark Association (INTA)
Bruno MACHADO (Representative Geneva, Rolle, bruno.machado@bluewin.ch)

Knowledge Ecology International, Inc. (KEI)
Thiru BALASUBRAMANIAM (Representative, Geneva, thiru@keionline.org)

L'assemblée des arméniens d'Arménie occidentale (AAAO)/Assembly of Armenians of Western Armenia, The
Arménag APRAHAMIAN (chef de délégation, Paris, haybachdban@wanadoo.fr); Vahagn GOUCHTCHIAN (conseiller, Paris, haybachdban@wanadoo.fr)

Maasai Cultural Heritage Foundation (MCHF)
John OLE TINGOI (Member, Kenya)

Massai Experience
Zohra AIT-KACI-ALI (Mme) (présidente, Geneva, sara.ciara@laposte.net)

Nigeria Natural Medicine Development Agency (NNMDA)
Tamunoibuomi F. OKUJAGU (Director General Executive, Lagos, tibuomi@yahoo.com)

Organisation des industries de biotechnologie(BIO)/Biotechnology Industry Organization (BIO)
Lila FEISEE (Mrs.) (Vice President, Global Intellectual Property Policy, Washington D.C.); Tatjana SACHSE (Ms.) (Legal adviser, Geneva); Laurelee DUNCAN (Mrs.) (Senior Counsel, Washington D.C.); Mark CROWELL (Chair, Technology Transfer Committee, Virginia)

Research Group on Cultural Property (RGCP)
Stefan GROTH (Member, Göttingen, sgroth@gwdg.de); Lars DÖPKING (Adviser, Göttingen)

Rromani Baxt
Leila MAMONI (Ms.) (Representative, Paris, mamoni@mac.com)

Société internationale d'ethnologie et de folklore (SIEF)/International Society for Ethnology and Folklore (SIEF)
Regina BENDIX (Ms.) (Professor, Göttingen)

Solidarité pour un monde meilleur (SMM)/Solidarity for a Better World (SMM)
Pierre LUTUMBA KOMBA (secrétaire générale, Kinshasa); Judith BABELANA MATUFUENI (Mme) (chargée de sensibilisation, Kinshasa); Chantal CINYERI NTAKWINJA (Mme) (animatrice culturelle, Kinshasa); Serge MATA DINDA (financier, Kinshasa); Nounous MPIA IYELI (chargé culturel, Kinshasa)

Third World Network (TWN)
Edward HAMMOND (Member, Geneva)

Tin-Hinane
Intchirwak ABOU (expert autochtone, Ouagagoudou, intchir@yahoo.fr)

Traditions pour demain/Traditions for Tomorrow
Diego GRADIS (président exécutif, Rolle, tradi@fgc.ch); Christiane JOHANNOT-GRADIS (Mme) (secrétaire générale, Rolle, tradi@fgc.ch); Leila GHASSEMI (Mme) (déléguée, Rolle)

World Trade Institute (WTI)
Hojjat KHADEMI (Researcher, Bern, hojjat.khademi@wti.org)

V. GROUPE DES COMMUNAUTÉS AUTOCHTONES ET LOCALES/ INDIGENOUS PANEL

James ANAYA, United Nations Special Rapporteur on the Rights of Indigenous Peoples, University of Arizona, Arizona, United States of America

Anil K. GUPTA, Executive Vice-Chair, National Innovation Foundation, Ahmedabad, India

Tarcila Rivera ZEA (Ms.), Founder and Executive Director, *Centro de Culturas Indígenas del Perú*, Lima

Godber W. TUMUSHABE, Executive Director, Advocates Coalition for Development and Environment (ACODE), Kampala, Uganda

VI. BUREAU/OFFICERS

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Vice-présidents/Vice-Chairs:	Alexandra GRAZIOLI (Mme/Mrs.) (Suisse/Switzerland)
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Secrétaire/Secretary:	Wend WENDLAND (OMPI/WIPO)

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

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Johannes Christian WICHARD, vice-directeur général/Deputy Director General

Konji SEBATI (Mlle/Ms.), directrice, Département des savoirs traditionnels et des défis mondiaux/ Director, Department for Traditional Knowledge and Global Challenges

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

Begoña VENERO AGUIRRE (Mme/Mrs.), conseillère principale, Division des savoirs traditionnels/Senior Counsellor, Traditional Knowledge Division

Simon LEGRAND, conseiller, Division des savoirs traditionnels/Counsellor, Traditional Knowledge Division

Brigitte VEZINA (Mlle/Ms.), juriste, Division des savoirs traditionnels/Legal Officer, Traditional Knowledge Division

Daphne ZOGRAFOS JOHNSSON (Mme/Mrs.), juriste, Division des savoirs traditionnels/Legal Officer, Traditional Knowledge Division

Fei JIAO (Mlle/Ms.), juriste adjointe, Division des savoirs traditionnels/Assistant Legal Officer, Traditional Knowledge Division

Oluwatobiloba MOODY, consultant, Division des savoirs traditionnels/Consultant, Traditional Knowledge Division

Jennifer TAULI CORPUZ (Mme/Mrs.), boursière à l'intention des peuples autochtones, Division des savoirs traditionnels/WIPO Indigenous Fellow, Traditional Knowledge Division

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