

E



WIPO/GRTKF/IC/25/8 PROV. 2
ORIGINAL: ENGLISH
DATE: OCTOBER 18, 2013

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

Twenty-Fifth Session
Geneva, July 15 to 24, 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-Fifth session (“IGC 25”) in Geneva, from July 15 to 24, 2013.

2. The following States were represented: Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Barbados, Belarus, Belgium, Belize, Bolivia (Plurinational State of), Brazil, Bulgaria, Burundi, Cameroon, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d’Ivoire, Czech Republic, Democratic People’s Republic of Korea, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Germany, Georgia, Greece, Guatemala, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Lebanon, Lithuania, Madagascar, Malaysia, Mexico, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Panama, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, Serbia, Singapore, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Togo, Turkey, Ukraine, United Kingdom, United Republic of Tanzania, United States of America, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam, Zambia and Zimbabwe (103). 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: African Union (AU), Eurasian Patent Organization (EAPO), European Patent Organization (EPO), International Organization of La Francophonie (OIF), International Union for the Protection of new Varieties of Plants (UPOV), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Expert Mechanism on the Rights of Indigenous Peoples (UNEMRIP), United Nations Permanent Forum on Indigenous Issues (UNPFII), World Health Organization, World Trade Organization (WTO) and South Centre (11).

4. Representatives of the following non-governmental organizations (“NGOs”) took part as observers: ADJMOR; Arts Law Centre of Australia; *Asociación Kunas unidos por Napguana*/Association of Kunas United for Mother Earth (KUNA); *Association pour le développement de la société civile angolaise* (ADSCA); Biotechnology Industry Organization (BIO); Center of Multidisciplinary Studies Aymara (CEM-Amayra); Civil Society Coalition (CSC); *Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos* (CAPAJ); *Cooperativa Ecológica de las Mujeres Colectoras de la Isla de Marajó* (CEMEM); Coordination of African Human Rights NGOs (CONGAF); Copyright Agency Limited; EcoLomics International; CropLife International; Culture of Afro-indigenous Solidarity (*Afro-Indigène*); EcoLomics International; Ethnic Community Development Organization (ECDO); European Law Students’ Association (ELSA International); Foundation for Aboriginal and Islander Research Action (FAIRA); Foundation for Solidarity and Social Welfare Projects (FOSBES NGO); Genetic Resources, Traditional Knowledge and Folklore (GRTKF Int.); Graduate Institute for Development Studies (GREG); Health and Environment Program (HEP); Incomindios Switzerland; Indian Council of South America (CISA); Indian Movement “*Tupaj Amaru*”; Indigenous Peoples (Bethchilokono) of Saint Lucia Governing Council (BCG); Indigenous Peoples’ Center for Documentation, Research and Information (doCip); International Association for the Protection of Intellectual Property (AIPPI); International Center for Trade and Sustainable Development (ICTSD); International Chamber of Commerce (ICC); International Federation of Film Producers Associations (FIAPF); International Federation of Pharmaceutical Manufacturers Associations (IFPMA); International Property Owners Association (IPO); International Society for Ethnology and

Folklore (SIEF); International Trade Center for Development (CECIDE); International Video Federation (IVF); Knowledge Ecology International (KEI); Maasai Experience; Nigeria Natural Medicine Development Agency (NNMDA); Organization for an International Geographical Indications Network (ORIGIN); Public Association Regional Centers for Education for Sustainable Development RCE Kyrgyzstan; Research Group on Cultural Property (RGCP); *Solidarité pour un monde meilleur* - Solidarity of a Better World (SSM); Tebtebba Foundation – Indigenous Peoples' International Centre of Policy Research and Education; Traditions for Tomorrow; Tulalip Tribes of Washington; World Trade Institute (47).

5. The list of participants is annexed to this report.
6. Document WIPO/GRTKF/IC/25/INF/2 Rev. provided an overview of the documents distributed for the Twenty-Fifth session of the Committee.
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-Fifth session of the Committee.

AGENDA ITEM 1: OPENING OF THE SESSION

9. The Director General, Mr. Francis Gurry, opened the session. He welcomed the participants and encouraged them to keep proceeding in the spirit of the Diplomatic Conference that had taken place in Marrakesh last June and where negotiators had been able to conclude a new treaty through a process of intense negotiation and mutual understanding. He hoped that this spirit would enable an agreement to be achieved at the IGC as well. He recalled that the Committee's 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 would ensure the effective protection of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs). The General Assembly had decided in October 2012 that three negotiating IGC sessions would take place in 2013. The first one took place from February 4 to 8, 2013 on the subject matter of GRs and produced a revised "Consolidated Document Relating to Intellectual Property and Genetic Resources" (document WIPO/GRTKF/IC/25/5). The second one had taken place from April 22 to 26, 2013 on the subject matter of TK and produced a revised text entitled "The Protection of Traditional Knowledge: Draft Articles" (document WIPO/GRTKF/IC/25/6). The present session was the third one. The Director General noted that the document entitled "The Protection of Traditional Cultural Expressions: Draft Articles" (document WIPO/GRTKF/IC/25/4), that had been developed at IGC 22, held from July 9 to 13, 2012, would be the basis of the present discussion under Agenda Item 6. In addition, he noted that the present IGC was a meeting of eight days. The three last days would be devoted to a roundup of the work of the IGC under Agenda Item 7 with the view to adopting a recommendation for consideration by the General Assembly at its next session in September 2013. He stated that the present session was, therefore, an exceptionally important meeting and urged all participants to find the means to be able to converge towards formulating a good recommendation to the General Assembly. He welcomed the representatives of indigenous and local communities and acknowledged the participation of the United Nations Permanent Forum on Indigenous Issues (UNPFII). He reminded the Committee that the WIPO Secretariat organized, jointly with the UNPFII, an Indigenous Expert Workshop on Intellectual Property and Genetic Resources, Traditional Knowledge

and Traditional Cultural Expressions that had taken place in Geneva from April 19 to 21, 2013 (document WIPO/GRTKF/IC/25/INF/9) and where Member States and observers in the IGC had been invited as observers. The Director General acknowledged the presence, in the present session, of the Chair of the UNPFII, Mr. Paul Kanyinke Sena from Kenya, as well as Ms. Valmaine Toki from New Zealand, an Indigenous-nominated member of the UNPFII, together with indigenous experts who participated in the Indigenous Expert Workshop. He referred to the WIPO Voluntary Fund which had been created by the Member States to facilitate the participation of indigenous and local community representatives in the IGC. The Fund had been established on the understanding that the WIPO regular budget would not be used for this purpose and that the Fund would depend on voluntary contributions. He warmly thanked the Governments of Australia and New Zealand for the recent contributions they had made to the Voluntary Fund, which would have been deprived otherwise of any means to continue operating. But he noted that the Fund would still need further contributions to be able to operate beyond the present session. He made, therefore, an urgent appeal to Member States and other potential donors to contribute to the Fund. He welcomed the presence of the panelists for the session's Indigenous Panel, namely its keynote speaker, Ms. Valmaine Toki, and Mr. Ramiro Batzin, Executive Director of the *Centro para la Investigación y Planificación del Desarrollo Maya Soz'il*, Iximulew, Guatemala, Ms. Jennifer Tauli Corpuz, Legal Desk Coordinator, Tebtebba Foundation, Quezon City, Philippines and Mr. Jon Petter Gintal, Senior Adviser of the Sami Parliament, Karasjok, Norway.

10. The Chair thanked the Director General and made some comments regarding the organization of the present session, based on the consultations he had held with Regional Coordinators on the work program and the working methodology. The Chair thanked them for their constructive guidance. The Chair informed that he had met with the Indigenous Caucus, which he thanked for its useful inputs and suggestions. He thanked the Vice-Chairs, Ms. Alexandra Grazioli from Switzerland and Mr. Bebeb Djundjungan from Indonesia. He thanked the facilitators who had been helping at different stages of the negotiating process so far. The Chair advised that the Secretariat had provided a briefing for Member States on the IGC documents and logistical arrangements for the session on July 2, 2013 and that the Secretariat would offer a similar briefing for all observers on the first day of the present session. He called on delegations, individually and in their various groupings, to discuss substantive issues with each other, especially inter-regionally and in-between sessions. In this regard, The Chair thanked the Government of Thailand for its initiative in having convened an Informal Meeting on Intellectual Property related to Genetic Resources, Traditional Knowledge and Folklore (a so-called "IGC Retreat") in Bangkok from July 5 to 7, 2013 at which the IGC Chair had been invited to be present. He said he had found the discussions useful and frank and expected that they would certainly be reflected in the inputs that might be made by individual Member States during the course of the session. The Chair referred to the summary of the IGC Retreat that had been made available by the Chair of the Retreat, His Excellency Mr. Thani Thongphadki, Ambassador and Permanent Representative of Thailand to the United Nations Office and Other International Organizations in Geneva. The Chair informed the IGC participants about the availability of printed copies of the summary outside the meeting room. The Chair reminded the IGC that the Regional coordinators had conveyed the methodology for Agenda Item 6 of the present session to all Member States. He considered, therefore, that the work program and methodology had been well shared. He emphasized that there had not been any dramatic departure from the methodology that had been in the last session (see the Report of IGC 24, document WIPO/GRTKF/IC/24/8, par. 10). He only pointed out the most important elements as follows. A twin approach, combining, in a complementary manner, the plenary (formal) and an expert group (informal) would be employed. Each regional group would be represented by six experts, one of whom should preferably be the Regional Coordinator. 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. The indigenous representatives would be invited to nominate two experts representatives to participate in the expert group as observers and an additional two representatives to sit on the meetings without speaking rights. The Chair might request the use of “informal informals”: delegations with particular interest in specific items might be invited to meet among themselves to discuss areas of possible convergence to be brought back to the expert group, this, without prejudice to the overall responsibilities of the plenary to eventually consider and determine the text the IGC would work on. The expert group would meet in Room B, where interpretation into and from English, French and Spanish would be available. In the interests of transparency, there would also be an English audio feed in real time of the proceedings of the expert group into Room A, a French audio feed into the J. Bilger Room and a Spanish audio feed into the U. Uchtenhagen Room. The text would be on the screen in those three rooms. The Chair commented on disappointing comments that had been made by some regarding an alleged lack of transparency in this way of proceeding. He emphasized that the Secretariat had facilitated transparency at great expense and great logistical effort. Furthermore, the intention was not to proceed behind closed doors, but to balance transparency with efficiency in order to ensure progress in the negotiation process. To ensure that the informality of the expert group was maintained, delegations and observers were requested to refrain from communicating to the public, whether live or at any future time, the content or the nature of the discussions taking place in the smaller group, whether in general terms or by way of quoting specific individuals or delegations. This included tweeting, blog posts, news stories and list serves. 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. The Chair would come back at a later stage with the names of the facilitators for the present session. As discussed with the Regional Coordinators, the Chair would also call upon Mr. Ian Goss from Australia to be “Friend of the Chair” and to assist the facilitators for the session in taking advantage of the cross-cutting approaches that had been taken in the two previous sessions. He expressed gratitude to Mr. Goss for his willingness to support the process in this way. The Chair said that the sequence of work for Agenda Item 6 would be similar to the one which had been used in IGC 24. The plenary would begin with a full reading through of the text, namely the Annex to document WIPO/GRTKF/IC/25/4. The plenary would then be suspended for a first round of discussions in the expert group, before the plenary would convene again on a revised text as elaborated by the expert group. After a second reading by the plenary, the revised text would be submitted for a second round of discussion in the expert group. The final plenary under Agenda Item 6 would be about addressing omissions or elements in the revised text that might not have been properly captured for its transmission to the General Assembly as had been done for the Consolidated Text on GRs and the Draft Articles on TK. The Chair intended to complete Agenda Item 6 by the end of the week. The three following days would be mostly dedicated to Agenda Item 7 in order for the Committee to try to converge on a recommendation that could be made to the General Assembly. The Chair trusted that regional groups and other groups had discussed ideas among themselves on how best the IGC could frame a recommendation to the General Assembly that would be constructive and support forward momentum in the IGC. He said that participants should be prepared for a full and effective discussion on all elements of the future work during that three-day segment of the present session. He pointed out that the review and stock-taking intended under Agenda Item 7 would not amend anything in the negotiating texts as transmitted to the General Assembly. However, participants would be free to comment on those texts, provided, of course, that there was no expectation that those comments would lead to any adaption or change to the texts as submitted to the General Assembly.

AGENDA ITEM 2: ADOPTION OF THE AGENDA

Decision on Agenda Item 2:

11. *The Chair submitted the draft agenda circulated as WIPO/GRTKF/IC/25/1 Prov. 2 for adoption and it was adopted.*

AGENDA ITEM 3: ADOPTION OF THE REPORTS OF THE TWENTY-THIRD AND TWENTY-FOURTH SESSIONS

Decision on Agenda Item 3:

12. *The Chair submitted the revised draft reports of the Twenty-Third and Twenty-Fourth sessions of the Committee (WIPO/GRTKF/IC/23/8 Prov. 2 and WIPO/GRTKF/IC/24/8 Prov. 2) for adoption and they were adopted.*

AGENDA ITEM 4: ACCREDITATION OF CERTAIN ORGANIZATIONS

13. The Chair informed that he had been advised that, further to the request made at IGC 24 for further information regarding the accreditation procedure, the Secretariat had published a set of frequently asked questions (FAQs) on the website for the purpose of providing greater insight into the accreditation criteria and procedure. He furthermore referred to the list of organizations that had requested accreditation (document WIPO/GRTKF/IC/25/2).

Decision on Agenda Item 4:

14. *The Committee unanimously approved the accreditation of all the organizations listed in the Annex to document WIPO/GRTKF/IC/25/2 as ad hoc observers, namely: Australian Centre for Intellectual Property in Agriculture (ACIPA); ARTICLE 19; Association Santé Éducation Démocratie (ASED) (Association-Health-Education-Democracy); Conseil International des Organisations de Festivals de Folklore et d'Arts Traditionnels (CIOFF) (International Council of*

Organizations of Folklore Festivals and Folk Arts); Terri Janke and Company Pty Ltd; and, Al-Zain Organization for Intellectual Property (ZIPO).

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

15. The Chair reminded the Committee that the Director General, at the opening the session, had drawn the attention of the Committee to the financial situation of the Voluntary Fund. The Chair wished to underline the importance of the remarks made by the Director General in this regard. It should be recalled that in 2005 the General Assembly decided to create a Voluntary Fund to support participation in the IGC of indigenous and local community representatives of accredited NGOs. Since its establishment, the Fund had benefitted from different contributors including: SwedBio, France, the Christensen Fund, Switzerland, South Africa, Norway and Australia. He was pleased to acknowledge the recent donations to the Fund by the Governments of Australia and New Zealand. These donations were accountable for the funding of representatives of indigenous and local communities, as recommended by the Board of the Voluntary Fund, to the present IGC session. The Chair observed that the Fund was widely regarded as transparent, independent and efficient and that most agreed that the Fund had operated successfully. While he acknowledged the donations made by the Governments of Australia and New Zealand, he called upon delegations again to consult internally and contribute to keep the Fund afloat. He stressed the importance of the Fund to the credibility of the IGC, which had repeatedly committed itself to supporting indigenous participation. He indicated during his meetings with the Indigenous Caucus that the importance of sustained participation had been made clear. He drew attention to document WIPO/GRTKF/IC/24/INF/4 Rev. which provided information on the current state of contributions and applications for support, as well as document WIPO/GRTKF/IC/25/3 which concerned the appointment of members of the Advisory Board. The Chair informed the Committee that he had requested Ms. Grazioli, one of the Vice-Chairs, 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/25/INF/6.

16. The Delegation of New Zealand considered that the participation of indigenous peoples and local communities was vital for the IGC to secure an outcome that worked for everybody. It emphasized that the outcome should work for Member States, be workable in the unique, domestic circumstances of each state, and work for the indigenous peoples and local communities of each state. The IGC could not achieve this without the participation of indigenous peoples and local communities in the IGC. It said that that had been the reason why its country had made a contribution to the Voluntary Fund. The Delegation encouraged other countries to contribute as well. It observed that the Governments of Australia and New Zealand had coordinated their contributions to ensure coverage of the present session, since the contribution by New Zealand alone would not have been enough to do so. The Delegation reminded Member States that a large number of small contributions would amount to a large contribution. It, therefore, encouraged Member States to collaborate and work together with other Member States to support the Voluntary Fund.

17. The Delegation of Australia supported the statement made by the Delegation of New Zealand on the importance of indigenous peoples and local communities participating in those discussions. Indigenous peoples and local communities contributed greatly to the

content and validity of the IGC work. Prior to the present session, the Voluntary Fund had been effectively empty, while this session was about addressing key issues, including future work. The Delegation also supported the observation made by the Delegation of New Zealand regarding the possibility of aggregating a number of small contributions in a coordinated way. It confirmed that the governments of both countries had gathered limited resources in a coordinated way to ensure participation in line with the Advisory Board's recommendations. It acknowledged that the representative of the Foundation for Aboriginal and Islander Research Action (FAIRA), from Australia who had been a recommended recipient (document WIPO/GRTKF/IC/24/INF/6), withdrew from funding as he had obtained independent funding. This withdrawal reduced the financial demand on the Fund and left funds for other recommended participants. The Delegation encouraged other Member States to support the participation of indigenous peoples and local communities in the IGC discussions.

18. The representative of *Tupaj Amaru* thanked the Member States for their goodwill in making voluntary contributions. He added that indigenous peoples would come with or without the support of the Voluntary Fund. What was more important was to ensure they were listened to and understood by Member States during the negotiating process. He indicated that the WIPO General Assembly, at its 40th session, had recommended that the IGC review its General Rules of Procedure in order to strengthen the substantive contributions made by indigenous peoples. He was of the view that the work had not been done. The support from the Voluntary Fund should favor indigenous peoples in a fair and equitable manner. However, he observed that in his view the same indigenous representatives had been financed since the inception of the Fund. While there were many indigenous peoples in countries like Bolivia, Guatemala or Mexico, the IGC never saw them participating. He was of the view that selectivity and discrimination presided over the way the Voluntary Fund had been extending support to indigenous peoples.

19. In accordance with the decision of the IGC (WIPO/GRTKF/IC/7/15, paragraph 63), the Twenty-Fifth session was preceded by a half-day panel of presentations (see WIPO/GRTKF/IC25/INF/5). The indigenous panel was chaired by Mr. Jim Walker of FAIRA, Australia. The Chair of the Panel submitted a written report on the Panel to the WIPO Secretariat which is contained below as edited:

“The Indigenous Panel was held on July 15, 2013. The theme of the Indigenous Panel was: “Indigenous Peoples’ Perspectives on Intellectual Property Protection for Traditional Cultural Expressions: Beneficiaries, Subject Matter, Rights and Exceptions”.

The Keynote Speaker was Ms Valmaine Toki, Indigenous-nominated Member of the UNPFII, Auckland, New Zealand. Ms. Toki's presentation focused on the rationale for indigenous peoples to be able to participate in any decision-making processes related to TCEs. Several doctrines supported that right and were equally relevant to the IGC process. Ms. Toki highlighted cases of different tenets in Australia and New Zealand that embodied indigenous rights, like Native Title-, Aboriginal Title-, Customary Title- and Tikanga Maori – systems of law.

Ms Toki emphasized that the right to participation was not confined to regional instruments but had been also recognized in international instruments like the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the recommendations of the UNPFII. She highlighted those articles within the UNDRIP that substantiated the right of the indigenous peoples to have their TCEs protected, to participate in forums such as the IGC; and the obligation for States to protect the rights of indigenous peoples. Ms Toki concluded by urging the IGC Member States to consider the negotiating text on TCEs (WIPO/GRTKF/IC/25/4, “The Protection of

Traditional Cultural Expressions: Draft Articles”) through an indigenous lens based on the recommendations of the UNPFII and the UNDRIP.

The second panelist was Mr Ramiro Batzin, Executive Director of the *Centro para la Investigación y Planificación del Desarrollo Maya Sotz’il*, Iximulew, Guatemala. Mr Batzin called for the recognition of Indigenous peoples’ rights of ownership over their TK, cultural heritage and TCEs. He emphasized that indigenous peoples had the right to maintain, control, protect and develop their intellectual property (IP) over such TK, cultural heritage and TCEs.

Mr Batzin provided an example of the dangers that the Maya indigenous peoples were presently facing with uncontrolled extractive industries and genetically modified plants that threatened native species. He outlined the dangerous impacts that uncontrolled development could have for indigenous peoples. He stated that there was an urgent need for consultative mechanisms that would involve indigenous peoples in decision making processes. Mr. Batzin further stated that in the absence of legal frameworks that would protect the inalienable rights of indigenous peoples in these matters, a full and effective participation of indigenous peoples should be accommodated in the IGC. In this regard, the Draft Articles on TK and TCEs respectively and Consolidated Document on GRs should reflect the rights of indigenous peoples as stipulated within the UNDRIP.

The third panelist, Ms Jennifer Tauli Corpuz, Legal Desk Coordinator, Tebtebba Foundation, Quezon City, Philippines, provided a summary of the report submitted by the Indigenous Expert Workshop on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions that took place in Geneva on April 19 to 21, 2013 (document WIPO/GRTKF/IC/25/INF/9). She emphasized the need for the Draft Articles on TCEs and TK to recognize and reflect the substantive rights of Indigenous Peoples as provided for in the UNDRIP and particularly the overarching principles of the right of indigenous peoples to self-determination and their permanent sovereignty over their resources.

Mr Jon Petter Gintal, Senior Adviser of the Sami Parliament, Karasjok, Norway, reported on the Consultation Agreement between the Sami people and the Government of Norway. Mr Gintal pointed out that the Government of Norway had recognized the right of the Sami indigenous peoples to be consulted and involved in matters that affected their rights as indigenous peoples. He reported that Norway has declared its intentions to protect Sami TK from exploitation and enable the Sami people to safeguard, develop and pass on their knowledge to future generations.

It resulted from the panel presentations that the fundamental issue regarding the forthcoming instruments from an indigenous peoples’ perspective was to ensure that they protect and promote the rights of indigenous peoples to self-determination regarding the management and control of their TK. In this line, the instruments should be based on the principle of free prior and informed consent (FPIC), mutually agreed terms (MATs) and access and benefit sharing (ABS) in all matters relating to the use of their knowledge. The Panel also reiterated the need for direct participation by indigenous peoples in the IGC work as a way to ensure that the instruments would provide effective protection of the indigenous peoples’ rights.”

Decision on Agenda Item 5:

20. *The Committee took note of documents WIPO/GRTKF/IC/25/3,*

*WIPO/GRTKF/IC/25/INF/4 Rev. and
WIPO/GRTKF/IC/25/INF/6.*

21. *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.*

22. *The Chair proposed, and the Committee elected by acclamation, the following eight members of the Advisory Board to serve in an individual capacity: Mr. Steven BAILIE, Assistant Director, International Policy and Cooperation Section, IP Australia, Canberra, Australia; Mrs. Edna Maria DA COSTA E SILVA, Representative, Cooperativa Ecologica de las Mujeres Colectoras de la Isla de Marajo (CEMEM), Brazil; Mrs. Simara HOWELL, First Secretary, Permanent Mission of Jamaica, Geneva; Mr. Nazrul ISLAM, Minister, Permanent Mission of Bangladesh, Geneva; Mr. Mandixole MATROOS, First Secretary, Permanent Mission of the Republic of South Africa, Geneva; Mr. Wojciech PIATKOWSKI, First Counsellor, Permanent Mission of Poland, Geneva; Mrs. Chinara SADYKOVA, Representative, Public Association Regional Centers for Education for Sustainable Development, Kyrgyzstan; Mr. Paul Kanyinke SENA, Member and Chair of the United Nations Permanent Forum on Indigenous Issues (UNPFII), New York.*

23. *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: TRADITIONAL CULTURAL EXPRESSIONS

24. The Chair recalled that he had laid out the methodology and work program agreed for the present session regarding Agenda Item 6 at the opening of the session. He emphasized that the methodology was flexible. He intended to keep the methodology fit for purpose and geared towards achieving the best possible outcomes. He recalled that there would be time constraints and that the revisions of the text during the week would be available in English only. There would be interpretation in all six United Nations (UN) languages in the plenary, and English, French and Spanish in the expert group. He would remain available to consult with any delegation or group of delegations that would wish to meet him, schedule and logistics permitting. He would also remain available to the coordinators of each group for consultations as and when necessary. He would remain available to the Indigenous Caucus for consultations as had been the practice in each IGC. He referred to the Annex of the working document WIPO/GRTKF/IC/25/4 under the Agenda Item: "The Protection of Traditional Cultural Expressions: Draft Articles". He also referred to three information documents: the "Glossary of Key Terms Related to Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions" (WIPO/GRTKF/IC/25/INF/7), "Resources Available on the WIPO Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources Website" (WIPO/GRTKF/IC/25/INF/8) and the "Report of Indigenous Expert Workshop on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions" (WIPO/GRTKF/IC/25/INF/9). Those three documents were resource documents and were not intended to be adopted in any form. He pointed out that he had made available a short and informal paper on key issues regarding the TCEs negotiations as he saw them. That non-paper was not a working document but simply a paper for reflection. Some of the points in the non-paper touched upon the goal of the negotiations, which was to find an appropriate IP-based agreement for the protection of TCEs. Taking into account existing international declarations and agreements, the IGC should seek to clarify which rights, measures and mechanisms for the IP-like protection of TCEs might be necessary and appropriate, and address the development of the mandated IP-like instrument to address those. The IGC should consider which IP-related objectives would be appropriate for such an instrument, and what harm such an instrument should seek to address. The IGC should seek to find clarity on how the instrument should deal with the core issues of defining the subject matter, identifying the beneficiaries, framing the scope of rights and delimiting those rights through appropriate exceptions and limitations. Efforts should be made at the session to link the objectives with the substantive provisions. He hoped that during the course of the discussions the IGC would seek to properly address the contents of the objectives and principles through linkage to the very provisions that were being negotiated. He added that in seeking solutions, the Committee might benefit from identifying in a cross-cutting way the issues that could and had to be addressed at the national level *vis-à-vis* those that needed to be addressed at the international level. For the latter level, the IGC should take into account those aspects which might better be addressed by existing international agreements or those which rightly belonged to other international forums. The Chair proposed to open the floor on issues raised in the Draft Articles on TCEs as a whole rather than article by article. He invited delegations and observers to identify the articles that would be referred to, so as to assist the facilitators in taking account of the points being made. He asked in particular for any new insights into and perspectives on the issues that were raised in the Draft Articles. He requested delegations, when making their interventions, to endeavor to link their comments on any issues or articles to the relevant objectives or general guiding principles which were related to the raised issues. That would assist the facilitators to begin the process of identifying which objectives and principles were of specific interest to delegations, as well as identifying those that bore direct relevance to the text. He would then invite the expert group to convene and the facilitators to continue their work within the expert group.

Before opening the floor for general comments and informing the IGC about the selection of the facilitators, he acknowledged the presence in the plenary room of His Excellency Mr. Thani Thongphakdi, Ambassador and Permanent Representative of Thailand at the UN in Geneva, whose Government had graciously convened the Informal Meeting in Bangkok from July 5 to 7, 2013, as he had referred to at the opening of the session.

25. The Delegation of Thailand, through His Excellency Mr. Thani Thongphakdi, congratulated the Chair for his dedication and commitment to the IGC process. It was confident that much progress would be made during the session under his able guidance. With the view to expediting the work of the IGC, it fully supported the method of work proposed by the Chair, striking a balance between the plenary and informal sessions while allowing all Member States to follow informal deliberations as observers even if they were not at the main negotiating table. It also supported the Chair in his effort to convene “informal informals” as and when necessary. It stated that its Government had had the honor and pleasure of hosting an Informal Meeting on Intellectual Property related to Genetic Resources, Traditional Knowledge and Folklore in Bangkok from July 5 to 7, 2013. It recalled that that so-called IGC Retreat had been attended by nearly thirty countries and organizations and had provided participants with a chance to take stock of and discuss outstanding issues related to GRs, TK and TCEs. Importantly, the participants had discussed the way forward, which was what the IGC would be discussing the following week when it would review and take stock of the texts related to all three issues and make a recommendation to the General Assembly under Agenda Item 7. As many of the issues raised during the IGC Retreat might be useful for the deliberations during the session, it reported on some of the more pertinent points discussed. Regarding TCEs, it noted that there had been several points of convergence among the participants. There had been general agreement that the time was right to return to the policy objectives and principles. Regarding the definition of the subject matter, there had seemed to be agreement that the listing of examples could be moved away from in the categories of TCEs, though a footnote might be considered if necessary. On how to deal with the issue of “nations” in Article 2, it had been thought that paragraph 2.2 from the TK text was a way forward. Given the similarity and synergy in the objectives and principles of the TK and TCE texts, effort should be made to harmonize the objectives and principles in both texts and create a single set of objectives for both TK and TCEs. Pending issues included Article 1 on the use of the term “artistic and literary” and “creative intellectual activity”, as they might not accommodate all TCEs. Additionally, concerns remained about the lack of clarity concerning beneficiaries. It noted that during the segment dedicated to the way forward at the IGC Retreat, there had been a number of important points of convergence. Given the important moral and economic rights associated with the issues and the significant investment made in the IGC process, all had agreed that a tangible and meaningful outcome had to be achieved. As a number of important points still remained to be resolved, political commitment was required, including decisions to be made at the political or policy level to push forward the process. While some participants had a preference for separate instruments for GRs, TK and TCEs, there had been general agreement on flexibility on whether there should be one, two, three separate instruments given the similarities, differences and synergies between them. Although the concept of an early harvest had been discussed, it had been agreed that all issues had to progress at the same rate in a balanced manner, and be concluded at the same time as a single undertaking. Participants supported the extension of the IGC’s mandate with clearly identified issues that required further work. It was requested at the IGC Retreat that consideration be given to setting the outer date for the diplomatic conference. It had been proposed for the next year that there be three IGC sessions held to address each issue thematically, with a fourth IGC held prior to the General Assemblies to discuss cross-cutting issues at a technical level, as well as allow for a meeting at the senior officials level to, among other things, discuss policy issues and provide policy guidance. Reference was made during the IGC Retreat to the need for further studies to be conducted and side events

to be held in order to share knowledge and best practices, especially on disclosure requirements. The need was expressed to further engage with representatives from indigenous and local communities which would help understanding the issues, facilitate their contributions to the process and serve as a confidence-building measure. Pending issues included whether the underlying approach of the international legal instrument or instruments should be measures-based or rights-based, and whether the international legal instrument(s) should be binding or not. The Delegation thanked the Chair of the IGC for attending the Retreat. It also thanked Mr. Ian Goss, General Manager, Strategic Programs, IP Australia, Mr. Emmanuel Sackey, Chief Examiner, ARIPO, and Ms. Kim Connolly-Stone, Chief Advisor, Intellectual Property, New Zealand, for moderating the sessions, as well as preparing very comprehensive and useful discussion papers on GRs, TK and TCEs, respectively. It also acknowledged the invaluable support of the WIPO Secretariat, particularly Mr. Wend Wendland, Director of the TK Division. It reminded the Committee that copies of the Summary of the IGC Retreat prepared by the Retreat's Chair had been made available in front of the plenary room.

26. The Chair thanked the Delegation of Thailand, headed by His Excellency Mr. Thani Thongphakdi, for his comprehensive update on the informal consultations hosted by its Government on matters relating to the work of the IGC. He hoped that delegations would take note of the points raised in its intervention and the Chair's summary. He proposed, after having consulted with the coordinators of the regional groups, that Mr. Tom Suchanandan from South Africa and Mr. Dominic Kebbell from New Zealand be the facilitators for the present session. He recalled that Ms. Kim Connolly-Stone from New Zealand had facilitated in the past, but that obligations in her country prevented her from being available. He was grateful to the Delegation of New Zealand for stepping forward once again to assist and also to the Delegation of South Africa and the African Group for proposing an experienced colleague to join in continuing the work. As he previously indicated, the facilitators would be helped by Mr. Goss from Australia, as Friend of the Chair. The Chair opened the floor for broad-based comments on the Draft Articles on TCE, re-inviting delegations and observers to refer to the specific articles and key objectives and principles that would be relevant to those comments.

27. The Delegation of Belgium, speaking on behalf of Group B, noted that the IGC had already accomplished important progress regarding TCEs in exploring national practices and clarifying differences in positions. However, it was convinced that further work was needed in order to overcome divergent and sometimes conflicting policy objectives and guiding principles. It emphasized that the IGC's work should remain inclusive, member-driven and participatory, and listen to the interests and priorities of all stakeholders. The IGC should continue to consider the preservation of a robust, rich and accessible public domain, as well as the obligations and flexibilities vested in the international IP agreements. The Committee should strive for a balanced outcome which would provide sufficient certainty and flexibility in the field of TCEs. The Delegation added that Group B stood ready to undertake further work towards concluding the text of an international instrument or instruments without prejudice to the nature of the instrument or instruments. The result had to be a solution which practically and substantially achieved the objectives without providing adverse effects on creativity. Regarding the cross-cutting stock-taking on IGC matters under Agenda Item 7, while noting that it was the prerogative of the General Assembly to make a final decision on that matter, the Delegation said that Group B was hopeful that the IGC would be able to come up with a consensual recommendation at the present session. It remained committed to contribute constructively in order to achieve a mutually acceptable result.

28. The Delegation of Poland, speaking on behalf of the Central European and Baltic States (CEBS), stated that all the issues on the agenda of the IGC were important to the CEBS. It looked forward to a constructive discussion on the issues relating to TCEs and was

thankful to the Chair for the preparation of the informal issues paper. The CEBS were ready to achieve further convergence in the discussions on the key articles related to the subject matter of protection, beneficiaries, scope of protection, as well as limitations and exceptions. The CEBS appreciated the presentations made so far on national experiences that had provided a helpful hand in clarifying respective positions. Nevertheless, there were still a lot of substantial divergences in the text that needed to be overcome. It reminded that important policy decisions were ahead of the IGC in order to successfully fulfill the objectives of the mandate for the current biennium. It emphasized that the result of the negotiations during the present session should be driven by existing obligations and flexibilities of existing IP treaties. The Delegation was ready to continue to engage in the negotiations, provided they would not have any negative impact on international standards of copyright aimed at protecting creative works. It was also looking forward to participate in the process of reviewing the state of the texts of the international legal instruments ensuring the effective protection of TCEs, TK and GRs in order to make a recommendation to the General Assembly under Agenda Item 7. It believed that considerable discussions were still needed before a consensus regarding the three instruments would be reached. On behalf of the CEBS, the Delegation assured that it remained committed to work in a most constructive manner in order to contribute to the appreciated outcome of the work of the Committee. It added that it was looking for a recommendation to the General Assembly that would set up the grounds for the future international instruments on the protection of TCEs, TK and GRs. It hoped that all the delegations taking part in the negotiations would prove their great commitment, capacity and skills to work in a team spirit towards a satisfactory compromise.

29. The Delegation of Trinidad and Tobago, speaking on behalf of GRULAC, said it was prepared to work constructively in order to achieve concrete results prior to the General Assembly. It highlighted that the issues dealt with at the IGC were an extremely important topic for developing countries and by extension, for all the Members of GRULAC. It was committed to work with other groups and Member States with the aim of achieving nothing less than an international legal instrument or instruments for the protection of TCEs, TK and GRs. In order to achieve that objective, it strongly supported the extension of the IGC's mandate and work program by the next General Assembly. The mandate and work program should include a suitable schedule regarding the way forward. It reiterated its engagement to work constructively on the TCEs text. It was convinced that once the IGC's mandate was extended, it would be possible to convene a Diplomatic Conference in the next biennium. Reaching the goal of convening a Diplomatic Conference would require from all Member States to display a degree of reasonability and flexibility during the course of the present negotiating session. Regarding Agenda Item 7, GRULAC wished to take stock of the three texts as produced to date. By so doing, a framework for the mandate of the General Assembly and an appropriate schedule to lead to the convening of a Diplomatic Conference should be finalized. It wished the Chair success as he continued to guide the deliberations of the Committee.

30. The representative of CAPAJ said that the Draft Articles on the protection of TCEs should constitute a legal framework to protect the creative spirit of the indigenous peoples and fight against the pillage and piracy which had affected their cultural heritage. He added that they should be based on the UNDRIP. Regarding Article 1, in order to avoid lists or a lengthy article, it could be summarized as long as it would cover the principal aspects of indigenous culture, mythology, music, rituals, sacred places and architecture. Regarding Article 2, the beneficiaries should simply be the indigenous peoples, without any restrictions from national law, which would limit their creative capacity and not allow them to continue to generate culture. Regarding Option 2 of Article 3, the representative pointed out that protection should extend not only to the cultural heritage but to the very source of the creative spirit of the indigenous peoples, in order to avoid its dissolution and distortion. Regarding Article 4, the administration of rights should not be transferred to third parties,

since the FPIC of the peoples concerned was essential. Regarding the exceptions and limitations, the limitations should only apply to third parties as they should not interrupt or disrupt the creative process initiated from within the indigenous peoples. As to the duration, there should be no limitation as to its term. He added that Article 11 should be deleted.

31. The representative of *Tupaj Amaru* proposed that the IGC work in a transparent manner going through the document article by article, and that the articles be shown on the screen, so that one could see what one was talking about and what modifications were made. He noted that the language in the Draft Articles had changed a great deal and that those modifications were not always beneficial for indigenous peoples. He reminded the IGC that he had suggested a group of articles in Spanish at IGC 19 and had resubmitted the text in English as modified in its entirety at IGC 21. He wished to know how the most recent version of his suggestion had been dealt with by the Secretariat.

32. The Delegation of El Salvador supported the statement made by the Delegation of Trinidad and Tobago on behalf of GRULAC. It highlighted its great interest in the work of the IGC, and supported the calling for a Diplomatic Conference and a work schedule which would allow the Committee to achieve that. Regarding the objectives, and the phrase which indicated that they were “to be discussed at a later stage”, in-depth discussions were necessary, taking into account the national policies on issues related to the protection of culture and indigenous peoples, which might vary from country to country. As to the subject of protection, a simple and broad definition was preferable, in order to avoid an extensive list which might leave out some elements of particular importance for certain members. As to the beneficiaries, due to the circumstances of its country, the Delegation pointed out that the issue of the diaspora or migration of indigenous communities should be reflected in the document. As to the scope and the administration of rights and interests, as well as exceptions and limitations, it said that it would be inclined to allow national legislation to regulate those issues, but that it was flexible on the issue.

33. The Delegation of the EU, speaking on behalf of the EU and its Member States, noted that the text under discussion was one of considerable complexity, with a large number of policy options, alternatives, and terms in brackets. It welcomed the continued involvement of facilitators and hoped that they might help clarify the different policy options and alternatives in the text, in order to help advance discussions and enable convergence. It also hoped that delegations continue to engage positively and in a spirit of compromise, and that real progress could be achieved on a broad range of outstanding issues during the present session. The nature of the legal instrument that would emerge from IGC 25 and the other IGCs remained undecided. With that in mind, the Delegation considered that, in the best interests of advancing discussions, the primary focus should continue to remain on clarifying and refining the objectives and principles of the text and the policy options contained therein. It reiterated the need for balanced and equitable provisions in the TCEs document. The Delegation acknowledged the mandate issued by the General Assembly on the work program for the present session, with a focus on the four articles dealing with subject matter of protection, beneficiaries, scope of protection, and limitations and exceptions. In particular, it attached great importance to reaching an agreement on the definition of TCEs in Article 1, and on beneficiaries in Article 2. It emphasized that without prior agreement on a definition of TCEs and beneficiaries, it would be extremely difficult to finalize the other draft articles. Until such a time, it would be premature to decide on a final form of instrument.

34. The representative of Tulalip Tribes pointed out that what the Tulalip Tribes possessed as tribes was not IP rights (IPRs) but intangible cultural heritage. He added that their intangible cultural heritage had intersections that touched upon the IP system, while it was not primarily an IP system. He reminded the IGC that the Tulalip Tribes and other indigenous peoples had been managing and governing their knowledge systems, and had

had customary rules and laws in place, long before the IP system arose. Their intangible cultural heritage was not associated with economics, but originated from an indigenous realm with spiritual, historical, ancestral and other connections that were deeply and inextricably bound. Indigenous peoples had to recognize, acknowledge and respond to changed conditions. For instance, the world population from 10,000 BC to 2000 AD, at 10,000 years before present, was at 1 million. When knowledge was being exchanged, it was in a very widely dispersed population with very different kinds of populations than presently. The world population was currently over 7 billion people. By 2016 it was estimated that there would be 2 billion computers on the planet interconnected and capable of exchanging digital information. Those were quite changed conditions from the conditions under which TCEs had initially been made available and exchanged in the past. When one heard expressions like the importance of the public domain and balance, and the exceptions and limitations, and one looked at what had happened to the cultural heritage of indigenous peoples, one might wonder what kind of balance there would be. The representative wished that the IGC be careful about not setting up a ratchet or a pump to divest indigenous peoples of their cultural heritage over time. He proposed two kinds of principles to guide the work of the IGC: the principle of non-maleficence and the principle of non-preemption or non-preclusion. The principle of non-maleficence implied first to do no harm. As the IGC tried to resolve IP issues, it needed to make sure that real cultural harms were not made to the peoples that the IGC was trying to serve. Regarding the principle of non-preemption or non-preclusion, he recalled that in 2007 many nations had signed onto the UNDRIP. Although there were different views about the status of the UNDRIP, at a minimum, even if it was viewed as aspirational, the countries that had signed onto it had said that they had the aspiration of implementing at least parts of it. One should not start closing off indigenous peoples' control over their TCEs, otherwise the elaboration of that regime would be preempted.

35. The Delegation of Norway pointed out that further constructive work was necessary in order to bridge existing gaps between the diverse policy orientations of stakeholders. To achieve that, all participants needed to show greater flexibility. The Delegation reiterated its belief in a strong and robust public domain which could foster cultural diversity, inspire creativity, and develop new cultural expressions based on cultural heritage. It could support a rights-based approach to protection, provided that limitation towards public domain was clear, precise, and provided users with legal certainty. For a rights-based approach, one needed to find a balance which could guarantee a rich and vibrant public domain. It was also important that obligations and flexibilities under other IP treaties were taken into account. Regarding Article 1, it believed that the criteria for eligibility had to be cumulative. Regarding Article 2, the Delegation was of the view that the beneficiaries had to be indigenous peoples or local communities. In Article 3, it could support a rights-based approach on the condition that the protection was clearly defined and contained sufficient exceptions and limitations. It emphasized that public domain had to remain strong in order to promote cultural expressions and creativity. Regarding Article 4, the Delegation could support the shorter and simpler approach proposed in Option 2. On Article 5, it supported a wide list of possible limitations and exceptions including for educational and research purposes, as well as for libraries, museums and archives. It added though that any use of TCEs based on exceptions and limitations had to respect the moral rights of the beneficiaries. As regards to the term of protection in Article 6, protection had to endure for as long as the TCE continued to meet the criteria for protection. It hoped that the stock taking work would enable the IGC to come up with clear recommendations and that all delegation would remain committed to finding a balanced solution.

36. The Delegation of South Africa thanked the Chair for his leadership and also for the personal involvement that had taken him to various locations such as Delhi, Pretoria and Bangkok in pursuit of consensus within the IGC. It thanked His Excellency Mr. Thani Thongphakdi from Thailand for his report on the Bangkok IGC Retreat and fully

concurred with its content. The Delegation supported the proposed methodology proposed by the Chair. The Delegation believed that the IGC should focus on highlighting issues that would provide possible solutions. The IGC should be able to work towards reducing the technical issues to a minimum, so that it would be easier for future meetings to see what brought IGC participants together and what separated them. All participants had a duty to attain the goals that had been set out. It called on all delegations to diligently engage in a balanced approach. It noted that there was a trend to mix policy issues with mechanisms or measures. It strongly believed that if one focused on the former, one could then work out the latter. The IGC should seek a consensus on the issues on which there was agreement rather than focus on the issues that divided the IGC participants. On the issues that divided IGC participants, the Delegation called for frank and transparent discussions that would enable participants to understand each other's fears. It emphasized that the objective of the IGC was not to replace the existing international agreements, nor to change the patent system, but to seek to address the mischiefs that had been identified and agreed upon in terms of misappropriating TCEs. It pointed out that, at one stage, the text on TCEs had looked very advanced. One year later, the text seemed more underdeveloped than the other texts. It, therefore, invited delegations to look at the text on TK and learn from the achievements that had been made in that text, and transpose them in the text on TCEs. The Delegation was flexible on the definition of TCEs, especially in regard to the illustrative materials that were in brackets. On the beneficiaries, great strides had been made in the TK text. That text could, therefore, be used and imported into the TCEs text. The Delegation looked forward to finding consensus on the scope of protection or, at least, having two clearly articulated approaches on measures and on rights. The Delegation emphasized that the IGC should work towards the conclusion of the process. In this regard, it considered Agenda Item 7 on the future work as decisive on deciding on the date for the Diplomatic Conference. It agreed with the principle that had been articulated by the representative of Tulalip Tribes that the TCEs and TK were a way of life and livelihood for local communities, and should not be reduced to mere aspects of the IP-system.

37. The representative of the UNEMRIP recalled that the United Nations Human Rights Council had established the UNEMRIP as a subsidiary body to assist the Council in the implementation of its mandate by providing it with thematic expertise on the rights of indigenous peoples, as requested by the Council. He highlighted, with regard to Articles 1 and 2, that clarity was needed on what would be protected and on who were the beneficiaries. A proper and clear definition as well as the criteria for eligibility should be appropriate to the issues that were being discussed. He said that the UNEMRIP had received recommendations by indigenous representatives with regard to the capitalization of the expression "Indigenous Peoples", which had been sent to the UN Human Rights Council. He noted also that in Article 2, the word "peoples" continued to be in brackets. He recalled that the UNEMRIP based its approach on the UNDRIP. In this regard, he invited the IGC to recognize the fact that the subject matter for protection as defined by the UNDRIP, was much wider and more defined in depth than the definition proposed in the Annex to document WIPO/GRTKF/IC/25/4.

38. The Delegation of the United States of America looked forward to continuing negotiations with other Member States towards an international legal instrument or instruments which would ensure the effective protection of TK, GRs and TCEs. In doing so, it looked forward to resolving the many divergent issues that remained. It supported the extension of the existing mandate without prejudice to the type of instrument or instruments that would arise from those negotiations. It also supported a meaningful discussion on objectives and principles. Reaching a meeting of the minds on objectives and principles would allow the Committee to determine the nature of the international legal instrument or instruments, and to make greater progress on the articles under discussion. With regard to the phrase "artistic and literary" in Article 1, it was aware that the phrase was anchored in the

Berne Convention for the Protection of literary and artistic Works (the Berne Convention). It was also fully aware that copyright issues and issues to be ingested in the instrument for a number of reasons were not a perfect fit for purpose, neither for indigenous peoples. The issue of defining with precision the scope of expressions that would be subject to protection was clearly a critical one. The Delegation preferred to retain the phrase “artistic and literary” in the text for the time being. In Alternative 2 of paragraph 1 in Article 1, the term “indicative” was the most recent attempt to define the critical nexus between the expressive elements of TCEs that could be subject to protection and their relationship to the originating or sustaining culture that was associated with that particular expression. Past attempts to define that important but elusive concept had included the terms “characteristic” and “authentic”. It noted that most delegations seemed to agree that some linkage to the traditional culture had to be established and that many delegations seemed to agree that an expression that was not related to a traditional culture or no longer related to a traditional culture should not and must not be the subject of protection. While the word “indicative” might be preferable to some of its predecessors, it emphasized that important questions remained to be answered. For instance, the expressive elements of traditional culture like the cultures themselves were not static but rather dynamic living cultures. Against that background, the Delegation wondered what it meant for an expression to be indicative of a past, present and even future traditional culture. With respect to the term TK that appeared in that article, the Delegation, as many other delegations it said, fully appreciated the view of indigenous peoples that in many TK systems, TK and TCEs were integrally related. It respected that point of view. Nonetheless, for the purposes of the deliberations of the IGC, discussions on TK and TCEs had preceded on separate but parallel tracks. Until those texts were more mature, it would prefer to retain the term TK, according to the tradition of the discussions within the IGC.

39. The Delegation of Japan supported the comments respectively made by the Delegation of Belgium, speaking on behalf of Group B, the Delegation of the EU, speaking on behalf of the EU and its Member States, and the Delegation of the United States of America. It said it was vital to reach a common understanding on the fundamental issues, such as the subject matter of the TCEs, the beneficiaries, and the future direction of the discussions at the IGC. Intensive discussions on those fundamental issues were necessary, since a shared understanding on them would enable the IGC to reach a fruitful outcome. With regard to the nature of the instrument, it was premature to decide what kind of international legal instrument the IGC should strive for, including whether it was binding or not. In the same vein, at that stage, the Delegation could not prejudge any specific date for a Diplomatic Conference. The Delegation was ready to engage in work at IGC 25 with a constructive spirit toward finding common understanding on the fundamental issues. This was in its view the essential and appropriate way to achieve a concrete outcome.

40. The Delegation of Australia emphasized that the objectives and principles within the Draft Articles had not been addressed since they had been drafted. It said that it was important to review them, considering that the text itself had been significantly refined in the meantime. The Delegation noted that they included many general statements of principle and recommended that the expert group discuss whether objectives and principles might be better addressed in a preamble or even test them for relevance, noting the need to maintain the connection between the Draft Articles and other relevant international instruments such as the UNDRIP. Without prejudice, the Delegation named the objectives that it considered relevant: prevent the misappropriation and misuse of TCEs, encourage community innovation and creativity, promote the development of indigenous peoples and communities and traditional and other cultural communities and legitimate trading activities, and preclude unauthorized IPRs. It believed there was merit in attempting to establish a single set of principles and objectives which could be related to both TK and TCEs.

41. The Delegation of Oman thanked the Secretariat for the efforts made in preparing the documents for the meeting. It supported the approach of the Chair and considered that the IGC was heading in the right direction. The technical comments made on the various articles would be of assistance to the expert group and make its work easier.

42. The Delegation of Egypt pointed out that, at each session, it had looked forward to the IGC accomplishing a solid legal foundation on which a structure could be built enabling Member States to afford protection to TCEs. However, it looked like the IGC participants had been repeating themselves since the first session. It was necessary to cut down on general statements and to concentrate on discussing specific points. The Delegation expressed the strong hope to see clear and unambiguous articles emerging from the present session. The issue of defining the various terms was one of the most important difficulties. The Delegation reminded the Committee that culture had its own terminology and semantics. In that regard, it would probably not be possible to reach agreement on all the various terms used. It was necessary to reach agreement on general principles, and then leave the details to others or to footnotes. Given the great deal of time and effort that had been invested in the IGC process, it was high time to determine the principles on which everyone would be in agreement. Otherwise, the IGC would be talking in circles for thirteen more years.

43. The Chair stated that he had been struck by the attempts made by delegations to replicate in the instrument elements that were specific to one country, one people, one community. It was necessary to find convergence, which meant that what would come out would be related to what went in but without being perfectly equal to it. He said that there were some questions which should have been settled already, while they had not been. The Chair urged the Committee to reflect on that way of proceeding and the need for each delegation to be interrogating its own positions and the positions of others.

44. The Delegation of India reminded the IGC not to lose track of its main purpose which was to prevent misappropriation. In this regard, it should be acknowledged that modern IP systems did contribute substantially to the misappropriation of TCEs and TK. At the same time, the Delegation considered it important to recognize the value of the contribution made by generations of communities in maintaining valuable and useful knowledge. It highlighted that the livelihood of those communities should remain the major focus when addressing the instrument. In that context, it was concerned about the use of modern IP standards, particularly the use of the expression "public domain". If that expression was used in the same sense in which it was used in the modern IP system, it was definitely going to be detrimental to the interest of the holders of TK. In such case, the instrument would not serve the purpose for which the Committee had been assembled. The Delegation was mindful of the fact that while it was concerned about protecting TK and creating an instrument, one needed to find solutions regarding existing norms without causing major harm to the purpose for which the instrument was going to be created. The Delegation emphasized the progress made on the TK document. Both on Article 1 and Article 2 there had been major breakthroughs in the TK document. The IP elements that had been introduced into the definition of subject matter in the TCEs document remained the major problems to find a viable definition for TK. The introduction of the expression "artistic and literary", which came from the Berne Convention, created concerns, which was why it remained in brackets. The Delegation wondered whether it needed to remain or not. Regarding the issue of the interrelationship between TK and TCEs, it emphasized that the IGC process artificially distinguished between TK under one set of norms and TCEs on another set. But it noted that the knowledge content of TCEs resulted in an important overlap between TCEs and TK regarding their respective definitions. When the text on TK and the text on TCEs were to be looped together, an appropriate solution might be found. But it stated that for the time being it was necessary to understand and recognize the significance of that overlap. The Delegation remained flexible on the illustrative list in Article 1. Regarding the criteria for

eligibility, it emphasized that the standards as drafted were IP-like. The terms “unique” and “distinctive” had been borrowed from the terminologies of formal IP systems. That approach needed to be relooked at. Beside it requested that the criteria be stand-alone and not cumulative. It reminded that the word “held” had been introduced at IGC 22 and that it had reservations on it, since it brought in the notion of custody, which was not necessarily true with all forms of TCEs. The Delegation said it remained flexible as to Article 2 until a solution was found, which might give a space to accommodate the word “held”. On Article 2 again, it saw much strength on what had been done on the TK document, particularly in paragraph 2.2. It noted that the IGC Retreat in Bangkok had been in line with that approach. It shared the views expressed by the Delegation of South Africa that one needed to take the TK text on beneficiaries and then craft an easy solution in the TCEs text, since the beneficiaries were going to be the same in both texts. On Article 3, it reiterated its position supporting a rights-based approach. It added that the measures in support of those rights could be integrated later. It noted that the IGC needed to work on the different options in Article 3 and find a suitable solution. The Delegation remained open on the issue of exceptions and limitations.

45. The Delegation of Nigeria felt stricken by the broad and unwieldy document that the Draft Articles constituted. It found that to be unusual, since the history of the IP system and the history of international treaties should provide guidance about how one might proceed successfully. The Draft Articles, as they looked, were very unlikely to produce successful outcomes. It hoped that during the present session, there would be a winnowing down to core principles and core obligations. It recalled that the IGC was not going to accomplish all that all wanted in one setting, and that the instrument or instruments ought to provide a stable foundation for what would be enduring work by WIPO on those issues, with the opportunity to build upon what had been accomplished after thirteen years. The Delegation recalled that no single treaty had been perfect at the time that it was completed. It emphasized that there had not been sufficient discussion distinguishing between the objectives of the treaty and the objectives of the TCEs protection itself. It said there was a mix of both in the text. It was necessary to identify those things that would be the focus of TCEs protection, namely the fourth objective (“Prevent the misappropriation and misuse of Traditional Cultural Expressions”), the eighth objective (“Encourage community innovation and creativity”), and the 13th objective (“Preclude unauthorized IP rights”). Those were the three core focal points of TCEs protection. Objectives one (“Recognize value”), and two (“Promote respect”) would be more the effect of an effective treaty. The Delegation highlighted that it was important to focus on what one wanted TCEs protection to do, as opposed to what the treaty might otherwise effectuate internationally. The former was the focus of the work of the Committee, and the latter was a function of how national laws would ultimately implement that. Regarding Article 1, there would be some need for creative papering over. The Delegation emphasized that the differences were not likely going to be resolved entirely but that it might still be possible to envisage replacing “are” by “include”. Such a change would give Member States the flexibility at the national level to devise their national laws in terms of subject matter, while giving perhaps some comfort as well to those delegations who would want a more specific definition. It added that in Alternative 2, the expression “are indicative of” could be similarly replaced by “embody” or “are reflective of”, as a way of massaging the differences, so that there would be room at the national level to implement international norms in a way that would be consistent with national law or national contexts. With respect to beneficiaries, the Delegation pointed out that the term itself of “beneficiaries” was inconclusive and problematic. “Beneficiaries” could relate to those who owned the rights and also to those who benefited like the community and the public. It was necessary to think about that distinction, and select either, an alternative or, inclusive language which might be more consistent with what one wished to accomplish. Regarding Article 3, the Delegation recalled that it was a proponent of a rights-based approach, but it noted, as other delegations had, that rights and measures were both needed. Such principle was consistent with what could be seen in other international instruments, not just in WIPO

but in other international bodies, which had a combination of both. It was not aware of any treaty anywhere that had rights but no measures or measures and no rights. It reserved its right to revert to other articles as appropriate.

46. The representative of *Tupaj Amaru*, commented on Article 1, stating that over years some essential elements thereof had been deleted: whereas the earlier text referred to a binding international legal instrument, the current text of draft articles did not include any provision to that effect. The representative insisted that an international legal instrument should protect TCEs and folklore in all tangible and intangible forms as the manifestation of common cultural heritage transmitted from generation to generation. In his view that would be coherent with the TK text. He representative commented further on the criteria for eligibility. He wished to substitute the criteria for eligibility under paragraph 2 of Article 1 with the following: “protection will be applied to all TCEs which are collective activities and constitute the living memories of indigenous peoples and local communities, and they belong to these people and local communities as intrinsic part of their culture, social and historical memory and identity. They are transmitted from generation to generation”. In relation to paragraph 3 of Article 1, the representative believed that given the international character of the document, it should exclude references to national law, because national law should be in line with international law.

47. The Chair asked whether any delegation supported the suggestion made by the representative of *Tupaj Amaru*. He noted that there was none.

48. The Delegation of Trinidad and Tobago, speaking in its own capacity, reiterated its fullest commitment to working with Member States in the present session to bridge any gap encountered in the course of the negotiations. It stated that a binding international legal instrument for the protection of TCEs, TK and GRs was particularly important for developing countries, as many of the world’s traditional peoples resided in such countries. With respect to the draft text, it advocated that works of mass should be accommodated under Alternative 2 of Article 1 dealing with the subject matter of protection. The Delegation expressed its view that works of mass did not fit in the copyright regime, but should be treated as TCEs. It believed that works of mass was a relatively new concept, which was becoming more important in both developed and developing countries and could be found across the world: the “Rio Carnival” in Rio de Janeiro, the “Notting Hill Carnival” in London, the “Phuket Carnival” in Thailand, and the “Mardi Gras” in New Orleans. The Delegation wished to support the recommendation for the WIPO General Assembly to renew the IGC mandate and convene of a Diplomatic Conference by 2015.

49. The Delegation of Brazil emphasized that the IGC was particularly important for developing countries and expressed its trust in the Chair’s stewardship in making progress in the work of the IGC. It was fully committed to conclude a legally binding international instrument or instruments in the three areas of the IGC’s discussions. The Delegation stressed that the conclusion of an international legal instrument for the protection of GRs, TK and TCEs required significant efforts from Member States. It stated that in the specific case of TCEs, delegations should focus on the primary objective of achieving an agreement that would prevent the misappropriation of TCEs and that would directly and effectively benefit indigenous peoples and local communities. The Delegation believed that the present discussion should concentrate on the core of the agreement, namely Articles 1, 2 and 3. In relation to Article 1, the Delegation believed that the intergenerational character of TCEs was its main distinctive element when compared with other forms of cultural expressions. It also observed that the inclusion of a non-exhaustive list of TCEs eligible for protection was crucial for purposes of clarity and certainty. It reiterated its willingness and flexibility to consider other alternatives to that of including a list of TCEs. The Delegation concluded that Member

States should always take into consideration the interests and expectations of the holders of TCEs.

50. The Delegation of Canada associated itself with the statement made by the Delegation of Belgium, speaking on behalf of Group B, and wished to make comments on objectives and principles. It thanked and commended Mr. Kebbell and Mr. Suchanandan for stepping up as facilitators. The Delegation was ready to engage constructively with other Member States during the present session. It agreed with the Delegation of Australia that certain concepts might be better placed in the preamble and supported the Delegation of the United States of America regarding the appropriateness of the term “artistic or literary” in the definition. In relation to the definition, the Delegation shared the flexibility of the Delegation of South Africa on the illustrative list and hoped that it could encourage Member States to return to that issue later on during the session. The Delegation indicated that as in the previous session, its country would welcome a renewed focus and discussion on objectives and principles. It added that the objectives and principles should be consistent with the operative provisions. It believed that providing an answer to the question of what is the harm that an instrument on TCEs would seek to address as well as other questions as raised in the informal paper by the Chair, would constitute a constructive and helpful exercise. The Delegation noted that in the objectives part, several paragraphs contained multiple ideas. It recommended that any given paragraph focused on a single and specific objective and that objectives were not to be repeated. It pointed out that a number of objectives and principles contained operative and substantive language that went beyond objectives and principles. The Delegation preferred that, without prejudice, any such language be addressed in the articles themselves. It further noted that important work was required on principles, as there were currently a number of one-word paragraphs in that section that needed to be expanded or otherwise redrafted, rearranged or reconsidered. On Article 1, the Delegation stressed that Member States needed a common understanding of what was meant by “traditional cultural expressions” and to what subject matter it referred before any definition was finalized. It called for an informed discussion on the meaning of the term “traditional cultural expressions”. Furthermore the Delegation stated that TCEs needed eligibility criteria that could be objectively tested in order to reduce legal uncertainty. On Article 2, the Delegation believed that beneficiaries must be precisely defined so as to allow any instrument to effectively pinpoint and address the issue at hand. In respect of Article 3, which the Delegation considered to be arguably the core of the document hinging upon Articles 1 and 2, it stated that the scope of protection and measures for implementing that protection must be addressed in a manner that would allow for national flexibility, preserve the public domain and be compatible with the existing IP framework, including the copyright system, in a balanced manner. The Delegation observed that those goals did not have to be and were not contradictory. It emphasized that Member States should strive to find complementarity between them so as to reach a mutually agreeable “win-win” solution. The Delegation noted the informative Report of the Indigenous Expert Workshop on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions (document WIPO/GRTKF/IC/25/INF/9). The Delegation was considering how that report could help the IGC in its work and looked forward to discussing those issues in the expert group meetings. It noted that it would propose alternative language to address some of those issues in a constructive manner.

51. The representative of ADJMOR said that the currently negotiated text needed to take into account any relevant international instruments, including the UNDRIP. The representative believed that the forthcoming instrument should be legally binding. He wished to comment on Articles 2 and 3. In respect of Article 2, the representative suggested that the beneficiaries should be both the indigenous peoples and local communities. He preferred that the brackets around the word “peoples” in Article 2 were removed, as the UNDRIP referred to “indigenous peoples”. The representative was concerned about the phrase “or as determined by national law or by treaty” in Article 2. The use of the word “or” bore an

optional character and could be harmful for indigenous peoples, should national laws not recognize their TCEs and TK. In relation to Article 3, the representative suggested that Option 1 and Option 2 be merged, because Option 2 was complementary to Option 1 and would strengthen it.

52. The representative of Arts Law Centre of Australia reminded that Member States had gathered for the IGC because the current level of protection for TCEs was inadequate and harmful as such to the culture of indigenous peoples. She informed that prior to the present IGC session, a group of Australian non-governmental organizations representing indigenous organizations, peoples and their clients, including the Copyright Agency Ltd., FAIRA, the Arts Law Centre of Australia, as well as Mrs. Terry Janke, an indigenous lawyer, who had done some work for WIPO in the past years, as well as Les Malezer from National Congress, had met to come to an agreed position and discuss their views with the Delegation of Australia. That was a beneficial preparatory work. The representative stated that in addition to looking at the specific texts of the TCE instrument, they also considered the process and came to the conclusion the IGC parties should consider the very limited resources of indigenous peoples and their organizations which made it extremely difficult for them to participate in an international process in a meaningful way. This situation had been worsened by the scarcity of means in the WIPO Voluntary Fund. She recalled that the IGC addressed matters that were central to indigenous peoples' cultural well-being and everyday lives. The representative requested that all participating parties considered the following two principles in their further deliberations: first, the need to set a date and make a commitment for the text to be finalized at a certain date rather than leaving way for an open-ended process; second, refrain from introducing new text to the TCE draft except in an attempt to resolve disputes between the various options. On specific articles, the representative urged parties to ensure that exceptions and limitations under Article 5 were drafted narrowly and were provided only on MATs and with the FPIC of indigenous peoples.

53. The representative of Tulalip Tribes noted that his comments on Article 5 were similar to those made by the representative of Arts Law Centre of Australia. He reminded that it was recognized by some countries at least either through constitutional law, statutory law or treaty law that indigenous peoples had a different set of rights than others. Some countries recognized that indigenous peoples had inherent rights that were not subject to state power or authority. The representative believed that the way Article 5 was constructed seemed to suggest that the rights were granted by the state, which was not *de facto* the case in many states. At least in those situations where indigenous peoples had inherent rights, any granting of exceptions and limitations should be with their FPIC and on MATs. He believed that that phrase could alleviate many difficulties found in the present negotiations: MATs would provide protection for States to make sure that their terms were also met, and FPIC would give protection for indigenous peoples to ensure that no harm was done. Giving the granting authority to the States would give them the right to interpret those terms. The representative pointed out that the main difficulty was to address the questions of who would interpret "harm" and what standards of harm would be used. In addition, he questioned what standard of moral offence would be used. He indicated that indigenous peoples had different ideas about what constituted "harm" especially when there were spiritual issues involved. The representative emphasized that Alternative 2 of Article 5, paragraph 2 seemed to be a paraphrase of paragraph 1. Regarding Option 2 of Article 6, the representative was confused over its meaning. He stated that the implications of the provision that economic aspects of TCEs or its protection shall or should be limited in time were unclear. He inquired whether protection was equivalent to economic exploitation and whether protection would cease if indigenous peoples no longer wished to exploit economically their TCEs and whether indigenous peoples could still benefit from it economically after the expiration of the term of protection.

54. The Chair stated that he anticipated that intensive discussion would take place on those technical issues at a later stage.

55. The representative of KEI suggested that consideration should be given to approaches based on the principle of liability. Such approaches would provide for remuneration in case of commercialization of a protected expression. An exclusive right would not necessarily be needed and would not provide for remuneration where the expression was used in works distributed or performed for free. An additional possibility would be to grant the right to remuneration only in respect of some types of commercial exploitation, such as for uses in motion pictures or recorded music where works generated more than a minimum amount of revenue. The representative was concerned that a *sui generis* IPR that protected TCEs could prevent non-commercial and free uses of works. He recognized that the community identified as an owner or a custodian of TCEs may have an interest in controlling or regulating the use of those TCEs, regardless of the issue of remuneration. But even in those cases, the regulation of the use did not necessarily have to be based on an IPR. For example, libel and slander were important restrictions of speech that operated independently of IPRs.

56. The Delegation of Namibia wished to speak on the issue of indigenous peoples and local communities, as it believed it was the main matter of contention. It recalled that during the negotiating processes of the UNDRIP, the Convention on Biodiversity (CBD) and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biodiversity (the Nagoya Protocol), there had never been any serious attempt to define the term "indigenous people". Article 33 of the UNDRIP provided for the criterion of self-identification of indigenous peoples. The Delegation pointed out that there remained clear ethnic differentiations within African societies which could not be reduced by any set of criteria to a single question of who was indigenous and who was not. A simplistic assumption of what an "indigenous people" was could not be workable in the African context. Even within groups which self-identified as indigenous peoples, TCEs were not uniformly distributed within a larger group but were specific only to some smaller subgroups. For that reason, the Delegation preferred the use of both terms "indigenous peoples" and "local communities". The Delegation pointed out that the purpose of the IGC was to prevent the situation where IPRs, created through the existing formal international IP system, allowed the misappropriation for individual benefit of creations or cultural expressions that were created communally, that is, within a community. Some of those creations were a millennium old and some of them were the costumes designed by a carnival group. The Delegation called for Member States to direct efforts at preventing the misappropriation for private gain of collectively created works. That approach would benefit the indigenous peoples, in its strictest definition, local communities as well as carnival groups, who might have designed a new costume and a new way of marching. That would specifically define the relationship between the newly created rights and the existing IPRs to expressions of creativity.

57. The Chair indicated that the questions raised by the Delegation of Namibia fell within the ambit of the technical discussion. He pointed out that further questions might arise in that regard, such as whether there were other forms of collective cultural expressions that might not fit within the single framework of protection. He echoed the view expressed by the Delegation of Namibia that there were different communities of people based on their historical realities that varied from community to community and from country to country. He referred to further examples of Australian and North American indigenous people who represented other groups and had different needs. He pointed out that one of the main difficulties for the Committee was to identify cultural expressions which were worthy of protection and distinguish them from those that, though legitimate, did not fall within the

scope of protection. The Chair noted that delegations had insisted that the Committee was dealing with the spiritual core of communities and indigenous people.

58. The Delegation of Japan believed that Member States should strike an appropriate balance between the protection of TCEs and their fair use. It proposed to add an objective with a view to striking a balance between the protection of TCEs and the utilization thereof by third parties. The text of the proposed additional objective read: "(xv) Utilization of TCEs by third parties: enable the utilization of TCEs by third parties." The Delegation referred to Article 1 of Copyright Act of Japan, which provided for both objectives: the protection of authors' rights and fair exploitation of cultural creations. It believed that TCEs were mainly in the public domain which enabled third parties to use them freely as long as such use was done in an appropriate manner. The Delegation did not support restrictions on private use of TCEs and believed that the misuse of TCEs was not frequent. It reiterated the importance of maintaining the right balance between the protection of TCEs and their fair use.

59. The Delegation of the Islamic Republic of Iran thanked the Government of Thailand for having hosted the Informal Meeting in Bangkok in July 2013. The discussions in Bangkok further facilitated better convergence and provided an opportunity for Member States to exchange views, especially on the issue of the future work of the IGC. The Delegation considered it was timely and helpful to convene such meetings in Geneva. It believed that it would facilitate the current negotiations. In relation to Article 1, the Delegation stressed that the definition of TCEs was at the heart of the instrument. The definition should be conclusive but at the same time with the maximum extent of inclusiveness. It was of the view that the introduction of qualifiers such "artistic or literary" jeopardized the inclusiveness of the definition. That was also true for the bracketed criteria for eligibility in Article 2(a), namely "creative intellectual activity". The Delegation believed that the fundamental element of the definition for TCEs which distinguished them from other sorts of cultural expressions was the fact that they were passed from generation from generation.

60. The representative of CAPAJ stated that Article 7 should establish clearly that the protection of TCEs of indigenous peoples was not subjected to any formalities. He insisted that Article 8 should ensure that sanctions applied to those who disturbed or impeded cultural creations of indigenous peoples. He suggested improving Option 1 of Article 9 in the following way: "The state shall take necessary measures to preserve the culture of indigenous peoples". The representative suggested that Article 10 used the word "shall", so that it read as follows: "Protection under this instrument shall etc.". He indicated that Article 10 should make reference to the UNDRIP. He suggested again deleting Article 11. With respect to Article 12, the representative stated that Member States must respect TCEs of indigenous peoples located in territories of other States.

61. The Delegation of the Russian Federation considered that Article 1, Article 2, and Article 3 were the key provisions for the discussion. With regard to Article 1, the Delegation preferred Alternative 1. The Delegation favored a separate discussion on the issue of the inclusion of words "artistic and literary". It stated that the list of TCEs under Article 1 should not include the "adaptations of the expressions" as referred to in subparagraph (e) nor provide specific examples of TCEs. In relation to the criteria for eligibility, the Delegation believed it was appropriate to include in paragraph 2 the subparagraphs (a), (b), and (c). In respect of Article 2, the Delegation stated that the beneficiaries of protection were indigenous peoples or local communities. It did not object to the inclusion of the phrase "or as determined by national law or by treaty who hold, maintain, use or develop the traditional cultural expressions as defined in Article 1". On Article 3, the Delegation preferred Option 1, according to which "the economic and moral interests of the beneficiaries would be safeguarded by national law." It believed that Option 1 was more flexible and enabled

Member States to determine the scope of protection in accordance with their national requirements.

62. [Note from the Secretariat: this part of the session took place after the expert group had met for the first time.]

63. The Chair reopened the floor on Agenda Item 6 and introduced “Rev. 1” of the text “The Protection of Traditional Cultural Expressions: Draft Articles” dated July 16, 2013. He suggested going through Rev. 1 article by article, and to begin with the Objectives and the suggested Preamble. He pointed out that the Preamble was a title that had been suggested by the facilitators without prejudice. That part had been intended to try to include broad principles that could be differentiated from the Objectives themselves. The Chair invited the facilitators to present Rev. 1.

64. Mr. Kebbell, speaking on behalf of the two facilitators, presented Rev. 1 to the plenary of the IGC. He stated that the facilitators had been impartial in preparing Rev. 1. They did not present their national views, but had attempted to take account of the views of all Member States. Their key principle in revising the text had been to balance the views of Member States and comments made by observers, and to balance the interests of holders and users of TCEs. Flexibility was a theme that had been reflected throughout the statements both in plenary and in the expert group, since the instrument would need to operate within diverse national environments. He said that the facilitators had tried to simplify the text and to focus on the key objectives relevant to the nature of the instrument, as an IP-like instrument. He apologized if there were some missed elements in Rev. 1, reminding that the facilitators had had a very limited amount of time to produce this revised text. Regarding the Objectives, the facilitators had attempted to identify the key IP-related objectives which the instrument was trying to achieve. That had resulted in four objectives. There had been some other objectives identified as important by Member States. Those objectives, how broad they would be, were important parts of the context in the instrument and had been placed in a preamble. Recognizing that the preamble needed further work, it had been bracketed. He noted that one bracket was missing at the end of the preamble section. He stated that Objective 1 came from Objective 4 in the original text. Objective 1 was meant to prevent misappropriation of TCEs and control ways in which TCEs were used beyond the traditional and customary context. The facilitators had split it into two parts for clarity. The brackets around “control” had been removed merely for the reason that the sentence did not make sense with the brackets around “control”. The facilitators had put brackets around the “s” of “Peoples”, because of the concerns expressed in relation to the use of the terms “People” and “Peoples”. Objective 2 came from Objective 13 in the old text and Objective 3 came from Objective 10 in the original text. Objective 4 came from Objective 8 in the original text. Objective 4 related to protecting and rewarding creation and innovation. The facilitators had reduced the original Objective 4, because they had been uncertain whether that objective was to intend to protect not only the underlining TCEs but also newly created TCEs, or to incentivize creation and innovation by indigenous peoples and local communities in line with a more classic IP policy objective which was to encourage them to create more TCEs. He apologized to the Delegation of Japan for missing its proposal in this regard. He offered to work with the Delegation to reflect it in the text. Regarding Article 1, Rev. 1 incorporated the draft circulated by the Delegation of Algeria, on behalf of the African Group. The comments which had been made in the plenary and the expert group had been taken into account as well. As requested by the Chair, the facilitators had made it available for delegations in order for them to look at the two versions of Article 1 at the same time, with the right-hand column reflecting the original version. The list in the original version had been moved to a footnote with a few brackets as requested by one delegation. There had been a mix of views amongst Member States on that issue. Some thought that the inclusion of the list ran the risk of excluding some TCEs, while others believed that it was important to clarify

the types of TCEs which were definitely covered under the instrument. Therefore, the facilitators had put it in a footnote as a possible way forward for delegations to consider. Another question would be whether delegations would be comfortable enough to agree to remove the list entirely. The words “are/include” had been put in brackets in the version derived from the proposal made by the African Group, because there was still no consensus on whether the definition should be inclusive. The facilitator reported that there had been some discussions on the use of “expressions” or “works”, so they had been put in brackets. He corrected that “work” should be replaced by “works”. The facilitators had tried to simplify Article 2. They had rearranged the text to clarify that the beneficiaries were “Indigenous People[s] or local communities who hold, maintain, use or develop their TCEs”. He acknowledged that there must be some links between TCEs and the persons who benefited from their protection. Another option was to use “distinctive to or associated with the traditional culture, knowledge or heritage of the beneficiaries” in Article 1 to show such links. The facilitators would like delegations to focus on the structure and not only on the precise wording. The facilitators had also incorporated Article 2.2 from the TK text, as suggested by some delegations. The facilitators had reduced and simplified Article 3. They had merged Options 1 and 2 in the old text by adding some concepts in Option 1 into a new text, such as “as appropriate”, “according to national law” and “in a reasonable and balanced manner”. The list of actions that had been prohibited had been moved into a footnote to provide clarity on the meaning of “use”. The facilitators had tried to meet the need for a flexible instrument that would provide flexibility at the domestic level. Intentions were to leave implementation with a right-based or measure-based measure to the domestic level. Regarding Article 5, the facilitators had put brackets around “or” between “traditional” and “cultural context” as proposed by one delegation. They had made an attempt to, as requested by a number of delegations, to merge Alternatives 1 and 2 in Article 5. That merging operation clearly needed further work. He noted that the current draft of Article 5.3 focused on the use of TCEs. It differed from the formulation of the three-step test which normally focused on whether the exceptional limitation itself would meet the test. There had been a comment on the three-step test providing certainty or not. The facilitator wondered whether it would provide certainty if it was used alone, given that it was designed in circumstances that would be quite variable. He also wondered whether the same certainty would be obtained if the three-step test was merged with other ideas.

65. The Chair thanked the facilitators and opened the floor for comments on the preamble and objectives in Rev. 1. He proposed that comments from participants focus on whether the Objectives and this Preamble had captured all the proposals or whether there were additions and omissions that would give further guidance to the facilitators in view of the next round of discussions within the expert group. [Note from the Secretariat: all delegations that made a statement thanked the facilitators for preparing Rev. 1.]

66. The representative of UNEMRIP had a concern on the brackets around “s” of “Indigenous Peoples” throughout the text. He requested to remove the brackets around “s” in order to harmonize the text with the UNDRIP. He proposed to add “and” between “Indigenous Peoples” and “local communities” in paragraph 3 of the Preamble. He reminded that the WIPO Secretariat had been one of the participating members of the United Nations Inter-Agency Support Group on Indigenous Issues and that WIPO was deeply involved in promoting the rights of indigenous peoples.

67. The Delegation of El Salvador expressed that it preferred “Indigenous Peoples” in plural. With regard to the Objectives in the original version, it recalled that the exercise had been to look at the different objectives and try to identify what were real objectives and what could actually be contained in a preamble. It was very grateful for the effort of the facilitators in this regard. However, a new objective proposed by the Delegation of Japan was missing. It believed that that objective was very useful.

68. The Chair proposed to restore the brackets around “Peoples” so there would be no need to discuss the plural at the present stage. It was understood that that particular issue resulted from a reservation made by some delegations. The Committee would revert to the issue at an appropriate time.

69. The Delegation of the EU, speaking on behalf of the EU and its Member States, noted that the word “preamble” prejudged the nature of the instrument. It requested that the title “Preamble” be deleted. With regard to the text falling under that title, it had not had time yet to reflect on all of it. It reserved its position regarding the facilitators’ statement that clarified that the whole content of the so-called preamble would be bracketed. With regard to the Objectives, the Delegation had not had time to fully study them in their current form. It would therefore request that they be placed under brackets and reserved its right to comment on them at a later stage.

70. The Delegation of Algeria, speaking on behalf of the African Group, proposed to add “and misuse” after “misappropriation” in Objective 1(a). It proposed to merge Objectives 3 and 4 into a new Objective 3 as follows: “to promote and reward tradition-based creativity and innovation, encourage intellectual and artistic activities, research and cultural exchange on fair and equitable terms to Indigenous People[s] and local communities.”

71. The representative of *Tupaj Amaru* stated that the issue of defining “indigenous peoples” was an issue which had already been dealt with in the past during the negotiating process regarding the UNDRIP. He noted that the Delegation of the EU seemed to be the only group of Member States opposing the recognition and acknowledgment of indigenous peoples. He also deplored that the Delegation of the EU was not supportive of the negotiating process by arguing that it needed more time to study the text. He claimed that, in his view, the EU looked as a group of neocolonial powers reminiscent of old Europe.

72. The Chair reminded the representative of *Tupaj Amaru* to focus on the Objectives and Preamble of Rev. 1 at the present stage of the proceedings.

73. The representative of CISA supported the comments made by the representative of *Tupaj Amaru*.

74. The representative of FAIRA proposed to insert “and accessible” after “effective” in Objective 1. He proposed to replace Objective 3 with “to promote intellectual and artistic freedom, research practice and cultural exchange on mutually agreed terms which are fair and equitable and subject to the free, prior and informed consent of Indigenous Peoples and local communities”.

75. The Delegation of Australia supported the text proposals made by the representative of FAIRA.

76. The representative of Tebtebba Foundation, speaking on behalf of the Indigenous Caucus, supported the proposal made by the representative of FAIRA. She proposed to insert “and accessible” between “effective” and “enforcement measures” in Objective 1. She suggested inserting “and misuse” after “misappropriation” in Objective 1(a) as proposed by the Delegation of Algeria, on behalf of the African Group. She supported the textual proposal made by the representative of FAIRA on Objective 3.

77. The Delegation of Sri Lanka believed that the beneficiaries were not yet clearly defined in Article 2. It believed that this definition needed to be appropriately reflected in the Objectives and Preamble until the IGC decided for sure who the beneficiaries were. It proposed two options: either to replace “Indigenous People[s] and local communities” with

“beneficiaries”, or to insert “or/and any other beneficiaries identified by the instrument” after “Indigenous People[s] and local communities”.

78. The representative of ADJMOR supported the comments made by the representative of Tebtebba Foundation, on behalf of the Indigenous Caucus. His concern was that “s” after “People” was still in brackets. However, he understood that there would be further discussion on that issue. He believed that those brackets would eventually be lifted.

79. The Delegation of the Syrian Arab Republic stated that there should be an explanation of terms which might not be easily understood by every delegation, such as “Indigenous Peoples”, and “local communities”. It needed a clear definition of each of those categories. It was concerned about the fact that Rev. 1 had been made available in English only.

80. The Chair noted the concern of the Delegation of Syrian Arab Republic. However, he indicated at the beginning of the session that the revisions during the week would be in English because of the very dynamic nature of the revision process. He stated that there would be a time for proper drafting and legal scrub procedures at the stage of reaching agreement on core issues.

81. The Delegation of Brazil reserved its position for further comments since it had not been able to contact its capital on Rev. 1. It was of the feeling that the first paragraph of the Preamble was strange since it only recognized that indigenous peoples and local communities considered the value of their cultural heritage. It suggested evaluating the possibility to rewrite the text with the view to involve the States in this acknowledgment. It suggested adding “and” between “Indigenous People[s]” and “local communities” in paragraph 3. It proposed to insert “traditional” before “cultural expressions” in paragraph 6. Regarding the Objectives, the Delegation, speaking on behalf of the DAG, supported the proposal made by the Delegation of Algeria, on behalf of the African Group.

82. The representative of Tulalip Tribes supported the proposal made by the representative of FAIRA on Objectives 3 and 4, which was supported by the Delegation of Australia. He wondered whether the fair and equitable test itself was fair and equitable. He believed that indigenous peoples and local communities had to use PIC and MATs to protect their TCEs against any misappropriation and misuse. The rights and interests, as well as the fair and equitable test, should not burden the holders of TCEs, but the demanders. Fairness and equitability should be key principles underlying the protection of the rights and interests of the TCEs holders.

83. The Delegation of Canada was pleased with the constructive spirit of discussions which had led to Rev. 1 and its streamlined text. Without prejudice to the nature of the outcome, the Delegation welcomed the addition of a so-called preamble that grouped together some elements of the objectives that had been more declaratory in nature, and also appreciated that the Objectives themselves currently focused on concrete policy objectives. Nevertheless, it could not afford to rush the discussion of those objectives. Success depended on a clear and common understanding of the policy intent expressed in the Objectives, and how the substantive provisions advocated in Articles 3 and 4 flowed from and supported that policy intent. The Delegation would thus welcome continued discussion of the Objectives in relation primarily to Articles 3 and 4, and reserved its right to further consider the revised Objectives in that light.

84. The Delegation of Philippines supported the proposal on merging Objectives 3 and 4 made by the Delegation of Algeria, on behalf of the African Group, which was also supported by the Delegation of Brazil, on behalf of the DAG. It suggested including the concept of PIC as suggested by other delegations and representatives of observers. It reserved to revert to the Objectives after consultations with its capital.

85. The Delegation of Japan supported the comments made by the Delegation of the EU, on behalf of the EU and its Member States. It reserved its rights to revert to the text with further comments, as Rev. 1 was completely new in its view. The Delegation needed more time to study it.

86. The Delegation of Poland, speaking on behalf of the CEBS, said that the IGC had not reached a stage when the nature of the instrument could be prejudged. It supported the Delegation of the EU, speaking on behalf of the EU and its Member States, to delete the word “preamble”. It needed more time to review the content of the preamble and some of its Member States needed to consult their capitals. It proposed therefore to bracket the whole preamble. Regarding the objectives, it needed more time to review them. It noted that some terms which had been previously bracketed were not bracketed any more, such as “control”. It also needed more time to examine such terms as “fair and equitable”. It supported the bracketing of the word “Peoples”.

87. The Chair clarified that the word “Peoples” would be subject to further consultations with a view of reaching an agreement on its use.

88. The Delegation of Morocco retained its rights to make further comments after a careful study of the text. It suggested including “nations” after “local communities” as reflected in Article 2. It supported the proposals made by the Delegation of Algeria, on behalf of the African Group.

89. The Delegation of the United States of America noted that there were a number of instances where the creative interpretations that resulted into Rev. 1 did not fully capture key elements of the discussion in the expert group. With respect to the Preamble, as requested by the Chair, the Delegation had discussed a number of objectives that it had viewed as having sufficient value to inform the work of the IGC to be retained in the text. It had been heartened to see that many of the concepts embodied in those principles had been retained in the text. Nonetheless, the Delegation was concerned that those objectives had been redrafted in the format of preamble recitals and had been reorganized into a new so-called preamble. It noted that there had been no discussion, much less consensus, to redraft and reorganize those objectives into a preamble, which it believed prejudged the outcome of those discussions. Therefore, the Delegation requested that the objectives at issue be returned to the Objective section in their original wording, including the related headings. With respect to the other Objectives, it noted that there had been little or no discussion of those objectives in the expert group meeting. Accordingly, the objectives currently set forth under the heading “Objectives” should be placed in brackets for further consideration.

90. The representative of CAPAJ supported the proposals made by the representative of Tebtebba Foundation, on behalf of the Indigenous Caucus and the representative of FAIRA, which were also supported by the Delegation of Australia. He welcomed the inclusive expression “to provide Indigenous People[s] and local communities” in Objective 1. He stated that “to promote intellectual and artistic freedom” in Objective 3 brought the issue of free determination. When a third party, either an academic organization or an independent researcher, was engaged in research concerning indigenous peoples and local communities, it was reasonable to expect that they respect the customary rules and laws of indigenous peoples and local communities. He reminded that research often resulted in misappropriation. It was important that cultural exchange be fair and equitable, because such so-called exchange very often occurred on paternalistic grounds with an attempt to integrate indigenous peoples into mainstream societies.

91. The Delegation of Egypt noted that every time when the IGC intended to take a step forward, it somehow had been pushed back. That exceeded the patience of the Delegation

and made it believe that there was no desire on the side of some Member States to reach an agreement. The IGC had spent a very long time on discussing, but it seemed to be regressing rather than advancing. The Delegation fully respected the rights of indigenous peoples and local communities to be benefited from their GRs, TK and TCEs. However, it believed that “nations” should be added after “indigenous peoples and local communities” as proposed by the Delegation of Morocco. Alternatively, it proposed to replace “indigenous peoples and local communities” with “beneficiaries” so as to avoid the repetition. The Delegation supported the statement made by the Delegation of Algeria, on behalf of the African Group. It proposed to add “and the rights of beneficiaries over their traditional cultural expressions” after “the diversity of cultural expressions” in paragraph 6 of the Preamble, because it believed that that instrument was a mechanism to establish the rights of beneficiaries. It proposed to replace “preclude” with “prevent” in Objective 2. The Delegation reserved its rights to submit further proposals at an appropriate time.

92. The Delegation of Montenegro supported the statement made by the Delegation of Poland, on behalf of the CEBS.

93. The Chair opened the floor on Article 1 of Rev. 1.

94. The representative of Tebtebba Foundation, speaking on behalf of the indigenous caucus, thanked the African Group for its proposal on Article 1. She was of the view that though it was helpful in moving the discussion along, there were some words that were missed out and which had been agreed on during the informal group discussions. With respect to forms of “creative endeavor”, she noted that the Delegation of Australia had proposed the inclusion of “spiritual” and requested that this word be reinserted in the text. Regarding Article 1.1 (a), the representative also noted that there had been agreement on the inclusion of “between generations” alongside “passed from generation to generation”, as this addressed the concerns of the stolen generations where assimilation policies had prevented the transmission of TCEs from one generation to the next. To promote consistency and legal certainty in the text, she suggested the insertion, in Article 1.1 (c), of “collective” before “cultural or social identity” as this was more descriptive and more accurate. The representative further suggested the use of the phrase “held, maintained, controlled, used, protected and developed” in place of “[held] or maintained, used and developed” to ensure consistency with Article 31 of the UNDRIP. She proposed the insertion of “with the full and effective participation of the beneficiaries” at the end of Article 1.2 as it was consistent with the UNDRIP.

95. The Delegation of Australia supported the suggestions of the representative of Tebtebba Foundation on behalf of the Indigenous Caucus. It further proposed the replacement of the word “its”, in Article 1.1.c, with the term “the beneficiaries”.

96. The Delegation of El Salvador expressed its gratitude to the African Group for its proposal regarding Article 1 and was of the view that the proposal had made a great contribution to the discussions that were taking place. It pointed out though that historically, for various reasons, there was a lost generation or a diaspora in El Salvador. This historical fact would make it conceptually impossible to apply the phrase “from generation to generation” as contained in the African Group’s proposal, to this lost generation. It therefore expressed its preference for the use of a term which took into account the peculiarities faced by its country, like “between generations”. It noted that TCEs were transmitted from grandparents to their grandchildren rather than from one generation to the next.

97. The representative of *Tupaj Amaru* was of the view that the original Article 1 had been cut up and divided into two parts. He explained that, previously, there had been a consolidated text with the various aspects of TCEs defined. This was, however, now

completely confused as all elements within the text, from (a) to (e), were now moved to footnotes. He sought clarification from the WIPO Legal Counsel as to whether the definitions in footnotes were legally binding in a legal text. He further pointed out that the current rearrangement of the text seemed to have undermined what was contained in the previous text and he, therefore, could not support Article 1 as revised.

98. The Delegation of Colombia thanked the facilitators for their work and the African Group for its proposal. However it requested that the expression "artistic and literary" in option 1 of Article 1.1 be placed within square brackets. The Delegation expressed its support for the intervention made by the Delegation of El Salvador with respect to retaining the word "between" in Article 1.1.a, for the purpose of reflecting the concern expressed with respect to the lost generations as well as how, sometimes, cultural expressions were expressed or transferred from grandparents to grandchildren. It also expressed its support for the inclusion of the term "collective" in Article 1.1.c, as proposed by the representative of Tebtebba Foundation, on behalf of the Indigenous Caucus.

99. The Delegation of India thanked the facilitators for their work and noted that it had some concerns with Article 1. It observed that despite the seeming attempt to make the article as simple as possible, there was an emerging lack of clarity. It noted that though it was pleased with the proposal from the African Group, it still had concerns with it as well. The Delegation expressed the view, with respect to the option on the right-hand column in Article 1, that the definition of TCEs needed to be an inclusive one. For this reason, it proposed the insertion of "include" in place of "are", after "traditional cultural expressions". Furthermore, it was not comfortable with the phrase "artistic and literary" being kept within the text despite the list being placed in the footnotes and requested that the brackets around "artistic and literary" be retained. The Delegation believed that there was a need for some guiding principles within the definition which would make it easier for nations to implement it, and was of the view that there was a need for the illustrative lists as contained in the footnotes to be reflected in the text. It therefore proposed that, as a minimum, the following be included after the phrase, "which pass from generation and between generations" in Alternative 2 of Option 2: "including, but not limited to, (a) phonetic and verbal expressions; (b) musical or sound expressions; (c) expressions by action; (d) tangible expressions; and, (e) adaptations of the expressions referred to in the above categories". It noted that though these elements would be made part of the text, the lists, illustrating what these elements would be, could be retained in the footnotes. Regarding the criteria for eligibility, the Delegation reiterated its view that this must be a stand-alone provision in the text. It proposed the insertion of "or" after Article 1.2 (a). It also requested that the bracket around "held" in Article 1.2 (c) be retained as it created problems with reference to its link to Article 2. With respect to the proposal from the African Group, contained on the left-hand column of Article 1, it noted that in principle it would like to study the proposal so as to find a meeting point. It noted that its major concern was with respect to the use of the phrase: "creative endeavor such as artistic and literary expression/work". It was of the view that a reading of the phrase without the explanations contained in the footnote, gave an impression that the scope was being tightened. It acknowledged that the use of the phrase "such as" was helpful but reiterated that some of the items used in the illustrative list needed to be reflected in the definition so that it gave an impression that TCEs were beyond literary and artistic works. With respect to Article 1.1(a), 1.1(b) and 1.1(c), the Delegation noted that there were several positive elements therein and expressed its support for their inclusion. It expressed its support for the inclusion of "or" immediately after "held" in Article 1.1(c), but, requested that "held" be kept in square brackets. After "maintained, used", it requested that the word "or" be used instead of "and". The Delegation expressed its reservation regarding the replacement of Article 1.1(c) with the proposal of the Indigenous Caucus supported by the Delegation of Australia because, though this proposal was in line with indigenous groups and the UNDRIP, there was a need to take local communities into account. The Delegation believed that there

was a need to use language which took care of the positions of both indigenous people as well as local communities. It, therefore, requested that Article 1.1(c) be kept as it was. The Delegation was open to the retention of “with collective or social identity”. Generally, the Delegation expressed its preference for the definition to be inclusive.

100. The Delegation of the EU, speaking on behalf of the EU and its Member States, expressed its preference for the definition provided for in the right-hand column of the table in Article 1, and requested that the left-hand column be placed in brackets for consideration as a separate option. With regard to the right-hand column, the Delegation reiterated its support for the inclusion of the phrase “artistic and literary” which was currently placed in brackets, and expressed its preference for Alternative 1 in Article 1.1. On Article 1, the Delegation further noted that it did not support the inclusion of the term “and knowledge”, which was in brackets, as it believed that this referred to TK and would consequently be better served in the TK text. It expressed its support for the clause on “generationality” and sought clarification from the facilitators on the phrase “which passed from generation and between generations”. It wondered as to whether the facilitators had erred in their draft of the phrase. It welcomed the move of the illustrative list to a footnote and thanked the facilitators for their help in this regard. With regard to Article 1.2(b), it was of the view that the deletion of “associated with” would make the link between TCEs and the “cultural and social identity” clearer, and requested that this phrase be deleted. The Delegation noted that it had not had sufficient time to study the left-hand column in detail and requested that it be placed in brackets. By way of preliminary remarks, however, the Delegation noted that the left-hand column defined TCEs regardless of the form in which they were embodied. It was of the view that a strong link needed to be made between the traditional culture and the embodiment of the TCEs. It therefore requested that the phrase, “regardless of the form in which they are expressed, illustrated or embodied”, be placed in brackets. The Delegation further proposed the insertion of “may also be determined where applicable by regional law” in Article 1.2 of the left-hand column.

101. The Delegation of Trinidad and Tobago sought clarification on the weight which was placed by the facilitators in placing the non-exhaustive list in Alternative 2 of Article 1.1 on the right-hand column, in a footnote or an agreed statement. It expressed its preference for the non-exhaustive list being placed within the main article itself. The Delegation alternatively sought clarification on whether the indicative list, as proposed by the Delegation of India, could be placed in the main text itself. The Delegation was of the view that without this indicative list in the main text, the provision, as it stood, would be quite vague and the precise definition of TCEs, difficult to interpret. Further, with respect to the examples, it noted that if the examples were not placed in the language of the treaty, the definition would be too loose and would fail to offer guidance to national legislators with respect to the precise definition of what constituted a TCE. The Delegation reiterated that the difficulty of interpretation was its major concern regarding the exclusion of examples from the text. The Delegation sought clarification on why the examples as contained in (b) and (c) within the footnote were retained in square brackets. It recalled that some delegations had expressed the view that (b) and (c) could be covered by the Beijing Treaty on Audiovisual Performances. It however noted that while the Beijing Treaty covered indigenous performances and related to the right to perform, the present treaty covered a broader scope than the Beijing Treaty in that it dealt with the permission granted by indigenous performers, who were themselves the prime beneficiaries of the treaty.

102. The Delegation of Canada welcomed the proposed reconsolidation of the definition of TCEs and the associated criteria for eligibility in Article 1. It was of the view that this was a positive way forward, and it expressed its willingness to proceed on the basis of the new proposal without prejudice, however, to the nature of the outcome of the negotiations. It expressed its preference for the use of the word “are” instead of “include”, immediately after

“Traditional cultural expressions”, to ensure certainty. It was of the view that the use of “creative endeavors such as” was a good basis on which to reach a compromise with respect to the inclusion of the phrase “artistic and literary”. It noted that it preferred the use of “expressions” rather than “work” after the phrase “artistic and literary” as this was in line with the focus of the IGC’s discussions. With respect to the term “embodied”, the Delegation called on delegations to reflect on the meaning of the term and was of the view that the inclusion of an illustrative list of TCEs as a footnote was useful. It proposed the insertion of the word “that” between “and” and “are” at the very end of the chapeau of Article 1.1 and, consequently, the deletion of the words “which is” in Article 1.1(b). It requested that the phrase “or associated with” in Article 1.1(b) be bracketed to reflect the original text. With respect to Article 1.1(a), the Delegation expressed its support for the interventions made by the Delegations of Colombia and El Salvador regarding the insertion of the term “between generations”. With respect to Article 1.1(c), it suggested that the word “its” be replaced by “their” which could entail the need for the word “identity” to be pluralized.

103. The Delegation of the United States of America expressed concern regarding the title of Article 1. It was of the view that the title’s delimitation as an “article” prejudiced the outcome of the negotiations, and it requested that the title be placed in square brackets. The Delegation further noted that though the proposal made with respect to Article 1 by the Delegation of Algeria on behalf of the African Group had been discussed in informal discussions and had received a favorable reception, there had only been a limited discussion of the proposal. It was of the view that many delegations were still studying the proposal and no consensus was reached for its inclusion in the revised working document for the meeting, nor to include it as a substitute to the existing text. To this end, the Delegation noted that it was not in a position to accept the facilitators’ proposition for the proposal to become the working basis for moving forward. It requested the full reinstatement of the original Article 1. It recognized though the value of the proposal made by the African group and requested, subject to the agreement of other delegations, for it to be included at the end of the existing working text as a bracketed additional proposal. The Delegation requested for the word “indicative” in Alternative 2 of Article 1.1, be placed in brackets. It further requested that paragraph (b) and (c) of the footnote be placed in brackets pending the further discussion of the text’s relationship with other WIPO instruments. It was of the view that, as reflected in the plenary discussions, there was no consensus on moving the non-exclusive list to a footnote. With respect to the format of the revised Article 1, the Delegation noted its preference for substance over form and was of the view that in the current text, the use of matrices was not standard and had made the text difficult to comprehend. It therefore requested that the text be returned to the standard WIPO practice which involved the retention of textual formulations and proposals in standard formats.

104. The Chair clarified that he had requested the facilitators to place the text in a matrix form during the working group, for the benefit of those who would review it and compare. This was not intended to prejudice the eventual format. He further noted that there was no intention to submit a matrix to the General Assembly, as it was merely being utilized in Rev. 1 to assist to speed up the Committee’s work. The Chair pointed out that some delegations had indicated a preference for the right side of the matrix, which was the original text, or for the left side of the matrix, which was the African Group text. He hoped that the discussions on the matrix would be of assistance to the facilitators in taking the text forward.

105. The Delegation of Brazil, speaking on behalf of the DAG, expressed its support for the proposal of the African Group. It requested, however, that the phrase “of any kind” in Article 1.1 be replaced with the words, “or a combination thereof”, to take into account the possibility of having a combination of tangible and intangible expressions. The Delegation further requested that the text “artistic and literary” be bracketed as there was no consensus on the text. It sought clarification as to why the text in Article 1.1 a) was bracketed, as it

understood that the discussions had shown that there was common ground on the fact that TCEs were passed on from generation to generation. It therefore requested that the brackets be removed from the paragraph. The DAG was of the view that the formulation was one of consensus and further expressed its support for the proposal by the Delegation of El Salvador to insert “between generations” in Article 1.1(a). The Delegation of Brazil, speaking in its national capacity, indicated that it would like to have a discussion on the proposal made by the Delegation of India with respect to the integration of the list of examples into the proposal made by the African Group.

106. The Delegation of Poland, speaking on behalf of the CEBS, was appreciative of the revised format of Article 1. It noted that it had made it much easier to compare the two options contained in the table. The Delegation requested that the proposal made by the African Group be placed in brackets. Based on the two options in Article 1, it noted that the differences between some terms as used in the respective texts needed to be clarified, such as, the difference between “creative endeavor” and “creative activity”. The Delegation also noted that there were some terms which it supported in the previous text, and which were missing from the African Group proposal, such as, the TCE feature of being “unique”, which it noted was an important feature in determining TCEs which were to be protected. It expressed its preference for keeping the terms contained in Article 1.1(c) cumulative and requested the insertion of the word “and” in place of the word “or”. The Group expressed the view that the text on the right side of the table was the preferred one to proceed with and welcomed discussions on this text. Regarding the option contained on the right side column, the Delegation expressed its support for Alternative 1 in Article 1.1. It pointed out that the word “knowledge” was not appropriate for TCEs and requested a clear distinction to be made in the regulation of TK and TCEs. It expressed its support for the notion of “intergenerationality” and noted its preference for the language as used in document WIPO/GRTKF/IC/25/4; “which pass from generation to generation and between generations”. It welcomed the enumerative list of examples which were placed in the footnotes by the facilitators and expressed its support for the inclusion of the term “heritage” in Article 1.2(c) as the transmission of TCEs from generation to generation was what constituted an heritage. The Delegation emphasized that the criteria for eligibility were to be treated cumulatively.

107. The Delegation of the Islamic Republic of Iran thanked the facilitators for their efforts and associated itself with the statement made by the Delegation of Brazil on behalf of DAG. It welcomed the proposal by the African Group on Article 1 and while acknowledging the improvement noticeable in the proposal, was of the view that there was still room for further improvement. The Delegation expressed its preference for the verb “include” instead of “are” in Article 1.1. It also requested the retrieval of the phrase “a combination thereof” after the word “tangible or intangible expressions”. It requested the insertion of brackets around the phrase “artistic and literary”. The Delegation reiterated its view that the main element of a definition of TCEs was a passing from generation to generation and therefore requested that the brackets in Article 1.1(a) be removed. It was flexible regarding the form of the indicative list. However, it believed that the main categories, as proposed by the Delegation of India, should be placed within the main text of the Article.

108. [Note from the Secretariat: The Vice-Chair, Ms. Grazioli, was chairing the session at this point]. The Delegation of Australia saw some value in the text inserted in the left-hand column. The Delegation requested to have it included in the options and alternatives for further consideration. The Delegation wished to retain the term “and” after the letter (b) and (c), since it was of the view that the criteria for eligibility ought to be cumulative in any event. The Delegation proposed that the brackets be removed around the term “generation to generation” since Rev. 1 referred to “between generations both in the left-hand and right-hand columns.

109. The Delegation of Mexico welcomed the proposal made by the African Group regarding Article 1. It was prepared to study it carefully, and proposed to make a combination with all the elements that were already in the definition, as well as those included in the footnote. It requested that “works of mas” be translated into Spanish, as it made clear that it understood “mas” as tangible objects. In that line, “works of mas” should not be listed under “expressions by action”. The Delegation also requested clarification from proponents of the terms “tangible spiritual forms”.

110. The representative of FAIRA thanked the Delegation of Australia for its support. In reply to the request for clarification made by the Delegation of Mexico, he highlighted the spiritual character of the subject matter from an indigenous perspective, as it was related with beliefs, cosmology and cosmogony that informed and guided the life of the indigenous peoples. He emphasized that it was hard to quantify or put square boxes around this kind of subject matter.

111. The Delegation of Thailand noted with great appreciation the useful effort made by the African Group which resulted in the new language as appeared in the left-hand column. However, the Delegation, like many other delegations who had spoken before, needed more time to consider this draft carefully. Regarding the right-hand column, the Delegation noted that language had been reviewed and revised several times over the year, without reaching any consensus. It was concerned that the entire list of examples had been moved to a footnote. It believed that the headings of the examples could be re-integrated into the text. Finally, considering the usefulness of the two columns, the Delegation proposed to keep both columns together with all the comments expressed in plenary for further consideration of Article 1, either at the present session IGC or later on.

112. The Delegation of Trinidad and Tobago wished to reply to the request for clarification expressed by the Delegation of Mexico. The Delegation shared its concern regarding translating some terms from English into Spanish. It stated that the “works of mas”, as it had been said in previous sessions, comprised both intangible and tangible characteristics. It would necessary to keep both of these characteristics together. The Delegation referred to a DVD presentation that tried to clarify the concept of “works of mas” and wished to share it with the Delegation of Mexico.

113. The Delegation of Algeria, speaking on behalf of the African Group, thanked all the delegations that had supported its proposal and those delegations which had welcomed it. The Delegation was ready to improve that proposal through formal or informal consultations with delegations in order to make it more inclusive and ensure it would reflect the concerns expressed by delegations and move forward on Article 1.

114. The Delegation of India reverted to its earlier intervention on the right-hand side column and expressed preference for Alternative 2. In Alternative 1, the Delegation wanted to put square bracket around “embodied”, just as in Article 2. The Delegation wanted to clarify that it wanted the word “and knowledge” to be retained and the brackets removed. Regarding the left-hand column, the Delegation expressed concerns about the terms “artistic and literary”. It wanted to put them between brackets.

115. The Vice-Chair opened the floor on Article 2 of Rev. 1.

116. The representative of CAPAJ referred to “local communities” in Article 2. He said that during the discussion that took place on those within the Indigenous Caucus, it had been understood that many local communities could also be characterized as indigenous peoples, as reflected in the interpretative work that took place before and after the adoption of the

UNDRIP. He recommended therefore the term "and" rather than "or", as it would better reflect the link between both.

117. The Delegation of Mexico supported the suggestion made by the representative of CAPAJ.

118. The Delegation of Bangladesh wished to keep "nations" among beneficiaries. While the Delegation supported the inalienable rights of the indigenous peoples, it stated though that there were countries where there were no identifiable indigenous peoples that could be distinguished from the whole nation. Furthermore, the Delegation expressed support for Article 2.2.

119. The Delegation of Barbados welcomed the intervention made by the Delegation of Bangladesh with regarding to keeping nations among beneficiaries. More generally, Article 2 should be drafted in a way that would allow flexibility in defining the beneficiaries. Given the heading of Article 2, it would be more impactful if the Article 2.1 were to open with the statement: "the beneficiaries of protection in respect of traditional cultural expressions shall be indigenous peoples and/or local communities or nations who hold, maintain etc..". Regarding the alternative between "and" and "or", the Delegation supported the use of the term "and".

120. The Delegation of Canada referred to Article 2.1. The Delegation preferred the original formulation as found in the original text, which included brackets around the term "local communities". The Delegation wished to have those brackets reinstated. The Delegation had reservations regarding the term "nations". Regarding Article 2.2 that ought to remain between brackets, the Delegation remained concerned that the formulation was incompatible with the objectives of the instrument and specifically contradicted paragraphs 1(b) and 1(c) of Article 1, as well as Article 2.1.

121. The Delegation of India expressed concerns on Article 2 which overlapped with Article 1. The Delegation argued that what had been included in Article 1 did not need to be reflected back in Article 2. In this vein, it wanted to put brackets around "hold, maintain, use or develop their traditional cultural expression of part of their cultural or social identity" in Article 2. The Delegation was open as to whether to include "nations" among the beneficiaries. However it expressed preference for their inclusion under Article 2.2, but rephrased in line with the language that was to be found in the original text: "where traditional cultural expressions were not specifically attributable to or not confined to indigenous or local community, or it was not possible to identify the community that generated it, then Contracting Parties might define any national entity defined by national legislation as beneficiaries". Such a formulation would clarify the purpose of Article 2.2.

122. The Delegation of Algeria, speaking on behalf of the African Group, proposed to merge both paragraphs by replacing paragraph 2.2 by "or an entity defined by national legislation as a beneficiary" and adding those terms at the end of paragraph 2.1.

123. The Delegation of the Islamic Republic of Iran supported the statement made by the Delegation of India regarding the reformulation of paragraph 2.2.

124. The Delegation of the United States of America requested the terms "Article 2" be placed between brackets. With respect to paragraph 2.1, in agreement with the Delegation of Canada, the Delegation requested that the term "local communities" be placed in brackets, pending further clarification of those important term that, it noted, had been subject to a great deal of discussion. With respect to paragraph 2.2, which, it noted, had been imported from the TK draft articles, it had promised to consult with their experts on TK in capital, and had done so. At that point, the Delegation was not fully comfortable with Article 2.2 and

requested that it remained in brackets. The Delegation stated that it was trying to develop a fuller understanding of the role of national entities. It requested that the phrase "national entity" in particular be placed in brackets until such a fuller understanding was developed.

125. The Delegation of EU, speaking on behalf of the EU and its Member States, referred to paragraph 2.1 and expressed preference for the formulation: "to hold, maintain, use and develop" rather than "or develop", as it regarded the four aspects of holding, maintaining, using and developing as cumulative criteria. With regard to paragraph 2.2 and the reference to "nations" in paragraph 2.1, the Delegation requested that they remained under brackets, as the Delegation did not wish to allow States to become the beneficiaries to the detriment of indigenous or local communities.

126. The representative of Tebtebba Foundation, speaking on behalf of the Indigenous Caucus, stated that they preferred that local communities in Article 2 not be bracketed. Indigenous peoples had stated many times that beneficiaries of protection were indigenous peoples and local communities. She observed that in the new formulation the term "local communities" was being delimited by the subsequent words. Based on the interventions of many of the delegations and the Indigenous Caucus, she proposed to use the term "collective" before cultural. As this was more descriptive and accurate, such term provided more legal certainty in her view. She also observed that the term "nations" did not quite fit within the definition of the beneficiaries within Article 2.1. She proposed to include it in Article 2.2 or in a separate paragraph.

127. The Delegation of Australia supported the suggestion made by the representative of Tebtebba Foundation, speaking on behalf of the Indigenous Caucus, regarding the inclusion of the term "collective" at that particular spot. The Delegation supported the Delegations of Canada and the United States of America regarding the bracketing of the terms "local communities". The Delegation supported the Delegations of Canada and the EU that protected TCEs must be held, maintained, used, and developed by indigenous peoples as cumulative criteria. As currently drafted, the scope of the beneficiaries within Article 2 was larger than the scope of the subject matter in Article 1, where the eligible TCE must be linked to a community. Therefore, the Delegation proposed an amendment to Article 2.1 that would read: "where it is not possible to [identify] the indigenous people who hold, maintain, use and develop", inferring that the problem of identification would arise from some logistic or particular domestic problem with finding out about that specific people. The Delegation would also like to bracket the term "identify" in order to reserve its right to revert to a better term that would circumscribe the situation to the kind of problems it had just referred to.

128. The Delegation of Japan expressed perplexity regarding the notion of "local community" and requested that those terms be bracketed until they were clarified. More generally, it was concerned that delegations wished to maximize the scope of the protection within their own countries by using terms of the like, opening ways for abuses. Should "local community" be eventually retained, than an explanation of those terms should be incorporated in the main text or in a foot note. The Delegation expressed concerns regarding the proposals made by the African Group regarding Article 1 and Article 2, as there were cross-referring with each other, which, it said, was not appropriate. The Delegation wished to exclude "nations" from the scope of beneficiaries. Regarding Article 2.2, it found it contradictory with Article 1. TCEs whose owners could not be identified should not be eligible for protection. It requested therefore that Article 2.2 be deleted.

129. The Delegation of Poland, speaking on behalf the CEBS, requested the term "nations" to be bracketed as the CEBS did not feel comfortable with it. The Delegation referred to paragraph 2.1 and expressed preference for the formulation: "to hold, maintain, use and

develop” rather than “or develop”. As the Delegation was not comfortable with the concept of orphan TCEs, it could not agree with Article 2.2.

130. The representative of UNEMRIP observed that some misapprehension or confusion had occurred over the terminologies used regarding “indigenous peoples” and “local communities”. He recalled that he had suggested some years ago to the IGC that thematic studies be executed to handle that particular situation and reiterated his suggestion. He made some comments on Article 2 with regard to local communities. In his view, local communities were geographical groups, and a local community in the Caribbean would be completely different to a local community in Africa or anywhere. Unfortunately, there were no local community representatives at the present session to defend and explain the expression “local communities”. He stated that it would be unfair to be bracketing or excluding the terminology. He stated that “nations” did not fit within the beneficiaries. States could not at the same time be administering rights and, at the same time, be a beneficiary. He did not support the proposal made by the Delegation of India to reimport the language use in the Annex to document WIPO/GRTKF/IC/25/4.

131. The Delegation of Brazil was surprised to see that delegations had requested the bracketing of the terms “local communities” despite precedents in the CBD. It recalled that those terms had been adopted and included in the CBD. It noted that some Members States which had expressed doubt about those terms at the IGC were nevertheless Contracting Parties to the CBD. It proposed that “local communities” be defined in national laws, as it had been decided in the CBD.

132. The Delegation of Sri Lanka reiterated that Article 2.2 should reflect what had been drafted in the TK text (WIPO/GRTKF/IC/25/6) and should read: “where protected Traditional Cultural Expressions as defined in Article 1 are not specifically attributable or confined to an indigenous people or local community etc.”, as that formulation provided for more clarity.

133. The Delegation of South Africa supported the statement made by the Delegation of Algeria on behalf of the African Group regarding Article 2. In reply to the Delegation of Japan, it had been suggested that Article 2 be the sole article that would specify who the beneficiaries were. Other articles would simply mention them in a generic way, as “beneficiaries” in order to avoid cross-references. Regarding the concerns around the terms “local communities”, it noted that the terms “indigenous and local communities” could be revisited. Regarding the terms “nations” and its inclusion among beneficiaries, the Delegation reminded that there were particular situations in Africa, where ethnic groups called themselves a nation or where there were cultural groups that were equipollent with a whole nation or state.

134. The Delegation of Barbados referred to the odd use of “define” and “defined” in Article 2.2 as drafted.

135. [Note from the Secretariat: The Chair was chairing the plenary again at that point.] The representative of *Afro-Indigène* recalled that her organization represented local communities and indigenous peoples from Venezuela, Honduras and Brazil. She was concerned, just as the Delegations of Brazil and South Africa, by the reservations expressed by some delegations against the inclusion of local communities among beneficiaries. Indigenous peoples as well as local communities were entitled the right to self-determination as they had a material and ancestral relationship to their lands, as it had been made clear in the UNDRIP. Their cultural identity was expressed in their own and specific languages and reflected social interactions that reflected their holistic view of life and the land. She emphasized the importance of facilitating the active participation of genuine representatives of indigenous peoples and local communities in the IGC work.

136. The Delegation of Namibia stated that there was not an agreed definition of “indigenous people”. The UNDRIP explicitly gave indigenous peoples the right to self-define as such. It recalled that in the African context, there were many groups, be tribal groups or ethnic groups, that would qualify as indigenous people, but who, for political reasons, were not in a position to self-identify as indigenous peoples. The Delegation said that the IGC could not be willing to deny those peoples their rights that had accrued to them by any objective standard. The Delegation proposed that the beneficiaries include local communities, as those terms were well understood as not including, for example, a Tokyo-based baseball-club. The Delegation proposed to qualify a local community as it had been done in Article 8(j) of the CBD, where it referred to indigenous and local communities that embodied traditional lifestyles. The Delegation also proposed that it might not be appropriate for the IGC to qualify what local communities were, as any self-designation could be challenged in national courts in any event.

137. The Delegation of Nigeria supported the proposal made by the African Group as a way of moving forward. The Delegation believed that it was important to maintain flexibility in the definition of Article 2, particularly with regard to notions as “local communities” and “nations”. It reminded that in a continent as diverse as the African continent, oftentimes, there were a multiplicity of people groups, both indigenous, local, and those that have been mainstreamed into urban society. The Delegation believed that the key was flexibility in letting national governments identify the specifics of what constituted an appropriate beneficiary of protection. It did not think that the cross-referencing that the Delegation of Japan made was entirely reflective of the relationship between Articles 1 and 2. The Delegation wished to retain the headings of the articles as they had appeared in Rev. 1, without prejudging the outcome of the present negotiations.

138. The Delegation of Ethiopia supported the amendment proposed by the Delegation of Algeria on behalf of the African Group. The Delegation further underlined that a reference to the determination of the beneficiaries by national laws in Article 2.2 would be helpful in order to address in a flexible way the unique and diverse realities that differed from country to country.

139. The Delegation of Trinidad and Tobago reiterated that there were many Caribbean countries which had no indigenous peoples or indigenous communities, but rather local communities. Local communities in the Caribbean were basically communities which were self-reliant and defined by their geographical location. In the circumstances, the Delegation was comfortable with indigenous peoples and local communities being both beneficiaries in the forthcoming treaty. The Delegation supported the idea that had been put forward by the representative of UNEMRIP to conduct thematic studies or any appropriate pedagogy regarding such key concepts within the treaty.

140. The representative of ADJMOR, speaking on behalf of the Indigenous Caucus, aligned itself with the Delegation of Brazil and expressed surprise that “local communities” would be put within brackets. He reminded the Committee that many regions of the world had been interconnected because of history, like the former system of colonization, the phenomenon of migration and also climate change. These factors had marked the lives of peoples, and that had given rise to mass movements of peoples and creation of groups that could identify as “local communities”. The Indigenous Caucus reiterated that indigenous peoples and local communities should be beneficiaries of the forthcoming instrument on TCEs.

141. The representative of Arts Law Centre of Australia commented on the extent of the dispossession of indigenous peoples in some parts of Australia. Regarding Article 2.1, it was important that the test to qualify as beneficiary was not set so high so that it would become difficult for indigenous peoples to show their connection to their own TCEs. That might be

the consequence of requiring indigenous peoples to hold, maintain, use “and” develop their TCEs, rather than “or” as drafted in the text. Regarding Article 2.2, she stated that even if there was no clear connection between an indigenous group and a particular TCE, indigenous peoples in Australia did not want those TCEs to be available as a free-for-all item. Indigenous peoples in Australia wanted those TCEs protected as well. She proposed that a national indigenous cultural authority could be nominated as beneficiary in such cases.

142. The Delegation of Australia supported the comments made by the Delegation of Namibia regarding the term “local communities”. The IGC should not be thinking about local communities in isolation. The Delegation stated that the term could be defined at the national level, where a court would determine what local communities were.

143. The Chair opened the floor on Article 3 in Rev. 1.

144. The Delegation of Algeria, speaking on behalf of the African Group, reiterated that it favored a rights-based approach and an instrument which would give exclusive rights to the beneficiaries. It wished therefore to replace paragraph 3.1(a) in Rev. 1 with the content, without brackets, of Option 2, paragraph (e), Alternative 2 in the original text, which referred to such exclusive rights.

145. The Delegation of India echoed the Delegation of Algeria, speaking on behalf of the African Group, and said that Article 3.1 in Rev. 1 did not reflect a rights-based approach. It wished that “where appropriate” in paragraph 3.1 (e) be put between brackets and that the paragraph be reformulated the following way: “shall/should ensure the beneficiaries have exclusive, inalienable and collective rights to authorize or prohibit the use and exploitation of traditional cultural expressions by others.”

146. The Delegation of the United States of America requested that “Article 3” be placed in square brackets in order to avoid prejudging the outcome of the discussions. It further asked that the following be restored as a free-standing option: “[t]he economic and moral interests of the beneficiaries concerning their traditional cultural expressions, as defined in Articles 1 and 2, shall/should be safeguarded as appropriate and according to national law, in a reasonable and balanced manner.” It also requested square brackets around the facilitator’s proposed text for Article 3, since it was still studying it. With respect to the proposals made by the Delegations of Algeria, made on behalf of the African group, and India regarding Article 3, it was unable to go along with them.

147. The Delegation of the EU, speaking on behalf of the EU and its Member States, stated that it had not had enough time to consider Article 3 as revised. It reserved therefore its position, especially in relation to points (a) through (e), and requested that they be placed under brackets. With regard to the chapeau, it would not support the language that follows: “[a]dequate and effective legal, administrative or policy measures shall/should be provided”, as it was unclear in its view what was meant by “adequate and effective” in this regard. It would also support a reformulation of the second and third lines in the chapeau to 3.1 to read: “The economic and moral interests of the beneficiaries concerning their traditional cultural expressions as defined in Articles 1 and 2 should be safeguarded as appropriate and according to national law in a reasonable and balanced manner.”

148. The representative of Tulalip Tribes said that he found the statement by the Delegation of Algeria, speaking on behalf of the African Group, interesting and that he was still studying it. Nevertheless, he supported the proposal made by the Delegation of India to strike out the terms “and commercial exploitation” from paragraph 3.1(e). He illustrated his view by telling a story of an indigenous person who became upset that a teacher, against customary laws, represented traditional stories that she had been telling in school, even though that had been

done without commercial purposes. The principle that use that would not be commercial would be allowed was very problematic in his view for many indigenous peoples.

149. The Delegation of South Africa described the negotiating process so far as one-step forward and two-steps backward. Regarding the implementation of the mandate, it did not see how bracketing the subject matter and the scope of protection could be reconciled with the mandate. He requested that the Chair reminded delegations of the mandate whenever it is necessary as he had a duty to ensure its integrity. It furthermore noted that delegations were inserting elements in the draft texts that were not congruent with the spirit of a negotiating exercise, asking also for further analysis and discussions instead of committing themselves in the drafting negotiations on texts that had been on the table since 2009. In its view, such dilatory approach reflected a lack of political will.

150. The Delegation of the Japan was of the view that it was premature to find compromises regarding Article 3 until the Committee reached a clear definition on the subject matter in Article 1 and beneficiaries in Article 2. In the meantime, it would like to support the proposals made by the Delegations of the United States of America and the EU regarding Article 3.

151. The Delegation of Poland, speaking on behalf of the CEBS, supported the proposal made by the Delegation of the United States of America regarding Article 3. It was of the view that Option 1 for Article 3 in the original text provides for more flexibilities to Member States in implementing the forthcoming instrument. Following up the remarks made by the Delegation of Japan, it wished to have the points (a) to (e) be bracketed, until the subject matter and the beneficiaries were clearly defined.

152. The Delegation of Brazil appreciated the proposals made by the Delegation of Algeria on behalf of the African Group and the Delegation of India and wished to have them reflected in the next revised version of the Draft Articles.

153. The Delegation of Canada said that it was not convinced that the Committee had had sufficient exchanges on the best options to deliver on the specific objectives identified. Therefore it could not endorse this new text at this stage as it did not reflect Option 1 resulting from the original text. It supported the proposals made by the Delegations of the United States of America and the EU in this regard and proposed the following elements of Option 1 be at least reinserted in the next revised version: first, "as defined in Articles 1 and 2"; second "concerning their traditional cultural expressions"; and third, "according to national law." The Delegation said that it would also appreciate to hear from other delegations on the differences between "administrative" and "policy" measures. It would welcome further discussion regarding the consistency between points (a) to (d) on the one hand, and (e) on the other hand, as the points had also an impact on commercial exploitation. It would also appreciate a broader discussion on the specific preferences of delegations on how the narrowed-down Objectives that were inserted in Rev. 1 would translate into Article 3. For instance, concerning the prevention of misappropriation and the control of the ways in which TCEs were used, the Delegation of Canada would welcome an exchange of views as to what would be the best vehicle to reach this objective, either in (a) to (e) or in Article 4, and how these would work together. It believed that this was how the Committee could build bridges between the respective positions.

154. The Delegation of the Russian Federation said that Article 3 as revised required further study. It wished that Option 1 be reinserted as reflected in the original text and supported the delegations which expressed the same request. It believed that that Option 1 was more flexible as it took into account the national requirements of each individual state.

155. The representative of UNPFII said he had consulted with the representative of UNEMRIP on the proposal made by the Delegation of Algeria on behalf of the African Group.

They agreed that the approach should be a rights-based approach, since it was in their view the only way to ensure that the rights of the indigenous peoples and communities' rights be protected and addressed in the forthcoming instrument. He reiterated that indigenous peoples had exclusive rights, especially in freely determining who to engage with on any commercial transactions they might choose to conclude.

156. [Note from the Secretariat: The Vice-Chair was chairing the session at this point]. Upon the invitation of the Vice-Chair, one of the facilitators, Mr. Kebbell, speaking on behalf of the facilitators, re-introduced to the plenary the modifications which had been made to Article 5 in Rev. 1. He noted that paragraphs 1 and 2 had been left intact, save for brackets that had been placed around the word "or" between "traditional" and "cultural context" in paragraph 2. He pointed out that the facilitators had not had as much time as they would have liked to work on the article to their satisfaction, and noted that the article still required further work. Responding to an earlier comment made by a delegation with respect to the certainty offered by the three-step test, he invited delegations to reflect on whether the certainty offered by the three-step test was appropriate in the context of the present negotiations given that it was developed for a different purpose. He further noted that while the three-step test was normally directed towards exceptions and limitations, within the current text, it referred more to the way in which the TCEs themselves were used.

157. The Vice-Chair opened the floor for comments on Article 5 in Rev. 1.

158. The representative of Tulalip Tribes requested that Article 5.4(a) be bracketed. He pointed out that if the brackets in the chapeau of Article 5.4 around the phrase "only with the free prior and informed consent of the beneficiaries" were removed, he would have no problem with the article being kept as it was. He however noted that his major concern was that if the bracketed phrase were to be removed from the text, it would imply that there were no exceptions or limitations to the use of TCEs by museums, libraries and archives as they would have free access to TCEs. He expressed concerns over the understanding by delegations that the noncommercial use of TCEs was acceptable in all circumstances. To illustrate his point, the representative told a story of the Puebloan peoples of the southwestern United States of America. He explained that in 1984, the New Mexico Sun hired an airplane to fly over the airspace of an open Kiva which was a sacred structure of the Puebloan peoples. They flew over one of the Kivas where a renewal ceremony for the year was being conducted. The representative noted that whenever the renewal ceremonies were held, a cosmic column was created that went from the Kiva up into the sky and attached to the cosmos. This was significant for the people, as whatever happened to them in the next year depended on what happened with their communications with the spirits. The airplane flew low, right through the column, and disrupted the ceremony as well as the spiritual column. The journalists took photographs and published those photographs in newspapers. He explained that the courts of the United States of America had ruled that the Puebloan people could not protect the ceremonies because it was in a public airspace and they had to cover their Kiva if they did not want the ceremonies to be photographed. The representative stressed that these kind of problems thrived due to blanket exceptions which supported the noncommercial use of TCEs. He was of the view that offences with respect to the use of TCEs involved the violation of the laws of the indigenous peoples and not the western laws. He called for this distinction to be reflected in the text. He clarified that indigenous peoples were not against museums, newspapers or education institutions having access to TCEs, but rather wished to be responsible for making the decisions on whether to grant access to the TCEs or not.

159. The Delegation of South Africa expressed support for the intervention made by the representative of Tulalip Tribes. It noted that there had to be a balance, as there could not be unlimited access to TCEs without any prior reference to the holders who maintained or

owned it. The Delegation was of the view that dropping the brackets in the chapeau of Article 5.4 would ensure the balance being sought. The Delegation further commended the facilitators for their attempt to narrow down the perspective on Article 5.3. It reiterated, with respect to the three-step test, that the burdens of other conventions should not be introduced into the present negotiations. It noted that if these burdens had worked before in those conventions it would have accepted and been comfortable with their use in the current negotiations. It commended the introduction made by the facilitator, Mr. Kebbell, and expressed its support for the point that the use of TCEs in themselves suggested the development of their own test.

160. The Delegation of Nigeria was appreciative of the facilitator's open question regarding the applicability of the three-step test. It was of the view that there was a need for some structural decisions to be made in that regard, particularly with respect to the way that the test had been formulated in Article 5.3. The Delegation noted that the three-step test as formulated in Article 5.3 was not a proper reflection of its real formulation and that, to the extent that the proponents sought to include the three-step test within the text, its formulation ought to be consistent with what its mechanism would accomplish. With respect to Articles 5.3(d) and 5.3(e), which were not traditionally part of the three-step test, the Delegation pointed out that it should probably be noted that to the extent that in Article 1 or 3 moral interests or moral rights were dealt with, the resolution on how to deal with Articles 5.3(d) and 5.3(e) ought to be reflected in the resolution of Article 3 which dealt with both economic and moral rights. It noted that the issues of non-compatibility or inoffensiveness with fair practice could be well taken care of with this approach. It pointed out that some of the conversations held so far had not advanced the purpose of the negotiations and reiterated the importance of thinking about ways to begin to converge on the outstanding issues particularly in Articles 1 and 3. The Delegation believed that it was very important that the instrument was not asked to do more than other IP instruments or other WIPO documents or treaties were asked to do. It reminded delegations that the Committee was trying to accomplish something that was about innovation and human rights, and about the right to self-determination. It was therefore important for WIPO, as a UN agency, to think about the ways of compromising positions between delegations, so as to reflect the three overarching themes that animate the work of the IGC. The Delegation appealed to delegations to bear in mind, not just the mandate but the overarching institutional prerogatives that should inform the IGC process when, in particular, Articles 1 and 3 were revisited. This was important because exceptions and limitations tended to be the place in which all of the previous work on the text needed to be effectively balanced.

161. The Delegation of the EU, speaking on behalf of the EU and its Member States, expressed its support for the brackets placed around the word "or" in Article 5.2. With respect to Article 5.3, the Delegation expressed its support for Article 5.3(a) but requested that paragraphs (b) to (e) of Article 5.3 be placed in brackets. It stated that it was against the inclusion of the phrase "only with the free prior and informed consent of the beneficiaries" in Article 5.4 and pointed out that by removing the brackets, the consequence would be that all previously acquired TCEs would have to go back to the previous beneficiaries and this would give the beneficiaries the possibility of removing a consent which had already been given in the past on the grounds that they were misinformed of the consequences. The Delegation noted that it could not support an article that forbade national limitations and exceptions from even noncommercial use without it being subjected to FPIC. It was of the view that that would constitute a severe burden for libraries, museums and other noncommercial users. With respect to Article 5.5, the Delegation requested that the brackets be removed from the wording "to the extent that any act would be permitted under the national law for works protected by copyright or signs and symbols protected by trademark law, such act shall/should not be prohibited by the protection of traditional cultural expressions".

162. The Delegation of Canada continued to harbor reservations on certain aspects of the provisions of Article 5. It was of the view that there was value in the revisions proposed by the facilitators, especially with respect to keeping the alternatives to paragraph 3 separate to ensure that delegations could have the benefit of a reference point on the existing three-step test as established in existing international treaties on IP. The Delegation aligned itself with the intervention made by the Delegation of South Africa that progress on Article 5 was closely tied, because of its very nature, to progress on Articles 1, 2, 3 and 4. It looked forward to making further progress with respect to reaching clarity on those articles, so that it could properly inform its reflections on Article 5.

163. The Delegation of India noted that the test under Article 5.3 was now a five-step test rather than a three-step test. It reiterated its position that TCEs were different from the formal IP and consequently, the standards which were followed in the formal IP system to identify the limitations and exceptions might not fully be useful in all the circumstances related to the protection of TCEs, though it could be useful in some circumstances. The Delegation noted that the importation of such a concept from the formal IP system to the subject matter, the set of rights and the nature of exceptions which were being sought for TCE protection might not be useful. It was of the view that the present formulation could give a wrong impression on how exceptions and limitations could be applied to TCEs. It believed that the standard three-step test should not be given such a strong reference in the article, but rather should be blended into the specific context of the protection of TCEs. It observed that the present approach seemed to progress in this direction. On Article 5.4, the Delegation reiterated its serious concerns with Article 5.4(b). It understood the concern expressed by the representative of Tulalip Tribes and expressed its willingness to look at it. It however believed that there was flexibility with reference to the exceptions. The Delegation requested that Article 5.5 be placed in brackets and reiterated its concern that the cross-linkage would completely undermine the prevention of misuse or misappropriation of TCEs being sought, in cases where IP was used to misappropriate TCEs.

164. The Delegation of Japan aligned itself with the proposal made by the Delegation of the EU, on behalf of the EU and its Member States, and requested that paragraphs (b) to (e) in Article 5.3 be placed in brackets. The Delegation proposed the deletion of the phrase “only with the free prior and informed consent of the beneficiaries” in the chapeau of Article 5.4 and consequently requested for the brackets on the phrase to be retained. The Delegation was of the view that it was premature to discuss how to make compromises on Article 5 before conclusions were made in Articles 1, 2, and 3, as exceptions and limitations were dependent on the content of Article 3.

165. The Delegation of the United States of America aligned itself with the intervention made by the Delegation of Japan and noted that it was quite hesitant to discuss Article 5 because exceptions and limitations needed to be matched with corresponding rights and also because no decision had yet been made on the nature of the instrument. By way of preliminary comments, it however requested that Article 5 be placed in brackets so as not to prejudice the outcome of the discussions. With respect to Article 5.3, it noted it had listened carefully to the explanation of the facilitator, Mr. Kebbell, with respect to some of the implications of word choices on the three-step test as well as to the intervention made by the Delegation of Nigeria. Drawing on the experience of the extensive negotiations with respect to the three-step test provisions in the Marrakech Treaty for the Benefit of Blind and Visually-Impaired Persons of June 2013, the Delegation acknowledged the level of detail and intensity that accompanied any discussion of the three-step test. Based on this, it noted certain divergences in the articulation of the three-step test in the present text and in other instruments. It requested, for the purposes of further understanding the use of the terms used, that brackets be placed around the words “use” in the chapeau, as well as “conflict”

and “utilization” in paragraph (b) of Article 5.3. It was concerned about the interrelationship of usages of the terms in the present text with their usages in other international instruments, including other WIPO instruments. With respect to paragraphs (d) and (e) of Article 5.3, the Delegation requested that they be placed in brackets. It noted that it continued to reflect on their content and their placement in the instrument and further, it wished to analyze further their compliance with the domestic law of the United States of America.

166. The Delegation of Poland, speaking on behalf of the CEBS, requested that paragraphs (b) and (c) of Article 5.3 be placed in brackets based on the interventions of different delegations and the arguments expressed by the Delegation of India. It was of the view that the *sui generis* instrument being worked on should be treated independently as it was not appropriate to follow all the parameters of the existing IP regulations. It also requested that paragraphs (d) and (e) of Article 5.3 be placed in brackets to reserve its right to further react to these paragraphs. Regarding Article 5.4, it expressed its support for the retention of the brackets around the phrase “only with the free prior and informed consent of the beneficiaries” and reminded that the freedom policy regarding archives, libraries and museums, with respect to preservation, display and research, was very important to the CEBS. The Delegation wished to keep the *status quo* as it was.

167. The Vice-Chair suspended the plenary and invited the expert group to reconvene and the facilitators to develop a further revision of the TCEs text based on the discussions that would take place in the expert group.

168. [Note from the Secretariat: this part of the session took place after the expert group had completed its work. Many delegations that took the floor thanked the facilitators for their work]. The Chair reopened the floor on Agenda item 6. He noted that Rev. 2 of the document “The Protection of Traditional Cultural Expressions: Draft Articles” dated July 19, 2013 had been submitted earlier with the view to enabling delegations and observers for any comment regarding errors or omissions in the text. He asked the facilitators to introduce Rev. 2.

169. Mr. Kebbell, speaking on behalf of both facilitators, introduced Rev.2 and ran through the changes made. He started with the *caveat* that the facilitators had had one hour and 20 minutes to finalize the draft, so a few corrections needed to be made, possibly during the session. He said that Objectives 1 to 5 were basically the objectives from Rev. 1. Objective 1 *alt.* was the version that had been worked on in the expert group. There were two Objectives 4 in Rev. 2: Objective 4 and Objective 4 *alt.* Objective 5 came from a proposal made in the Expert Group by the Delegation of Sweden. He explained the history of the heading “Principles and Objectives” and distinguished the objectives in Rev. 1 from the new ones. Because they were phrased differently, it was impractical not to split them up. Another option was to insert the heading “preamble,” but that was controversial. Objective 6 came from old Objective 1, Objective 7 from the original Objective 3, Objective 7 from original Objective 3, and Objective 8 from original Objective 1 as well. Objective 1 was split into Objectives 6 and 8. Objective 9 came from original Objective 2, Objective 10 from original Objective 6, Objective 11 from old Objective 11, Objective 12 from old Objective 7, and Objective 13 from old Objective 14. On Article 1, he said that he had added footnotes for the examples of TCEs. There did not seem to be any policy dispute about the meaning of “intergenerational,” but there remained a question of wording. The expert group had suggested adding a footnote in to clarify that that meant “passed on from generation to generation and between generations.” Option 3 was based on the original proposal made by the African Group, as modified in plenary. Option 3 had been replaced by Option 2 in the expert group, but it was retained in the text to provide the plenary with the opportunity to confirm that. On Article 2, Option 1 was the Rev. 1 version, as modified in plenary. He said that in paragraph 2, the phrase “a traditional cultural expression” had to be replaced by “it”.

Option 2 was the text from the expert group. The difference between Options 1 and 2 in paragraph 2 was that in Option 2 referred to it “not being possible to identify the people or community that generated it”. That phrase came from Article 1 of the TK text (WIPO/GRTKF/IC/25/6). The word “generate” did not appear in the TCE text. Yet, while “generate knowledge” was quite a comfortable phrase, “generate TCEs” did not fit as comfortably, and that was something for participants’ consideration. Other comments had been made in plenary about Article 2, but they were more suitable for the Expert Group to consider. As to Article 3, Option 1 had been restored from the original TCE text (WIPO/GRTKF/IC/25/4). Option 2 was based on the text in Rev. 1, as modified in plenary. Option 3 was a very recent option included from the expert group. Options 2 and 3 were very similar. Option 3 was very similar to Option 2 in the original TCE text. The only difference was paragraph (a) in Option 3, which came from paragraph (e) of Alternative 2 in the original TCE text, except there were some words missing at the start: the original text read “ensure the beneficiaries” before “have the exclusive and inalienable collective rights.” Paragraph (b) in Option 3 came from paragraph (a) of Option 2 of the TK text. One more difference in paragraph (a) from the original TCE text was that the words “by others” at the end of paragraph (a) in Option 3 had been included. Moving to Article 5, the only change to the Rev. 1 version of the original TCE text was that paragraph 3 had been modified to clarify that it was the limitations and exceptions that had to be limited to certain special cases, etc. Subparagraph 3(d) referred to the “use” of TCEs. The limitations and exceptions had to ensure that the use of the TCEs were not offensive and derogatory, acknowledged the beneficiaries and were compatible with fair practice.

170. The Chair said there would be more flexibility in the read-through of Rev. 2 than in ordinary cases. Delegations could draw attention to errors and omissions and have them restored. If a submission had been made but not properly captured, that could be explained for the facilitators to adjust. That would be done live, so that the text could be corrected for all to see. If delegations had new ideas, those could be indicated for the record, but they would not go into the text. The task was to tidy up the work done in the past four days: first the Objectives, then article by article. He asked delegations to be precise and speak only to the article or objective under consideration and in sequential format. There was no time to discuss broader issues. He asked the Vice-Chair, Ms. Grazioli, to chair the plenary. The Vice-Chair opened the floor for comments on the Objectives in Rev. 2.

171. The representative of Tebtebba Foundation, speaking on behalf of the Indigenous Caucus, wished to include the following text in the preamble: “Noting the significance of the United Nations Declaration on the Rights of Indigenous Peoples, and affirming that nothing in this instrument or instruments shall be construed as diminishing or extinguishing the existing rights of indigenous peoples and local communities, all objectives must be interpreted within the general objective of, wherever appropriate, obtaining the free prior and informed consent of indigenous peoples and local communities.”

172. The Vice-Chair asked whether there was any Member state that would support the proposal made by the Indigenous Caucus.

173. The Delegations of Australia and the Philippines supported the proposal made by the Indigenous Caucus.

174. The Delegation of the United States of America wished that throughout the entire text, the term “local communities” be placed in brackets until it be further clarified. The new architecture of the Principles and Objectives was acceptable. However, the Delegation preferred that they be reflected in an active or passive verb, not in gerund form so as to conform to the Objectives. For example, “recognizing” would become “to recognize,” “being guided by,” would become “to be guided by,” “acknowledging,” “to acknowledge,” etc.

It submitted that both language options be preserved side by side in the text, with brackets around the gerund form. It also noted, in Principle 7, the new appearance of the phrase “and adaptations,” which was overly broad and had to be placed in brackets.

175. The representative of UNEMRIP supported the position presented by the representative of Tebtebba Foundation on behalf of the Indigenous Caucus. He asked what the term "nations" referred to in the entire text. He reserved the right to make comments on that particular issue.

176. The Delegation of Algeria asked for clarification from the facilitators on the word “preamble” and its removal.

177. One of the facilitators, Mr. Kebbell, explained that their understanding from the expert group was that there was no agreement to remove the preamble. A different position was to take the words out of the preamble and place them back under Objectives. Rather than create two options, they had tried to construct it to meet those needs. If delegations felt that the preamble had to be there, one way of dealing with it was to place it between brackets. The other way was to have two options, but that was not preferable. He said that the facilitators were open about how to deal with that issue.

178. The Delegation of Algeria, after having heard those clarifications, wanted the preamble of Rev. 1 to stay in the text, as expressed in the expert group. It agreed that alternatives or options were not necessary. The most agreeable way was to add the word “preamble” in brackets.

179. The Delegation of India supported the proposal made by the Delegation of Algeria, because it had not been agreed to remove the preamble. There had been a suggestion to have those as further principles and objectives, and in that connection, it referred to the intervention made by the Delegation of the United States of America to change the language of the Principles and Objectives, below the Objectives. It wished to retain the language in the preamble, within brackets.

180. The Delegation of Canada wished that the Principles remain in the text given that it had not had a chance to discuss the Principles in relation to articles 3 and 4. As a general comment that applied to the entire text, it recalled its own intervention to the effect that its suggestion related to the term “beneficiaries” had to be seen as an alternative to any instance of the phrase “indigenous peoples and local communities and nations”. Therefore, it requested that any such instance be followed by a slash, and then the term “beneficiaries”. It wanted the text to be consistently clear that the term “beneficiaries” was an alternative. That was in line with its approach that favored discussing beneficiaries in one place, namely Article 2. The same applied *mutatis mutandis* to “should/shall”: both terms had to be mentioned as alternatives, whenever either was mentioned.

181. The Delegation of the EU, speaking on behalf of the EU and its Member States, stated that it had had limited time to review the text, and it therefore made some comments without prejudice to its final position. Objective 3 had to end after the words “cultural exchange,” as it had requested in the Expert Group. Objective 4 had to end after the word “creativity,” with brackets from that point forward, as requested in the expert group. The Delegation requested that Objective 5 remain in the text. With regard to the Objectives and Principles, its understanding from the expert group was that the relevant Objective and Principles from the Annex to document WIPO/GRTKF/IC/25/4 would be used. Without prejudice to its final position or any of those points, it noted that item 6 corresponded at least in part to the original Objective and Principle (i), item 7, to Objective and Principle (iii), item 8 at least in part to the original Objective and Principle (i), item 9 to the original Objective and Principle (ii), item 10 to the original Objective and Principle (iv), item 11 to the original

Objective and Principle (ix), and item 13 to the original Objective and Principle (xiv). The Delegation noted that the new item 12 did not seem to be related to one of the original Objective and Principles.

182. The Delegation of South Africa said that the amendments proposed by the Delegation of the EU with regard to Objectives 3 and 5 represented an ongoing and inconclusive discussion. No conclusions or agreements had been reached. It requested that the end of the sentences remain in the text.

183. The Delegation of Japan supported the comments made by the Delegation of the EU, especially concerning Objective 3 to end at “cultural exchange.”

184. The Vice-Chair opened the floor for comments on Article 1 in Rev. 2.

185. The Delegation of Algeria, speaking on behalf of the African Group, wished that Option 2 replace Option 3 since both options resulted from successive proposals made by the African Group.

186. The Delegation of Mexico said that instead of having “phonetic or verbal,” “musical or sound,” etc., “or” had to be replaced by “and,” because sounds were different from music, just as any phonetic expression was different from a verbal one. It wished that the terms “ceremonial masks and dress” be inserted in footnote 4 after the word “handicrafts.” Lastly, it was flexible on either “from generation to generation,” “between generations” or “intergenerational.”

187. The Delegation of India was happy to see that its suggestions had been carried forward in Option 1. But it supported Option 2, and it joined the Delegation of Algeria, speaking on behalf of the African Group, to remove Option 3, since Option 2 had substituted it.

188. The Delegation of Trinidad and Tobago preferred Option 2. It wished to have the illustrative, non-exhaustive list moved from the footnotes into the text itself, as it had already mentioned. Also, it wondered why the lists were in brackets, especially in footnotes 2 and 3, and requested that the brackets be removed. It suggested replacing “traditional sports and games” in footnote 3 with “sports and traditional games” to align the text with Article 31 of the UNDRIP.

189. The Delegation of Colombia said that Option 2 was the closest to its interests. It wished to keep “creative and other spiritual” in brackets not because those expressions could not be creative or spiritual, but because they could be something else, and that phrase could in fact be limiting, restricting the expressions only to creative and spiritual ones. In subparagraph (c), it wished to add the word “collective” before “culture or social identity.”

190. The Delegation of the United States of America said that, concerning the title of the articles, its intention was that only “Article 1,” “Article 2,” and so on, should be in brackets, but not their verbal description, e.g. “Subject matter of protection”. The intention was to not prejudge the outcome of the discussions. Globally, the phrase “adaptations of these expressions,” which appeared for the first time in paragraph 1 under Option 1, and related phrases such as “and their adaptations” had to go in brackets. In subparagraph 2(c) of Option 1 and 1(c) of Option 2, the connector “or” between “used” and “developed” had to be changed to “and.” Options 1, 2 and 3 had to remain in the text to accurately reflect the discussions. It agreed with the Delegation of Trinidad and Tobago that the categories and examples of TCEs, in footnotes 1 to 4, had to be reflected in the text, not in footnotes.

191. The Vice-Chair asked the plenary whether Option 3 could be deleted from Article 1.

192. The Delegation of the United States of America said that Option 2 which had resulted from a revised African Group proposal had been proposed extremely late in the expert group meeting. It welcomed any refinement of Option 3, but it had not had a full chance to study Option 2 and to find nuances and differences with Option 3. And until it could fully understand them, it preferred to have all options reflected in the text. There would be an appropriate time going forward when the IGC would be in a position to simplify the options.

193. The Delegation of El Salvador would have appreciated to have the text in Spanish, but recognized that there were certain limitations. It supported Option 2, even though the consultations with its capital had not concluded yet. It was happy to see the explanation of the term “intergenerational” in Option 1 and wished to see it reflected in Option 2.

194. The Delegation of the EU, on behalf of the EU and its Member States, provided comments on Article 1, without prejudice to its final position. It supported Option 1, but noted that the term “intergenerational” had not been discussed, and wished to include “from generation to generation, and between generations.” It supported the intervention by the Delegation of the United States of America to bracket “adaptations.” Also, in document Rev. 1, the examples in the footnotes were clearly listed as such, and were not tied to specific items in the definition. It therefore asked that the superscripts in Option 1 be removed. It thanked the proponents of Option 2, but noted that it had not been discussed and was introduced very late in the day, so it requested that it be bracketed.

195. The Delegation of Indonesia, on behalf of the LMCs, explained that Option 2 was actually a joint proposal by the LMCs, DAG and the African Group. Option 3 was previously the proposal of the African Group, which had withdrawn it. The LMCs also wished to have Option 3 removed from the text.

196. The representative of Tebtebba Foundation, on behalf of the Indigenous Caucus, had indicated in the expert group that they were flexible, but wished to work on the basis of Option 2. She had introduced language in Option 3. She read their proposal into the record: “(c) controlled and protected and/or maintained, used and developed collectively as part of its cultural or social identity.”

197. The Delegation of Thailand supported Option 2. Option 3 had to be removed, as it has been withdrawn. It supported the Delegation of Trinidad and Tobago that the brackets in the footnotes should be removed.

198. The Delegation of Kenya supported Option 2, and aligned itself with the comments made by the Delegations of Algeria, speaking on behalf of the African Group, India and Thailand.

199. The Delegation of Brazil, on behalf of DAG, stated that it was a core proponent of Option 2. It sought clarification as to whether Option 3 had been deleted, or if that was still being discussed. It wished to clarify whether even though the African Group was the proponent of Option 3, it could not alone ask for its removal.

200. The Vice-Chair reminded the Committee that Option 3 contained elements added by delegations and noted that a delegation had requested to keep it as revised. Option 3 as revised should, therefore, be kept in the text.

201. The Delegation of Algeria reminded the Vice-Chair that Option 3 as reflected in Rev. 2 was a text prepared by the facilitator based on a proposal by the African Group. Since it had asked to withdraw the proposal, the Delegation wondered what its status was. It requested that Option 3 be removed and proposed that the report capture the comments made by other delegations regarding the original Option 3.

202. The Delegation of Japan supported the comments made by the Delegation of the EU and preferred Option 1.

203. The Delegation of Guatemala preferred Option 2, and it was glad that the word “intergenerational” had been kept. It also thought it was important to drop the brackets around the footnotes, and supported the Delegation of Mexico’s statement to add to footnote 4 the terms “ceremonial masks or dress”.

204. The Delegation of Poland, on behalf of the CEBS, supported Option 1 with all the provisions made by the Delegation of the EU.

205. The Delegation of Egypt stated its support for Option 2. With regard to Option 3, it recalled the Committee that the note by the facilitators indicated that it was based on an African Group proposal. Meanwhile, the African Group had withdrawn it. It had to be clarified that it no longer was an African Group proposal. It proposed that other proponents, if they so wished, indicate that the option be attributed to them.

206. The Vice-Chair asked the facilitators to remind the IGC how Option 3 had evolved.

207. The facilitator, Mr. Kebell, said that the proposal, which was being referred to as “the African proposal,” had gone into the Rev. 1 version of the text, and subsequently worked on and revised in plenary. The change from “from generation to generation” to “intergenerational” with a footnote was an initiative by the facilitators intended to provide the basis for discussion in the expert group, which actually never occurred. There was a question as to whether “intergenerational” should go back to “from generation to generation, and between generations,” which would be consistent with some of the interventions made on the Rev. 1 version of the text.

208. The Vice-Chair asked again whether there was any delegation interested in keeping Option 3, knowing that it was no longer purely an African Group proposal, but an evolved version, which had been collectively worked on. She said that all the statements made for removing it were on the record.

209. The Delegation of the United States of America indicated that it had an interest in retaining that option.

210. The Delegation of Brazil sought clarification as to which would be the delegation supporting Option 3. The Delegation noted that the text had been worked on by the facilitators, but it was not a facilitators’ proposal. It wished to know whether the Delegation of the United States of America was the new supporter of Option 3 or whether it had no support whatsoever.

211. The Delegation of South Africa recalled that the Delegation of the United States of America, which had expressed an interest in retaining the option, had actually bracketed it from the beginning. It sought information as to the purpose of retaining it, since the Delegation had no interest in it. .

212. The Vice-Chair suspended the discussions on Option 3 in Article 1 and indicated that the IGC would revert to it later on. She opened the floor for comments on Article 2.

213. The Delegation of Australia pointed out an omission: in both Options 1 and 2, in paragraph 2, as it had proposed the term “the” as an alternative to the term “an.”

214. The Delegation of Brazil stated that Option 2 was a joint proposal of DAG, the LMCs and the African Group.

215. The Delegation of the EU, on behalf of the EU and its Member States, supported Option 1 without paragraph 2.
216. The Delegation of Trinidad and Tobago, with regard to Option 2, paragraph 2, was uncomfortable with the word “define” repeated twice in the last sentence. It proposed replacing the first “define” with “designate” or “establish.” Also, it wished to insert, before the brackets around “people,” the term “indigenous.” It also referred to the definition of “local community” in the Glossary (WIPO/GRTKF/IC/25/INF/7).
217. The Delegation of Mexico, referring to paragraph 2 of Option 2, but also to the whole text, said that the terms “indigenous peoples or local communities” should always be in the plural, because sometimes more than one local community or indigenous people could be a beneficiary.
218. The Delegation of India supported the proposal made by the LMCs, DAG and the African Group on Option 2. It requested that if the term “indigenous” was added before “people,” then the term “local” had to be added before “communities.” It was open to replace the word “define” by “designate.”
219. The Delegation of Japan preferred Option 1.
220. The Delegation of Algeria, on behalf of the African Group, cosponsored the proposal by the LMCs and DAG.
221. The Delegation of the Islamic Republic of Iran supported Option 2, jointly proposed by the LMCs, DAG, and the African Group.
222. The Delegation of El Salvador supported Option 2, but “local communities” and “or as determined by national law” did not serve the needs of its country.
223. The Delegation of Thailand supported Option 2, and was flexible on the language amendments.
224. The Delegation of Colombia supported Option 2, and was flexible on the language changes.
225. [Note from the Secretariat: The Chair was chairing the session again at this point]. The representative of UNEMRIP said that he was happy that Option 2, paragraph 1, referred to the beneficiaries as indigenous peoples and local communities, whereas in the Preamble of Rev. 1 and Objectives, beneficiaries had been referred to as indigenous peoples and local communities followed by “nations.” He asked the proponents of the word “nations” to indicate to the plenary what they were intending to with that word. He said he would be ready to meet with the proponents to take a very close look at a question that was problematic in his view.
226. The Chair suggested that those kinds of cross-cutting issues be dealt with at a later time. The IGC was not seeking to interrogate the positions within the text itself, it was merely seeking to ensure that the text was consistent with what had been put by participants. The Chair wished that the IGC had more time in the session to revisit some of those issues and benefit from the perspective that participants certainly could have brought. He added that perhaps at a next IGC session dealing with TCEs, this issue could be an important matter for discussion.
227. The Delegation of Poland, on behalf of the CEBS, supported Option 1 with the provisions made by the Delegation of the EU.

228. The Delegation of Bangladesh supported Option 2 because it took care of the concerns of indigenous peoples and local communities, as well as of the more homogenous countries like Bangladesh.

229. The Delegation of Ecuador said it was important that Option 2 take into account local communities.

230. The Chair opened the floor on Article 3 of Rev. 2.

231. The Delegation of India said that Option 3 had been introduced in the expert group by the LMCs, DAG and the African Group to replace Option 2, so it requested that Option 2 be removed from the text. In subparagraph (a) it wished that the word "commercial" be deleted.

232. The Delegation of Japan preferred Option 1.

233. The Delegation of the United States of America said that Option 3 had been tabled very late in the process. There had been no time for its full and complete discussion. Therefore, it requested that it be placed in brackets for further consideration and analysis in forthcoming sessions of the IGC.

234. The Delegation of Namibia supported Option 3, and asked that Option 1 be bracketed.

235. The Delegation of the EU, speaking on behalf of the EU and its Member States, supported Option 1. It requested bracketing Option 3, which had not been fully discussed.

236. The Delegation of Brazil, speaking on behalf of DAG, said that it was a co-proponent of Option 3.

237. The Delegation of Indonesia, speaking on behalf of the LMCs, as a cosponsor of Option 3, extended its support for it.

238. The Delegation of the Islamic Republic of Iran preferred Option 3.

239. The Delegation of the Russian Federation supported Option 1, which was a more flexible approach to determine the way in which national legislation would take due account of the specific needs of each and every state.

240. The Delegation of Algeria, speaking on behalf of the African Group, cosponsored Option 3 and wished that Option 1 be placed between brackets.

241. The Chair said that Option 2 would be removed, replaced by Option 3, as the new Option 2, and brackets would be inserted as requested. He opened the floor on Article 5.

242. The representative of Tulalip Tribes wished to add, in paragraph 3, a new subparagraph (e) "do not pose a significant risk of harm to the beneficiaries."

243. The Delegation of Cameroon sought clarification on the point of placing the name of an article in brackets. It said that the brackets around the word "article" had no impact on the content of the article.

244. The Chair clarified that at IGC 22 and during the present session it had been requested that the term "article" be bracketed so as not to prejudice the nature of the instrument.

245. The Delegation of the United States of America further explained that its intent was to put brackets around the term "article", so as not to prejudice the outcome of the negotiations and the nature of the instrument. In Articles 1, 2, 3, 4 and 5, the brackets would open with

the word “article” and close with the number identifying the article. It was comfortable with having the descriptive words as a legend to identify the content.

246. The Delegation of South Africa wished to keep the title as the title, and did not support bracketing the word “article.”

247. The Delegation of the EU, on behalf of the EU and its Member States, wanted the brackets to remain so as not to prejudge the nature of the instrument. On Article 5, without prejudice to its final position, it was struggling to understand the relationship between subparagraphs 3(a) through (d) and therefore requested bracketing from after the word “national law” to the end of subparagraph (d).

248. The Chair reverted to the pending issue regarding Option 3 under Article 1 and asked the delegations that had articulated positions on the retention or not of this Option to reintroduce their concerns.

249. The Delegation of Algeria, speaking on behalf of the African Group, said that Option 3 resulted from a proposal made by the African Group. Since it tabled Option 2 as a refinement of Option 3, it wished to withdraw its former proposal, namely Option 3, and have it removed from Rev. 2.

250. The Delegation of Nigeria proposed as a way of compromise that Option 3 be moved into an annex in order to accommodate the wish of the Delegation of the United States of America to further consider this option.

251. The Chair asked whether there were material elements in Option 3 that were not contained in Option 2.

252. The Delegation of the United States of America reminded that Option 2, as it stood, had been tabled extremely late in the expert group negotiations, while Option 3 had been an historical text for a number of sessions. By requesting that Option 3 be kept in Rev. 2, the Delegation was seeking to retain a full and accurate reflection of the development of the text during the present session. Retaining all options would allow the Delegation to reflect on and analyze some of the nuances in the language between the two proposals. Moreover, as it had been explained by the Vice-Chair and as a matter of procedure within the Committee, Option 3 had evolved in the plenary session, and could no longer accurately be said to be an African Group proposal. The Delegation added that the African Group could not withdraw Option 3 as this Option was not its own anymore. Nevertheless, it would accept the proposal made by the Delegation of Nigeria to retain Option 3 in an annex.

253. The Delegation of South Africa noted that the Chair had asked for material differences between both options, while no material difference had been pointed out. It added that the demander in this case wished to keep Option 3 in the text while it had not contributed to it, but instead bracketed it. Furthermore, it reminded that the few delegations that had contributed to Option 3 would not oppose the withdrawal of this Option, since it had been replaced by Option 2.

254. The Chair advised that the record showed that Option 3, as it stood, resulted from the African Group, followed by two interventions made respectively by the Indigenous Caucus and supported by the Delegation of Australia, and by the Delegation of Trinidad and Tobago on behalf of GRULAC. He would allow the contributors to Option 3 to consult, and determine whether they would collectively withdraw it. He also read out Rule 22(1) of the General Rules of Procedure: “(1) A proposal may be withdrawn by the delegation which has made it at any time before voting on it has commenced, provided that it has not been amended.” He

announced that he would call the Legal Counsel to advise the Committee, unless a compromise was found.

255. The Delegation of Angola encouraged the Chair to facilitate the meeting in view of the many obstacles and stumbling blocks that had been set up by delegations in the present session. It was of the view that Member States that had made a proposal had the right to withdraw it, should there be a consensus among those Member States. Otherwise, it would be for the Delegation of the United States of America to endorse or contribute positively to the proposal in order to keep it on the table.

256. The Chair asked what the Delegation of Angola would propose in case there would be no consensus among the group of Member States which made and subsequently revised the proposal to withdraw that proposal.

257. The Delegation of Angola replied that in the present case, only the amended phrases should be kept, since there was a consensus within the African Group to withdraw the original proposal.

258. The Delegation of South Africa invited the Chair to ask those delegations which further contributed to the proposal made by the African Group to express what their views were. Should there be no agreement from them, the solution could be to withdraw the proposal, save the parts that had been amended.

259. The Chair opened the floor for those contributors, adding that the Committee would need to be guided by the General Rules of Procedure unless a compromise was found.

260. The representative of Tebtebba Foundation, speaking on behalf of the Indigenous Caucus, said that the Indigenous Caucus had indicated flexibility on its part earlier on. She added that Option 3 could be removed, but indicated that the language suggested by the Indigenous Caucus should be reflected in the record.

261. The Delegation of Australia, which had supported the language suggested by the Indigenous Caucus regarding the full and effective participation of the beneficiaries, agreed to take it out as well.

262. The Delegation of Trinidad and Tobago, speaking on behalf of GRULAC, referred to its proposal to move the footnotes of the proposal made by the African Group up into the main text. Since the same proposal had been made regarding Option 2, it agreed that Option 3 be removed.

263. The Delegation of the United States of America, noting the statements made respectively by the representative of Tebtebba Foundation, the Delegation of Australia and the Delegation of Trinidad and Tobago, withdrew its objection to removing Option 3 from Article 1 as revised in Rev. 2.

264. The Chair took note of the statements made regarding Option 3 in Article 1. He said that Option 3 would be removed from the text as transmitted to the General Assembly. Regarding the negotiating process, he invited delegations to keep focusing on the overall objective of the process and to take into account the concerns of their counterparts in moving the process forward in an efficient way. He read out the decision under Agenda Item 6 and it was approved. He then closed the agenda item.

Decision on Agenda Item 6:

265. The Committee developed, on the basis of document WIPO/GRTKF/IC/25/4, a further text, "The Protection of Traditional Cultural Expressions: Draft Articles Rev. 2". The Committee decided that this text, as at the close of this agenda item on July 19, 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.

AGENDA ITEM 7: REVIEW AND TAKING STOCK OF THE TEXT(S) OF THE INTERNATIONAL LEGAL INSTRUMENT(S) ENSURING THE EFFECTIVE PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS, TRADITIONAL KNOWLEDGE AND GENETIC RESOURCES AND RECOMMENDATION TO THE GENERAL ASSEMBLY

266. The Chair recalled that the General Assembly in October 2012 had decided that the work of the IGC for 2013 would be carried out through three thematic sessions in February, April and July 2013 with a focus on GRs, TK and TCEs, respectively. The work was expected to build on the existing texts submitted by the IGC to the 2012 General Assembly as annexes A, B and C to document WO/GA/41/15. IGC 23 met in February 2013 and discussed the theme of GRs. At the close of the session on February 8, 2013, the IGC developed, on the basis of document WIPO/GRTKF/IC/23/4, a revised "Consolidated Document Relating to Intellectual Property and Genetic Resources" and decided that that 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 the work program for 2013 as contained in document WO/GA/41/18. The document, as transmitted at IGC 23, had been made available at the present session as an Annex to document WIPO/GRTKF/IC/25/5. IGC 24 met in April 2013 and addressed the theme of TK. At the close of the session on April 26, 2013, the Committee developed, on the basis of document WIPO/GRTKF/IC/24/4, a further text, "The Protection of Traditional Knowledge: Draft Articles Rev. 2", and decided that that text, as at the close of the session on April 26, 2013, be transmitted to the 2013 WIPO General Assembly. The document, as transmitted at IGC 24, had been made available at the present session as an Annex to document WIPO/GRTKF/IC/25/6. At the present session, during its first week, the Committee focused on the theme of TCEs. The Committee developed, on the basis of document WIPO/GRTKF/IC/25/4, a further text, "The Protection of Traditional Cultural Expressions: Draft Articles Rev. 2", and decided that that text, as at the close of the Plenary on July 19, 2013, be transmitted to the 2013 WIPO General Assembly. The document, as transmitted, had been prepared and made available as Annex to document WIPO/GRTKF/IC/25/7. In accordance with the 2013 work plan, three days would be utilized during the present session under Agenda Item 7 to review and take stock of the texts and the progress made so far in the above mentioned thematic sessions in 2013 and to make a recommendation to the General Assembly which would take place in September

2013. The Chair reminded delegations that the three thematic texts had already been noted and transmitted by the IGC to the General Assembly and were merely made available as working documents for the purpose of review and stock-taking. The exercise would, therefore, not include a renegotiation of the texts or any further drafting. He proposed that the IGC proceed to discuss in plenary the work reflected in each of the texts in a sequential manner. He called upon delegations to express their views on the state of each text, to identify areas of possible convergence and any new proposals, and reflect their perceptions on the nature and level of further work required to achieve the goals of the negotiations, including identifying specific outstanding issues in each of the texts on which further focus was required as a priority. The discussion would be reported on in the usual way in the report of the session. Upon completion of the initial, sequential discussion in plenary, the Chair would make a further proposal on how to move forward on a recommendation to make to the General Assembly. The Committee would be addressing its work in two phases. The first phase would be the stock-taking on GRs, TK and TCEs, hopefully informing the formulation of a recommendation in a second phase. Once that would be completed, the Committee would then chart the path for the discussion on the recommendation. The Chair indicated that he would allow general statements to be made before the reviewing and taking stock of the three texts.

267. [Note from the Secretariat: all delegations that made general statements thanked the Chair for his leadership.] The Delegation of Algeria, speaking on behalf of the African Group, attached great importance to the work of the IGC and believed that the conclusion of the work of the IGC would lead to an increase in the development and wealth of its population. During its current mandate, the IGC had to expedite text-based negotiations with the objective of concluding an appropriate international legal instrument or instruments for the protection of TK, TCEs and GRs. Through the three meetings organized in 2013, the IGC had been able to make progress on texts relating to TK and TCEs, as well as GRs. In those texts, the contentious issues were clearly set out. They were related to four articles (subject matter of protection, beneficiaries, scope of protection and limitations and exceptions). Time had come to adopt a holistic and political approach to resolve those issues. With goodwill and strong commitment and engagement from Member States, agreements could easily be reached on them. With regard to the way forward, the African Group believed that a roadmap for the IGC to reach its desired destination had first to set a clear time line for the text or texts to be ready for a Diplomatic Conference, and then, identify the number of IGC sessions needed in order to be well prepared for the Diplomatic Conference. The African Group strongly believed that structuring further work in that way would better serve the objective of the negotiations. In its view, the General Assembly had to send a strong message to the international community regarding the commitment of Member States to conclude the work of the IGC. The General Assembly should renew the mandate of the IGC to intensify its work, in good faith, in order to finalize a text or texts of an international legal instrument or instruments in 2014 and convene a diplomatic conference in the 2014/2015 biennium. To achieve that aim, more IGC sessions were needed. Member States had to recognize that there was a need for thematic sessions, as well as cross-cutting sessions to allow a holistic perspective of the work. The African Group remained fully engaged and stood ready to consider all the proposals that would make the IGC closer to its objective, which was, for the African Group, the conclusion of a legally-binding treaty for the protection of GRs, TK and TCEs against misappropriation and misuse.

268. The Delegation of Belgium, speaking on behalf of Group B, said that the Member States of Group B were fully committed to seeking a balanced outcome. The result should be a solution that provided clarity, legal certainty and flexibility for all stakeholders. The Delegation reminded that Group B had actively and constructively engaged in the discussions over the last years. Progress had been made, but outstanding issues remained. The IGC had moved to a closer understanding of others' positions for certain diverging

and/or conflicting concerns. Group B did not find though that the discussions had yet resulted in outcomes that lent themselves to be the basis for an instrument or instruments of any legal nature, whether binding or nonbinding. It continued to believe that successful outcomes were achievable, provided that the IGC created the conditions that would allow them to emerge, based on the continuation of the discussions that would build up on recent progress. Any outcome should acknowledge that there were situations where protection of TK, TCEs and GRs was needed, but that should not adversely restrict creativity and innovation. The Delegation reiterated that Group B was fully committed to the IGC and would work constructively to address those important issues.

269. The Delegation of Poland, speaking on behalf of the CEBS, envisaged the present discussions under Agenda Item 7 as ending with a consensus recommendation to the next General Assembly on the IGC process, with a view to renew the mandate of the Committee. The renewed mandate would allow the IGC to continue its text-based negotiations in the next biennium, with the view to finalizing the process, should the General Assembly of 2015 decide that adequate and substantial progress would have been made by that time. The established work program had to ensure the most efficient negotiations with the most effective use of time and resources. In the future IGC program, the negotiators needed to concentrate on the most crucial pending issues, which so far remained unsettled, before proceeding to the issues of lesser importance. That was why the objectives and principles had to be settled first. The CEBS Group recalled the "equal footing" principle as the basis of the work in the IGC. It also supported the need to maintain a separation between the texts under discussion. The CEBS Group supported the development of instrument or instruments for the protection of GRs, TK and TCEs fulfilling the basic requirements of legal certainty, clarity and flexibility. It reiterated that the nature of those instrument or instruments was still to be determined. The CEBS Group endorsed the achievements and progress made in the work of the IGC. It noted that the discussions so far had been fruitful. The main points of divergence needed to be further discussed towards a satisfactory compromise to all. It observed though that the existing texts on GRs, TK and TCEs were not mature and sound enough, technically speaking, to take next steps in the negotiation process. It reaffirmed its full commitment to the IGC process. It fully supported the objective of a balanced approach towards the issues discussed and acknowledged the importance of TCEs, TK and GRs and the role they played in the cultural and natural heritage of the world. Given the importance and complexity of the issues, it was all the more crucial that the texts were technically sound and mature.

270. The Delegation of Trinidad and Tobago, speaking on behalf of GRULAC, said that the Annex to document WIPO/GRTKF/IC/25/7 on TCEs, which represented the result of the discussions that had taken place under Agenda Item 6 in the present session, was not perfect, as it still contained brackets and reflected in some instances the divergent views of Member States. Despite that, the IGC had come a very long way after thirteen years of work. The IGC succeeded in producing a fairly mature text, which, with more hard and dedicated work, could become a more adequate and balanced legal framework which would satisfy the whole WIPO membership. GRULAC supported the call to transmit this text, and the two other texts on TK and GRs, to the General Assembly for its consideration. It also supported the call for the General Assembly to renew the mandate of the IGC in order for the Committee to continue its work on the three thematic areas during the course of 2014. The Delegation expressed the wish of GRULAC to have three separate IGC sessions during the course of 2014, with the aim to building on the current texts and improving them. Such sessions should be complemented by additional meetings in Geneva with the appropriate budgetary allocations. The GRULAC was confident that this work plan would allow for a Diplomatic Conference to be convened during the course of the next biennium. It reiterated that the protection of TCEs, TK and GRs were of utmost importance to GRULAC. GRULAC was very committed in making further progress in the process and looked forward to working

with other Member States over the next three days to determine a concrete work plan for the IGC for the year 2014.

271. The Delegation of Indonesia, through His Excellency Ambassador Triyono Wibowo, Permanent Representative of the Republic of Indonesia to the UN, the WTO, and other International Organizations in Geneva, speaking on behalf of the Like-Minded Group of Countries (LMCs), pointed out that the IGC process would bring great benefit and advantages to mankind and was therefore of utmost importance to the LMCs. It stated that progress had been made at the IGC process. However, some fundamental issues were still left to be addressed; in particular, subject matter of protection, beneficiaries and transparency. It expressed the hope that the IGC process end up with a legally binding international instrument or instruments in a timely manner. It recommended that all parties pave the way of their fortitude by finalizing the negotiation process. Decisiveness was needed regarding technical issues in the drafting process as well as a push forward and strong political will. On GRs, it believed that convergence on critical issues through the prospect of other relevant international instruments had been building up. On TK, the current text contained a number of brackets which should be worked out to enhance clarity and to narrow down differences. The IGC needed to explore similarities and synergy in the objectives and principles in order to harmonize them and bring about common objectives and principles for both texts on TK and TCEs. While consensus was building up regarding the text on TCEs and its format, policy objectives and principles needed further refinement in order to facilitate progress in the more technical issues. The LMCs stated that there was an imperative need to renew the mandate of the IGC in such a way that the work plan be strongly fostered and finalized. The renewal of the mandate during the next biennium should be adopted under the assumption that a clear time frame be set that would ensure the finalization of an international legally binding instrument or instruments and the convening by the General Assembly in September 2014 of a Diplomatic Conference. The Delegation reiterated the full commitment of the LMCs to pursue the finalization of the process in that line.

272. The representative of ADJMOR, speaking on behalf of the Indigenous Caucus, thanked the Chair for allowing it to participate in the process. He also thanked the facilitators and the Secretariat of WIPO for their help, and those delegations who had been considering its positions. He welcomed the strong interest expressed during the discussions for the protection of TK, GRs and TCEs of indigenous peoples and local communities. He encouraged the Committee to find consensual solutions that would respect the interests of all parties. He renewed its readiness to contribute to the finalization of negotiations, in accordance with the different international instruments that dealt with the rights of indigenous peoples, which actually rested on fundamental human rights. In that respect, he announced that the Indigenous Caucus would make a more detailed statement in which it would set out its recommendations for the future work program.

273. The representative of *Tupaj Amaru* stated that the Committee, in his view, had failed in its work. The three texts on the table contained no economic, social or political content of any value. He added that the Member States did not take into consideration the contributions of the indigenous peoples. He noted that the Committee had discussed culture in the abstract, while culture was based on economic and social foundations whose well-being should matter more than so-called cultural exchanges. He could not approve any of the three texts, which had been watered down and had not taken into consideration the contributions made by his organization.

274. The Delegation of the Republic of Korea noted the differences of opinion between Member States on the definitions of the terms, the beneficiaries and the methods of protection. It believed that those differences came from the various ways GRs, TK and TCEs

were understood, as well as the different expectations, experiences or situations in those areas. It was of the basic opinion that GRs, unique TK and specific TCEs should be protected appropriately from forms of misuse. At the same time, it reminded that its country had put in place practical IP protection systems, such as patents and copyrights whose efficiency with regard to economic development and innovations had been widely proven. It believed that a completely new and hastily established protection system for GRs, TK and TCEs could create more disputes among Member States, indigenous peoples and local communities than provide solutions. The Delegation urged that the definitions and scope be clearly set out in order to ensure effective protection and legal certainty. It emphasized that the current IP protection system should be respected and maintained. It reserved the right to come back with more details in the course of the discussion.

275. The Delegation of the United States of America continued to support the process. It was confident that with the guidance of the Chair, the Committee would be able to reach mutually satisfactory outcomes. It stated that within WIPO, the topic of IP had different levels of support, with some Members advocating for strong IPRs protection and others weaker protection, some promoting harmonization of systems, while others opposing that goal or promoting broad exceptions and limitations to IPRs. Therefore, it was not surprising that the IGC was taking time to develop a consensus on the topics that were being addressed in the IGC, namely TK, TCEs and GRs, including the challenge of how to provide for their maintenance and development, while continuing to preserve and promote a sound and vibrant public domain. The Delegation supported the intervention made by the Delegation of Belgium on behalf of Group B. It was committed to contribute to the IGC work with the view to forging consensus. It emphasized though that it would like to avoid any commitments that would pre-judge the outcome of the work of the IGC. It noted that the text-based negotiations had resulted in three documents that demonstrated the scope of the discussions. It considered that to be progress. But the Delegation deplored that a detailed discussion of facts and a meaningful technical discussion had been lacking though. For example, it wondered what were examples of TCEs, TK and GR that all would agree had to be protected. It also wondered what would be meant by protection in relation to those examples. With a fact-based discussion of examples, the Committee could come to a common understanding and make further progress. Factual studies on the actual use of a disclosure requirement would also be helpful to address the debate. It reiterated that one could understand each other's position better with facts. With room for discussion of examples and factual studies, the Delegation could support the extension of the IGC's mandate. It believed that the Committee should harvest milestone accomplishments along that way.

276. The Delegation of Australia stated the negotiations that had taken place under Agenda Item 6 had been the most frustrating of the three exercises of the kind in 2013 in contrast to the significant progress made on GRs, when disclosure proponents agreed on an administrative approach to disclosure rather than an approach based on substantive examination. The meeting on GRs was able as well to reduce a significant number of principles and objectives to two core objectives. Whilst the meeting on TK did not make as much progress, reflecting similar core policy issues to TCEs, it was conducted in a very positive spirit, with robust, but respectful discussions and compromise. The Delegation called for Member States to capture the spirit of IGC 23 and IGC 24 in order to move forward with the negotiations. It emphasized that Member States should come prepared to discuss core policy issues of substance and engage collaboratively with each other. The Delegation hoped that Member States would be appropriately represented by capital or Geneva-based staff of sufficient seniority, technical and policy competence, as well as authority to negotiate, in line with clear negotiating strategies and in good faith. It urged Member States not to divide the negotiations into a north-south debate. The Delegation reiterated that Australia, while considered a developed country, had much in common with developing countries:

Australia was a mega-diverse importer of knowledge and had a strong vibrant group of indigenous peoples, many of whom were still struggling to overcome the social problems resulting from the past. The Delegation aligned itself with the statement made by the Delegation of Belgium on behalf of Group B regarding the status of the current negotiations. The Delegation believed that further work was required and supported the renewal of the mandate for two more years with a view to continuing the work in a balanced way on each of the three topics with stocktaking prior to 2014. It highlighted the key areas to focus on across the three areas. The Delegation believed that the objectives across the three subject matter areas needed to be consolidated. One consolidated list of objectives across the three subject areas rather than different lists would help to focus the work of the IGC on core outcomes. There was merit in starting to develop a declaratory statement as a preamble which would reflect the intent and create linkages to international agreements such as the CBD and the UNDRIP. This should be a demonstration of commitment to the key stakeholders in these negotiations, namely the indigenous peoples. In relation to GRs, the Delegation believed that the core normative issue was disclosure. It believed that there was no disagreement on the need for defensive measures as proposed in the Joint Recommendation tabled by some Member States ("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/24/7)), as they would be required to underpin any normative approach. It noted, however, that that proposal addressed prior art in examination and did not address the key issue of concern to most Member States that those using GRs and TK in innovation should be able to transparently indicate in patent applications that they had complied with laws on Access and Benefit Sharing (ABS). The Delegation stated that the critical issue blocking progress was a lack of consensus in relation to disclosure mechanisms. Key concerns related to the potential burden on the IP system and business and unintended consequences, which could create uncertainty in the IP system, limit access to GRs and TK associated with GRs, thereby impeding innovation and achievement of economic benefits. It believed that this should be the focus of the discussions on GRs, that is, to develop a disclosure approach which would address those concerns whilst achieving the objectives of the text. The Delegation noted that many arguments against disclosure reflected a dated position, not based on what was on the table, namely an administrative approach that would not involve substantive examination. The Delegation urged the Member States to reflect on that and come prepared for future meetings focused on what was on the table and achieve an outcome which would balance the different interests. In relation to TK and TCEs, the Delegation believed that there was clear consensus concerning the protection of moral rights. However, significant work remained in developing an approach which would address economic rights, whilst balancing the needs of users and holders, and would take into account the different national environments, including the legal environment and environment in which indigenous peoples and local communities operated. The Delegation believed that it was critical to prepare a flexible agreement which would provide flexibility with respect to implementation at the national level. It pointed out that across both subject matters, TK and TCEs, there were common key issues on which Member States had to find common ground. Those were: definitions, beneficiaries, scope of protection, exceptions and limitations. Another key issue that Member States would need to address was the impact of publicly available information and how to address diffused knowledge. The Delegation believed that there was merit in combining the two texts which also reflected the view of the indigenous stakeholders that TCEs were an expression of TK and did not stand alone. The Delegation believed that it was inefficient to continually cover the same ground at different meetings. It wished to offer some key words which should reflect the characteristics of the future negotiations: balance, flexibility, substance, shared understanding, including engagement with key stakeholders, indigenous peoples and users. It emphasized that most important of all were maturity and political will.

277. The representative of CAPAJ noted that in the course of the current year, during which three documents had been prepared, the IGC had demonstrated goodwill by enabling greater participation of indigenous people in the IGC, as represented by the Indigenous Caucus. At IGC 23 and IGC 24, it was concluded that indigenous peoples could participate in the expert group meetings. It had been a positive sign, as representatives of indigenous people had been able contribute to clarifying many contentious issues. He believed that participants could reconcile their diverging views and adopt a consolidated text based on the three current documents. In his view, given that some Member States envisaged a potential international treaty of a binding character, there would be a need to discuss in greater detail the norms resulting from the CBD and the 2003 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage and encompass the jurisprudence and case law relating to the participation of indigenous peoples and local communities. Those international norms reflected the contributions, needs and strong beliefs of indigenous peoples. He recalled that at IGC 23 a proposal had been made to engage the representatives of indigenous peoples in the facilitators' team in the same manner as they were engaged in the expert group meetings. The representative believed that that could improve the IGC process. He concluded by encouraging the participants to continue the discussion so as to achieve a successful result that would satisfy the indigenous peoples and local communities.

278. The Delegation of Lebanon stated that consensus should be reached on an international treaty and called on Member States to further consider all details of the draft documents. It reminded that the present documents had an international character and should therefore take on board general principles that would match the different situations and needs of Member States and observers.

279. The Delegation of Brazil supported the statement made by the Delegation of Indonesia, speaking on behalf of LMCs, and the statement made by the Delegation of Trinidad and Tobago speaking made on behalf of GRULAC. It believed that after 12 years, time had come to finalize binding international legal instruments on the three subjects that the Committee was negotiating. It reminded that a lot of personal and financial resources had been spent in the IGC already. Those efforts should not be lost and the forthcoming agreements should be finalized during the next mandate. It acknowledged that the Committee would face many challenges in the next two years and suggested that participants engaged with each other more intensively during informal meetings in order to reconcile their differences. It stressed that such informal meetings should remain transparent and inclusive. The Delegation believed that the work should be organized in such a manner so as to enable the Committee to finalize the text with a view to convening a Diplomatic Conference in the next biennium. It was confident that the Committee could reach an agreement on a substantive amount of formal sessions of intensive negotiation.

280. The representative of Tulalip Tribes believed that the current texts were not ready for a Diplomatic Conference. He stated that the Committee must take into account all relevant international and domestic laws. He opined that while some aspects of intangible cultural heritage touched upon the IGC, it had to be acknowledged that many aspects laid outside its scope. Intangible cultural heritage of indigenous peoples was regulated primarily by customary law, human rights law, the UNDRIP, international intangible cultural heritage law, public international law and constructive arrangements such as treaties, constitutional law, agreements, protocols and others. The representative highlighted that negotiations at the IGC could not take place in isolation of those international and domestic laws and that the Committee should ensure that they were incorporated in the negotiation process. The representative gave the example of human antiquity: scientists gave a range of 250,000-400,000 years for evolution of *homo sapiens*, the modern human, which, by a conservative reckoning at twenty five years per generation, would give around 8000-16000 generations as the period in which TK, TCEs and TK associated with GRs started to arise. While much was

not that ancient, they might certainly be several thousands of generations in antiquity. That could be contrasted with about sixteen generations for IP law and approximately four generations for its modern versions. For that reason, the Committee needed to be extremely cautious in treating TK, TCEs and TK associated with GRs in an IP context. The representative emphasized the need for legal clarity in relation to the concept of public domain. He reported that he made an internet search for such terms such as “public domain law”, “international law of the public domain”, “law of the public domain”, “international public domain law” and that the internet returned only a handful of results. He believed that the Committee should not make very broad claims and generalizations about international public domain law. He indicated that in the existing international IP laws, the concept of public domain mainly referred back to domestic law and was a copyright law concept, whereas there were plenty of other laws for intangible cultural heritage that did not involve copyright law. The representative stated that the Committee had failed to consider retrospective and prospective measures. He noted that some of the earlier negotiations had referred to retrospective rights and property that had been acquired with the consent of indigenous peoples or local communities without making a distinction between rights acquired in the future versus those obtained in the past. He reiterated that given the antiquity of TCEs and TK, some did not merit protection under the IP regime and this would have to be clarified. The Committee had to distinguish between the material and IP matters. The representative commented on the effects on creativity and burdens on innovations. He pointed out that whilst indigenous peoples and local communities welcomed innovation and creativity, those should not be achieved at the cost of indigenous people losing their control and protection over their TCEs, TK or TK associated with GRs. He concluded that the Committee should make sure that the forthcoming agreements did not constitute burdens or have chilling effects on indigenous peoples and local communities.

281. The Delegation of South Africa aligned itself with the statement made by the Delegation of Algeria, speaking on behalf of the African Group and with the statement made by the Delegation of Indonesia, speaking on behalf of the LMCs. The Delegation stated that it had high regard for WIPO as the focal point in the UN system on IP issues. In recent years, IP had proved to be hugely popular and yet it was an increasingly complex subject. The Delegation, however, was concerned that after 13 years of deliberations in the IGC, there was still no agreement in sight. That reflected poorly on WIPO’s normative initiatives. Failure to finalize the instruments on GRs, TK and TCEs was not due to lack of substantive material but to lack of political will and readiness to acknowledge misuse and misappropriation, as well as to provide legal remedies for such acts. The Delegation reminded that it had persistently played an active and positive role since the establishment of the IGC. It reminded the Committee that its country had contributed to the Voluntary Fund to support the participation of indigenous people’s representatives in the IGC work. The Delegation recalled as well that, through the African Group, it had been an active facilitator of informal meetings with other regional groups in pursuit of solutions to unlock challenging conceptual issues. It had also participated in preparatory meetings and hosted one informal meeting in Pretoria in April 2013, which aimed at establishing consensus on all four critical issues listed in the 2012 General Assembly’s decision. The Delegation thought it crucial that all Member States recognized the importance of reaching an agreement on an international legal instrument or instruments for the effective protection of GRs, TK and TCEs. That would constitute a historical turning point as it would also be the first time that the IP normative system progress in support of Africa and developing countries. Overall, that could benefit all Member States as well, since such instruments would enhance trust and confidence in the IP system as a whole. Failure to reach agreement on an instrument or instruments to effectively protect GRs, TK and TCEs would be tantamount to denying developing countries their basic rights and principles of justice in relation to the prevention of misappropriation and misuse, as well as provision of legal remedies for such acts. Unless WIPO reaffirm such basic founding principles of justice as the prevention of misappropriation and misuse, its

effectiveness and value for developing countries would likely to be seriously questioned. The Delegation observed that some Member States had shown lack of political will towards concluding the text or texts of an international legal instrument or instruments for the effective protection of GRs, TK and TCEs. This lack of political will might unfortunately prevent the GA to decide on convening a Diplomatic Conference next September. With regard to future work, the Delegation believed, nonetheless, that the renewal of the IGC mandate, complemented with a firm commitment to make substantial progress at both ordinary and special IGC sessions, should enable the Committee to prepare constructively and expeditiously for the convening of a Diplomatic Conference within the next biennium. The Delegation believed that the texts transmitted to the next General Assembly were sufficiently mature as to constitute a suitable base for the IGC negotiations to be concluded next year in view of the convening by the September 2014 General Assembly of a Diplomatic Conference during the next biennium.

282. The Delegation of Malaysia aligned itself with the statement made by the Delegation of Indonesia, speaking on behalf of LMCs. The Delegation wished to reaffirm the importance of GRs, TK and TCEs. It reiterated that many developing countries were faced with many forms of misuse, alteration and misappropriation of GRs, TK and TCEs. It strongly supported the objective of an international legally binding treaty or treaties. It believed that an international legal framework would complement the national laws and measures that had been adopted by some Member States and greatly enhance and strengthen such protection. Given the protracted discussions on the forthcoming instruments and signals that the IGC might be faced with further delays, the Delegation proposed the following steps: first, setting a specific date for convening a Diplomatic Conference; second, recommending the extension the IGC mandate in order to prepare for the Diplomatic Conference. The work program would consist of three thematic IGC sessions on each issue as well as an additional IGC session to be held prior to the General Assembly of September 2014.

283. The Delegation of Trinidad and Tobago, speaking in its national capacity, supported the statement made by GRULAC. It was encouraged that after five days of intense discussions, the Committee could meet during three days to discuss its future work. It acknowledged the fact the Annex to document WIPO/GRTKF/IC/25/7 on TCEs still remained with many bracketed parts. It made the following proposals: first, to recommend to the General Assembly in September the renewal of the IGC mandate; second, to hold three core negotiation sessions in 2014 aimed at settling the texts in the three thematic areas of TCEs, TKs and GRs. Those sessions would be complemented by additional meetings in Geneva with the appropriate allocations in the 2014 budget for such meetings; third, to convene a Diplomatic Conference at least by the year of 2015. It called on the Committee to collectively draw inspiration from the success of the Beijing Treaty and the Marrakech Treaty. It looked forward to the renewal of the mandate at the 2013 General Assembly so that the IGC could conclude its work during the next biennium.

284. The Delegation of Thailand aligned itself with the statement made by the Delegation of Indonesia, speaking on behalf of LMCs. The Delegation noted that as the IGC mandate of the current biennium was coming to an end, it was important to think about the way forward for the IGC. It recalled that the IGC Retreat that took place in Bangkok from July 5 to 7, 2013 generated a number of valuable ideas and questions that might be subject for further discussion at the present session. It hoped that the following three days could be used efficiently to agree on concrete recommendations for consideration by the General Assembly. It acknowledged that all delegations had invested much time, energy, efforts and resources for the IGC and that the protection of GRs, TK, TCEs itself had very significant moral and economic implications. The Delegation believed that it was the responsibility of all Member States to ensure that the IGC process resulted in a tangible and meaningful outcome achieved in a timely manner. It believed that Member States had already

expressed their preferences for options that reflected their concerns and interests. The next steps should be directed toward narrowing down those options, streamlining the text and making it more focused, in particular with respect to key issues such as objectives, the subject matter of protection, the beneficiaries and the scope of protection. The Delegation emphasized that the Committee should aim at reaching compromised solutions and preparing texts based on consensus that would be acceptable to all. It was important that delegations showed flexibility and helped to find bridging solutions rather than merely continued insisting on their national positions. It believed that the Committee should strike a balance between detailed prescription for legal certainty and flexibility of national legislation. It preferred a rights-based approach, but stressed the need to go beyond that. The Delegation believed that since a number of important points still remained to be resolved, political commitment was required. It reminded that as it had been proposed during the IGC Retreat in Bangkok, besides expert level discussion, the IGC could benefit from policy level discussion, such as one at the senior official or political level in order to advance forward the process at the right time. It called on the Committee to further explore the proposal when planning the work program of the IGC in the next biennium. It supported the extension of the IGC mandate for the next biennium with the date of a Diplomatic Conference set no later than the end of 2015. It expressed strong preference for a legally binding international instrument or instruments to ensure the effective protection of GRs, TK and TCEs. Synergy, complementarity and differences among GRs, TK, and TCEs must be borne in mind. The Delegation was in favor of a single undertaking but was flexible on the number of instruments. It recognized that the three existing texts shared a number of common elements which might be combined in a single set of provisions such as the preamble, objectives and final provisions. If they were kept separately, it had to be ensured that all three texts were consistent. To save time the Committee should avoid repetitive negotiations. The Delegation expressed its view in relation to the work methodology of the IGC in the next biennium. It concurred that negotiation on three issues should proceed in parallel with equal time allocated to each subject matter. However, they did not have to move at the same pace. For example, on the subject matter of GRs, where pending issues were narrowed down, the Committee could proceed with the language negotiation. It believed that there was a need to rethink the organization of the work methodology during the IGC meetings. It stated that having one meeting per year per issue might not suffice if the Committee wanted to conclude the work in one or two years' time. Combined discussion could be brought back, supplemented by alternative ways of work such as the convening of intersessional meetings or expert drafting groups. The Delegation looked forward to engaging itself in further discussion on that issue.

285. The Delegation of Japan stated that it attached great importance to GRs, TK and TCEs. It appreciated the significant developments that the Committee had achieved over the past years. Even though progress had been achieved and should be recognized, the Delegation was of the view that there was no sufficient common understanding among Member States on such fundamental issues as the definition, the criteria for eligibility and beneficiaries. It pointed out that there was not even an agreement on a common objective. It was convinced that further work still remained to be done in order to overcome divergent views and address concerns raised by Member States, including those of the Delegation of Japan. The Delegation emphasized that the negotiation should not be process-driven but substance-driven, especially because some issues had not been dealt with by the Committee. The Committee had to tackle those issues in an appropriate manner from the substantive perspective in order to find a solution for the protection of TCEs and at the same time prevent any adverse effects on innovation and creativity. Ambition was necessary to accomplish the objective, but a pragmatic and cautious strategy was essential to reach a common goal. The Delegation believed that for that reason Member States should not introduce artificial and procedural targets, such as the timing for a Diplomatic Conference, until they identified common objectives agreeable for all. The Delegation believed that all

three subjects should be treated equally and at an equal speed, taking into account their equal importance and interconnectedness. It wished to stress the importance of fact-based analysis in order to overcome divergent views and help the discussions to move forward with satisfactory results for all Member States. The ultimate goal was to ensure the effective protection of GRs, TK and TCEs. The Delegation believed that the Committee should continue the work and elaborate on the discussion based on fact-based analyses. It reiterated its commitment to take part in discussions in a faithful and constructive manner so as to reach tangible and meaningful outcomes with which all Member States would be satisfied.

286. The Delegation of India supported the statement made by the Delegation of Indonesia, speaking on behalf of LMCs. It recalled that the General Assembly set up the IGC thirteen years ago. Prior to that mandate, there had been fact-finding missions in 1997 to analyze such questions as the nature of misappropriation, the effects of it and whether IP rules applied to TK. The Delegation noted that from 2001 until 2009 there had been almost ten sessions and many discussions. There had been studies and gap-analysis reports. Issues had been discussed extensively. In 2009 the General Assembly decided that time was ripe to move toward and expedite text-based negotiations for an international legal instrument that provided effective protection to GRs, TK and TCEs. In 2011 the Committee did not provide any recommendation to the General Assembly and the decision had been adopted to continue the negotiations. The Delegation urged Member States to acknowledge and implement the General Assembly's recommendation to move forward without further delays. In relation to the work of the IGC, the Delegation observed that substantive work had been done in the past 13 years. It indicated that the Member States' positions had been reflected in the texts. It was now a matter of political will to move forward and convene a Diplomatic Conference. The Delegation concluded by recommending that the 2014 General Assembly decide to convene a Diplomatic Conference.

287. The Delegation of the Islamic Republic of Iran wished to associate itself with the statement made by the Delegation of Indonesia, speaking on behalf of the LMCs. It noted that some progress had been made within the framework of the IGC and that the Committee relentlessly had been continuing text-based negotiations with the objective of concluding an appropriate international legal instrument or instruments for the effective protection of GRs, TK and TCEs. Nevertheless, it expressed concerns regarding the speed of the IGC negotiations. Lack of progress could unnecessarily jeopardize the objective. The Delegation observed that there were still divergent views on key issues in the present drafts, like the definition of the subject matter. But it was of the view that it was the right time to narrow down differences and achieve concrete results in the nearest future. It believed that at that stage the Committee needed political will to move the negotiations forward and allow the Chair to bridge Member States' differences. It was essential that all Member States showed flexibility and engaged constructively in order to ensure that the General Assembly's mandate would be fulfilled without any undue delay. The Delegation read out the relevant passage from the General Assembly 2012 mandate that the Committee "continue intensive negotiations and engagement in good faith, with appropriate representation, towards concluding the text(s) of an international legal instrument(s) which will ensure effective protection of GRs, TK and TCEs". The Delegation believed that regardless of the progress made in the past three thematic sessions of the Committee, the Committee had to increase its efforts and show flexibility necessary to reach consensus on the outstanding issues. In this regard, it would be imperative to renew the IGC's mandate for the upcoming biennium and at the same time hold negotiations combined with a genuine commitment by all Member States. The Delegation emphasized that it was time to decide on how to accomplish the task that Member States had undertaken some thirteen years ago. It reiterated that the subject matter under discussion was of high importance to developing countries for a number of reasons: first, it was closely linked with the Development Agenda Recommendations;

second, the conclusion of such an important instrument, highly supported by many developing countries, would be an essential step towards filling considerable gaps in the IP legal framework. The Delegation pointed out that it was of high importance that the international IP legal system evolved in a balanced manner and ensure sustainability through international legally binding instrument or instruments on GRs, TK and TCEs. The conclusion of a binding treaty or treaties that would provide effective protection against misappropriation of GRs, TK and TCEs, would ensure that the legitimate needs and requests of the developing countries regarding the IP system were taken into account. The Delegation stressed that it was highly essential to ensure that the international IP system did not merely impose obligations on developing countries but also sustainably enhanced their economies. It observed that the negotiations that took place under Agenda Item 6 proved that the mandate of the IGC could not be achieved without having a strict timeframe. It believed that it was necessary to define a timeframe in order to secure success. The Delegation took note with sympathy of the many delegations that were participating at the costs of their own countries. After twelve years of efforts and energy, it was the right time to take the final move and accomplish the task entrusted on the Committee. In this regard, setting a definite time for convening a Diplomatic Conference as well as scheduling a sufficient number of thematic sessions for the IGC to further develop the instruments prior to the Diplomatic Conference should be the option in view of the 2014-2015 biennium. The work program could initially provide for four sessions of the IGC, with the aim of convening a Diplomatic Conference in the first half of 2015.

288. The Delegation of Canada supported the statement made by the Delegation of Belgium, speaking on behalf of Group B. It welcomed the opportunity to take part in the discussion concerning the review and taking stock of the work of the Committee. It believed that that exercise was vital in order to achieve the Committee's common goal. It expressed its commitment to cooperate fully in finding solutions that would take into account the considerations put forward by each participant regarding future work. The Delegation acknowledged that the issues under discussion were complex. The type of protection sought was innovative and the task of defining its parameters might potentially be left to non-state actors, requiring vigilance in terms of the way in which the wider world would comprehend any solution that the Committee might envisage. Time and openness in terms of complementary initiatives were required in order to develop such a common understanding. The Delegation believed that based on the text documents the Committee had not yet reached that stage of common understanding. It supported the idea of renewing the mandate of the Committee. The Delegation was prepared to hold discussions concerning the issue of how to organize the Committee's work and achieve the objectives set. It believed that the Committee could find balanced solutions which would take into account the various interests.

289. The representative of CISA supported the statement made by the representative of *Tupaj Amaru*. He stated that the political will of indigenous peoples could not be expressed within the IGC due to unequal participation and the denial of the right to self-determination of indigenous people. Such recognition should constitute the basis for recognizing the dignity of, and respect for their property rights. He believed that this situation was not in conformity with a democratic and equitable international order. He stated that WIPO had systematically ignored international standards set for indigenous peoples. A credible and responsible organization would not have only reflected and respected the established rights of indigenous peoples, but would have put them in black and white on the documents before the Committee. Indigenous peoples had been recognized at every level of sovereignty: from autonomy to complete independence. Political rights had been fully recognized for all indigenous peoples. In this regard, the representative was of the view that the Nagoya Protocol could not be used as a good example for standards setting in modern days. He believed that that document was not acceptable for a lot of indigenous peoples. The

representative recommended that the IGC directly work with indigenous peoples so as to ensure a more equal level of participation that would be equipollent with their legitimate right to self-determination. He stated that indigenous peoples were not asking for WIPO or the IGC to solve the difficult question of self-determination. That had never been the intention. The intention was to ensure that the IGC acknowledge that this right was standing as reflected in Article 1.2 of the UN Charter by ensuring a level of participation that would be more equal. With regard to the texts under negotiation, the representative stated that there had not been any consensus on “state-devised” texts. He used the term “state-devised” because he believed that those texts had resulted from an unequal process. For all practical purposes, indigenous peoples had not participated in or consented on those texts in accordance with international standards. Furthermore, he agreed with the statement made by the Delegation of India that further studies were not necessary, especially if they were not independent and were prepared by the WIPO Secretariat. He believed that there was a need for an independent study so as to enable a broader base of choice to reach conclusions on how to proceed. Without the consent of indigenous peoples, the Committee would not be able to move forward legitimately. The representative urged delegations to work more closely with indigenous peoples. He stated that the IGC needed to review its rules of procedure and amend them so as to allow for equal participation of indigenous peoples and ensure that the IGC process became legitimate.

290. The representative of UNEMRIP thanked the WIPO Secretariat for fast tracking the accreditation of the UNEMRIP at the present session. He reminded that two weeks prior to the beginning of IGC 25, the UNEMRIP had met and submitted important recommendations. The representative read a part of the preamble of the UNDRIP as follows: “Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration.” He noted that the divergence of views among delegations partly reflected the various national and regional peculiarities of indigenous peoples. Despite the progress made, the representative believed that the renewal of the IGC mandate was necessary. It was important for the IGC to recognize that it was faced with difficulties regarding terminology. The representative noted that the Delegation of Trinidad and Tobago had supported the suggestion of conducting independent and thematic studies to deal with those semantic issues. The representative recalled the importance of the subject matter of the IGC: in 2000 the UN Development Program (UNDP) had estimated that there were 390 million indigenous peoples around the world. The representative considered that since 2013 there could well be over 500 million indigenous peoples in over just about 100 countries.

291. The Delegation of Nigeria associated itself with the statement made by the Delegation of Algeria, speaking on behalf of the African Group. It wished to address both substance and process. It pointed out that the Committee was in the process of painfully, slowly but purposefully, completing an international text or texts that would have the force of law and that would reflect legal principles encompassing not only innovation and creativity but also human rights, self-determination and justice. The Delegation believed that an instrument that would not be legally binding would not be meaningful. It added that any sustainable instrument would also need to reflect competing but ultimately coordinated responses to and reflections of other international instruments. The work of the IGC should be to consolidate the objectives of the instrument or instruments and ensure consistency with the core articles and those objectives. It should contribute to strengthen the IP system by preventing misappropriation from being allowed, legitimated, encouraged or rewarded. The instruments should ensure that activities that undermined the moral and economic interests of indigenous persons were made illegal. The Delegation stated that as part of the UN, WIPO had a moral obligation to ensure that particular forms of creativity and innovation were not discriminated against and were not marginalized within the formal IP system. The Delegation strongly

believed that there must be a timeline regarding future work, not in an effort to prematurely hasten the outcome, but because discipline was needed to secure achievement. It added that addressing cross-cutting issues could and should facilitate progress. It noted that the discussions regarding Agenda Item 6 on the TCEs text had been frustrating and at many times discouraging. However, it recognized that up and downs were part of any process of international consensus building. There must be room for all delegations to express and to make their points. Nonetheless, that could not be done in a way that undermined or frustrated the ultimate goal of satisfying and accomplishing the IGC mandate. She also said that submission of examples and studies were important to inform the process. She requested though that those examples and studies facilitate the process of completing legally binding instruments. Studies should be done in parallel with the ongoing negotiations and should not serve as substitutes. She also said that relevant examples of misappropriation, misuse and abuse should embrace both the moral and legal dimension of misappropriation. The Delegation shared the view of the Delegation of Australia that maturity, political will, integrity and authority were needed in negotiating the instrument or instruments. She noted that the interests, rights and concerns of indigenous peoples were not the only issues at stake. The IGC process should also ensure the sustainability of the IP system as a whole, in which particular forms of innovation and creativity had been undermined or had been ignored within WIPO. The need to combine the two models that drove innovation was imperative. The Delegation stressed that time was important from two different perspectives. A timeframe was important to ensure successful completion of the negotiating process. But time was also important to ensure that ongoing acts of misappropriation did not continue to take place under the guise of systems of knowledge protection and knowledge governance. The Delegation believed that failure would undermine the legitimacy not only of the IGC, but of the IP system as a whole.

292. The Delegation of the EU, speaking on behalf of the EU and its Member States, reaffirmed its commitment to the IGC process and offered its views with regard to progress and the various texts for discussion under Agenda Item 7. The Delegation fully supported the objective of a balanced approach towards the subjects discussed and acknowledged the importance of GRs, TK and TCEs as well as the role they played in its cultural and natural heritage. Given the importance and at the same time the complexity of those issues, the Delegation believed it was imperative that the texts were technically sound and mature. With respect to IGC 23 on GRs, the Delegation believed that some good progress had been made in terms of general simplification of the text; however, further work was still needed. The Delegation emphasized that the EU and its Member States had demonstrated their engagement and flexibility in proposing a mechanism under which they could contemplate a requirement to disclose the origin, or source, of GRs and associated TK, in patent applications. That did not mean that the EU and its Member States could accept any form of disclosure requirement. The Delegation was supportive of a specific form thereof that would be related to patents, having a specific form with safeguards existing as part of an overall agreement to ensure legal certainty, clarity and appropriate flexibility. A disclosure requirement which would discourage or create legal uncertainty in the use of the patent system would not facilitate the sharing of benefits, and would not be in anybody's best interests. It noted that there were unsettled questions in the GR text regarding the issue of what would trigger disclosure, the exclusion of derivatives, its relationship between the Patent Cooperation Treaty (PCT) and Patent Law Treaty (PLT) and, importantly, the appropriate sanctions. It noted also there was also disagreement on whether disclosure was needed at all. With respect to TK, the Delegation noted that some good progress had been made at IGC 24 in reducing some of the policy options and alternatives in the text. It noted, however, that fundamental issues remained open. Limiting its comments to key articles, the Delegation stated that with regard to the subject matter of protection, both the definition of TK and the criteria for eligibility contained a large number of brackets and alternatives. The Delegation believed that in advancing on those issues, the Committee should ensure that the

envisaged options do not have any adverse effect on material already in the public domain. In establishing a legal instrument for the protection of TK, the Committee could not engage in a process of “putting the genie back in the bottle” which would restrict access to what was already freely available. If that was done, the effects could extend well beyond the IP system in ways that could not be readily envisaged. Concerning the scope of protection, the Delegation was of the opinion that there was a clear schism among Member States between those who favored a rights based approach and those, such as the EU and its Member States, who saw a measures based approach as being more appropriate and sufficient. It noted that there was a difference of opinion as to whom the beneficiaries of protection might be. The Delegation believed that the beneficiaries of any protection measures should be the indigenous and local communities themselves, who held, maintained, used and developed TK. It pointed out that the policy objectives and principles with regard to TK remained un-discussed. Concerning TCEs, the Delegation noted that the Committee had made difficult progress during the present session, reflecting the differences in opinion among Member States as to the policy objectives underlying the TCE text. As for the TK text, the Delegation noted that fundamental issues remained open. With regard to the subject matter of the instrument, the definition of TCEs contained a number of policy options and terms in brackets. The Delegation observed that some of them would need to be further discussed. The Committee should make sure in particular that the envisaged options do not have any adverse effect on material already in the public domain, and that existing artistic freedoms and research practices were not curtailed. In establishing a legal instrument for the protection of TCEs, the Committee could not engage in a process that would restrict current artistic freedoms, or access to material which was already freely available. If that was done, the effects could extend well beyond the IP system in ways that could not be readily anticipated. Concerning the scope of protection, the Delegation noted that there was a wide schism among the Member States between those who favored a rights based approach and those, including the EU and its Member States, who preferred a measures based approach, namely safeguarding TCEs as appropriate and according to national law, in a reasonable and balanced manner, as being more appropriate and sufficient. Regarding the beneficiaries of protection, as the Delegation had already mentioned in relation to the TK text, the Delegation believed that the beneficiaries of any protection measures should be the indigenous and local communities themselves, who held, maintained, used and developed TCEs, and not the state. The Delegation noted that the policy objectives and principles with regard to the TCE text remained without consensus. The Delegation considered that as a whole IGC 23, 24 and the present session had been undoubtedly been fruitful, as good progress had been made. But issues of fundamental importance remained to be resolved in all texts before the Committee would be able to give them a fully stabilized form. The Delegation recommended that the Committee consider the final form of the texts as non-binding. The Delegation highlighted that in determining the future work of the IGC, the Committee needed not only to proceed on an equal basis on each of the topics but also to maintain a separation between the texts. It noted that the number of days of meetings that had been spent this year had been resource intensive and difficult to manage. It believed that this had at times threatened the inclusive nature of discussions. The Delegation reaffirmed its commitment to the IGC process. It fully supported and committed to continued negotiations in which it would engage in good faith and with appropriate representation.

293. The representative of FAIRA expressed support for the statement made by the Delegation of Australia under Agenda Item 7. He also wished to support in part the statement made by the Delegation of South Africa, with the exception of the insertion of nations as being part of the beneficiaries. The representative thanked the Delegation of the EU for recognizing indigenous peoples and local communities, in his view, as the beneficiaries. However, he said that the need to reflect the rights of the indigenous peoples in the texts required further discussions with the Delegation of the EU. He believed that the Committee had made some way in direction of the indigenous peoples. He thanked those

Member States that had consulted and negotiated with the representatives of indigenous peoples and local communities in parallel of the plenary, but noted that there was still much room for more compromises and acknowledgement. He reminded the Committee that the minimum principles to be recognized in his view were as follows: first, the outcomes of the negotiations in the IGC should not make any harm to indigenous peoples and local communities; second, the principles of FPIC, MATs and ABS should be firmly incorporated in the forthcoming instruments.

294. The Delegation of Peru said that the work achieved in the IGC over the previous two years had been satisfactory. There had been progress in the three areas examined by the IGC. A consolidated text containing articles on GRs was proof of that. On TK, there had also been significant and high quality progress on delicate issues such as the definition of TK, the beneficiaries and the scope of protection. To a lesser extent, due to lack of time, there had also been progress on exceptions and limitations. There were still a number of issues open to discussion, some of a technical nature, but also some of strategic significance. For example, protected subject matter, disclosure requirements and the costs associated therewith, misappropriation, etc. A central issue which was still being discussed was that of TK and the public domain. The progress made over the past thirteen years meant that the time was ripe to take those discussions up to a higher level. The suggestion made by the Delegations of Australia, Indonesia and others, to work on a common body of principles and objectives and on the final clauses to apply to all three areas of work, was very useful. It therefore supported the statement made by the Delegation of Trinidad and Tobago, on behalf of GRULAC, and by the Delegation of Indonesia, on behalf of the LMCs. It firmly believed that the IGC should recommend to the next General Assembly that the biennial mandate of the IGC be renewed with three sessions per year, complemented with intersessional consultations of an informal nature where the active involvement of the Geneva-based missions could bring in ideas and positions on key issues closer together. An extraordinary session to examine cross-cutting issues should also be considered during the biennium. As part of the mandate, there should be the convening of a Diplomatic Conference towards the end of that period of two years. Finally, although the Delegation attached great value to codes of conduct and good practices, the rights and legal stability of relationships between holders and users would only be properly served by legally-binding texts.

295. The Delegation of Kenya supported the comments made by the Delegation of Algeria on behalf of the African Group and those made by the Delegation of Indonesia on behalf of the LMCs. Progress had been made on the three texts on GRs, TK and TCEs. It supported a clear timetable setting a determined number of IGC sessions. It was important to renew the mandate so that the text could be finalized in 2014 and a Diplomatic Conference be convened in the 2014/2015 biennium. Ultimately, what was hoped for at the end was an international legally-binding instrument/treaty for the protection of GRs, TK and TCEs against misappropriation, misuse and unlawful acquisition. The Delegation reminded the Committee that Kenya was in the process of drafting legislation on TK and TCEs. Its Constitution of 2010, Articles 11, 40.5 and 69 articulated that. It was very committed to the outcome of the IGC process.

296. The Delegation of Chile stated that the IGC had made significant progress, even though the IGC might not have made progress as fast as some delegations could have expected. It was clear that there was a great deal remaining to be done. For that reason, the Delegation believed that the IGC must continue to work intensively as it had been doing over the past two years. It was of the view therefore that it should be envisaged to hold a Diplomatic Conference as soon as possible. Working in that way would allow the Committee to produce ultimately an international instrument or instruments that would ensure the protection for GRs, TK and TCEs. The Delegation highlighted that the objective was to

organize a successful Diplomatic Conference which would allow Member States to produce an international instrument or instruments. It was ready and willing to continue to work intensively towards that end. It was also flexible enough to understand that an international negotiation was extremely complex and took time. Undertaking further studies and analysis might take the risk of getting the IGC away from the mandate. The Delegation said that the mandate of the IGC should be renewed without doubt. It urged all Member States to display political will. The Delegation believed that the only way of achieving a productive outcome was to set up a win/win situation for all, allowing every Member State to understand that the results achieved would be in some way or another in its own interests.

297. The Delegation of Egypt mentioned a proverb that a journey of a thousand miles began with a single step. It was not sure which phase of the journey the IGC was in presently. However, it had a feeling that the IGC should be approaching the final destination. A fair assessment of the IGC indicated that more progress could have been desired and attained. Unfortunately, there were still many brackets and different options in the texts of TK and GRs. More work needed to be done to achieve convergence, consolidation and streamlining, so as to reach the destination of the journey. It noted with concerns that, after a long journey of thirteen years, there were still disagreements on key policy issues, such as the need to prevent misappropriation and misuse and the need for IP protection of the moral and economic rights of the beneficiaries. Those were not merely technical matters but policy issues that required political will and commitment. It was important that, when renewing the mandate of the IGC, Member States agree to improve and enhance the negotiating method in order to ensure efficiency and direction in the negotiations. It was also important to have a clear mandate with the objective of convening a Diplomatic Conference in accordance with a clear and specific timeframe. Therefore, the Delegation supported the renewal of the mandate of the IGC for 2014 with three thematic meetings on GRs, TK and TCEs, as well as an intersessional or cross-cutting meeting with the view to holding a Diplomatic Conference in the 2014-2015 biennium.

298. The Delegation of Switzerland, echoing comments made by other delegations, considered that the IGC had made major progress on the three draft texts during the last two years. However, it recognized that none of the draft texts had yet reached a level of maturity that suggested being already in the final stage of the work. The session on GRs at IGC 23 had made significant advances on the substantive issue of the disclosure of source of GRs in patent applications. The session on TK at IGC 24 had also enabled the IGC to move ahead with the draft text in a spirit of dialogue and mutual understanding. On the other hand, the present session on TCEs had been clearly less productive in terms of both the substance and the dialogue needed to reconcile divergent views among delegations. The Delegation hoped that that would prove to be a temporary blip that would not recur in future if all delegations wished to achieve the expected results. The Delegation remained fully committed in that regard. However, it could not simply ignore what had happened during the present session. It called for caution with regard to fixing the program of work for the next biennium. Enough time was needed to finalize the draft texts. Putting artificial pressure on the work schedule might actually be counterproductive. In determining the work schedule for the next biennium, eventual success should be kept in mind. The work plan for the next biennium must remain ambitious but must also be realistic and aware of contingencies. Regarding the substance, the Delegation considered that the instruments or instruments to be jointly established should be sufficiently flexible in order to embrace the diverse realities that characterized different Member States, indigenous peoples and local communities. An excessively rigid solution would not provide an adequate response to the various needs and realities. It was important that the instrument or instruments should set up international standards that ensure transparency and legal certainty, while avoiding hampering innovation or creativity. The instrument or instruments that the IGC had agreed to develop with the view to protecting GRs, TK and TCEs should be appropriately balanced. In view of the

statements made by other delegations and in line with the statement made by the Delegation of Belgium, on behalf of Group B, the Delegation was in favor of renewing the mandate of the IGC for the next biennium. It was fully committed to work with other delegations on the elements of a recommendation regarding the renewal of the mandate of the IGC.

299. The Delegation of the Russian Federation believed that the process of seeking balanced solutions for the protection of TCEs, TK and GRs should be continued. Therefore, the mandate of the IGC should be extended for the 2014-2015 biennium. In the next biennium, the General Assembly would assess the degree of preparedness of documents prepared by the IGC. Key unresolved issues were the subject matter, beneficiaries and scope of protection. The IGC should continue to seek common ground on those issues. The Delegation believed that the documents developed within the framework of the IGC should be flexible and balanced in order to take into account the national peculiarities and the needs of Member States, as well as the existing IP system.

300. The Delegation of Senegal thanked the Secretariat and the facilitators for their efforts. The Delegation associated itself with the statement made by the Delegations of Algeria on behalf of the African Group and Indonesia on behalf of the LMCs. The Delegation stated that for thirteen years, Member States had been trying to produce one or more legal instruments to protect TK, GRs and TCEs. It recalled that the mandates had been renewed many times by the General Assembly for that purpose. There was a lot at stake for the developing countries because there was much value involved. The GRs, TK and TCEs, in the daily lives of those peoples, could not be overestimated. However, the property of the holders of GR, TK and TCE had to be protected against misappropriation and misuse. It was a matter of economic justice in the context of a globalized world. It proposed to strengthen the mandate of the IGC and to agree on the precise schedule of work that would lead to the convening of a Diplomatic Conference during the 2014-2015 biennium. Despite the square brackets in the texts, the texts had improved over the last two years, particularly as regarded the four articles considered to be key articles. The Delegation considered essential that the IGC make provision for a sufficient number of thematic and cross-cutting sessions, so as to enable a Diplomatic Conference to convene with the view to leading to a legally binding instrument.

301. The Delegation of Kazakhstan pointed out that attention was given to issues that could be mostly resolved at a national level. It considered that WIPO should be dealing more specifically with global issues that require international standards of protection. The forthcoming texts should take into account UNESCO Conventions, as far as international research was concerned for example. Finally, the Delegation stated that the IGC mandate should be extended for further work on GRs, TK and TCEs.

302. The Delegation of China thanked the Chair for his work to move forward the negotiations in the IGC and the Secretariat for its work. The Delegation hoped that delegations could overcome their differences and display more flexibility in the negotiations. It pointed out the relevance of adopting one or more legally binding international instruments which would provide effective protection of GRs, TK and TCEs. The Delegation was committed to play a constructive role in the IGC negotiations.

303. The Delegation of Niger believed that some further work was still needed to complete what it called a negotiating marathon. The Delegation expressed that despite of the brackets in the texts, the IGC made progress, for example, on definitions relating to TCEs and TK, subject matter protection, beneficiaries, the scope of the protection and exceptions and limitations. The Delegation supported the statement made by the Delegation of Algeria on behalf of the African Group and by the Delegation of Indonesia on behalf of the LMCs regarding the renewal of the mandate. It added that three sessions might not be enough to cover all the issues.

304. The Delegation of Ethiopia endorsed the statement made by the Delegation of Algeria on behalf of the African Group. The Delegation fully subscribed to the objective of developing a binding international legal regime or regimes for the effective protection of the subject matters under consideration. The Delegation strongly believed in the importance of a well-defined mandate and time frame during the next biennium with the view to finalizing the entire process and achieve the desired result. The Delegation fully supported the extension of the mandate of the IGC by the General Assembly in September 2013. The Delegation looked forward to seeing an eventual positive outcome of the IGC during the next biennium.

305. The Chair closed the floor for general statements regarding Agenda Item 7. He referred back to the mandate of the IGC that requested that the IGC review and take stock of the text(s) of the International legal instrument(s) ensuring the effective protection of TCEs, TK and GRs. In this line, the Chair said he would open the floor on each of the texts to be transmitted to the General Assembly separately. He invited delegations, in doing so, to focus in good faith on the maturity of texts, on the issues where progress had been made, on the scope of technical work that would still be required and on those key issues that required flexibility and political will from Member States. He urged delegations and observers to be receptive to each other in doing so. He emphasized though, that this exercise would not aim at redrafting the texts, but informing the recommendation that the Committee would address, as a next step under Agenda Item 7, to the next General Assembly regarding its future work program. He invited delegations and observers to review and take stock of the Annex to document WIPO/GRTKF/IC/25/5 (“Consolidated Document Relating to Intellectual Property and Genetic Resources”).

306. The Delegation of the United States of America saw two different objectives in the Annex to document WIPO/GRTKF/IC/25/5: first, enforcement mechanism requirements that included disclosure of the source or origin of genetic materials, and second, a system to avoid the grant of a patent without consideration of the closest prior art. It saw progress and consensus forming around the second of those objectives. Specifically, it saw consensus forming around the objective of preventing patents from being granted erroneously for inventions that were not novel or inventive with regard to GRs and TK associated with GRs. That would protect indigenous peoples and local communities from the limitations of the traditional use of GRs and TK associated with GRs that might result from the erroneous patenting thereof. The Delegation also saw support for ensuring that patent offices had the information available on GRs and TK associated with GRs that would be appropriate and needed to make informed decisions in granting patents. The Delegation noted that there had been no opposition to maintaining the incentives for innovation provided by the patent system. The Delegation was confident that the IGC could formulate an appropriate international legal instrument, namely a joint recommendation, that could achieve those objectives. As noted by the Delegation of Australia and many other delegations, the requirement to disclose the source or origin of a GR was an area where significant differences of opinion remained. It understood that those delegations viewed the requirement as a simple administrative requirement and not examination-based. The Delegation strongly disagreed with this view. To know whether the disclosure requirement applied to an application, the inventor needed to know whether the invention made use of GRs. That inquiry required an understanding of the invention, what was claimed and disclosed, and how the invention had been made. That inquiry was far from an administrative task, and it might have harmful impacts on innovation, especially when linked with national ABS laws. Although discussion of examples at the IGC had been sparse, some examples had been given in the many side-events and forums that supported the IGC. Those included the development of new seeds and uses of plant-based material. The seeds and plant-based material used in those examples had been acquired in nature as well as in stores. To have an understanding of those complex examination-based issues, the Delegation and other delegations had proposed a study on existing disclosure requirements

("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" (document WIPO/GRTKF/IC/24/6)). It believed that such a study could inform and guide the deliberative process at the IGC.

307. The Chair asked the Delegation of the United States of America to clarify how the proposed study it referred to would help to inform the Delegation.

308. The Delegation of the United States of America said it would reply in detail to the question by the Chair when addressing the text on TK.

309. The Delegation of South Africa agreed that there were two outstanding issues. There was agreement on one of them, but not on the other. The Delegation recalled that there had been a long discussion on the proposal for studies at IGC 23 and that the matter had been settled.

310. The representative of FAIRA stated that the acknowledgement of source was important. Should the word "indigenous" popped up when looking for the source of any material, than this should trigger further investigation. That would not put an extra burden on the research which was not based on materials owned by indigenous peoples. Acknowledgment of source could actually help in relation to any development of databases. Regarding the text on GRs, he believed that the inclusion of FPIC was very important. He asked for the support from Member States in ensuring compliance with MATs and ABS.

311. The Delegation of the Republic of Korea reminded the Committee that it had signed the Nagoya Protocol to the CBD. Its country had therefore committed to fully respect the PIC of the providing countries through MATs between providing countries and user countries. However, it had some concerns on the Consolidated Document on GRs. It was concerned regarding the inclusion of "derivatives" in Article 1. This inclusion would make the scope of the document very broad as well as ambiguous. It would be very difficult to confine the scope of the derivatives. Regarding the disclosure requirements as envisaged in Article 3, in case some GRs were not documented or in the public domain, it would be very difficult to prove that those GRs had some connection with specific patents. Disclosure requirements would increase the legal uncertainties for the patents in such a situation. Furthermore, disclosure requirements might impose an undue burden to the patent system and make people avoid utilizing the patent system or bypass the IP regime. The Delegation was also concerned about the revoking or nullifying of previous granted patents based on disclosure requirements. A patent should be granted based on the requirements that were specific to patenting, such as novelty and inventive steps. Failure to disclose the source of the used GRs, should not result in the revocation of a patent. It would be more appropriate to resolve the dispute between providing countries and their user countries outside of the patent system. Regarding the protection of GRs, the Delegation firmly believed that the establishment of a database of GRs was a very practical and feasible way to prevent erroneous granting of patents.

312. The Delegation of Australia believed that the central policy issue in the current negotiations was not the policy objectives themselves, but what the primary focus of the negotiations and mechanisms should be adopted to address those objectives. Essentially, there was a divide in relation to whether the appropriate mechanisms were to deliver the policy outcomes. There were two basic positions: first, a non-normative approach, essentially through a database of GRs and GRs associated with TK and guidelines for examining patent applications relating to GRs; and second, a normative approach based on the establishment of disclosure requirements. The non-normative approach was reflected in Option 1 of Objective 2. The Delegation believed that those measures were not controversial

from a policy and technical perspective and further operational and technical analysis should be able to be supported by all Member States. It noted that the normative measures being considered would require those non-normative measures to underpin. In relation to disclosure requirements, consensus had importantly built up among disclosure requirement proponents as to the nature of disclosure requirements. Rather than an approach based on a criterion for patentability, the text reflected an administrative regime without any obligation for IP offices to verify. However, as indicated by the Delegation of the United States of America, there were a number of key technical policy issues that still needed to be resolved. It wondered whether disclosure requirements in the IGC text should be linked to the provisions on checkpoints in the Nagoya Protocol. Another unsolved issue was whether disclosure requirement should apply to patents only or IPR generally. Pharmaceutical patents were the most significant part which the Delegation believed was most relevant. The Delegation noted that some Member States were of the view that plant variety protection was also important. As indicated by the Delegation of the Republic of Korea, one issue was whether that mechanism should apply to “derivatives”. The term was not clearly understood in IP discussions. Another issue was whether the text should describe the trigger of disclosure requirements. General terms gave room for national flexibility, while a clear threshold provided certainty. The last issue was whether the text should mandate sanctions in specific terms, or specify minimum sanctions, or include sanctions that affected validity of granted patents. The IGC needed to gain a better shared understanding of different perspectives on disclosure requirements. It was clear that a number of delegations, including the Delegation of Australia, had concerns regarding the practicality and effectiveness of disclosure requirements, potential high transaction costs, their impact on certainty within the patent system and potential barriers to access to GRs. The Delegation believed that an avenue to progress the work of the IGC was to address those key technical issues and to start to share information on national experiences and obtain greater clarity regarding the nature of the proposed disclosure requirement and a shared understanding of the issues.

313. The Delegation of Namibia stated that all delegations, except the Delegations of the United States of America, Canada, Japan and the Republic of Korea, currently agreed that there should be an administrative disclosure requirement. The Delegation called it the main progress made. There was also no significant opposition to the idea that databases and better patent examination procedures could prevent erroneous granting of patents. However, that ought to be considered as a mere improvement of the existing system. The main question remained where disclosure requirements could be put in place to help with ABS compliance and monitoring of that compliance. It believed that disclosure requirements would increasingly be implemented by more and more countries, and the question therefore had become whether to have one WIPO authorized system or to have many different national systems. The Delegation supported the comments made by the Delegation of Australia that consequences of nondisclosure needed to be further discussed.

314. The Delegation of Mexico recalled that the IGC had carried out a very lengthy and detailed discussion that resulted in a revised Consolidated Document on GRs. It believed that the text was ripe for further progress. Looking at the various positions of different countries, it believed that the future work should focus on trying to achieve balance between defensive protection and positive protection so as to ensure an appropriate relationship between the IP system and the Nagoya Protocol. The main issue would be to define the scope of protection of GRs that the IP system would contribute to ensure. Regarding the creation of databases, PIC from indigenous peoples and local communities was necessary and important. Access to those databases by indigenous peoples and local communities was another issue. It also wondered whether those databases could be more widely accessible.

315. The representative of Tulalip Tribes stated that in his view indigenous peoples and local communities were neutral on disclosure requirements. What they needed were norms or measures that would reduce the burden of proof on indigenous peoples and local communities themselves to have their own GRs and TK protected. Even though the IGC had made progress in understanding that disclosure did not grant protection by itself, the Consolidated Document showed that disclosure requirement was one avenue that could provide some protection under particular conditions. In any event, strong sanctions should be needed. The representative noted that some mechanisms aim at protecting disclosed TK within the patent system, but he noted as well that not all States had implemented those measures. If the cost of including disclosure requirements in the patent system would be that TK went into the public domain after 20 years, such requirements would have chilling effects on indigenous peoples and local communities' participation in the innovation system. He suggested that discussions take place on how to allow the use of TK in the IP system, beyond the issue of disclosure. He believed that databases were necessary and useful, but he added that databases were a tremendous burden on indigenous peoples and local communities. TK should only be compiled with the FPIC and indigenous peoples and local communities in order for them to remain in control of the collecting process. Databases which indigenous peoples and local communities maintained, controlled and linked together in a federated system were the kind of model that the IGC should go for.

316. The Delegation of Japan believed that, although significant progress had been accomplished under the current mandate, a lot of fundamental issues still remained to be resolved. It recognized that even the policy objectives of the Consolidated Document had not yet been agreed. With regard to the policy objectives, the Delegation reiterated that the issue of erroneous granting of patents should be clearly distinguished from the issue of CBD compliance regarding ABS and PIC. It strongly believed that the global patent system should focus on properly granting patents and not be used as a means of enforcement under the CBD and the Nagoya Protocol. Therefore, the Delegation supported Option 1 of Objective 2. Although there was diverging views regarding the policy objective itself, it believed that the importance of Option 1 of Objective 2 and the value of creating databases were shared among Member States. Regarding the mandatory disclosure requirement, the Delegation was of the view that the IGC had not yet found a common understanding of this issue. The Delegation did not believe that the introduction of a mandatory disclosure requirement would be the most effective way to address issues concerning GRs. In this regard, it noted that the present negotiation was not based yet on factual analyses and studies. The Delegation recognized that some Member States might argue that such analyses and studies could prejudice the IGC's ongoing work. Nevertheless, the Delegation believed that factual analysis would be the best way to achieve consensus on difficult and complex issues like that one. It emphasized that further work remained to be done in order to merge divergent views and meet the concerns raised by Member States as reflected in the Consolidated Document. The IGC should strive for solutions step by step and in a constructive and satisfactory manner.

317. The Delegation of Nigeria did not see disclosure requirements as an enforcement issue but as an information-sharing mechanism that would facilitate the ability of Member States to address misappropriation and to identify pressure points along the innovation chain. In terms of the current text, as indicated by other delegations, the Delegation believed that information about prior art, which was required at national patent offices, was an important key point on which there had been some progress. There was a consensus about the fact that information was needed to ascertain compliance with international instruments, such as the TRIPS, the CBD and the Nagoya Protocol. Information by way of disclosure could better inform compliance with the standards of novelty and non-obviousness. If delegations understood that there was a need to prevent the inappropriate and unauthorized access and use of GRs, the question of mechanisms would become far less divisive. For the future, it

argued that the text on GRs should keep focusing on a norm-based approach. At the same time, it acknowledged that disclosure requirements and their impact on national patent offices should continue to be discussed. A study, if any, should be conducted in parallel with the ongoing negotiations, and should help the IGC understand how best to bridge the divide between the concerns on burdening the patent system on the one hand and the imperative of granting moral and legal protection to GRs and recognizing the rights of indigenous peoples and local communities on the other hand.

318. The Delegation of Canada believed, as the Delegation of Australia had mentioned, that the Consolidated Document essentially offered a choice between a policy approach based on mandatory disclosure requirements and a policy approach based on defensive measures. IGC 23 had made some progress by which the Delegation had gained an enhanced understanding of the proposed approaches. The Delegation understood that disclosure demands generally no longer viewed disclosure as a patentability requirement, although that did not allay its concerns altogether. It noted however that the IGC had not yet reached an understanding on the binding or non-binding nature of any outcome on GRs. Without prejudice as to how that issue would be resolved, the Delegation regretted that delegations had not yet reached an understanding on the following: first, the definitions of certain key terms remained unclear, such as access, origin, source and provider. The IGC had not fully explored what those entailed in practical terms; second, there was a lack of clarity on what would be the objective trigger for a disclosure requirement to apply, and how it would accord with the realities of pharmaceutical and other research and development activities; third, what would happen exactly, in concrete cases, after disclosure, or lack thereof; and fourth, the Delegation was concerned that several proposals, by introducing requirements of evidence of PIC and MATs and compliance with ABS regimes in patent applications, were actually envisaging those mechanisms as part of the substantive patentability requirements. In such case, disclosure requirements could not be branded any more as simple administrative formalities. The Delegation shared with other delegations one overarching concern that the incentives provided by the IP system be maintained and more burdens and uncertainty avoided. The Delegation stated that those and other concerns were compounded by a lack of statistics, evidence of effectiveness, and information on challenges from or faced by those countries that were already implementing disclosure requirements. While the Delegation still believed that defensive measures that leveraged the existing and fundamental strengths of the patent system in preventing the erroneous granting of patents on GRs and TK associated with GRs offered a practical and consensual way forward. It agreed with the Delegation of Australia that the work program for the IGC should allow time for fact-based discussions of disclosure requirements based on actual experience and examples, through which it hoped to have exchanges on technicalities with countries implementing disclosure requirements. The Delegation welcomed the comments made by the Delegation of Nigeria in this regard. Those discussions would help inform the exploration as to what mechanism or mechanisms were best suited to address the issues of GRs and reach the common goal in a balanced manner. The Delegation looked forward to being an active part of those continued discussions.

319. The representative of CAPAJ stated that the basis of the negotiation on GRs was Article 8 (j) of the CBD, the right to free determination and the right of indigenous peoples over their land, water and resources as provided in the UNDRIP. He emphasized that indigenous peoples and local communities should be informed when their land and resources were accessed. That should be reflected in the forthcoming text.

320. The representative of *Tupaj Amaru* stated that it was important to conserve biological diversity, to preserve customary practices of indigenous peoples, and to prevent illicit misappropriation of GRs by unauthorized parties. It was imperative that the IGC examine GRs not only from a market and profitability perspective, but also from the perspective of

conserving, protecting and developing them in a sustainable manner. He stated that the biggest challenge indigenous peoples were facing was piracy and prospection of GRs. The IGC needed to find a balance between those countries which had GRs and those which did not. He did not expect nonbinding instruments or contracts between holders and users to constitute effective solutions.

321. The Delegation of Brazil believed that the IGC had had some fruitful discussions on GRs at IGC 23, which had allowed the text-based negotiations to move forward. A concise set of objectives for the instrument would make clear that it did not mean to add excessive burden on the patent system. A broadened understanding had been achieved among Member States that the text proposal should include disclosure requirements. However, there was still work to be done in order to finalize a binding international agreement that included the mandatory disclosure requirement and its related sanctions. The Delegation believed that the text on GRs was the least complex of the three documents. Given the work that had been done, the Delegation strongly believed that the IGC could achieve agreement on how to ensure that patent applicants who utilized GRs, their derivatives and associated TK comply with international norms and national rules of providing countries regarding ABS. As the Delegation of the United States of America had stated, there were some consensus on erroneous granting of patents. However, it did not believe that that was the most important issues of the negotiation. How difficult that could be, the IGC should deal with those more delicate and more important topics as well. The Delegation believed that the work on GRs should focus on the two following core elements: first, mandatory disclosure requirements, and second, effective and appropriate sanctions in case of non-compliance.

322. The Delegation of the EU, speaking on behalf of the EU and its Member States, stated that the IGC had made some good progress on the GR text in terms of general simplification. However, further work on the text was still needed. There were still questions of what triggered disclosure, whether there was a disclosure requirement only for inventions directly based on GRs, whether derivatives of GRs should be covered or excluded. In that regard, the Delegation preferred derivatives to be excluded. The Delegation mentioned as well the issue of how disclosure requirements might be linked to the PCT and the PLT. It noted that that issue was currently undecided. It also noted that there was no agreement on whether the use of GRs in patents should be dependent on PIC and MATs or not. The Delegation preferred not, as that would discourage the use of the patent system. It noted that the appropriate sanctions for failure to disclose origin were not decided yet. The Delegation argued that it was crucial for any sanctions to stay outside of the patent system and not result in revocation. Otherwise, any disclosure requirement would discourage the use of the patent system and hamper innovation.

323. The representative of FAIRA provided two examples regarding disclosure requirements. Tea tree oil was actually manufactured by a company in Australia called the "Thursday Plantation". On its website, the company actually acknowledged the indigenous people of northeastern New South Wales as the main knowledge holders in relation to the use of tea tree. Tea tree oil was used quite widely as an antiseptic and disinfectant and for healing properties. Additionally, Arthur Penfold discovered the virtues of the plant in 1923, and went ahead to process it and develop it. Another example would be an aboriginal elder who had been out hunting crocodiles and had had his finger taken off by one of the crocodiles. He had then used the bark of a local tree which was part of his knowledge in relation to the medicinal properties of that plant. The aboriginal elder had actually entered into an agreement with Griffith University and another company to further develop the medicinal qualities of that plant. The aboriginal people and his people would benefit from that discovery. The representative encouraged Member States to revisit the idea of mandatory disclosure requirement. Appropriate triggers were necessary in order not to

discourage the use of the patent system and protect the rights and interests of indigenous peoples.

324. The Delegation of the Russian Federation supported the concerns expressed by other delegations regarding the disclosure of the origin of GRs in patent applications. It expressed interest for further discussions regarding disclosure mechanisms. The Delegation reminded the Committee that it had formulated questions in this regard since IGC 10. Since then, it joined other delegations in submitting requests for more factual information regarding disclosure mechanisms and its impact on patent offices that were implementing such mechanisms.

325. The Delegation of Thailand saw the benefits of mandatory disclosure of the source of GRs in order to promote and comply with regulations related to ABS and PIC. In order to move the process forward, the Committee should not allow that issue to become an obstacle. The Delegation had no objections against the proposal made by the Delegation of Belgium, speaking on behalf of the Group B, requesting the WIPO Secretariat to conduct an additional study on the impact of the disclosure requirement, including, but not limited to, possible implications and relationships between that requirement and other existing IPRs. The Delegation acknowledged in that regard that more information and evidence could probably help policymakers to be better informed when taking their decisions. Nonetheless, such study should be conducted in parallel and should not be a precondition to move forward with the text-based negotiations. The study should have clear scope and timeline, reflect questions and address the issues and concerns of all parties. The Delegation encouraged those who were in favor of disclosure requirements to work together to come up with a common text reflecting unified position. This proposal, complemented with the result of the study, would contribute to facilitate the IGC discussion at a policy level.

326. The Delegation of Germany believed that efficiency and practicability were the core issues of a functioning patent system. It had to be sure that a disclosure requirement could fit into national patent systems, in line with the PCT. The Delegation noted that the Delegation of Canada had proposed to compare national models and practices of disclosure requirements. It wondered how disclosure requirements were carried out in practice in order to address potential lack of efficiency. The Delegation wondered what would happen after the disclosure, who would do what with the information that a GR was coming from a particular specific country, whether the patent office would actively inform the country of origin, and who would have the burden of proof that there was an immediate or direct use of that GR. The Delegation believed that those countries who had already implemented disclosure requirements in their legislations could be helpful to the Committee. It expected that the study that had been requested by some delegations address its concerns in terms of efficiency and practicability.

327. The Delegation of the United Kingdom echoed the statement made by the Delegation of the EU, speaking on behalf of the EU and its Member States. Good progress had been made on the GR text and the Committee should continue to build on that work. There were still outstanding issues that needed to be addressed, such as the objectives and principles and disclosure requirements. Regarding disclosure requirements, outstanding issues included what would trigger disclosure, whether derivatives should be included and how far the disclosure should extend.

328. The Chair closed the floor on the reviewing and stock taking of the Annex to document WIPO/GRTKF/IC/25/5 on GRs and opened the floor on the Annex to document WIPO/GRTKF/IC/25/6 (“The Protection of Traditional Knowledge: Draft Articles”).

329. The Delegation of Australia said that the TK text required more work, as did the TCE text. It raised a series of key issues that were in its view common to the Draft Articles on the protection of TCEs (Annex to document WIPO/GRTKF/IC/25/7). Was there clarity in the subject matter? Could a nation be a beneficiary and, in a related way, who were the beneficiaries? Could TK or TCEs that were publicly available be withdrawn from free access? Regarding the latter question is proposed, as a possible way to move forward, that the Secretariat revise its “Note on the meanings of the term ‘public domain’ in the intellectual property system with special reference to the protection of traditional knowledge and traditional cultural expressions” (WIPO/GRTKF/IC/17/INF/8 dated November 24, 2010) as it felt it such a revision was timely. This revision could be informed by the current drafting texts as well as the discussions that took place at the IGC over the past two years in plenary and the expert groups and the Intersessional Working Groups (IWGs). It could also include a survey on members' views and experiences regarding TK that had been moved beyond the sacred confines of customary law of indigenous peoples. It argued that such a study could shed light on the linkage between the subject matter and the beneficiaries. It said that if its proposal could not be adopted at the present session, it could be so at some future session.

330. The Delegation of the United States of America responded to the question that the Chair raised earlier under Agenda Item 7 on how the proposed study (“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/24/6 Rev.), submitted by the Delegations of Canada, Japan, the Republic of Korea, the Russian Federation and the United States of America) would help to inform the Delegation. The Delegation said that the proposed study would comply with the Development Agenda Recommendation 15 by helping to determine costs and benefits of disclosure requirements. Regarding costs, the study would collect information on the burden, if any, placed upon patent applicants or delays in patent offices. Most importantly, the study would help to determine whether such a disclosure requirement caused legal uncertainty in the patent system. Finally, regarding costs to applicants as well as to society, the study would collect information on the processing time for patent applications, since any added time required for applications with the disclosure requirement would be harmful for applicants as well as the economy in general. A study on disclosure requirements would permit a better understanding of what triggers lead to a disclosure requirement, how an applicant would determine whether an invention used a GR or TK, and how the decision was made when many different GRs were used, since many different sources were possible, and how much time was needed to determine whether disclosure was required, and whether this cost was reflected in an increase in the cost of fees paid to a patent attorney or agent, among other aspects. Regarding the Annex to document WIPO/GRTKF/IC/25/6 on TK, the Delegation noted that it reflected a diversity of views on what subject matter should be entitled to protection, the scope of protection, the duration of protection, the beneficiaries of protection, sanctions and remedies, as well as whether an applicant for an IPR should be required to disclose the source of origin of GRs or TK associated with a GR. As in the case of GRs, it believed that the text-based negotiations on TK had not allowed time for a sufficient discussion of concrete examples. It said that it would find helpful to know what TK precisely should be entitled to protection. It noted that all cultures had knowledge that was transmitted from generation to generation. It expressed confidence that WIPO Member States would be able to work together to develop one or more international legal instrument or instruments to address their common TK-related concerns. It believed as well that the two joint recommendations that had been co-sponsored by the United States could contribute to or form the basis of such outcomes (“Joint Recommendation on Intellectual Property and Genetic Resources and Associated Traditional Knowledge”, submitted as document WIPO/GRTKF/IC/24/5 by the Delegations of Canada, Japan, Norway, the Republic of Korea and the United States of America; “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/24/7), submitted by the Delegations of Canada, Japan, the Republic of Korea and the United States of America).

331. The Delegation of South Africa addressed the issue of whether TK would require disclosure or not. In that regard, it echoed the comments made by the Delegation of Namibia which observed that there was a consensus building around the issue on disclosure. It said that therefore the issue concerned a very small number of Member States. In any event, the precise mechanism related to the disclosure requirement was a matter of the PCT, while the IGC was concerned with the policy and norms that would address misappropriation and misuse of TK and GRs. Should the IGC ask for studies, those would have to address the question of failure of acknowledgment and document misappropriation and misuse. It added that until the IGC acknowledge the scope of misappropriation and misuse, it would be quite challenging for the IGC to make a lot of progress. It observed that the Draft Articles on TK were quite mature and clear regarding the subject matter, while the Member States which considered the opposite had not contributed until now to make them clearer. Beside it noted that references to GRs and associated TK were misplaced within the TK text. In its view, the draft article regarding beneficiaries covered all categories of stakeholders and constituted quite a mature text as well. Regarding the scope of protection, it viewed the two optional approaches as complementary, not antagonistic. The draft articles on exceptions and limitations, as well as on sanctions and remedies, were challenging, only because the underlying policy issue of misappropriation and misuse had not been addressed adequately. Finally, on the issue of public domain, it noted that the issue had been played down adequately earlier in plenary by the representative of Tulalip Tribes, as it gave evidence of the absence of international provisions in this regard. It therefore required from the Member States which raised that issue as a red flag to provide an agreed definition of the public domain that would appropriately apply to TK. In this regard, it further asked whether the public domain was equivalent or not to knowledge that was widely diffused.

332. The Delegation of Mexico stated that it found the negotiations regarding the protection of TK as extremely fruitful, since progress had been made on a few points, especially on the definition of TK. It noted though that more in-depth technical discussion was needed, particularly on the question of the public domain and knowledge that was presently publicly available. The Delegation was seeking broad and effective protection of TK and terms that would ensure this sort of protection. It noted that the three categories of beneficiaries needed further consideration as well as the exceptions and limitations, sanctions, remedies and enforcement of rights. On the latter point, it noted that dispute settlement mechanisms had been discussed shortly within the expert group but not in-depth.

333. The Delegation of Japan, echoing the Delegation of the United States of America, wished to respond to the question that the Chair raised earlier under Agenda Item 7 on how the proposed study (document WIPO/GRTKF/IC/24/6 Rev.) co-sponsored by the Delegation would help to inform the Delegation. It considered that the domestic implementation of any disclosure requirement should form part of the discussion at the IGC, and more particularly the following questions: How a disclosure requirement could actually achieve the objective or not of protecting GRs and preventing erroneous patents? What would be the impact of a disclosure requirement on innovations using GRs? By responding to those questions, the proposed study would allow the IGC to consider the disclosure requirement in an evidence-based manner and not based on anecdotic elements. Regarding the TK text, it noted that all Member States recognized the importance of objective criteria that would draw a line between what should be protected and what should be out of the scope of protection. But to find such clear objective criteria and put them into language had proved to be challenging. It further noted that the objectiveness of such criteria was related to the scope of protection and the appropriate measures to ensure such protection. The Delegation reiterated that the

depths of the understanding among the Member States on issues of definition, beneficiaries and scope of protection were still insufficient for any kind of agreement at an international level to be formed. Regarding the definition of TK, it was of the view that the scope of TK was still too vague according to the current text and would not ensure proper protection of TK at an international level. A higher degree of precision in the definition of TK was essential to ensure legal certainty. Moreover, enhanced clarity was critical to prevent possible disputes on whether or not protection should be provided to a particular TK at the international level. With regard to the beneficiaries of protection, it reiterated that the beneficiaries should be defined in relation to particular TK and that the inclusion of nations or national entities as beneficiaries was problematic, as mentioned earlier by the Delegation of the EU. With regard to the scope of protection, since the core pending issues of the definition of TK and beneficiaries were too vaguely addressed and had not paved the way for a rights-based approach, a measures-based approach throughout the drafting text was the preferable alternative as it allowed for flexibility.

334. The Delegation of the EU, speaking on behalf of the EU and its Member States, reiterated that in its view, the IGC had made good progress in reducing some of the policy options and alternatives in the TK text. However it noted that fundamental issues remained open. Limiting its comments to the key articles, with regard to subject matter of protection, it noted that both the definition of TK and the criteria for eligibility contained a large number of brackets and alternatives. In advancing on these issues, the IGC should ensure there was not an adverse effect on material already in the public domain, in establishing a legal instrument for the protection of TK. It could not engage in a process of “putting the genie back in the bottle” by restricting access to what was already freely available, as the effects could extend well beyond the sphere of IP in ways that could not be readily envisioned. Concerning the scope of protection, it was in its view well known that there was a clear divide among Member States between those who favored a rights-based approach and those, including the EU and its Member States, who foresaw a measures-based approach as being more appropriate and sufficient. It noted as well that there was a difference of opinion as to who the beneficiaries of protection might be. The Delegation believed that it should be the indigenous and local communities themselves who held, maintained, used and developed the TK which should benefit from any protection measures. It also observed that the policy objectives and principles with regard to TK remained without being discussed.

335. The Delegation of the Republic of Korea noted that the basic elements of the instrument under negotiation, namely the definition, the beneficiaries and the scope of protection, were not clear and needed to be further worked out in order for the IGC to move forward.

336. The Delegation of Sri Lanka was of the view that the definition of TK in Article 1 was the most important issue in the text. It aligned itself with the intervention made by the Delegation of Mexico and other delegations which stressed the importance of reserving more time in future discussions to develop a definition of TK. It noted that the definition of TK was in line with the definition of TK associated with GRs and both remained unclear. It noted that there were further ideas being introduced into the definitions in the various texts and believed that these definitions were all closely linked to each other. With respect to the TK text, the Delegation noted that there were still many brackets and expressed its concern over when the brackets would be removed. It noted that several other instruments had taken many more years to complete than the IGC had taken so far, and was of the view that the reality indicated that the IGC instrument still required more time to be finalized. The Delegation noted that it was extremely interested in traditional medical knowledge as it had a rich culture in this field. It recalled that its proposal, which had enjoyed the support of several delegations, had also been bracketed in the text and looked forward to further discussions on the text.

337. The Delegation of Nigeria was of the view that important progress had been made in the TK text, but acknowledged that more progress was still yet to be made. It did not believe that the lack of agreement on key principles or provisions was synonymous with a lack of progress but that agreement was a process which happened over time as delegations continued to talk and debate. It noted that the fact that the IGC was presently discussing protection for TK as well as the other instruments was an important acknowledgment of the need for an international legal instrument that delivered that goal. The Delegation believed that existing studies should be taken into account in addressing the areas of disagreement among delegations. It believed that additional information was valuable but should be tailored to fill gaps that existing studies did not cover. The Delegation therefore reiterated that it was important that those delegations who demanded additional work and additional studies, were able to clarify precisely the questions that the existing studies had failed to answer as well as the questions that would enable the Committee to move forward and assuage concerns about the impact of the protection of TK on the existing IP system. The Delegation believed that it was important that a parallel regime to WIPO was not created and expressed the view that there were existing international instruments, with respect with GRs, TCEs and TK, which could move the Committee towards greater consensus and greater coordination regarding the substantive provisions of the TK text. It stated that it would not support discussions and deliberations that would be contradictory to the existing mechanisms, but rather, welcomed efforts to find ways to bridge the gaps in the existing definitions with respect to TK and the ongoing work at UNESCO and other UN forums. It was of the view that as long as the normative and the administrative frameworks were identified, there were indeed ways to move ahead. It reiterated its view that there was no material difference between a rights-based approach and a measures-based approach as it believed that both were needed. It noted that it had, therefore, recommended that the two options be merged. The Delegation was of the view that the substantive work that had been accomplished in the last session gave an important basis for moving forward and noted that the Committee could begin to build on the existing areas of agreement with the removal of brackets, thereby making greater progress towards identifying the true and genuine differences in the existing text.

338. The Delegation of India was of the view that significant progress had been made over the text in 2013 and noted that, similarly to the discussions on GRs, there had been an emergence of two major sides in the negotiations. There was a small group of delegations which were opposed to any kind of progress towards protecting TK, while there was a group of other delegations, the demanders, which were in support of progress being made. The Delegation noted that the instrument being demanded for by the demanders was based on years of evidence that had been forwarded in WIPO and other institutions. It questioned whether the delegations that sought further evidence could be convinced by a further singular study if they had not yet been persuaded by all the evidence that was already available. The Delegation was unable to comprehend the possible benefits that would emerge from another study which would provide information on what was being demanded for and provide further clarification on how barriers within the IP system were not the objective of the demands for TK protection. The Delegation stressed that the objective of the demanders was, if anything, to strengthen the IP regime as they had discovered that there were a lot of unintended problems being faced because patents had not been granted in the right manner. It was of the view that the way forward should be that those delegations that did not really understand the demands of the demanders engage further with those to understand their perspectives which was to strengthen the IP system for the betterment of all concerned.

339. The representative of FAIRA was of the view that progress had been made with respect to the TK text. He noted that the IGC was close to a decision on the policy objectives, and welcomed the guiding principles which he noted were positive as far as

indigenous people were concerned as it had begun to recognize their rights within the UNDRIP by inclusion of the UNDRIP and the ILO 169. He regretted that the text was still rather convoluted around the scope of protection, but was hopeful as some of the alternatives that the indigenous representatives had supported thus far were still contained within that text. He was of the view that the recognition of traditional medical knowledge within the text was an important step forward.

340. The Delegation of France aligned itself with the intervention made by the Delegation of the EU, on behalf of the EU and its Member States. It was of the view that despite the progress made in the previous session on TK, several issues were still pending, such as, the criteria for eligibility, the notion of public domain and the beneficiaries of protection.

341. The Delegation of Canada believed that the April session on TK was generally positive in terms of outlining the core issues in the various policy options. It however noted that the session did not really lead to consensus on any issues and that there was still room for progress to be made. With respect to Article 1, the Delegation noted that progress had been made in cleaning up the definition and the criteria. It was, however, of the view that fundamental differences remained on whether TK that was widely known, used outside the community of the beneficiaries and/or that was in the public domain should be protected. On Article 3 regarding the scope of protection and notwithstanding support of a defensive approach, it pointed out that progress had been made as the options for this Article had been re-assimilated into two clear options; one that was rights-based and the other that was measures-based. It also identified a third option, namely one that merged these two other options. While there was a divide on this point, the Delegation noted that the informal informals had proved helpful in reducing Article 3 into these clear options. The Delegation was of the view that, despite the difficulties being encountered in the use of the informal informals, the format could help in reaching greater understanding on certain issues and could be helpful under a renewed mandate. The Delegation believed that the key issues that the IGC needed to address in its future work included the development of a clear understanding of what constituted TK. The Delegation was of the view that such an understanding needed to take into account the necessity of preserving the current IP system, particularly the maintenance of a strong and robust public domain. It was of the view that this issue permeated all of the key sections in the text, particularly the subject matter of protection, criteria for eligibility and scope of protection, and also raised the fundamental question, which several delegations had referred to, on whether TK considered to be in the public domain and treated as such, ought to be withdrawn from the public domain as this would create significant uncertainty not only for the IP system but for society as a whole. On the issue of the public domain, it agreed with the intervention of the Delegation of South Africa with respect to the need for further discussion on this issue. Another key issue was whether TK that was widely known outside of the community of the beneficiaries, or in the public domain, should be protected. Who the beneficiaries of TK were was another key issue. The Delegation stated that it needed to understand, in practical terms, how nations could be defined as beneficiaries in a TK context. Furthermore the Delegation noted that concerns had been raised about the nature of the criteria to be fulfilled in order to establish limitations or exceptions under national law and on whether or not secret TK should be subjected to exceptions and limitations. A key feature of the current IP system was that it contained flexibility to allow for limitations or exceptions. It observed that the continued discussion on the issue by the IGC needed to take into account how to ensure that what was achieved in the IGC preserved the existing flexibility. The Delegation believed that any TK instrument should provide legal certainty and should not impact the IP system. It further believed that defensive protection, such as the establishment of guidelines or databases to prevent patents from being granted in error with regards to TK, was the best way forward with respect to the protection of TK.

342. The Delegation of Netherlands expressed its support for the intervention of the Delegation of the EU, on behalf of the EU and its Member States. It observed that the objectives and principles of the TK text remained un-discussed. It noted the importance of such a discussion. It further stressed the importance of a clear definition of the subject matter as well as the importance of a discussion on the public domain. Finally, the Delegation was of the view that beyond the outstanding issues in the key articles, there were also other outstanding issues, such as implementation and dispute settlement, which required further discussion as well.

343. The Delegation of the United Kingdom aligned itself with the intervention made by the Delegation of the EU, on behalf of the EU and its Member States. It was of the view that there were a lot of divergent views and varying notions with respect to the basic principles and objectives. In this respect, it sought to highlight some important questions, such as follows: what was the definition of the subject matter of protection? Who were the beneficiaries of protection and who should this include? Can we ever restrict knowledge already widely available in the public domain? The Delegation was of the view that in providing answers to the questions raised, delegations needed to bear in mind the aim to ensure that benefits, if any, were to be shared. It emphasized in particular that protection should not inadvertently cause a chilling effect on innovation.

344. The representative of Tulalip Tribes was of the view that several of the submissions in the TK text reflected one-sided views, and noted that the IGC needed to take note of the varying views in addressing the difficulties within the text. He noted that people may choose to focus on the users, the national providers or the TK holders but that there was rather a need to look at all three of the different groups together and analyze all their perspectives and all their issues. This was because there was a possibility of economic impacts on indigenous peoples and local communities as there may also be on national society. He also noted that there were issues of treaty rights, national rights and human rights, as well as social justice issues involved in the protection of TK. He therefore noted that any policy development should involve a balanced assessment of all of these views and not be limited to a one-sided look at issues. He was of the view that progress had been made with the recognition of FPIC, though it had been bracketed severally in the text. He believed that the issue of the public domain was cross-cutting as it was one which arose in the three documents. He observed that the concept of the public domain could also be referred to as a *terra nullius* concept and reminded delegations of the problems which *terra nullius* concepts had led to. He agreed that there was a public domain and that there were benefits with the public domain but noted that the question was whether the public domain applied in all cases to all forms of TK. He pointed out that he would like to see, in addition to some of the conversations that had occurred before, evidence of general threats to the public domain. He questioned whether the withdrawal or protection of TK in the future from the public domain constituted a general threat as there was a large amount of knowledge already in the public domain that was not related to TK. He was of the view that arguments of convenience could not be used to defeat misappropriation and that wherever misappropriation had occurred, it should be corrected. With respect to the question of classification of TK in the public domain, the representative questioned whether TK had ever even been in the public domain and noted that such assertions depended on which law and which form was applied to TK. He was of the view that it was a human rights issue and therefore the idea of the public domain was not appropriate. The representative further expressed concerns that its classification into the public domain closed off the implementation of Article 31 of UNDRIP which many Members States had signed on to and were hopefully aspiring to. He noted that he was not denying the concept of the public domain but needed a much deeper understanding of what was being talked about before progress could be made. With respect to the issue of retroactivity, the representative noted that within the formal IP system, there had been repeated retrospective extensions of copyrights, and it therefore believed that

Member States already had experience with “taking back in the bottle” what would have been in the public domain and extending protections over them as these had happened in the past. The representative observed that there was a need for informal exchange of views and invited delegations who had problems with the protection of TK to discuss with the indigenous peoples to clearly understand their position.

345. The Delegation of Namibia noted, with respect to the public domain, that what was being dealt with were two completely incommensurable paradigms of ownership of ideas. It pointed out that the idea of the public domain historically developed out of the enclosure that resulted from the creation of the western IP system. It was not part of indigenous knowledge systems, as within indigenous knowledge systems, there was a very clear sense of who owned and controlled knowledge and knowledge was never in the public domain. The Delegation was therefore of the view that the insistence from delegations on the public domain was a very clear and transparent attempt to legalize and legitimize the misappropriation and privatization of TK. The Delegation said that the issue of the public domain was not a technical question but offered an excellent example of why it was necessary to take the negotiation process to a Diplomatic Conference so that political decisions could be made.

346. The Delegation of Kazakhstan was of the view that progress had been made on virtually all the issues within the text. It reminded that Kazakhstan had a great deal of TK and as such, the development of the international protection for TK was of extreme importance to it. It noted that despite the abundance of TK in Kazakhstan, there was no domestic protection, nor documentation of TK in Kazakhstan. It further noted that though its TK was not documented, it existed, and had been the subject of several erroneous patents in other countries. It was anxious to bridge this gap and expressed its desire to work on this in the future.

347. The Delegation of Niger noted that undeniable progress had been made on the TK text, even though there was still a certain amount of divergence on the criteria of eligibility, the provisions on beneficiaries and the scope of protection. It noted that the Committee had moved forward significantly despite these divergences. It was of the view that till date, most of the proposals that had come from the demanders on TK had not challenged the existing IP criteria. The Delegation pointed out that those IP criteria were not being called into question. It observed that disclosure requirements were being requested for already, as there was part of the existing IP obligation to disclose prior art. It argued that the patent system, for example, contained disclosure requirements that did not constitute obstacles but functioned effectively in the patent and plant varieties protection systems. The Delegation further discredited the arguments that had opposed rights-based approaches against measures-based approaches. On the contrary, it argued that these two approaches were complementary and not mutually exclusive. With respect to the issue of the public domain, it agreed that the public domain existed, from an unilateral perspective as defined by the western IP system. The Delegation noted though that this perspective involved private rights which were conferred as opposed to what was freely accessible in the public domain. The Delegation argued that the notion of collective rights challenged the relevance of the public domain as applied in the IP system. The Delegation was of the view that the unilateral model based on an opposition between private rights and the public domain, as well as the related theory of *terra nullius* were not relevant as far as the protection of TK and TCEs was concerned. More so, it added that this model had been used in Africa for four to five centuries to deprive entire populations of their knowledge.

348. The Chair closed the floor on the reviewing and stock taking of the Annex to document WIPO/GRTKF/IC/25/6 on TK and opened the floor on the Annex to document WIPO/GRTKF/IC/25/7 (“The Protection of Traditional Cultural Expressions: Draft Articles”).

349. The representative of CAPAJ said that the discussion on the public domain had been very interesting, and TCEs could also be examined from that perspective. He focused on a topic raised by the Delegation of Algeria, speaking on behalf of the African Group: the doctrine of *terra nullius*. According to that doctrine, once indigenous peoples had shared TCEs with the public, from that time onwards, others could acquire them. He emphasized that in reality, TCEs of indigenous peoples were shared so that new inventions could arise and new creations could emerge from them. He asked for some guarantee in the TCE text that the beneficiaries that had already shared their TCEs with humanity could create things along the same lines, so the creations of indigenous peoples could continue and be further developed in a free manner. He rejected the doctrine of *terra nullius*, which had already been condemned and declared scientifically false at the past session of the Permanent Forum. He said there were other legal gaps that needed to be reflected upon and given better thought to, so as to provide more clarity as to what indigenous people wanted to be protected as “TCEs.”

350. The Delegation of Namibia said that the TCE text was at a much more evolved stage after the facilitators had given it a good shot. The text could serve as a basis for negotiation. It said that some IGC members wished, in its view, to avoid a serious negotiation and would use any possible tactic to spin out the discussions for another sixteen years. That was another reason why it was imperative to set a deadline to the work of the IGC and actually get to a point where political decisions could be taken. The IGC could receive the instruction from the General Assembly to negotiate an instrument against a deadline.

351. The Delegation of the United States of America said that the Annex to document WIPO/GRTKF/IC/25/7 reflected a diversity of views. Significantly, a definition of the subject matter with sufficient precision to support a new international norm had yet to evolve. The scope of protection, including exceptions and limitations, had yet to be determined with sufficient legal clarity. The IGC also needed to clarify the important concept of beneficiaries and gain a deeper understanding of the interrelationship of the proposed form of protection for TCEs with existing international instruments, including WIPO treaties and treaties beyond WIPO, as the Delegation of Nigeria had noted. Developing a deeper and clearer understanding of the legal and other mechanisms for the safeguarding of TCEs consistent with national law required further work. That was important technical work and the technical experts should continue their work in the next biennium. The IGC also had to reach consensus on mechanisms to safeguard important values for all participants in those deliberations, including all WIPO Member States, indigenous peoples and other stakeholders. It wished to work together with other WIPO members to develop one or more international legal instruments for the protection of TCEs. Those could include a declaration on the protection of TCEs. Based on that voluminous set of unresolved issues spanning the three texts, any commitment to a Diplomatic Conference was premature and would prejudice the outcome. It looked forward to working with other Member States to resolve those outstanding issues and to carry the work forward.

352. The Delegation of the EU, on behalf of the EU and its Member States, said that the IGC had made difficult progress on TCEs during the present session, which reflected the differences in opinions among Member States as to the policy objectives underlying the TCE text. As in the TK text, the fundamental issues remained opened. Regarding the key article on subject matter, the definition of TCEs contained a number of policy issues and terms in brackets, some of which had yet to be formally discussed. Advancing on those issues, it had to be ensured that there was no adverse effect for material already in the public domain and that existing artistic freedom and research practices were not curtailed. In establishing a legal instrument for the protection of TCEs, it could not engage in a process which restricted current artistic freedoms or access to material which was already freely available. If one did that, the effects could extend well beyond the sphere of IP in ways that could not be readily

envisioned. Concerning the beneficiaries of protection, there was a difference of opinion as to who the beneficiaries of protection might be. The Delegation believed it should be the indigenous and local communities themselves who hold, maintain use and develop the TCEs. It noted that the Objectives and Principles remained without consensus. During the discussion under Agenda Item 7, it had heard many delegations raise issues that still required significant work before clear options could be put before the IGC for consideration and finalization. Building on the Chair's summary of the general statements made under the Agenda Item, it noted that there was a view shared by a significant number of delegations on the need to have further stages of work before a decision could be taken on the final form of the instrument and the outcome of the IGC's deliberations. In that regard, it looked forward to contributing to the discussions with concrete discussions on the shape and format of future work.

353. The representative of *Tupaj Amaru*, having listened to statements claiming that progress had been made on the text, said that the IGC had drifted away from the straight and narrow and did not know too much about the substance of the discussions. He did not feel the IGC had made any progress; the text was emasculated in terms of legal content and form. In addition, on the definitions of both TK and TCEs, he had submitted texts which picked up elements from various international instruments, including UNESCO instruments. The current definition did not take into account the 500 years of specialized knowledge received from ancestors from a civilization going back thousands of years and which was taken from them. Member States claimed to have made progress, but the IGC still had a lot of progress to make. He asked delegations to make proposals instead of asking for further studies. Indigenous peoples were going to die off while waiting for those studies to be completed. Further, the concept of *terra nullius* had nothing to do with the issues. As to beneficiaries, the representative said that states could not be beneficiaries. The essential aspects of TCEs had been reduced to footnotes; the instrument did not have any substance left. There was no sufficient political will on the part of the states to do otherwise. He claimed that the EU did not recognize indigenous peoples.

354. The Delegation of Japan said that as a consequence of discussions that had taken place under Agenda Item 6, it was able to distinguish the issues which could be agreed upon from those to be further discussed. Great dedication to the discussions had brought the IGC a certain level of common understanding on the positions and rationales of each delegation. It had made key progress on Article 1, as a shared understanding of the importance of a clear definition of TCEs for the sake of legal certainty had built up. Nevertheless, according to the current text, the scope of TCEs, which was still too vague, would not provide proper protection at an international level. As it had suggested, a possible solution could be a registration system linked to Article 7. That important issue needed to be further elaborated. With regard to Article 2, it reiterated that beneficiaries should be defined in relation to individual TCEs, so as to ensure legal certainty. It was also concerned about "nations" or "national entities" being considered as beneficiaries. On Article 3, it was important to build a clear definition of TCEs and "beneficiaries" before having a substantive discussion on the question of a measures-based or rights-based approach. Until a final solution was found with the current definition of TCEs and beneficiaries, it found difficulty in reaching an appropriate compromise. Finally, the Delegation was convinced that further work remained to be done in order to overcome divergent views and concerns and in order to find a good outcome on that issue.

355. The Delegation of South Africa said that, regrettably, the IGC had reverted with regard to TCEs to the positions of 2011, which clearly indicated two approaches. The new document provided evidence as to the nature of the work that the IGC had engaged in the past week: it was bloated, long and unclear. That was the reason why delegations from developing countries had to request that fresh proposals be inserted in the text in order to

ensure that their positions be reflected in the documents to be sent to the General Assembly. Those new proposals would constitute a strong basis on which the majority of the Member States could then negotiate with other Member States. It indicated that the Annex to document WIPO/GRTKF/IC/25/7 would constitute an indictment on the IGC process in terms of not following the mandate to make progress and go forward. On the Objectives, it was clear that the discussion under Agenda Item 6 had been very difficult, in that there was an obvious refusal from some Member States to consider TCEs as of any value or even worthy of protection against misappropriation. On that basis, the IGC had been thrust right back into discussing the issue of misappropriation, which was a clear indication that the issues at hand were not about legal certainty, nor were they about clarity or maturity. The Delegation said that this sort of discussion had simply signaled a refusal from some Member States to recognize the concept of misappropriation as applying to TCEs, because TCEs were not considered to be of value. The issue remained, therefore, a political issue, and it did not depend on the number of meetings the IGC would have. An intensification of political discussions by political leaders on such a basic thing as Objectives had become necessary. It was a deliberate strategy to stop the progress of the discussions. It said that the principle of the protection of rights acquired before the entry into force of the TCE instrument had disrupted the flow of discussions. That principle was a challenge because there would be an article to deal with transitional measures, but to insist on entrenching the old rights was another low part of the discussions on TCEs under Agenda Item 6. On Objectives, the Delegation asked: if there was no agreement on issues related to best policy, how could there be one on substantive issues? The Delegation was happy to note that on the subject matter, the majority of Member States collectively agreed on the text. The Delegation would therefore have to challenge the opponents to that text to come up with a similar text that would constitute an alternative to choose or decline. It was not sufficient, in the view of the Delegation, to state that the text was not clear or immature. It suspected that this sort of statement was simply made to postpone the text. It hoped that on subject matter, beneficiaries and scope of protection, the text spoke much louder, was thinner, cleaner, more specific, to the point and not bloated. That evidence would remain on the record as a clear indication of what had happened during the present session.

356. The representative of FAIRA said he had raised the issue of indigenous direct participation in the IGC before. He thanked the Chair for the opportunity to participate in the expert group, because that had given the opportunity for indigenous peoples to participate in discussions and not walk out of the IGC. It had also given the opportunity to influence other Member States. The "informal informals" had also been beneficial to them because more and more Member States were coming to them and asking for their opinions and views on issues. On the process regarding the way forward, he hoped that the Chair would continue with the "informal informals" and hoped that what had happened during the present session had not put off the expert group because that had given indigenous peoples the real opportunity to have some say in the deliberations.

357. The Delegation of Mexico said that the discussion held on TCEs under Agenda Item 6 had at certain times been rather frustrating. It had wished to be able to set the Objectives, but that had not happened. Some discussions remained pending and could be addressed further, including on beneficiaries and exceptions and limitations. There also seemed to be some cross-cutting issues on TK and TCEs and there needed to be consistency between the two documents.

358. The Delegation of the United Kingdom supported the statements made by the Delegation of the EU and noted that the main outstanding questions were very similar to those already highlighted. Taking into account the work on TCEs under Agenda Item 6 and listening to all the previous interventions and concerns expressed, it was clear that further

work was needed before any concrete outcome could be finalized. It would continue to be constructive and fully engaged in the process.

359. The Delegation of Sweden expressed support for the intervention made by the Delegation of the EU. More work needed to be done on the relationship between the subject matter of TCEs and the scope of protection or safeguarding. More specifically, the IGC needed to further discuss the impact of different forms of protection or safeguarding of TCEs on creativity and artistic freedom and the development and mutual exchange between cultures.

360. The Delegation of France echoed what had been said by previous speakers to the effect that there were still key points that had not yet been settled. There was no agreement on the cumulative or alternative nature of the eligibility criteria. The newly introduced term “intergenerational” had not yet been sufficiently defined. There was no agreement on the use of the term “indigenous peoples” or “local communities,” or on the framework for the inclusion of “nations” as beneficiaries. Furthermore, the IGC had not yet had sufficient discussions to be absolutely clear about what was understood under exceptions and limitations. Above all, it reiterated that during the negotiations regarding TCEs, there had been no discussion of Articles 4, 6 and 7, which would have to be addressed in future. Last but not least, it reminded the IGC that there had been virtually no discussion since 2009 on the following items which remained in suspense: sanctions, transitional measures, integration into the IP system, national treatment and all the across-the-board aspects which all deserved close consideration at the next sessions of the IGC.

361. The Delegation of Canada said that it seemed that delegations had supported Rev. 2, which included the various proposed textual alternatives resulting from the informal discussions. It was encouraged by the prospects which had opened up for exploring the links between the Objectives and the various elements included in the substantive provisions. Those links were less than precise at that stage. It noted that the Member States had not yet reached agreement on the nature of the instrument and that, without prejudice to the way in which that would be resolved, delegations were not yet in a position to decide on what should be protected, which of the options developed on the key aspects of Article 1 were right. It had become clear, for example, that the reference to “artistic and literary” had no consensus. Next, on beneficiaries, whether that was indigenous peoples and local communities on the one hand, or nations on the other, that was a key element that changed the fundamental nature of the instrument. Further, the scope of protection varied greatly, particularly considering the divisions which surfaced between a rights-based approach and a measures-based approach. Moreover, on enforcement, because they were multifaceted administrations, Member States would sometimes be required to apply several measures, complementary or contradictory, and that had to be taken into account when looking at the scope of protection. On exceptions and limitations, the IGC had to consider the link between the text and the three-step test provided by existing IP treaties. It suggested that the working methods and schedule make it possible to go in greater depth into the issues of the Objectives and Principles, enforcement measures, and on when protection of TCEs was required. It had to be ensured that the text be legally consistent within itself and with other texts. Given what was at stake, particularly when it came to the text on TCEs and what had been identified in the other two texts on GRs and TK, a firm commitment had to be made by delegations to a serious consideration and examination of cross-cutting issues. That would be more useful than identifying a date for convening a Diplomatic Conference. It continued to be willing to work with everybody to build consensus on those issues and to adopt a work program which would make it possible to achieve that.

362. The representative of CISA addressed all three texts and issues, because they were all relevant and they overlapped. The scope of protection and the administration of rights and

interests would be sorted out when the right to self-determination of indigenous peoples would be recognized and discriminating principles removed. It seemed as though some Member States wanted to evade the level of control and ownership to wrestle away the terms of protection associated with the rights. Some of the bracketed text would automatically be removed, once fundamental rights would be recognized as human rights. What the Delegation of France had said about “people” or “peoples” was irrelevant, the IGC should go forth beyond that. He recalled that he had asked for those Member States that had already recognized those fundamental rights to apply them in order to move forward in deliberations on recognition, protection, administration, and application of legal principles, whether on TCEs, TK or GRs. Otherwise, he said, the IGC would go forward by one step, before taking two steps backwards.

363. The Delegation of New Zealand said, on Article 3 in the TCEs text, that the article itself was not necessarily the problem in terms of maturity of the text. There seemed to be two very clear options and the option chosen would depend on political positions. There was more work to be done regarding this Article, but the Delegation noted that this inconclusive situation was reflective of the fact that the changes made in the revised versions of the text had been subsequently undone by Member States. It noted that Article 3 actually looked very similar to Article 3 of the TK text. On Article 5, more work was required, particularly on paragraph 3, to come up with a text that would make sense for all Member States. The IGC clearly needed more discussion on paragraphs 4 and 5, which were controversial and went to the heart of the TCE text. It echoed the delegations which had stated that the key to moving forward were Articles 1 and 2. One of the most important issues was who the beneficiaries were: indigenous peoples, indigenous peoples and local communities, or indigenous peoples, local communities as well as nations or national entities. The options regarding the beneficiaries really colored the text and depending on the adopted option, Member States would likely take different approaches elsewhere in the text. In terms of the relationship between Articles 1 and 2, there was currently a structural problem, because of the circular nature of the definitions: while TCEs were things that were very important to the beneficiaries, beneficiaries were the people to whom TCEs matter most importantly. Either one defined beneficiaries under national law, which was not agreeable to all Member States, or one defined “local communities” at the international level, which would constitute a difficult endeavor.

364. The representative of Copyright Agency Ltd. said that the fact that some delegations were not aware of examples of misappropriation of TCEs and of the gaps in current IP laws was, in her view, amazing. In Australia, there were unfortunately still many examples of misappropriation of TCEs. The definition, scope of protection and of course the controversial exceptions all needed more work. Article 5, as the Delegation of New Zealand had said, was contentious and needed further thought and discussion. From an indigenous peoples’ perspective, she wished to have FPIC for any exception, like giving access to museums, archives and libraries, otherwise the *status quo* would remain, whereby many museums acquired TCEs without consent from indigenous peoples. The present situation caused harm to indigenous peoples and to those important TCEs that were taken out of their communities. In terms of “inspiration or borrowing” of a TCE, the text was not favorable to indigenous peoples, for that would allow for further misappropriation and misuse. During the 2010 winter Olympics, non-indigenous ice skaters “borrowed” from a style of aboriginal origin for their costumes, which caused high strain and prompted heated discussions in the media. She urged delegations to come to the IGC in good faith to develop instruments of protection for TCEs as a rights-based process. It was also very difficult for indigenous peoples to participate in the IGC process due to the lack of funds, particularly in the Voluntary Fund. She wished to see a date set for the Diplomatic Conference so as to complete the mandate of the IGC.

365. The Chair took note of the statements made by delegations and observers in reviewing and taking stock of the texts relating to GRs, TK and TCEs. Before suspending the plenary, he invited delegations and observers to consult and test ideas informally on the main elements and structure of the recommendation to be made to the General Assembly. He would then consult with the Regional Coordinators of the various groups before briefly reconvening the plenary again and inviting them to report on those consultations. He proposed that the plenary be then suspended again and that the informal preparation of the recommendation take place within an informal group composed of the Regional Coordinators plus six delegates, two coordinators from the Indigenous Caucus, plus two observers. The Chair would consistently engage to test ideas and facilitate the informal process with the help of Mr. Goss, from Australia, as Friend of the Chair. He then suspended the plenary.

366. The Chair reconvened the plenary after a first round of consultations. He informed about the constructive meeting he had held with the Regional Coordinators, which had enlightened him of the priorities attached by the various groups regarding the recommendation to be made and the work program for the next biennium. He understood that there were specific issues on which the delegates would need to have further focused consultations, while there were other issues on which delegates might be in a position to quickly agree. The Chair, as agreed, gave the floor to the different groups' Coordinators in order for the informal consultations among delegations that would follow suit to proceed in an enlightened fashion.

367. The Delegation of Belgium, speaking on behalf of Group B, thanked the Chair for his very constructive engagement. The Delegation stated that Group B agreed on five key principles. It also believed that those five elements could be agreeable to the other Member States groups as well. First, the Delegation proposed, as it had done already, that the IGC mandate be renewed for the next biennium, with a view to continuing work in a balanced way on each of the topics. The Delegation said that Group B Member States were willing to take stock appropriately prior to the General Assembly of 2015. Third, the Delegation proposed that, with the view to advancing the text-based negotiations, the IGC mandate include cross-cutting discussions on specific issues and concrete examples. Fourth, as it had stated at earlier sessions, the Delegation noted that the text-based negotiations, in accordance with the IGC work plan and mandates, had generated a number of working documents. It was therefore of the view that in order to find optimal and balanced solutions, the renewed IGC negotiations include all working documents, as well as any new textual contributions by Member States in accordance with the previous mandate. The Delegation said that Group B was ready and willing to engage in further informal consultations regarding the recommendation after hearing in plenary from the other groups.

368. The Delegation of India, speaking on behalf of the Asian Group, appreciated the efforts and involvement of the Chair within the consultations that had taken place regarding future work. First, the Delegation proposed that the IGC mandate be renewed for the next budgetary biennium 2014-2015. Second, the IGC should be mandated to continue its work with the view to finalizing, before September 2014, the draft text or texts of an international legal instrument or instruments for the effective protection of GRs, TK and TCEs on the basis of the texts that were to be submitted to next General Assembly. Third, the work program for the biennium ought to be based on sound working methods. The Delegation added that the work program should provide for four IGC sessions, three of which would be thematic and one on cross-cutting issues, and three additional special sessions. Fourth, it wished to recommend that the General Assembly in September 2014 decide on convening a Diplomatic Conference at the earliest possible date, considering the text or texts and progress made. The Delegation reserved the right to revert to the issue as required.

369. The Delegation of Indonesia, speaking on behalf of LMCs, said that the LMCs proposed that the IGC adopt a recommendation to the GA as follows: first, to convene a Diplomatic Conference in 2014; second, to renew the mandate of the IGC for the next budgetary biennium 2014-2015 and instruct the IGC to continue its work with a view to finalizing the draft text or texts of an international legal instrument or instruments for the effective protection of GRTKF before September 2014, with the view to submitting this text or texts to September 2014 session of the General Assembly. The Delegation further recommended that the GA define a work program for the biennium based on sound working methods. It recommended that four sessions of the IGC be provided for in 2014. Three sessions should be thematic and one devoted to cross-cutting issue. Three special sessions should be provided in addition.

370. The Delegation of the EU, speaking on behalf of the EU and its Member States, reaffirmed its commitment to a meaningful and concrete outcome. The Delegation proposed that the future work of that Committee be focused and strategic in order for a consensus to eventually emerge. It was of the view that what mattered was the quality of the IGC work, not its quantity. In line with these principles, the EU and its Member States made some concrete proposals in view of a recommendation to General Assembly as follows. The Delegation proposed extending the IGC mandate in view of the next biennium 2014-2015. The work program for the biennium should make provisions for four sessions of the IGC. Before going to the three thematic sessions on GRs, TK and TCEs, the Delegation would strongly support holding first, at the beginning of 2014, a cross-cutting session to discuss specific issues and concrete examples. It added that that cross-cutting session could be informed by a paper prepared by the Secretariat addressing, for instance, whether there was clarity in the subject matter, how might protection for TCEs impact freedoms, artistic or otherwise, including those of indigenous and local communities and the public domain, as well as practical evidence and examples from a broad range of countries and sectors.

371. The Delegation of Trinidad and Tobago, speaking on behalf of GRULAC, referred to the following items that were pertinent to GRULAC. First, in terms of future work, GRULAC would agree to renew the mandate of the IGC for the next biennium 2014-2015 with a view to finalizing the draft text or texts of an international legal instrument or instruments which would ensure the effective protection of GRs, TK and TCEs and be submitted to the General Assembly of September 2014. Second, the IGC would hold at least three thematic sessions during the course of 2014. These sessions would include: IGC26 on GRs, IGC27 on TK, and IGC 28 on TCEs. Third, the Delegation stated that GRULAC recognized that political will within this process was both lacking and necessary to move the IGC forward in a more expeditious manner. In those circumstances, the Delegation said that GRULAC recommended that each of the three thematic sessions be preceded by one additional day prior to the start of the IGC, whereby high level delegates, at the ambassadorial or ministerial level as each delegation would deem it appropriate, would bring in political will in the negotiating process by defining political guidelines for the experts during the session. The duration of the IGC session would thereby be extended to six days in lieu of five. Fourth, the Delegation recommended that the Chair be allowed to convene intersessional informal meetings in order to expedite the finalization of the draft text. Fifth, the Delegation requested the WIPO International Bureau to continue to assist the IGC by providing Member States with the necessary expertise and funding in the most efficient manner with the participation of experts from developing countries and least-developed countries (LDCs), taking into account the usual formula. Sixth, the Delegation recommended, on behalf of GRULAC, that a Diplomatic Conference be convened within the next biennium.

372. The Delegation of Poland, speaking on behalf of the CEBS, proposed to recommend that the mandate of the IGC be renewed by the next General Assembly for the 2014-2015

biennium. The CEBS recommended that the IGC text-based work continue in a balanced way. At the same time, the Delegation wished to recommend that each issue be treated by separated texts. The Delegation felt that it was of most importance that time and resources be used in the most efficient way. The Delegation proposed to provide for four sessions during the next biennium, including a cross cutting and stock taking session. It recommended that the 2015 General Assembly consider whether adequate and substantial progress had been made up to that time and decide on further work on that base. The Delegation said that the CEBS were ready to participate in the forthcoming consultations regarding future work in good faith.

373. The Delegation of Algeria, speaking on behalf of the African Group, recalled that the African Group had already delivered a statement on future work earlier on under Agenda Item 7. It summarized it as follows. The African Group was in favor not just to renew the IGC mandate for the sake of it, but to improve the mandate of IGC, with the view to committing the IGC to reach and finalize a concrete outcome within the duration of its renewed biennium mandate. It emphasized that the African Group wanted to renew the mandate of the IGC in order to finalize the text-based negotiations and let the General Assembly convene a Diplomatic Conference at an early stage within the 2014-2015 biennium. As far as the IGC work program was concerned; the African Group favored both thematic sessions as well as cross-cutting sessions that would take advantage of convergences among the different texts. The African Group was also in favor of having inter-sessions that would sustain the momentum in the negotiations. The African Group stressed the need to hold sessions of productive and direct negotiations, in order to ensure that the IGC move forwards, not backwards and pave the way towards the Diplomatic Conference that should take place during the 2014-2015 biennium.

374. The Delegation of Belarus, speaking on behalf of the Central Asian, Caucasian and Eastern European Countries (CACEEC), thanked the Chair for his productive commitment and leadership. The CACEEC supported the renewal of the mandate of the IGC on GRs, TK and TCEs. A Diplomatic Conference could be possibly envisaged, should it be preceded by careful preparation and basic agreement between Member States on the documents to be submitted to the Diplomatic Conference.

375. The representative of Tulalip Tribes, speaking on behalf of the Indigenous Caucus, stated the Indigenous Caucus did not have a clear view on the process forward. The Indigenous Caucus did believe though that the mandate needed to be renewed, as the Indigenous Caucus was willing to go forward. That said, the representative added that the Indigenous Caucus did not want to hurry to the extent that it negotiated texts that would not be in the interest of the indigenous peoples. The Indigenous Caucus was of the view that there was still way to go in improving the text in that regard. The Indigenous Caucus could contemplate a Diplomatic Conference taking place in 2015, but such a Diplomatic Conference would be conditional on a formal review that would show that substantive progress had been made in 2014. Indigenous peoples should enjoy full and effective participation in the IGC substantive processes. The representative added that such participation meant to have more indigenous peoples' representatives sitting and participating at the negotiations table. While the Indigenous Caucus had seen some progress and praised where that progress had occurred, it agreed with other Member States that the IGC needed political will. . The Indigenous Caucus was of the view that there was no need for new studies, since there were many mechanisms that could inform the IGC, like side-events and presentations on the Indigenous Panel. More generally, indigenous peoples requested that any consideration of the impacts on third parties be balanced by duly considering the impacts on the TK and TCEs holders themselves.

376. The Delegation of China recommended that the mandate of IGC be extended. Based on the results that had been reached so far, the Delegation saw that further substantive progress needed to be made in the texts. The Delegation urged delegations to resolve divergences so that a Diplomatic Conference could be held at an earlier date and provide effective protection for GRs, TK and TCEs.

377. The Chair invited delegations and representatives of observers to hold informal consultations on a draft recommendation within the format he had described earlier. He reiterated his commitment to be involved in those consultations, with the support of Mr. Goss, as Friend of the Chair. He then suspended the plenary.

378. The Chair reconvened the plenary on Agenda Item 7 and referred to the draft recommendation that resulted from a draft of Mr. Goss, as Friend of the Chair. The Chair informed the IGC that that draft had been based on the informal consultations that had taken place during the preceding morning. He recalled that printed copies of the draft recommendation had been made available. He invited Mr. Goss to introduce the draft recommendation.

379. Mr. Goss said that it had not been the easiest task to reflect the different single options and the various permutations thereof as they had been referred to in plenary and during the informal consultations. His aim had been to make the draft as simple, and hopefully, as clear as possible and to take the interests of all Member States on board. He thought that most issues were captured in the draft. He said that restricted time did not allow him to go into further details about the way in which cross-cutting issues should be dealt with, either at the beginning or the end of the next IGC mandate.

380. At the request of certain delegations, the Chair requested that the Secretariat read out the draft recommendation in order for the interpreters to convey its content in the working languages.

381. The Secretariat read out the draft recommendation as follows: "Draft Recommendation to the WIPO General Assembly. At its 25th session, the IGC agreed to recommend to the WIPO General Assembly the renewal of its mandate for the 2014-2015 biennium. In this regard, the IGC agreed to recommend the following decision to the General Assembly: [B]bearing in mind the Development Agenda recommendations, the WIPO General Assembly agrees that the mandate of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore be renewed as follows: (a) The Committee will, during the next budgetary biennium 2014/2015, and without prejudice to the work pursued in other fora, expedite its work on text-based negotiations with the objective [with a view of finalizing its work] of reaching agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs; (b) The Committee will follow a clearly defined work program [to be further developed], based on sound working methods, for the 2014/2015 biennium. This work program will include three thematic meetings and one cross cutting meeting in [2014] [2014/2015 biennium]; (c) Option 1. There will be [two/three/four] sessions of the IGC, as detailed in the future work program of the IGC in 2014 taking into account sub paragraph (f) with regard to the possible consideration by the General Assembly in 2014 of the need for additional sessions of the IGC in 2015. Option 2. There will be [four/six/eight] sessions, as detailed in the future work program of the IGC in the 2014/2015 biennium; (d) The [IGC/GA] will consider during the biennium the need for intersessional/special sessions and/or informals to progress the work of the Committee; (e) The focus of the Committee's work in the 2014/2015 biennium will build on the existing work carried out by the Committee and use all WIPO working documents, including WIPO/GRTKF/IC/25/5, WIPO/GRTKF/IC/25/6 and WIPO/GRTKF/IC/25/7 which are to constitute the basis of the Committee's work on text-

based negotiations, as well as any textual contributions [and other new proposals] by Members; (f) The Committee is requested to submit to the [2014][2015] General Assembly the text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs,[and any new proposals]. Option 1. The General Assembly in [2014][2015] will take stock of and consider the text(s), progress made and decide on [whether to convene] convening a Diplomatic Conference, and will consider the need for additional meetings, taking account of the budgetary process. Option 2. The General Assembly in 2014 will take stock of and consider the text(s), progress made and convene a Diplomatic Conference at the earliest in the 2014/2015 biennium, and will consider the need for additional meetings, taking account of the budgetary process. Option 3. The General Assembly in 2013 will convene a Diplomatic Conference by the end of 2014; (g) The General Assembly requests the International Bureau to continue to assist the Committee by providing Member States with necessary expertise and funding, in the most efficient manner, of the participation of experts from developing countries and LDCs, taking into account the usual formula; (h) With a view to progressing/enhancing negotiations, resolving areas of difference and consensus relating to the principles and objectives of the instruments, as well as key articles: Option 1. Participants are invited to submit examples relating to key issues, including cross cutting issues, and to link them to the text, to be published as information documents. Option 2. Participants are invited to submit specific examples of GR, TK, TCE which should be protected and should not be protected and explain how they relate to the text. Option 3. Secretariat is requested to gather additional information in an information document to further inform discussions in the cross cutting as well as thematic sessions; (i) [The Committee notes the proposal of the Indigenous Caucus to hold a special session/intersessional/informal meeting, conditional on their ability to secure funds, to exchange views between members states and observers from indigenous and local communities on issues relating to all three texts.]; (j) [Each session of the IGC will be preceded by a one day high level segment with Ambassadors and Senior Officials to share views on key policy issues relating to the negotiations, to further inform/guide the process.]”

382. [Note from the Secretariat: The Vice-Chair, Ms. Grazioli, was chairing the session at this point]. After the reading out of the draft, the Vice-Chair suspended the plenary for further consideration of the draft recommendation by the IGC participation.

383. [Note from the Secretariat: The Chair was chairing the session again at this point]. The Chair reconvened the plenary and referred to the draft recommendation. He asked that proponents, as a first order of work, focus on their options and positions and comment on any omissions or areas in which clarifications needed to be effected.

384. The Delegation of the United States of America proposed changes in the text in order to improve it. It proposed to insert a new paragraph (a) stating: “[T]he Committee will bear in mind the Development Agenda Recommendations, especially Recommendations 15, 16, 17, 19, 20 and 45. Regarding the original paragraph (a), it proposed the insertion of “continue to” before the word “expedite” in the second line, since the Committee had already received an expedited mandate for the 2012-2013 biennium. In paragraph (b), it proposed to bracket the words “clearly defined” in the first line, as it did not want the text suggesting that a separate process would be needed for that “clearly defining” process. The Delegation proposed also that the second sentence be separated from the first sentence in paragraph (b) by a space and to label the second sentence as Option 1. The following Option 1 would be relabeled as Option 2 and Option 2 would be relabeled as Option 3. The Delegation wished that a new paragraph (*ebis*) be inserted as follows: “(*ebis*) Participants are invited to submit examples to inform the discussion of objectives and principles, and each proposed article, including examples of protectable subject matter and subject matter that should not be protected. The Committee shall discuss these examples, and where consensus is reached that an example represents subject matter that is intended to be

protected or an example of subject matter that is not intended to be protected, the example shall be collected in an Information Document, which shall be submitted to the [2014][2015] General Assembly.” It proposed also to add a new paragraph (j) as follows: “(j) To inform the IGC of the impact of its work and to aid in its progress, the IGC is encouraged to request studies, such as that proposed in WIPO/GRTKF/IC/24/6 REV.”

385. The Chair noted that the amendments proposed by the Delegation of the United States of America, given their volume, would need to be carefully reviewed. He announced that he would determine how to proceed regarding the amendments proposed by the Delegation at a later stage. He opened the floor for further comments on the draft recommendation.

386. The Delegation of Algeria, speaking on behalf of the African Group, made the following requests regarding the draft recommendation. It wished to have the word “be renewed” replaced by “be improved” in the chapeau of the draft recommendation. In paragraph (a), it proposed that the word “expedite” be replaced by “conclude”. It wished the following words be added to paragraph (a): “and to finalize a text or texts of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs”. With regards to paragraph (b) and (c), it said that both paragraphs referred to the same issues and ask for clarification of their interaction. It noted that the proposal made by the African Group was reflected in paragraph (c). On paragraph (e), it wanted to replace “use all WIPO working documents, including WIPO/GRTKF/IC/25/5, WIPO/GRTKF/IC/25/6 and WIPO/GRTKF/IC/25/7 which are to constitute the basis of the Committee’s work on text-based negotiations, as well as any textual contributions [and other new proposals] by Members” with “streamline working documents WIPO/GRTKF/IC/25/5, WIPO/GRTKF/IC/25/6 and WIPO/GRTKF/IC/25/7 which are to constitute the basis of the Committee’s work on text-based negotiations.” Regarding paragraph (f), Option 2, which was supposed to have been made by the African Group, the Delegation would like it to read as follows: “The General Assembly will convene a diplomatic conference at the earliest time in 2014/2015 biennium and will consider the need for additional meetings, taking account of the budgetary process”. It wished to have paragraph (h) bracketed, including the three options therein. With regard to paragraph (j), it proposed the paragraph to read as follows: “(j) Each session of the IGC will be preceded by a one day high level segment with Ambassadors and Senior Officials to resolve key policy issues relating to the negotiations, to further inform/guide the process.”

387. The Delegation of India raised questions regarding the status and purpose of the draft recommendation. It was of the view that the purpose of a draft recommendation, where brackets had been included, was different from a text which would be the accurate reflection of the different proposals and options that were made by the different proponents. A recommendation instead would break a middle ground between those proposals and options. It asked the Chair to clarify his intentions in this regard.

388. The Chair replied that he was not entitled to attempt on his own initiative to adjust the positions expressed by Member States. He added that the recommendation to be sent to the General Assembly, given the difference of views regarding future work, would be the sum of the inputs made by the Member States, set in a recommendation form. He further explained that the present recommendation was intended to reflect how Member States saw the future work program of the Committee.

389. The Delegation of India thanked the Chair for his clarification and made the following comments on the draft recommendation. Regarding paragraph (a), it wanted the phrase “with the objective [with a view of finalizing its work] of reaching agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs” deleted. Concerning paragraph (e), it requested that the terms “use all” be bracketed. Regarding Option 3 of paragraph (f), it wished to delete the original and have it replaced by

the following: “[T]he IGC will finalize the texts by September 2014. The General Assembly in 2014 will decide the date for convening the diplomatic conference by the end of 2014.” It requested that paragraph (h) be bracketed. It reserved its right to revert to the text again, should there be any new addition.

390. The Delegation of Indonesia wondered how the Committee would be able to finalize its discussion on the draft recommendation.

391. The Chair replied that the order of work would be first to gather the comments on how the different proposals and options had been captured in the draft recommendation. The draft recommendation would be then fixed in order to ensure accuracy. It was understood though that the recommendation to be sent to the General Assembly would not end up with one converging option, but reflect the different proposals formulated under Agenda Item 7.

392. The Delegation of Indonesia was respectful of the attempts by the Chair to submit a draft recommendation but doubted that the present format of the draft recommendation would enable its own position to be accurately reflected in the draft recommendation. It suggested instead that the differences of views be expressed in a format that would ensure clarity.

393. The Chair invited the Delegation of Indonesia to identify where its position on the various issues had not been clearly formulated and how to improve this formulation. Once this process of reviewing the text was completed, the Committee would then consider whether the resulting text would be worthy to be sent or not to the General Assembly.

394. The Delegation of Indonesia stated that it had difficulties to sort out how to follow this methodology, since the format of the draft recommendation was different from what had been discussed during the informal consultations.

395. The Chair observed that the Delegation of Algeria, speaking on behalf of the African Group, had been in a position to comment on how its own position had been reflected. He wondered whether the Delegation of Indonesia could not do the same on behalf of the LMCs group.

396. The Delegation of Indonesia clarified, in responding to the Chair, that it was speaking in its national capacity. It emphasized that its key concern was not about drafting at that stage but about the fact that the drafting exercise could not possibly end up in its view with a text which would accurately reflect its own particular position. Its concern raised a matter of policy, not merely a matter of drafting.

397. The Chair asked whether, as an example, the position of the LMCs group regarding the number of sessions in 2014 was reflected in the text or not.

398. The Delegation of Indonesia said that it was reflected but in a way that was difficult to understand. It noted, for example, that paragraph (a), which in some way reflected its position, did contain elements that were contentious for the Delegation, hence its difficulty to decipher the text as it stood.

399. The Delegation of the EU, speaking on behalf of the EU and its Member States, thanked the Chair and Mr. Goss for submitting the draft recommendation. It was of the view that the present draft recommendation reflected all views that had been expressed in the informal consultations. It viewed it important to transmit the draft recommendation to the General Assembly, so as not to lose the elements that had been gathered so far in the informal consultation, even though a common position would not be finalized obviously at the present stage. It added that it would be better to refrain from amending too much the present

draft and minimize the amendments to be introduced. In reaction to the various amendments proposed by delegations, the Delegation could be amenable to many of the amendments presented by the Delegation of the United States of America, but asked whether they would be necessary. While it was supportive in principle of the proposal to insert “continue to” before “expedite” in paragraph (a), the Delegation could also be flexible in retaining the initial wording of this paragraph. Regarding paragraph (d), it agreed that there was no consensus at this stage on this paragraph and that it would be best to bracket it, as suggested by the Delegation of the United States of America. It would also like to replace the word “will consider” by “may consider” in this paragraph. The Delegation would not be in a position to support the amendments introduced by the Delegation of Algeria, speaking on behalf of the African Group, in paragraphs (a) and (e). Concerning paragraph (g) and the different options contained therein, the Delegation requested that Option 3 be retained. The Delegation added that it would be ready to provide more information regarding this option according to the specific guidance that the Committee would provide in this regard. The Delegation suggested as well that Option 2 be merged into Option 3, by inserting in Option 3 the following: “Participants are invited to submit specific examples of GR,TK,TCE which should be protected and should not be protected and explain how they relate to the text”.

400. [Note from the Secretariat: this statement was submitted in writing only.] The Delegation of Japan commented on paragraph (g) in similar line with the Delegation of the EU propose. It observed that the three options were not mutually exclusive. “Specific examples of GRTKF which should be protected and should not be protected and explain how they relate to the text” in Option 2 would provide for concrete “examples relating to key issues” that was mentioned in Option 1. It noted that the work by the Secretariat envisaged in Option 3 could add value to Options 1 and 2. The Delegation was of the view that those three options could therefore be merged. As such, they would constitute a better option which the negotiation process could benefit from.

401. The Delegation of Egypt supported the textual amendments as introduced by the Delegation of Algeria, speaking on behalf of the African Group. It found it difficult to follow, react and comment upon the proposals made by the other delegations and wished to have the opportunity to discuss them further. It was of the view that the report of the IGC ought to cover the statements that were made under Agenda Item 7 regarding in its three elements, namely the reviewing and taking stock of the texts as well as the formulation of a recommendation. The report should enable the Member States to better consider the present draft.

402. The Delegation of Trinidad and Tobago, speaking on behalf of GRULAC, thanked the Chair and Mr. Goss for having prepared and submitted the draft recommendation. It shared the concerns expressed by the Delegations of India, Indonesia and Egypt regarding the difficulty to decipher the present draft and eventually come up with a clean and clear text, given the lack of time. It added that the draft recommendation should be sent to the General Assembly without prejudice of its position on the issues. Regarding the proposal regarding high-level meetings which GRULAC made as reflected in paragraph (j), the Delegation said that it was planning to submit a revised version of this proposal in the sense of envisaging one high-level meeting instead of three at the beginning of IGC 26, to take place at the ambassadorial level and not aiming at negotiating the texts. It was ready to submit precise wording should the Chair so wished.

403. The representative of *Tupaj Amaru* said he had been saddened by the statement made by of the Delegation of the United States of America, which, he said, complicated the process. Furthermore, this statement, as it referred to studies and examples, would have the detrimental effect of redirecting the IGC to the first stage of its process, while it had entered its closing phase. Regarding the present draft, he wished that paragraph (a) make clear that

the objective of the IGC would be to conclude its work. In this regard, he was of the view that the proposals made by the Delegations of the United States of America and the EU had set up stumbling blocks against this objective. With regard to paragraph (b), he was surprised to see a reference to a proposal regarding a cross cutting process, while it had not been mentioned before. Regarding paragraph (e), he noted that the textual proposals referred to therein did not include those from the indigenous peoples, while they should. Options 1 and 2 in paragraph (f) should be redrafted in order to allow the General Assembly to convene a Diplomatic Conference, regardless of the “progress made”. He disagreed with the reference to the WIPO budget under those options, as the negotiating process should not depend on budgetary constraints. With regard to paragraph (g), participation should include indigenous peoples as legitimate participants in the process. Finally, he said that it would be a mockery of the authority of the Committee to send a recommendation with square brackets to the General Assembly. It agreed with the statements made by the Delegation of Indonesia in the sense that the Committee should suspend its work on the present draft recommendation. He deplored that Member States from Group B had made the drafting process confusing in his view.

404. The Delegation of Brazil thanked Mr. Goss, as Friend of the Chair, for his attempt to compile in one document the content of the informal consultations. Nevertheless it shared the concern expressed by some delegations regarding the format that would be needed to accurately reflect the respective positions. It observed, for example, that the proposals that were made respectively by the LMCs and GRULAC had been very concise, compared to the long draft recommendation that had been submitted as a result of the longer proposals made by other delegations that needed to be incorporated as well.

405. The Chair reiterated that the objective was not to come to a short common recommendation, but to send a text that would reflect the different proposals and options made by delegations on a clear set of issues around which the informal consultations articulated. Such a text would enable the Committee to take benefit from its work under the present Agenda Item, although there had been no convergence on how to deal with those core issues.

406. The Delegation of Brazil suggested that a discussion take place regarding the nature of the text that was needed in order to accurately reflect the different positions that had been submitted. It further suggested that the present document be presented as from the Friend of the Chair, but not as a draft recommendation of the IGC to the WIPO General Assembly, and be complemented by the full text of the different proposals in an annex.

407. The Chair, after a short suspension for consultations, reconvened the plenary. He noted that there was a clear sense that another methodology was needed to ensure accuracy in capturing the different proposals. He asked the Friend of the Chair, Mr. Goss, to prepare a text that would be simplified and that would show in a neatly separated way the different options or proposals made around the particular areas that had been identified as key regarding future work. He asked Mr. Goss to inform the Committee on how he would proceed in preparing this new text.

408. Mr. Goss, as Friend of the Chair, said that his intent was to insert headings in the text, followed by stand-alone options under each heading in order to ensure clarity. He invited the groups that had made proposals to meet him during his compilation in order to ensure that their options were accurately reflected within this revised structure.

409. The Delegation of India requested clarification as to how the proposals that had been made after the submission of the draft recommendation would be dealt with.

410. The Chair said that the text would reflect the proposals that had been made during the informal consultations, as appropriately amended, should the case arise. New proposals would need to be treated separately.

411. The Delegation of India further requested clarification as to whether the text would be sent as a mere report of the proposals made regarding future work.

412. The Chair confirmed that the text would be sent as a report that compiled the different proposals made on future work. He added that the exact language that would describe that document would have to reflect what had been done under Agenda Item 7. He invited Mr. Goss to submit a draft "report" in that line and suspended the plenary.

413. The Chair reopened the plenary and referred to the draft "Report of the Proposals Made by Delegations Regarding Future Work of the IGC, Following the Review and Stocktaking Conducted under Agenda Item 7, as at the Close of the Session on July 24, 2013" as prepared by Mr. Goss, as Friend of the Chair. He reminded the Committee that printed copies had been made available beforehand. He intended to submit the draft for consideration and adoption by the IGC and opened the floor for comments on errors or omissions that could have been made in the draft. He requested delegations to intervene on whether the provisions, as reflected in the draft, were consistent with the proposals they had made. The Chair indicated that, after that review, he would open the floor to enable new amendments and/or proposals to be introduced by delegations that wished to do so. Those new amendments and/or proposals would be entered into the record. [Note from the Secretariat: Many delegations which took the floor thanked Mr. Goss for the work he had done].

414. The Delegation of Algeria, speaking on behalf of the African Group, with regard to the "Renewal of the Mandate", noted that Option 1 was the African Group's option and requested that paragraph (b) be corrected to read, "and streamline WIPO's working documents", instead of "and use streamlined WIPO working documents". Under the heading "Reference to Diplomatic Conference", it requested for the deletion of the phrase "and will consider the need for additional meetings, taking account of the budgetary process".

415. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, noted that the phrase "the instruments; as well as key articles, the Committee request", as contained in Option 3 under "Studies/Examples", should read "instrument(s) as well as key articles, the Committee requests". The Delegation further requested the insertion of a full stop after the phrase "additional information in a paper" which would be followed by the additional sentences: "The paper will contain practical evidence and examples and how they relate to the articles in question. It will aim at further informing discussions in the cross-cutting as well as thematic sessions."

416. The Delegation of Indonesia was of the view that the new draft offered a better structure than the previous one. It noted that its proposal had been captured and that its concerns with respect to the diplomatic conference had been addressed by another group.

417. The Delegation of Peru noted that it had earlier supported the initiative proposed by the indigenous caucus under "proposals". It therefore requested that the name of its country be inserted after "indigenous caucus" in proposal 2, as a co-proponent of the proposal, for the purpose of strengthening it.

418. The Chair closed the floor for errors and omissions in the document and opened the floor for new amendments and proposals to the document, and confirmed that such changes would be entered only into the record.

419. The Delegation of Trinidad and Tobago, speaking on behalf of GRULAC, pointed out, with reference to its proposal in the Report, that it had consulted internally as well as with several delegations and certain groups and wished to fine-tune its proposal with respect to the high-level meeting. The Delegation read into the record the revised proposal as follows: "That there be a half-day single high-level meeting at the level of Ambassador or Head of Delegation in Geneva in 2014. The purpose of this meeting is to have an open and frank discussion on the political and policy direction on the work of the IGC."

420. The Delegation of the United States of America proposed that the following sentence be inserted under the heading "Renewal of Mandate": "The Committee will bear in mind the Development Agenda Recommendations, especially Recommendations 15, 16, 17, 19, 20, and 45." It also proposed the following text be inserted under the heading "Studies/Examples": "The Committee shall discuss examples, and where consensus is reached that an example represents subject matter that is intended to be protected or an example of subject matter that is not intended to be protected, the example shall be collected in an information document which shall be submitted to the 2014/2015 General Assembly".

421. The representative of Tulalip Tribes proposed the insertion, under the heading "Studies/Examples", of a new option which read: "Participants are invited to submit examples to inform the discussion of objectives of each proposed article, including examples of both beneficial and adverse impacts of protections and lack of protections for GRs, TK, TCEs, and how they relate to the text". He further proposed the insertion into the record: "The Committee will take steps to ensure the full and effective participation of Indigenous Peoples and local communities in all relevant negotiations and decision-making processes", as well as, "The General Assembly urges members of the Committee and other relevant organizations to contribute to the Voluntary Fund".

422. The Delegation of Peru expressed its support for the entry into the record of the three textual proposals made by the representative of Tulalip Tribes.

Decision on Agenda Item 7:

423. The Committee reviewed and took stock of the text(s) of the international legal instrument(s) ensuring the effective protection of traditional knowledge, traditional cultural expressions and genetic resources, and decided to transmit to the WIPO General Assembly taking place in September 2013 its "Report of the proposals made by delegations regarding future work of the IGC, following the Review and Stocktaking conducted under Agenda Item 7, as at the close of the session on July 24, 2013", as well as a record of interventions made on the report.

AGENDA ITEM 8: CONTRIBUTION OF THE INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE (IGC) TO THE IMPLEMENTATION OF THE RESPECTIVE DEVELOPMENT AGENDA RECOMMENDATIONS

424. [Note from the Secretariat: this statement was submitted in writing only.]

The Delegation of Australia was of the view that progress in the IGC, in accordance with Recommendation 18 of the Development Agenda Recommendations, had been encouraging. It was pleased that the norm setting processes in the Committee had been carried out in accordance with Cluster B principles including, being inclusive, member driven, participative and balanced. It was also pleased that the norm setting environment, as well as the working documents, were the outcome of Member State deliberations, appropriately supported by the Secretariat, and noted that these had relied on contributions from many different stakeholders. The Delegation pointed out that Recommendations 16 and 20 addressed the public domain and were of particular significance to the work of the IGC. It welcomed the contribution that IGC discussions had made to the evolving and varied forms that the concept of the public domain had taken within the varied contexts of IP discussions.

425. The Delegation of China recognized the contributions made by the IGC to the implementation of the respective Development Agenda recommendations, and expressed the hope that the IGC would continue its efforts to help countries make progress in this regard.

426. [Note from the Secretariat: this statement was submitted in writing only.]

The Delegation of Brazil, speaking on behalf of the DAG, noted that the Development Agenda was an achievement of WIPO and of all its Member States. It was of the view that the establishment of a report compiling the interventions of countries that wished to present their appraisals of the implementation of the Development Agenda was an important step towards a mainstreamed implementation mechanism. It noted that this had allowed for an exchange of views and had revealed areas of convergence among Member States. The Delegation pointed out that the mechanism required reinforcement for it to truly fulfill its purpose. It noted that it was difficult to extract conclusions from a simple compilation of individual interventions which contained no analysis. It therefore reiterated its suggestion that the report of the Secretariat to the General Assembly include an analysis of the interventions submitted by delegations. Without such an analysis, it was of the view that the efficacy of the exercise was reduced. The Delegation stressed the importance of the 45 recommendations of the Development Agenda being reflected in the work of the IGC, as well as all other bodies in WIPO. With respect to the IGC, the Group stated that it would work to carry out recommendation 18 of the Development Agenda which urged the IGC “to accelerate the process on the protection of genetic resources, traditional knowledge and folklore, without prejudice to any outcome, including the possible development of an international instrument or instruments.” The Delegation recalled that the Committee had pursued this objective, since 2007, through the elaboration of negotiating texts on GRs, TK and TCEs, as well as the approval of ambitious mandates for the IGC in 2009 and 2011. In 2012, it noted that the General Assembly had decided to amend the 2011 mandate and include more sessions with the aim of concluding the negotiations on the three topics. The Delegation expressed the view that the 2013 mandate had to be stronger than the previous mandate if there was going to be a finalization of the negotiations within the scope of the mandate. The Group observed that the Committee had covered a lot of ground to reach its present position and was of the view that its results had demonstrated that it possessed the conditions to conclude effective instruments on the protection of GRs, TK and TCEs. Despite the positive signals, the Group noted that the negotiations were not advancing at the expected pace and that to conclude the negotiations in the near future, there was a need for Member States to double their efforts. The Group further observed that there was a need to

provide room for the inclusion of the interests of Developing Countries and of Least Developed Countries, in line with cluster B of the Development Agenda, for the purposes of strengthening the IP system. It pointed out that the adoption of effective and binding instruments to protect and to prevent the misappropriation and misuse of GRs, TK and TCEs was a fundamental part of this inclusion process. The Delegation of Brazil, on behalf of the DAG, stated that the full implementation of the Development Agenda was incompatible with a lack of interest of Member States in the IGC negotiations. Taking into account the 13 years that had been put into the Committee's work on the three subjects, the Delegation noted that it was unacceptable that all the efforts did not culminate in a positive outcome that fulfilled the recommendations of the Development Agenda and, therefore, called on all Member States to commit to the finalization of the negotiations of the IGC and adoption of a binding instrument(s) on the three areas of work.

427. [Note from the Secretariat: this statement was submitted in writing only.] The Delegation of Algeria, speaking on behalf of the African Group, recalled that the IGC, under the Development Agenda Recommendation 18, was requested to accelerate the process on the protection of GRs, TK and TCEs. The Delegation noted that the IGC's mandate required it 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 would ensure the effective protection of GRs, TK and TCEs. The Group welcomed the progress which had been made in the work of the Committee in 2013 and noted, in particular, the efforts of the Committee in developing a draft legal text for GRs, TK and TCEs. It pointed out that it had hoped that the thematic sessions would accelerate the negotiations with a view to completing the legally binding instruments. It welcomed the fact that the 2013 WIPO General Assembly would have the opportunity to assess the progress on the text of the international legal binding instrument(s) on GRs, TK and TCEs as transmitted to it by the Committee, with a view to agreeing on the way forward, especially regarding the convening of a diplomatic conference. The Group expressed its expectation that, in taking stock of the text on the three instruments, the General Assembly would make a landmark decision to ensure that the Committee completed its work towards the effective protection of GRs, TK and TCEs. The Group noted that a lot of technical work and discussions had already taken place over the past decades, and believed that what remained was the political will of all Member States to conclude the work of the IGC. It urged all Member States to commit to the conclusion of the work of the IGC. The Group stated that it expected the Committee to adhere to implementing the relevant Development Agenda recommendations as well as to the mandate given to it by WIPO's highest decision-making body, the General Assembly.

Decision on Agenda Item 8:

428. The Committee held a discussion on this item. The Committee decided that all statements made on this item would be recorded in the report of the Committee and that they would also be transmitted to the WIPO General Assembly taking place from September 23 to October 2, 2013, in line with the decision taken by the 2010 WIPO General Assembly related to the Development Agenda Coordination Mechanism.

AGENDA ITEM 9: ANY OTHER BUSINESS

429. [Note from the Secretariat: no statement was made under this Agenda item.]

AGENDA ITEM 10: CLOSING OF THE SESSION

430. The Delegation of Algeria, speaking on behalf of the African Group, noted that it had been a difficult week for everyone. It thanked all delegations for their contributions and the Secretariat for its assistance. It thanked the Chair and noted that it had every confidence in his ability to continue to lead the Committee forward.

431. The representative of FAIRA, speaking on behalf of the Indigenous Caucus thanked the Chair for his leadership throughout the course of the session. He also thanked the facilitators, the Friend of the Chair and the Secretariat for their work. [Note from the Secretariat: the following part of the statement was submitted in writing only.] With respect to the draft articles of the international instruments on GRs, TK and TCEs, the Indigenous Caucus, with the support of local communities, the UNPFII and UNEMRIP, noted that though the discussions had been complex and difficult, there was still a need to continue to move forward. In line with the statement of the UNPFII in document E/2010/43-E/C.19/2010/15 (2010) and UNEMRIP, he supported the inclusion of the term “Indigenous Peoples and local communities” within the text. He was of the view that indigenous peoples sought to promote and protect their social, political, economic and cultural rights associated with their right to development and right to self-determination as affirmed by Articles 2 and 31 of the UNDRIP, Article 8(j) of the CBD and in other relevant international instruments that did not diminish their rights. He clarified that they were not seeking to prevent innovation by others. He noted that the UNPFII had consistently highlighted the need for WIPO to be cognizant of and reflect these rights within their deliberations and ensure that they were manifested within the agreements on GR, TK and TCEs. He requested that the following indigenous and human rights be included within the outcomes of the final documents: FPIC, as a necessary prerequisite to agreements; MATs by all parties within agreements; ABS for beneficiaries negotiated on an equal footing of each of the parties; and the “Do no harm” principle. Ensuring the inclusion of these rights would provide a focus and consistency of approach across the three agreements on GR, TK and TCEs and would protect the rights of beneficiaries. He reiterated, on behalf of the Indigenous Caucus and local communities, the call for a meeting to be convened by Indigenous Peoples and Member States that would include an independent review process as well as independent studies on the current IGC process. Furthermore, in relation to independent studies, the representative called on WIPO to implement Recommendation 8 of the UNPFII, as contained in document E/C.19/2012/L.4, which called for a technical review of the work of WIPO on GRs, TK, and TCEs to be undertaken by an independent Indigenous Expert within the framework of indigenous human rights. He urged Member States to continue in the IGC process on the basis of a willingness to negotiate and compromise for the purpose of achieving the aspiration of a legally binding agreement and preventing further protracted discussions. The Indigenous Caucus believed that the Committee would be assisted by the direct equal participation of its members in the IGC process, particularly as the IGC process moved into its next mandated biennium with the view to hopefully finalizing its work. The representative acknowledged and welcomed the incremental steps that had occurred through their involvement in the expert groups and the informal informals. He, however, noted that the Indigenous Caucus continued to be frustrated by the fact that the majority of its members were relegated to the periphery of discussions while their substantive rights were being threatened. He noted that several key issues remained unsolved, such as; the public domain, the use of databases and the repatriation of dispersed TK and TCEs. The Indigenous Caucus therefore called upon the General Assembly to adopt a position that would allow for their equal participation as outlined

in the statements of the Indigenous Caucus at IGC 18 and IGC 19. He finally urged members of the IGC to continue to support the attendance of indigenous peoples and local communities at future IGC sessions by contributing to the WIPO Voluntary Fund.

432. The Delegation of Indonesia thanked the Chair, the facilitators and the Secretariat for their hard work.

433. The Delegation of Trinidad and Tobago, speaking on behalf of GRULAC, thanked the Chair, the facilitators, the Friend of the Chair, and all delegations for their constructive comments especially on the proposals made by GRULAC. It thanked the Vice-Chair, Ms. Grazioli, who had stepped in to fill in the shoes of the Chair, as required, and also thanked the interpreters for their work. It expressed the hope that the progress that had been made so far could be solidified during the General Assembly.

434. The Chair expressed a special word of thanks to the Friend of the Chair, Mr. Ian Goss. The Chair also offered special thanks to the Vice Chairs, Ms. Alexandra Grazioli from Switzerland and Mr. Bebeb Djundjungan from Indonesia. He noted that the success of the session could not have been possible without their assistance. Both had worked extremely hard, both visibly and behind the scenes. The Chair welcomed the progress made in the discussions during the present year and believed that it showed that success could be achieved through creative solutions as well as on outcomes and avenues to bridging differences. He observed that the legitimate concerns raised by delegations about the initial draft recommendation under Agenda Item 7 had led to a discussion around the ways in which the work done over the past three days could be best reflected. The Chair thanked the facilitators for the session, Mr. Tom Suchanandan from South Africa and Mr. Dominic Keibell from New Zealand, for their excellent work. He thanked the Secretariat and all delegations. He observed that the session had been unusual as it had required a night session to complete it. However, it was most important that the work done was properly captured and of benefit to the General Assembly.

Decision on Agenda Item 10:

435. The Committee adopted its decisions on agenda items 2, 3, 4, 5, 6 and 8 on July 19, 2013 and its decision on agenda item 7 on July 24, 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 by September 20, 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-Sixth 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 SELETI, Chief Director, National Indigenous Knowledge Systems Office, Department of Science and Technology, Pretoria, yonah.seleti@dst.gov.za

Elena ZDRAVKOVA (Mrs.), Director, Patents and Designs Department, Companies and Intellectual Property Commission (CIPC), Pretoria

Tom SUCHANANDAN, Director, National Indigenous Knowledge Systems Office, Department of Science and Technology, Pretoria

Boitumelo MOSITO (Mrs.), Deputy Director, National Indigenous Knowledge Systems Office, Department of Science and Technology, Pretoria

Mandixole MATROOS, First Secretary, Permanent Mission, Geneva

ALGÉRIE/ALGERIA

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

ALLEMAGNE/GERMANY

Stefan WALZ, Head, Division for Patent Law, Federal Ministry of Justice, Berlin

Patricia FINKENBERGER (Ms.), Desk Officer, Division for Copyright and Publishing Law, Federal Ministry of Justice, Berlin

Bettina BERNER (Mrs.), Desk Officer, Division for Patent Law, Federal Ministry of Justice, Berlin

Pamela WILLE (Ms.), Counsellor, Permanent Mission, Geneva

ANGOLA

Manuel LOPES FRANCISCO, directeur général, Institut national des savoirs traditionnels, Ministère de la science et technologie, Luanda

Kayimbo MALILO K., chercheur en sciences sociales et humaines, Centre d'investigation scientifique, Ministère de la sciences et technologie, Luanda

Alberto GUIMARÃES, deuxième secrétaire, Mission permanente, Genève

ARABIE SAOUDITE/SAUDI ARABIA

Rashed AL ZAHRANI, Manager, Copyright Department, Ministry of Culture and Information, Dammem, rashed34@gmail.com

ARGENTINE/ARGENTINA

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

AUSTRALIE/AUSTRALIA

Ian GOSS, General Manager, IP Australia, Canberra

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

Guenter AUER, Adviser, Copyright Department, Federal Ministry of Justice, Vienna

Lukas KRÄUTER, Expert, Austrian Patent Office, Federal Ministry for Transportation, Innovation and Technology, Vienna

BANGLADESH

Nazrul ISLAM, Minister, Permanent Mission, Geneva

BARBADE/BARBADOS

Marion WILLIAMS (Mrs.), Ambassador, Permanent Representative, Permanent Mission, Geneva

Deborah BECKLES (Ms.), Deputy Registrar, Corporate Affairs and Intellectual Property Office, Ministry of Industry, International Business, Commerce and Small Business Development, Bridgetown, dbeckles@caipo.gov.bb

BÉLARUS/BELARUS

Ivan SIMANOUSKI, Head, International Cooperation Division, National Center of Intellectual Property (NCIP), Minsk

Andrei ANDREEV, Counsellor, 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, First Secretary, Permanent Mission, Geneva

BELIZE

Koreen FLOWERS (Mrs.), Senior Assistant Registrar, Belize Intellectual Property Office (BELIPO), Belmopan, koreen@belipo.bz

BRÉSIL/BRAZIL

Carlos DE CARVALHO FONSECA, Deputy Head, Office for International Affairs, Ministry of the Environment, Brasilia

Natasha PINHEIRO AGOSTINI (Mrs.), Secretary, Ministry of External Relations, Brasilia

Rodrigo ARAUJO, First Secretary, Permanent Mission to the World Trade Organization (WTO), Geneva

BULGARIE/BULGARIA

Boryana ARGIROVA (Mrs.), Third Secretary, United Nations and Cooperation for Development Directorate, Ministry of Foreign Affairs, Sofia

BURUNDI

Esperance UWIMANA (Mme), conseillère, Mission permanente, Genève

CAMEROUN/CAMEROON

Oumar Farouk MOUNCHEROU, chargé d'études, Division de la valorisation et de la vulgarisation des résultats de la recherche, Ministère de la recherche scientifique et de l'innovation (MINRESI), Yaoundé, omouncherou@yahoo.fr

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

CANADA

Nicolas LESIEUR, Senior Trade Policy Advisor, Intellectual Property Trade Policy Division, Ministry of Foreign Affairs and International Trade, Ottawa, nicolas.lesieur@international.gc.ca

Nadine NICKNER (Ms.), Senior Trade Policy Advisor, Intellectual Property Trade Policy Division, Ministry of Foreign Affairs and International Trade, Ottawa, nadine.nickner@international.gc.ca

Shelley ROWE (Ms.), Senior Project Leader, Strategy and Planning Directorate, Ministry of Industry, Ottawa, shelley.rowe@ic.gc.ca

Catherine BEAUMONT (Ms.), Manager, International Copyright Policy and Co-operation, Ministry of Canadian Heritage, Ottawa, catherine.beaumont@pch.gc.ca

CHILI/CHILE

María Catalina OLIVOS BESSERER (Sra.), Jefa, Departamento de Estudios y Políticas, Instituto Nacional de Propiedad Industrial (INAPI), Ministerio de Economía, Fomento y Turismo, Santiago

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

CHINE/CHINA

ZHENG Xiangrong (Mrs.), Section Chief, Copyright Department, National Copyright Administration of China (NCAC), Beijing

ZHANG Ling (Mrs.), Project Administrator, International Cooperation Department, State Intellectual Property Office (SIPO), Beijing, zhangling_1@sipo.gov.cn

QIU Junchang (Mrs.), Project Administrator, International Cooperation Department, State Intellectual Property Office (SIPO), Beijing, qiujunchang@sipo.gov.cn

YAO Xin, Official, Department of Legal Affairs, State Intellectual Property Office (SIPO), Beijing, yaoxin@sipo.gov.cn

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

COLOMBIE/COLOMBIA

Adelaida CANO (Sra.), Asesora, Dirección de Asuntos Indígenas, Minorías y Roms, Ministerio del Interior, Bogotá D.C.

María Margarita JARAMILLO PINEDA (Sra.), Asesora, Dirección de Inversión Extranjera, Ministerio de Comercio, Industria y Turismo, Bogotá D.C., mjaramillop@mincit.gov.co

Juan Camilo SARETZKI, Encargado de Negocios, Misión Permanente, Ginebra, juan.saretzki@misioncolombia.ch

Catalina GAVIRIA (Sra.), Consejera Comercial, Misión Permanente ante la Oficina Mundial del Comercio (OMC), Ginebra

CONGO

Célestin TCHIBINDA, deuxième secrétaire, Mission permanente, Genève

Nilce EKANDZI, attaché, Mission permanente, Genève

COSTA RICA

Sylvia POLL (Sra.), Embajadora, Representante Permanente Adjunta, Misión Permanente, Ginebra

Aimee LACE (Srta.), Practicante, Misión Permanente, Ginebra

CÔTE D'IVOIRE

Kumou MANKONGA, premier secrétaire, Mission permanente, Genève

DANEMARK/DENMARK

Signe Louise HANSEN (Ms.), Legal Adviser, Policy and Legal Affairs Department, Danish Patent and Trademark Office, Taastrup, slh@dkpto.dk

DJIBOUTI

Djama Mahamond ALI, conseiller, Mission permanente, Genève

ÉGYPTE/EGYPT

Ahmed ALY MORSI, Director, National Archives of Folk Traditions, Ministry of Culture, Cairo, amorsi9@yahoo.es

EL SALVADOR

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

ÉQUATEUR/ECUADOR

Lilian CARRERA (Srta.), Directora, Dirección Nacional de Obtenciones Vegetales y Conocimientos Tradicionales, Instituto Ecuatoriano de la Propiedad Intelectual (IEPI), Quito, lmarrera@iepi.gob.ec

Juan Carlos SÁNCHEZ, Primer Secretario, Misión Permanente, Ginebra

ESPAGNE/SPAIN

Jaime DE MENDOZA FERNÁNDEZ, Subdirector General Adjunto, Subdirección General de Propiedad Intelectual, Ministerio de Educación, Cultura y Deporte, Madrid

Juan José CLOPÉS BURGOS, Jefe de Área, Dirección General de Política e Industrias Culturales y del Libro, Ministerio de Educación, Cultura y Deporte, Madrid

Eduardo SABROSO LORENTE, Consejero Técnico, Departamento de Coordinación Jurídica y Relaciones Internacionales, Ministerio de Industria, Energía y Turismo, Madrid

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Dominic KEATING, Director, Intellectual Property Attaché Program, External Affairs, United States Patent and Trademark Office (USPTO), Alexandria

Betsy PETERSON (Ms.), Director, American Folklife Center, Library of Congress, Washington D.C.

Michael SHAPIRO, Senior Council, Office of Policy and External Affairs, United States Patent and Trademark Office (USPTO), Alexandria

Karin L FERRITER (Ms.), Attaché, Intellectual Property Department, Permanent Mission, Geneva

ÉTHIOPIE/ETHIOPIA

Girma Kassaye AYEHU, Minister Counsellor, Permanent Mission, Geneva

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Natalia BUZOVA (Mrs.), Deputy Director, International Cooperation Department, Federal Service for Intellectual Property (ROSPATENT), Moscow

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

Oksana EGOROVA (Ms.), Chief Specialist Expert, Department of Innovative Development, Ministry of Economic Development of Russian Federation, Moscow

Arsen BOGATYREV, Attaché, Permanent Mission, Geneva

FINLANDE/FINLAND

Heli HONKAPÄÄ (Mrs.), Senior Government Secretary, Ministry of Employment and the Economy, Helsinki, heli.honkapaa@tem.fi

Anna VUOPALA (Ms.), Senior Advisor, Legal Affairs, Department for Cultural, Sport and Youth Policy, Division for Cultural Policy, Ministry of Education and Culture, Helsinki

FRANCE

Ludovic JULIE, chargé de mission, Bureau de la propriété intellectuelle, Ministère de la culture et de la communication, Paris

Daphné DE BECO (Mme), chargée de mission, Service des affaires européennes et internationales, Institut national de la propriété industrielle (INPI), Paris

GÉORGIE/GEORGIA

Irakli GVALADZE, Chairman, National Intellectual Property Center of Georgia (SAKPATENTI), Mtskheta

George KURDIANI, Head, Trademarks and Geographical Indications Department, National Intellectual Property Center of Georgia (SAKPATENTI), Mtskheta

Eka KIPIANI (Mrs.), Counsellor, Permanent Mission, Geneva

GRÈCE/GREECE

Ioannis KATSARAS, Counsellor Economic and Commercial Affairs, Directorate, Ministry of Foreign Affairs, Athens, ykatsaras@hotmail.com

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

GUATEMALA

Flor de María GARCÍA DÍAZ (Sra.), Consejera, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

HONDURAS

María del Carmen OSORIO (Sra.), Jefa, Oficina Administrativa del Derecho de Autor, Dirección General de Propiedad Intelectual (DIGEPIH), Tegucigalpa

HONGRIE/HUNGARY

Virág HALGAND DANI (Mrs.), Counsellor, Permanent Mission to the World Trade Organization (WTO), Geneva

INDE/INDIA

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

Chandni RAINA (Mrs.), Director, Department of Industrial Policy and Promotions, Ministry of Commerce and Industry, New Delhi

N.S. GOPALAKRISHNAN, Professor, Human Resources Department, Chair on Intellectual Property, Department of Industrial Policy and Promotion (DIPP), Kerala

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

INDONÉSIE/INDONESIA

Abdulkadir JAILANI, Director for International Treaties of Economic, Social and Cultural Affairs, Ministry of Foreign Affairs, Jakarta

Julianus LIMBENG, Head, Music Industry Sector, Ministry of Tourism and Creative Economy, Jakarta

Aryudhi SAPUTRA, Head, Legal Affairs Department, Ministry of Tourism and Creative Economy, Jakarta

N. NURDIANSYAH, Head, Content Development Film Locations, Ministry of Tourism and Creative Economy, Jakarta

Muhammad SURADIN, Acting Head of Sub-Division, Ministry of Creative Economy, Jakarta

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

Berti DELIANI (Ms.), Staff, Ministry of Tourism and Creative Economy, Jakarta

Arief Rachmat HIDAYAT, Staff, Directorate of Trade, Industry, Investment and Intellectual Property Rights, Ministry of Foreign Affairs, Jakarta

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

Abbas BAGHERPOUR ARDEKANI, Ambassador, Deputy Permanent Representative, Permanent Mission, Geneva

Alireza KAZEMI ABADI, Deputy Ministry, Ministry of Justice, Teheran

Nabiollah AZAMI SARDOUEI, First Secretary, Permanent Mission, Geneva

IRLANDE/IRELAND

James KELLY, Intellectual Property Expert, Intellectual Property Unit, Department of Jobs, Enterprise and Innovation, Dublin, jamesa.kelly@patentsoffice.ie

ISRAËL/ISRAEL

Guy AZRIEL, Adviser, Permanent Mission, Geneva

ITALIE/ITALY

Ivana PUGLIESE (Ms.), Chief Patent Examiner, Ministry of Economic Development, Rome
Tiberio SCHMIDLIN, First Secretary, Permanent Mission, Geneva

JAMAÏQUE/JAMAICA

Wayne McCOOK, Ambassador, Permanent Representative, Permanent Mission, Geneva
Simara HOWELL (Ms.), First Secretary, Permanent Mission, Geneva,
fsec@jamaicamission.ch

JAPON/JAPAN

Kazuhide FUJITA, Deputy Director, International Affairs Division, General Affairs
Department, Japan Patent Office (JPO), Tokyo
Hiroki HORI, Deputy Director, Japan Copyright Office (JCO), Tokyo
Kenji SAITO, Deputy Director, Intellectual Property Affairs Division, Ministry of Foreign
Affairs, Tokyo
Ryoji SOGA, Deputy Director, Intellectual Property Affairs Division, Ministry of Foreign
Affairs, Yokohama
Mari MORI (Mrs.), Assistant Director, International Affairs Division, General Affairs
Department, Japan Patent Office (JPO), Tokyo
Kunihiko FUSHIMI, First Secretary, Permanent Mission, Geneva,
kunihiko.fushimi@mofa.go.jp

JORDANIE/JORDAN

Ghadeer EL FAYEZ (Ms.), Advisor, Permanent Mission, Geneva

KAZAKHSTAN

Alma TOLEUKHANOVA (Mrs.), Chief Expert, Committee on Intellectual Property Rights,
Ministry of Justice, Astana

KENYA

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

LIBAN/LEBANON

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

LITUANIE/LITHUANIA

Dovile TEBELSKYTE (Ms.), Head, Law and International Affairs Division, State Patent Bureau of the Republic of Lithuania, Vilnius

Vaida VILKUOTYTE (Ms.), Specialist, Ministry of Culture, Vilnius, vaida.vilkuotyte@lrkm.lt

MALAISIE/MALAYSIA

Mohd Shahar OSMAN, Deputy Director General, Intellectual Property Corporation of Malaysia (MyIPO), Kuala Lumpur

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

Siti Salwa HAJI GHAZALI (Mrs.), Senior Assistant Director, Copyright Division, Intellectual Property Corporation of Malaysia (MyIPO), Kuala Lumpur, salwa@myipo.gov.my

MAROC/MOROCCO

Abdellah OUADRHIRI, directeur général, Bureau marocain du droit d'auteur (BMDA), Ministère de la communication, Rabat

Salah Eddine TAOUIS, conseiller, Mission permanente, Genève

MEXIQUE/MEXICO

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

Mónica Edith MARTÍNEZ LEAL (Srta.), Subdirectora de Cooperación Económica y Técnica, Área de Asuntos Internacionales, Comisión Nacional para el Desarrollo de los Pueblos Indígenas (CDI), México D.F., ainternacionales@cdi.gob.mx

Ludka Enriqueta Krupskaia DE GORTARI KRAUSS (Srta.), Encargada, Unidad de Planeación, Comisión Nacional para el Desarrollo de los Pueblos Indígenas (CDI), México D.F., ainternacionales@cdi.gob.mx

Elleli HUERTA OCAMPO (Sra.), 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.

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

Amelia Reyna MONTEROS GUIJÓN (Srta.), Consejera Indígena, Consejo Consultivo de la Comisión Nacional para el Desarrollo, Comisión Nacional para el Desarrollo de los Pueblos Indígenas (CDI), México D.F., ainternacionales@cdi.gob.mx

MONTÉNÉGRO/MONTENEGRO

Dusanka PEROVIC (Mrs.), Deputy Director, Intellectual Property Office of Mongolia, Podgorica

MOZAMBIQUE

Pedro COMISSARIO, Ambassador, Permanent Representative, Permanent Mission to the World Trade Organization (WTO), Geneva

Elias Jaime ZIMBA, Minister Plenipotentiary, Permanent Mission, Geneva

Juvenal DENGGO, First Secretary, Permanent Mission, Geneva

MYANMAR

Aung Kyaw MYAT, Director General, Department of Advanced Science and Technology, Ministry of Science and Technology, Nay Pyi Taw

NAMIBIE/NAMIBIA

Tileinge S. ANDIMA, Registrar, Business and Intellectual Property, Ministry of Trade and Industry, Windhoek

Pierre DU PLESSIS, Senior Consultant, Ministry of Trade and Industry, Windhoek

Ainna Vilengi KAUNDU (Ms.), Principal Economist, Commerce division, Ministry of Trade and Industry, Windhoek

Simon Madjumo MARUTA, Counsellor, Chargé d'Affaires, Permanent Mission, Geneva

NÉPAL/NEPAL

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

NIGER

Amadou TANKOANO, professeur de droit de propriété industrielle, Ministère des mines et de l'industrie, Niamey

NIGÉRIA/NIGERIA

Jane IGWE (Mrs.), Principal Assistant Registrar, Commercial Law Department, Trademarks Patent and Designs Registry, Federal Ministry of Trade Industry and Investment, Abuja, janeclintin@yahoo.com

Nifesimi AYODELE (Ms.), Assistant Registrar, Commercial Law Department, Trademarks Patent and Designs Registry, Federal Ministry of Trade Industry and Investment, Abuja, knifexe@yahoo.com

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

NORVÈGE/NORWAY

Didrik TØNSETH, Minister, Deputy Permanent Representative, Permanent Mission, Geneva

Jostein SANDVIK, Director, Legal and International Affairs, Norwegian Industrial Property Office (NIPO), Oslo, jsa@patentstyret.no

NOUVELLE-ZÉLANDE/NEW ZEALAND

Dominic KEBBELL, Acting Principal Policy Advisor, Commercial and Consumer Environment, Ministry of Business, Innovation and Employment, Wellington

OMAN

Yousuf AL BUSAIDI, Research Director for Culture, Basic and Social Science, Program Department, The Research Council, Athaibah, yousuf.albusaidi@trc.gov.om

Haithm AL-AMRI, Head, International Cooperation Department, Public Authority for Crafts Industries, Muscat

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

OUZBÉKISTAN/UZBEKISTAN

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

PANAMA

Zoraida RODRÍGUEZ MONTENEGRO (Sra.), Representante Permanente Adjunta, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

Lorenza del Carmen SÁNCHEZ DE VALENZUELA (Sra.), Abogada, Departamento de Derechos Colectivos y Expresiones Folclóricas, Dirección General del Registro de la Propiedad Industrial (DIGERPI), Ministerio de Comercio e Industrias, Panamá

PARAGUAY

Roberto RECALDE, Segundo Secretario, Misión Permanente, Ginebra

PAYS-BAS/NETHERLANDS

Margreet GROENENBOOM (Ms.), Policy Advisor, Innovation Department, Intellectual Property Section, Ministry of Economic Affairs, The Hague

PÉROU/PERU

Elmer SCHIALER, Director de Negociaciones Económicas Internacionales de la Cancillería, Dirección General de Asuntos Económicos, Ministerio de Relaciones Exteriores, Lima

Luz CABALLERO (Sra.), Ministra, Misión Permanente, Ginebra

Carlos ROSSI COVARRUBIAS, Consejero, Misión Permanente, Ginebra

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

PHILIPPINES

Josephine REYNANTE (Ms.), Minister, Permanent Mission, Geneva

Maria Asuncion INVENTOR (Mrs.), Attaché, Permanent Mission, Geneva

POLOGNE/POLAND

Maciej DYDO, Deputy Director, Intellectual Property and Media Department, Ministry of Culture and National Heritage, Warszawa

Wojciech PIATKOWSKI, First Counsellor, Permanent Mission, Geneva

QATAR

Ibrahim AL-SAYED, Intangible Heritage Consultant, Ministry of Culture, Arts and Heritage, Doha

RÉPUBLIQUE ARABE SYRIENNE/SYRIAN ARAB REPUBLIC

Mohamad AL Amin ZOUETIR, Manager, Copyright, Ministry of Culture, Damascus

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

OH Ahrum (Ms.), Assistant Director, Culture and Trade Team, Copyright Policy Division, Ministry of Culture, Sports and Tourism, Seoul, ahrumoh@korea.kr

CHOI Hye Min (Ms.), Research Associate, Law and Policy Research Division, Korea Copyright Commission, Seoul, rukanary@copyright.or.kr

KIM Shi-Hyeong, IP Attaché, Permanent Mission, Geneva

RÉPUBLIQUE DOMINICAINE/DOMINICAN REPUBLIC

Marisol de las Mercedes CASTILLO COLLADO (Sra.), Directora Jurídica, Ministerio de Medio Ambiente, Santo Domingo

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

KIM Myong Hyok, Second Secretary, Permanent Mission, Geneva

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

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

Michal DUBOVAN, Desk Officer, Copyright Department, Ministry of Culture, Prague

RÉPUBLIQUE-UNIE DE TANZANIE/UNITED REPUBLIC OF TANZANIA

Leonila KISHEBUKA (Mrs.), Deputy Registrar, Intellectual Property Division, Business Registrations and Licensing Agency, Dar es Salaam, leonillah@yahoo.com

Doreen Anthony RWABUTAZA (Ms.), Acting Chief Executive Officer, the Copyright Society of Tanzania (COSOTA), Dar es Salaam

ROUMANIE/ROMANIA

Mirela Liliana GEORGESCU (Mrs.), Head, Chemistry and Pharmaceutical Division, Patent Directorate, State Office for Invention and Trademarks (OSIM), Bucharest

Constanta Cornelia MORARU (Mrs.), Head, Division for Legal Affairs and International Cooperation, State Office for Inventions and Trademarks (OSIM), Bucharest

Cristian Nicolae FLORESCU, Legal Counsellor, Romanian Copyright Office (ORDA), Bucharest

Livia PUȘCARAGIU (Mrs.), First Secretary, Permanent Mission, Geneva

ROYAUME-UNI/UNITED KINGDOM

Miranda DAWKINS (Mrs.), Head of Trade and Development, International Policy Directorate, Intellectual Property Office (IPO), Newport, miranda.dawkins@ipo.gov.uk

Nick ASHWORTH, Copyright Policy Adviser, Intellectual Property Office (IPO), Department for Business, Innovation and Skills, Newport, nick.ashworth@ipo.gov.uk

Beverly PERRY (Mrs.), Policy Officer, International Policy Directorate, Intellectual Property Office (IPO), Newport, beverly.perry@ipo.gov.uk

Grega KUMER, Senior Intellectual Property Adviser, Permanent Mission, Geneva

SÉNÉGAL/SENEGAL

Fodé SECK, ambassadeur, Représentant permanent, Mission permanente, Genève

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

SERBIE/SERBIA

Miloš RASULIĆ, Counsellor, Copyright and Related Rights Department, Intellectual Property Office, Belgrade, mrasulic@zis.gov.rs

SINGAPOUR/SINGAPORE

Thaddeus HOO, First Secretary, Permanent Mission to the World Trade Organization (WTO), Geneva

SOUDAN/SUDAN

Adil HILAL, Registrar General, Intellectual Property Office, Ministry of Justice, Khartoum

SRI LANKA

Lalith KANNANGARA, Secretary, Ministry of Indigenous Medicine, Colombo

Newton Ariyaratne PEIRIS, Advisor, Ministry of Indigenous Medicine, Colombo

Gihan INDRAGUPTHA, Assistant Director, Economic Affairs Department, Ministry of External Affairs, Colombo, gihan@mea.gov.lk

Chatura PERERA, Second Secretary, Permanent Mission, Geneva

SUÈDE/SWEDEN

Johan AXHAMN, Special Government Adviser, Division for Intellectual Property and Transport Law, Ministry of Justice, Stockholm

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

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

Agnès VON BEUST (Mme), avocate, Service juridique des marques, Division de droit et affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne

THAÏLANDE/THAILAND

Thani THONGPHAKDI, Ambassador, Permanent Representative, Permanent Mission, Geneva, mission.thailand@ties.itu.int

Krerkpan ROEKCHAMNONG, Ambassador, Deputy Permanent Representative, Permanent Mission, Geneva, mission.thailand@ties.itu.int

Savitri SUWANSATHIT (Mrs.), Advisor to the Ministry of Culture, Office of the Permanent Secretary, Ministry of Culture, Bangkok, sa_vitri2000@yahoo.com

Tull TRAISORAT, Director, International Law Development Division, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs, Bangkok, ttraisorat@yahoo.com

Tanit CHANGTHAVORN, Assistant Director, Biodiversity-Based Economy Development Office, Bangkok, tanit@bedo.or.th

Chonletee CHANRACHKUL (Mrs.), Counsellor, Department of International Economic Affairs, Ministry of Foreign Affairs, Bangkok, chonlatee@hotmail.co.uk

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

Nutchanika JITTNARONG (Ms.), Legal Officer, Department of Intellectual Property, Ministry of Commerce, Bangkok, o_auy@hotmail.com

Titaporn LIMPISVASTI (Ms.), Cultural Officer, Professional Level, Department of Cultural Promotion, Ministry of Culture, Bangkok, titamod94@hotmail.com

Kanita SAPPHAISAL (Ms.), First Secretary, Permanent Mission, Geneva, mission.thailand@ties.itu.int

Varapote CHENSAVASDIJAI, Counsellor, Permanent Mission, Geneva, mission.thailand@ties.itu.int

TOGO

Essohanam PETCHEZI, premier secrétaire, Mission permanente, Genève

TRINITÉ-ET-TOBAGO/TRINIDAD AND TOBAGO

Mazina KADIR (Ms.), Controller, Intellectual Property Office (IPO), Ministry of Legal Affairs,
Port of Spain, mazina.kadir@ipo.gov.tt

Justin SOBION, First Secretary, Permanent Mission, Geneva, sobionj@ttperm-mission.ch

VIET NAM

TRAN Thi Tram Oanh (Mrs.), Official, Patent Division No.3, National Office of Intellectual
property (NOIP), Ministry of Science and Technology, Hanoi, trantramoanh@noip.gov.vn

MAI Van Son, Attaché, Permanent Mission, Geneva

ZAMBIE/ZAMBIA

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

ZIMBABWE

Rhoda T. NGARANDE (Ms.), Counsellor, Permanent Mission, Geneva

II. DÉLÉGATION SPÉCIALE/SPECIAL DELEGATION

UNION EUROPÉENNE/EUROPEAN UNION

Delphine LIDA (Ms.), First Counsellor, Permanent Delegation to the United Nations, Geneva

Oliver HALL-ALLEN, Counsellor, Permanent Delegation to the United Nations, Geneva

Katja MUTSAERS (Ms.), Policy Officer, European Commission, Brussels

Michael PRIOR, Policy Officer, European Commission, Brussels

III. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/
INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

CENTRE SUD (CS)/SOUTH CENTRE (SC)

Yuan ZHANG (Ms.), Intern, Innovation and Access to Knowledge Program, Geneva

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

Georges Remi NAMEKONG, ministre conseiller, Genève

L'INSTANCE PERMANENTE SUR LES QUESTIONS AUTOCHTONES/UNITED NATIONS
PERMANENT FORUM ON INDIGENOUS ISSUES (UNPFII)

Paul Kanyinke SENA, Chair, Kenya

Valmaine TOKI (Ms.), Indigenous-nominated Member, New Zealand

ORGANISATION DES NATIONS UNIES POUR L'ÉDUCATION, LA SCIENCE ET LA
CULTURE (UNESCO)/UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL
ORGANIZATION (UNESCO)

Antoni DURSKI, Intern, Intangible Cultural Heritage Section, Saint Denis,
antekdurski@gmail.com

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

Maria SEROVA (Mrs.), Chief Examiner, Chemistry and Medicine Division, Examination
Department, Moscow, mserova@eapo.org

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

Marko SCHAUWECKER, Lawyer, Directorate Patent Law, Munich

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

Adeline MICHOU (Mme), stagiaire, Genève

Miriam SANGIOLGIO (Mme), stagiaire, Département du commerce et développement,
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

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 EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES
(UNEMRIP)

Albert DETERVILLE, Representative, Castries

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

ADJMOR

Hamady AG MOHAMED ABBA (président, Coordination des programmes de développement, Tombouctou, tassanafalte@yahoo.fr)

Arts Law Centre of Australia

Robyn AYRES (Ms.) (Executive Director, Sydney, rayres@artslaw.com.au)

Asociación Kunas unidos por Napguana/Association of Kunas United for Mother Earth
(KUNA)

Nelson DE LEÓN KANTULE (Directivo Vocal, Panamá)

Association européenne des étudiants en droit (ELSA International)/European Law Students'
Association (ELSA International)

Mari HEINO (Ms.) (Head of Delegation, Helsinki, mari.heino@helsinki.fi); Matteo BARBIERI (Delegate, Milan, m.barbieri@hotmail.it); Aleksandra BURDA (Ms.) (Delegate, Warsaw, burda.aleksandra.92@gmail.com); Frida FOSTVEDT (Ms.) (Delegate, Asker, frida.fostvedt@gmail.com); Andrija ILIC (Delegate, Belgrade, andrijailic18@gmail.com)

Association internationale pour la protection de la propriété intellectuelle (AIPPI)/International
Association for the Protection of Intellectual Property (AIPPI)

Benedetta UBERTAZZI (Mrs.) (Observer, Zurich); Marlies ALLAN (Mrs.) (Observer, Zurich)

Association pour le développement de la société civile angolaise (ADSCA)

Sandra Garcia DA COSTA (Mme) (assistante de protection, Département juridique et de protection, Luanda, ipdosmarcos@yahoo.com.br); Gladicia Buzitu TAYANA (Mme) (agente d'animation communautaire (AAC), Section des savoirs traditionnels, Luanda, ipdosmarcos@yahoo.com.br)

Centre de documentation, de recherché et d'information des peuples
autochtones/Indigenous Peoples' Centre for Documentation, Research and Information
(doCip)

Mariam DALIMAN (Mme) (stagiaire, Genève); Parfait DIHOUKAMBA (stagiaire, Genève); Guzel KHAFIZOVA (Mme) (interprète, Genève); Claudinei NUNES DA SILVA (Mme) (interprète, Genève); Samantha PELLMANN (Mme) (interprète, Genève); Ana PÉREZ CÓRDOBA (Mme) (traductrice, Genève); Alba PORCEDDU (Mme) (Co-coordinatrice, Genève); François BIGIRIMANA (Stagiaire, Geneva)

Centre du commerce international pour le développement (CECIDE)/International Trade Center for Development (CECIDE)

Biro DIAWARA (représentant, coordinateur de programmes, Genève)

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

Ahmed ABDEL LATIF (Program Manager, Geneva)

Centro de Estudios Multidisciplinarios Aymara (CEM-Aymara)/Center for Multidisciplinary Studies Aymara (CEM-Aymara)

María Eugenia CHOQUE QUISPE (Sra.) (Delegada, La Paz)

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

Timothy ROBERTS (Consultant, London)

Civil Society Coalition (CSC)

Marc PERLMAN (Fellow, Providence)

Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos (CAPAJ)

Tomás Jesús ALARCÓN EYZAGUIRRE (Presidente, Tacna); Rosario LUQUE GIL (Sra.) (Especialista, Quito)

Cooperativa Ecológica de las Mujeres Colectoras de la Isla de Marajó (CEMEM)

Edna María DA COSTA E SILVA (Sra.) (Presidenta, Ponta de Pedras, Marajó)

Coordination des ONG africaines des droits de l'homme (CONGAF)/Coordination of African Human Rights NGOs (CONGAF)

Ana LEURINDA (Mme) (représentante principale, Genève)

Copyright Agency Limited

Patricia ADJEI (Ms.) (Expert, Sydney, padjei@copyright.com.au)

CropLife International

Tatjana SACHSE (Ms.) (Legal Adviser, Geneva)

Culture of Afro-indigenous Solidarity (Afro-Indigène)

Ana LEURINDA (Mrs.) (President, Geneva)

EcoLomics International

Elizabeth REICHEL (Mrs.) (Adviser, Geneva); Noriko YAJIMA (Ms.) (Observer, Montréal, nikkiyaji@hotmail.com)

Ethnic Community Development Organization (ECDO)

Nongpoklai SINHA (Ms.) (Member, Sylhet, nongpoklai@yahoo.com)

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

Benoît MÜLLER (Legal Adviser, Brussel)

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

Chiara GHERARDI (Ms.) (Policy Analyst, Innovation, Intellectual Property and Trade, Geneva); Axel BRAUN (Head, International Development, Geneva)

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

Bertrand MOULLIER (Senior Advisor, International Policy, Paris); Esther BIGO (Mrs.) (Adviser, Paris); Asha LOVELACE (Mrs.) (Adviser, Paris); Michel OCELOT (Adviser, Paris)

Foundation for Aboriginal and Islander Research Action (FAIRA)

JIM WALKER (Director, Brisbane)

Foundation for Solidarity and Social Welfare Projects (FOSBES NGO)

Esperance LUTETE BERIE (Mrs.) (Gender and Family Manager, Kinshasa, fosbesong@yahoo.fr); Marthe MBANGA MFUNYI (Mrs.) (Training and Research Manager, Kinshasa, fosbesong@yahoo.fr); Tony NDEFRU FRACHAHA (Training and Research Manager, Kinshasa, fosbesong@yahoo.fr)

Genetic Resources, Traditional Knowledge and Folklore (GRTKF Int.)

Gladys OBELMEJIAS (Ms.) (Member, Caracas, gladysobe@gmail.com)

Graduate Institute for Development Studies (GREG)

Derek EATON (Executive Director, Centre for International Environmental Studies, Geneva, derek.eaton@graduateinstitute.ch)

Health and Environment Program (HEP)

Madeleine SCHERB (Mme) (présidente, Genève, madeleine@health-environment-program.org); Pierre SCHERB, conseiller, Genève)

Incomindios Switzerland

Maria Helena NYBERG (Ms.) (Adviser, Zurich); Brigitte VONASCH (Ms.) (Temporary representative, Zurich)

Indian Council of South America (CISA)

Ronald BARNES (Representative, Geneva); Tomás CONDORI (Representative, Puno); Roch Jan MICHALUSZKO (Consejero Jurídico, Puno)

Indian Movement "Tupaj Amaru"

Lázaro PARY ANAGUA (General Coordinator, Bolivia)

Indigenous Peoples (Bethechilokono) of Saint Lucia Governing Council (BCG)

Albert DETERVILLE (Executive Chairperson, Castries)

Intellectual Property Owners Association (IPO)

Manisha DESAI (Ms.) (Assistant General Patent Counsel, Indianapolis)

Knowledge Ecology International, Inc. (KEI)

Thiru BALASUBRAMANIAM (Representative, Geneva); Asma REHAN HAFIZ (Ms.) (Legal Intern, Geneva); Kirsten WILLIAMS (Ms.) (Delegate, Geneva)

Massai Experience

Zohra AIT-KACI-ALI (Mrs.) (President, Geneva)

Nigeria Natural Medicine Development Agency (NNMDA)

Tamunoibuomi F. OKUJAGU (Director General/Chief Executive, Lagos)

Organisation des industries de biotechnologie(BIO)/Biotechnology Industry Organization (BIO)

Lila FEISEE (Mrs.) (Vice President, Global Intellectual Property Policy, Washington D.C.)

Organisation pour un réseau international des indications géographiques

(ORIGIN)/Organization for an International Geographical Indications Network (ORIGIN)

Massimo VITTORI (Secrétaire Général, Geneva)

Public Association Regional Centers for Education for Sustainable Development RCE Kyrgyzstan

Chinara SADYKOVA (Ms.) (Member, Bishkek)

Research Group on Cultural Property (RGCP)

Stefan GROTH (Head of Delegation, Göttingen, sgroth@gwdg.de); Julia KOPP (Ms.) (Adviser, Göttingen, julia.kopp@demokratie-goettingen.de)

Société internationale d'ethnologie et de folklore (SIEF)/International Society for Ethnology and Folklore (SIEF)

Áki G. KARLSSON (Member, Reykjavík, akigk@landsbokasafn.is)

Solidarité pour un monde meilleur (SMM)/Solidarity for a Better World (SMM)

Emmanuel TSHIBANGU NTITE (président, Kinshasa, smmasbl@gmail.com); Godefroid BAKABUKEBA WAFUANA (chargé culturel, Kinshasa, smmasbl@gmail.com)

Tebtebba Foundation - Indigenous Peoples' International Centre for Policy Research and Education

Jennifer TAULI CORPUZ (Mrs.) (Legal Desk Coordinator, Philippines)

Traditions pour demain/Traditions for Tomorrow

Diego GRADIS (président exécutif, Rolle, tradi@fgc.ch); Christiane JOHANNOT-GRADIS (Mme) (secrétaire générale, Rolle, tradi@fgc.ch)

Tulalip Tribes of Washington Governmental Affairs Department

Preston HARDISON (Policy Analyst, Seattle); Terry WILLIAMS (Commissioner, Treaty Rights Office, Tulalip)

World Trade Institute (WTI)

Hojjat KHADEMI (Researcher, Bern, hojjat.khademi@wti.org)

V. GROUPES DES COMMUNAUTÉS AUTOCHTONES ET LOCALES/
INDIGENOUS PANEL

Valmaine TOKI (Ms.), Indigenous-nominated Member of the United Nations Permanent Forum on Indigenous Issues, New Zealand

Ramiro BATZIN, Executive Director, *Centro para la Investigación y Planificación del Desarrollo Maya Sotz'il*, Guatemala

Jennifer TAULI CORPUZ (Mrs.), Legal Desk Coordinator, Tebtebba Foundation, Philippines

Jon Petter GINTAL, Senior Adviser of the Sami Parliament, Norway

VI. BUREAU/OFFICERS

Président/Chair: Wayne McCOOK (Jamaïque/Jamaica)
Vice-présidents/Vice-Chairs: Bebeb DJUNDJUNAN (Indonésie/Indonesia)
Alexandra GRAZIOLI (Mme/Mrs.) (Suisse/Switzerland)
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)

Francis GURRY, directeur général/Director General

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

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

Oluwatobiloba MOODY, juriste adjoint, Division des savoirs traditionnels/Assistant Legal Officer, Traditional Knowledge Division

Q'apaj CONDE CHOQUE, boursier à l'intention des peuples autochtones, Division des savoirs traditionnels/WIPO Indigenous Fellow, Traditional Knowledge Division

Irina PAK (Mlle/Ms.), interne, Division des savoirs traditionnels/Intern, Traditional Knowledge Division

[End of Annex and of document]