

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

Twenty-Sixth Session
Geneva, February 3 to 7, 2014

REPORT

Adopted by the Committee

1. Convened by the Director General of the World Intellectual Property Organization (“WIPO”), the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the Committee” or “the IGC”) held its Twenty-Sixth session (“IGC 26”) in Geneva, from February 3 to 7, 2014.
2. The following States were represented: Algeria, Afghanistan, Albania, Andorra, Angola, Argentina, Azerbaijan, Australia, Austria, Bahamas, Bangladesh, Barbados, Belarus, Belgium, Bhutan, Bolivia (Plurinational State of), Bosnia and Herzegovina, Botswana, Brazil, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Czech Republic, Democratic People’s Republic of Korea, Democratic Republic of the Congo, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Estonia, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kyrgyzstan, Lebanon, Lesotho, Lithuania, Madagascar, Malaysia, Mauritania, Mauritius, Mexico, Monaco, Morocco, Mozambique, Myanmar, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Qatar, Romania, Russian Federation, Saudi Arabia, Sudan, Senegal, Saint Kitts and Nevis, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia and Zimbabwe (115). 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 Intellectual Property Organization (OAPI), African Regional Intellectual Property Organization (ARIPO), African Union (AU), Benelux Office for Intellectual Property (BOIP), Eurasian Patent Organization, European Patent Organisation (EPO), International Organization of La Francophonie (OIF), Food and Agriculture Organization of the United Nations (FAO), International Union for the Protection of new Varieties of Plants (UPOV), Organization of Eastern Caribbean States (OECS), Organization of Islamic Cooperation (OIC), Patent Office of the Cooperation Council for the Arab States of the Gulf (GCC Patent Office), South Centre, United Nations Conference on Trade and Development (UNCTAD), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Environment Program (UNEP), and World Health Organization (17).
4. Representatives of the following non-governmental organizations (“NGOs”) took part as observers: Action Group for Literacy and Social and Cultural Advancement; Al-Zain Organization for Intellectual Property (ZIPO); Assembly of Armenians of Western Armenia; Association Health-Education-Democracy (ASED); Association of Kabyle Women; *Asociación Kunas unidos por Napguana*/Association of Kunas United for Mother Earth (KUNA); Biotechnology Industry Organization (BIO); Bioversity; *Cercle d’Initiative commune pour la Recherche, l’Environnement et la Qualité* (CICREQ); Civil Society Coalition (CSC); *Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos* (CAPAJ); *Conseil national pour la promotion de la musique traditionnelle du Congo* (CNPMT); Coordination of African Human Rights NGOs (CONGAF); CropLife International; Culture of Afro-indigenous Solidarity (Afro-Indigène); EcoLomics International; Friends World Committee for Consultation (FWCC); Global Development for Pygmy Minorities (GLODEPM); Health and Environment Program (HEP); Ibero-Latin-American Federation of Performers (FILAIE); 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); *Institut du développement durable et des relations internationales* (IDDDRI); Institute for African Development; *Instituto Indígena Brasileiro para Propriedade Intelectual* (InBraPI); Intellectual Property Owners Association (IPO); International Association for the Protection of Intellectual Property (AIPPI); International Center for Trade

and Sustainable Development (ICTSD); International Chamber of Commerce (ICC); International Council of Organizations of Folklore Festivals and Folk Arts (CIOFF); International Federation of Pharmaceutical Manufacturers Associations (IFPMA); International Publishers Association (IPA); International Society for Ethnology and Folklore (SIEF); International Trade Center for Development (CECIDE); International Trademark Association (INTA); International Video Federation (IVF); Kabylia for the Environment (AKE); Knowledge Ecology International (KEI); Nepal Indigenous Nationalities Preservation Association; Nigeria Natural Medicine Development Agency (NNMDA); Pacific Island Museums Association (PIMA); Research Group on Cultural Property (RGCP); Tebtebba Foundation – Indigenous Peoples' International Centre for Policy Research and Education; Tulalip Tribes of Washington Governmental Affairs Department; Traditions for Tomorrow; Union for Ethical Bio Trade; World Trade Institute (WTI) (48).

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

6. Document WIPO/GRTKF/IC/26/INF/2 Rev. provided an overview of the documents distributed for the Twenty-Sixth session.

7. The Secretariat noted the interventions made, and the proceedings of the session were communicated and recorded on webcast. This report summarizes the discussions and provides the essence of interventions, without reflecting all the observations made in detail or necessarily following the chronological order of interventions.

8. Mr. Wend Wendland of WIPO was Secretary to the Twenty-Sixth session of the Committee.

AGENDA ITEM 1: OPENING OF THE SESSION

9. The Director General, Mr. Francis Gurry, opened the Twenty-Sixth session of the IGC and welcomed the Ambassadors, Heads of Mission and Senior Capital-based Officials present, as well as the other participants. He was pleased to see so many Ambassadors and Senior Capital-based Officials in attendance and took it as a clear signal of the importance that Member States attached to the IGC. He recalled that in September 2013, the General Assembly (“the GA”) had adopted a new IGC mandate for the 2014-2015 biennium. The renewed mandate foresaw, once again, that the Committee expedite its work with open and full engagement on text-based negotiations. He drew the attention of the Member States to the fact that this mandate did not give much time to expedite the work of the IGC, since the IGC had been tasked to submit to the September 2014 GA the text(s) of an international legal instrument(s) which would “ensure the effective protection of genetic resources, traditional knowledge and traditional cultural expressions.” Consequently, between the present session and next September, there was a huge amount of work that remained to be done. The Director General reminded the Member States that they had also adopted a work program comprising, first, the present session on genetic resource (“GRs”); second, a session of ten working days that would take place from March 24 to April 4, 2014, on traditional knowledge (“TK”) and traditional cultural expressions (“TCEs”); and third, a cross-cutting session of three days in July 2014 that would take stock of the progress made and make a recommendation to the September 2014 GA. He highlighted that an innovation had been introduced in the process of the IGC, namely to devote the first half-day of the present session to an Ambassadorial/Senior Capital Based Officials meeting that would “share views on key policy issues relating to the negotiations and to further inform/guide the process.” He recalled that the Secretariat had held three consultations with Regional Coordinators with a view to developing the major lines of the methodology for this meeting. He referred to the suggested questions that the meeting had been invited to discuss as a point of departure. In respect of each theme of the IGC (GRs, TK and TCEs), what was the policy issue that needed to be resolved as a priority and why? What should be dealt with in an international legal instrument and what could be left to be dealt with at the national level? What suggestions were there for common ground on the issues that need to

be resolved internationally? Regarding the process as a whole, what new negotiating pathways and modalities might there be to make further progress? The Director General emphasized that those questions were not intended to over-engineer the meeting, but to provide a good point of departure for an open and free discussion.

AGENDA ITEM 2: ELECTION OF OFFICERS

Decision on Agenda Item 2:

10. *Upon the proposal of the Delegation of Uruguay, on behalf of the Group of Latin American and Caribbean States (GRULAC), seconded by the Delegation of Belarus, on behalf of the Group of Central Asian, Caucasus and Eastern European Countries (CACEEC), and the Delegation of China, the Committee elected as its Chair, His Excellency Ambassador Wayne McCook of Jamaica, unanimously and by acclamation, for the 2014-2015 biennium. As Vice-Chairs for the same period, upon the proposal of the Delegation of Japan, on behalf of Group B, seconded by the Delegation of the Czech Republic, on behalf of the Group of Central European and Baltic States (CEBS), the Committee elected Ms. Alexandra Grazioli of Switzerland, and upon the proposal of Kenya, on behalf of the African Group, the Committee elected Ms. Ahlem Sara Charikhi of Algeria, and upon the proposal of the Delegation of Bangladesh, on behalf of the Asia-Pacific Group, the Committee elected Mr. Abdulkadir Jailani of Indonesia.*

11. The Chair of the IGC, His Excellency Ambassador Wayne McCook from Jamaica, extended his appreciation for the confidence that the IGC had once again reposed in him and in the Delegation of Jamaica. The Chair thanked those delegates who had been elected as Vice-Chairs. He emphasized that the Vice-Chairs and forthcoming facilitators would have challenging tasks ahead of them.

AMBASSADORIAL/SENIOR CAPITAL-BASED OFFICIALS' MEETING

12. The Chair recalled that the Ambassadorial/Senior Capital-based Officials meeting was convened pursuant to the 2014-2015 mandate of the IGC as agreed upon by the GA. The Member States had decided at the GA that the meeting would be to "share views on key policy issues relating to the negotiations and to further inform/guide the process". The Chair also recalled that the Latin American and Caribbean Group of Countries ("GRULAC") had made the original proposal for such a meeting because a higher level of political and diplomatic engagement and reflection was needed. The discussion should not be a repeat of normal IGC

sessions. It should bring the wisdom, experience and guidance of senior officials and Ambassadors to bear on important work for WIPO and for stakeholders who had watched while the IGC had worked for over 12 years without clarity as to the final outcome that would be achieved. Therefore, the arrangements for the Ambassadorial/Senior Capital-based Officials meeting had been agreed upon by Regional Coordinators. The Chair hoped for an interactive discussion, in order to begin, perhaps, to pave the way for convergence on the subject matter the IGC was dealing with. The meeting was, as had been agreed, for Member States only, as well as the Chair of the Indigenous Caucus. The meeting was not being webcasted nor were the proceedings being transmitted to any other room in the WIPO premises. This was intended to enable the fullest and most frank discussions possible. Each delegation was expected to compromise no more than two delegates. The Chair, however, proposed that the Vice-Chairs for the session be permitted to sit with their respective delegations in their capacities as Vice-Chairs. At the end of the meeting, the Chair indicated he would provide a short oral summary of the meeting in his capacity as the Chair, and he would provide a similar summary to the plenary when it reconvened in the afternoon. The full report of the meeting would be contained in the session's report which would be prepared as usual by the Secretariat for adoption by the next session of the IGC. On the questions that the Secretariat had circulated and referred to by the Director General at the opening of the present session, the Chair stated that they had been drafted to evoke cross-cutting discussions and they were, therefore, not limited to the specific theme for this session of the IGC, namely GRs. Delegations were encouraged to reflect their positions across the three main pillars of the IGC's work. Guidance being sought from the meeting was expected to address both policy and process, and on issues which delegations felt could further advance the IGC's negotiations. The Chair also clarified that the questions circulated were by no means exhaustive. Delegations could raise any other question and issue they wished. To promote interaction as well as frank and open exchanges, further questions might be posed as needed, based on the discussions as they arose. Delegations should as far as possible try to keep their responses to the point and focused, as time was of the essence. The Chair, in order to save time, asked for none of the usual diplomatic courtesies to be expressed. He then opened the floor.

13. The Delegation of Bangladesh, speaking on behalf of the Asia-Pacific Group, reminded that the IGC was approaching the fifteen-year mark of its work. All through the years, the mandate of the IGC had been repeatedly extended. That reflected the combined genuine interest of Member States to remain engaged in finding just and equitable solutions to the concerns relating to the existing intellectual property ("IP") regime that all delegations intended to deal with at the IGC. The Delegation thanked all Member States for their continued commitment and their spirit of compromise. It said that the Asian countries were known for their abundance and diversity of GRs, TK and TCEs. Those assets and strengths would continue to be an essential factor of their society and culture. That was why the Asia-Pacific Group attached extreme importance to the issues discussed at the IGC and to reaching an agreement on an international legal instrument or instruments which would ensure and uphold the rights and benefits of the holders of TK, TCEs and GRs, in line with the IGC mandate as adopted by the 2014 GA. The misappropriation of GRs and other traditional assets must be effectively addressed through the establishment of a mechanism that guaranteed proper benefit-sharing. Any utilization or exploitation of the resources could be based on prior informed consent ("PIC") reached through mutually agreed terms ("MATs"). In that regard, although there was no unified view or position, many Member States from the Asia-Pacific Group believed that it was necessary for the IGC to explore the possibility of establishing an effective mandatory disclosure requirement, which would protect GRs, their derivatives and associated TK against misappropriation and would prevent the granting of erroneous patents. Further to the establishment of the process of access and benefit sharing ("ABS") through PIC based on MATs, the Asia-Pacific Group recognized the importance of establishing databases and other information systems with the IP offices to avoid the granting of erroneous patents. Compared to other international organizations, WIPO was dynamic and continuously delivering. As a result, the responsibilities of WIPO were very significant and all stakeholders had very high aspiration regarding its activities. The Delegation believed that the three existing texts included all the

options and alternatives to advance the IGC's work in order to conclude an international instrument or instruments for the effective protection of GRs, TK and TCEs. However, divergence in views persisted on some identified fundamental issues, especially on whether, for example, a legally binding instrument should be adopted or not. At that juncture, the Member States had to take sincere political decisions on the way forward and to provide policy guidance. The Delegation expected that, based on the principles of justice and fairness, all delegations would take the right decision displaying a spirit of compromise. It reiterated its willingness to contribute in an effective and constructive way to the objectives of IGC for a successful conclusion.

14. The Delegation of Belarus, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European Countries ("CACEEC"), drew particular attention to the issues of the conservation and fair use of GRs, TK and TCEs. Aside from adopting national legislation, the countries of the CACEEC had been working tirelessly for many years to establish common approaches to address those issues. The progress made in that area was clear. A range of agreements and model laws had been adopted under the auspices of the Commonwealth of Independent States. Provisions on recognizing the value of GRs, TK and TCEs and on cooperation to conserve them were included in bilateral intergovernmental agreements. Given the experience in addressing national and regional issues related to the conservation and fair use of the heritage of indigenous peoples and local communities, the CACEEC tackled the conservation and the fair use of GRs, TK and TCEs at an entirely different level. It was essential to promptly finalize the Consolidated Document Relating to Intellectual Property and Genetic Resources (document WIPO/GRTKF/IC/26/4) ("the Consolidated Document") and subsequently to consider the possibility of using it as a basis for drafting an international agreement in that field, aiming to resolve the conflict between IP protection of GRs and associated TK, and the generally recognized needs to protect the interests of indigenous peoples and local communities who had developed TK. Given the close association of GRs and TK with various types of IP, particularly the inventions based on them, Member States should determine the approach to the equitable use of those resources in the interests of the patent systems and innovators, as well as of the public at large. The first step could be to establish a database of GRs and associated TK that would be available to patent offices. An analysis of its information would take into account the interests of indigenous peoples and local communities when issuing patents for inventions. The next step would undoubtedly be rethinking the international system that protected inventions, taking into consideration the specificities of the legislation of Member States. While recognizing the efforts of Member States to actively work for many years on drafting a consolidated document relating to IP and GRs, the CACEEC hoped that the present session of the IGC would achieve significant progress in that area. The Delegation emphasized its intention to continue working on the text of the document on the protection of TCEs, so that, in the spirit of the work on the 2013 Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled and the 2012 Beijing Treaty on Audiovisual Performances, the IGC could agree on the final wording of the draft international treaty and adopt it at a Diplomatic Conference. The CACEEC was convinced that mutual understanding would be the key to achieving results.

15. The Delegation of Japan, speaking on behalf of Group B, welcomed the opportunity that had been offered to Ambassadors and Senior Capital based Officials by the high-level meeting, to exchange their views on policy issues and inform the further discussion in the IGC in a more informal and interactive way. It noted that the IGC had already accomplished progress in exploring national practices and clarifying differences in positions through text-based negotiations during the past biennium. However, the IGC should face the reality that there were divergent and conflicting views as reflected in the current draft texts of the international instruments. Without a more commonly accepted understanding on policy objectives and guiding principles, it would be difficult to reach an agreement. The Delegation appreciated the opportunity to take advantage of this high-level meeting to shed light on the common policy grounds upon which the further technical or expert work could be built, and to elaborate the

appropriate method of such further work through frank exchange of views. It shared the importance of safeguarding GRs, TK and TCEs. It strongly believed though that the protection of GRs, TK and TCEs should be designed in a manner that did not have adverse effects on innovations and creativities, since they were the basis for development. Legal uncertainty and ill-designed protection would undermine the foundations for further innovations and creations. In that regard, it believed that a policy issue to be resolved as a priority was to set up a predictable and balanced protection of GRs, TK and TCEs, which presupposed that the IGC would agree on precise definitions of GRs, TK and TCEs that ought to be protected. Furthermore, the framework of the protection should be flexible enough to accommodate the various systems that Member States had established and had maintained so far in different cultural and historical circumstances, while fixing standardized ceiling on the protection. From that perspective, any international legal instrument or instruments in that area should provide appropriate flexibility in order to allow Member States to take national measures which were appropriate and adapted to their domestic circumstances, while ensuring legal security, certainty and predictability at an international level. In making efforts to find common grounds on some issues, it was essential to understand the issues in the same way by using common language, a common language which, however, was still lacking in the field of GRs, TK and TCEs. Common language could be facilitated through the analysis of concrete and actual examples. The Delegation believed that the text-based negotiation complemented by analysis aimed at establishing common language would contribute to further progress. Further progress depended in a large part on the discussion of specific examples of national situations and measures, which would bring the delegations closer to a common understanding. The Delegation said that Group B remained committed to contributing constructively to a mutually acceptable result.

16. The Delegation of Uruguay, speaking on behalf of GRULAC, extended its thanks to the other Regional Groups for their support for its proposal that IGC 26 include a high-level segment as a way to informing further the IGC negotiations. In addition to enabling a frank exchange of ideas among Member States, the meeting should serve properly to orient the process as established by the decision adopted by the 2013 GA. It was confident that the findings summarized by the Chair would reflect the consensus emerging from the Ambassadorial/Senior Capital-based Officials meeting and guide the negotiations at the IGC. It welcomed the Secretariat's questions, which should facilitate a definition of a clear direction for the ongoing negotiations. The outcome of the ongoing negotiations in the IGC was crucial to prevent the misappropriation and misuse of TK, GRs and TCEs and change a situation that was detrimental to those countries that had significant resources derived from their great biological and cultural diversity. Those should be the policy objectives that must be addressed as a priority during the negotiations. While that detrimental situation affected Member States in the short term, especially developing countries holding biological and cultural resources, it could affect also global biodiversity in the medium and long term. The absence of an international legal instrument had facilitated the continued misappropriation of GRs, TK and TCEs which were often used without PIC. It was vital that the IGC achieved an ambitious outcome and adopted an international legal instrument to ensure the effective protection of GRs, TK and TCEs, and disclosure of their origin. For the holders of GRs and those who benefited from their use, it was essential to conclude the IGC negotiations.

17. The Delegation of Algeria, speaking on behalf of the African Group, re-emphasized the importance the African Group attached to the proceedings of IGC and of the issues of GRs, TK and TCEs, as well as its intention to make a positive and constructive contribution to the ongoing negotiations. TK and GRs had played and continued to play a vital role in the daily lives of the African populations. The interest in protecting such knowledge lied not only in its close relationship with the traditional cultural and scientific heritage, but also in the benefits provided by TK as a source of wellbeing and cultural, scientific and economic development. TK, GRs and TCEs were being pirated and the rights of local communities were being trampled underfoot. It was therefore concerned that, notwithstanding the efforts made in the last two decades, the situation continued to deteriorate, while a definitive settlement of the issues which

would be acceptable to all was yet to be reached. The IGC began its work fourteen years ago with the ultimate objective of drafting one or more legal instruments to guarantee the effective protection of GRs, TK and TCEs. Currently, the principal fundamental issues had been identified, but results were slow in coming. That situation was of concern to the African Group. There were several good reasons for international action to protect GRs, TK and TCEs to the same extent as other innovations: first, intellectual property rights (“IPRs”) on TK should not be granted to persons other than the communities from which TK derived. In other words, the purpose was to ensure that the holders of TK had exclusive rights; and second, the appropriate protection of GRs from the illicit granting of IPRs should be enhanced. That would be achieved by making the disclosure of the source or origin mandatory. The Delegation called upon the IGC to accelerate its work with a view to achieving meaningful results that met the expectations of most indigenous, local and other communities. By 2015, the ongoing process should culminate in the convening of a Diplomatic Conference with a view to adopting a legally binding international instrument to prevent the misappropriation and misuse of TK, TCEs and GRs. Only the commitment and the political will of the parties to engage in negotiations in a spirit of unalloyed good faith would guarantee a positive outcome for those negotiations. Therefore, the African Group suggested that a ministerial conference be organized to discuss policy issues related to the work of the IGC and guide the future discussions in the IGC. It was convinced that such a meeting would have the necessary political impact, enabling Member States to transcend technological difficulties and make progress. The modalities of such a conference should be discussed and finalized in partnership with all Member States. The Delegation pledged its full cooperation and unwavering commitment to an outcome which was positive and acceptable to all.

18. The Delegation of the Czech Republic, speaking on behalf of the Group of Central European and Baltic States (“CEBS”), noted the work that had been done at the IGC so far. Yet, it was aware that the amount of issues that should be considered still rested on the shoulders of the IGC for further work. With regard to strategic questions concerning the perspectives of how to cope with the commitment, it felt that different approaches to international legal instrument or instruments had arisen from different expectations, legal traditions and societal values among Member States. When reflecting on existing doubts, one of the main concerns related to the proposed binding character of the negotiated instrument or instruments on TK and TCEs. The character of the instrument on GRs should be determined after there was more clarity on the substantive provisions of that instrument. Any instrument would need to ensure that patent systems and related IPRs would not be threatened by any element of legal uncertainty. The IGC could also benefit from a more evidence-based debate on potential legal and economic impacts of protection of GRs, TK and TCEs. The Delegation was of the view that a final agreement within the IGC had not been reached yet due to pending different views regarding the disclosure requirement, related sanctions and derivatives in the case of GRs. A disclosure requirement which would create legal uncertainty in the patent system would not be in the interest of Member States and patent users. In the field of TK and TCEs, there was no agreement as to objectives, definitions, concepts such as misappropriation, scope of beneficiaries and scope of protection, etc. Taking into account existing observations, the Consolidated Document relating to IP and GRs should be limited to patents. The Delegation reaffirmed that GRs were different from TK and TCEs. As GRs were not developed by the human mind, they could not be considered suitable for direct protection by an IP instrument. The CEBS considered reasonable to achieve a consensus on the policy objectives in the first place. Only after that, efforts could then be devoted to precise the final wording of the negotiating text to be submitted to the GA for its decision. There was a need for consensus on policy objectives guided by a detailed debate on the potential impacts of proposed instruments. The CEBS expressed its preference for a non-binding instrument or instruments on TK and TCEs, and the need to differentiate between GRs and TK and TCEs from the IP protection perspective. The CEBS was ready to engage in continuing IGC process with all the stakeholders, while the work of the IGC should be carried out in a pragmatic, efficient and balanced manner.

19. The Delegation of China stated that it had been continuously supporting the work of the IGC, and wished to see early concrete results with regard to the protection of GRs, TK and TCEs in the form of binding international instruments. In that regard, the Delegation called upon all parties to affirm their political will and flexibilities, in order to facilitate the early conclusion of relevant international instruments, thereby ensuring the effective protection of GRs, TK and TCEs. In the field of GRs, it believed that the IGC had a two-fold task before it: first, to enhance the international protection of GRs in mutual support with the Convention on Biodiversity (“the CBD”) through the reform and improvement of the IP system; second, to prevent the erroneous granting of patents. The core work of the IGC should be the establishment of a system of disclosure of source of GRs. The establishment of such a system would be conducive to bridging the IP system and the rules for the protection of GRs as laid out by the CBD, as well as to implementing the principles of PIC and ABS for the utilization of GRs, which was also the purpose of the establishment of a new international instrument on GRs. With regard to the establishment of databases on GRs, the Delegation believed that the relevant work would have certain impact and significance. It reaffirmed though that its precondition must be the protection of GRs, since the establishment of databases could lead to the misuse of information, unless protective measures were taken at the same time. The Delegation had noticed that some details concerning the system for disclosure of source of GRs remained to be discussed. As long as such discussions were constructive, the Delegation would actively participate in the discussions. It was willing to show certain flexibility, in order that relevant international rules could be agreed upon as quickly as possible.

20. The Delegation of the EU, speaking on behalf of the EU and its Member States, reaffirmed its commitment to the IGC process. It fully supported the objective of a balanced approach and acknowledged the importance of GRs, TK and TCEs, and the role they played in the cultural and natural heritage. The EU and its Member States had demonstrated its engagement and flexibility in the IGC process and had proposed a mechanism to disclose the origin or source of GRs in patent applications. That did not mean that the EU and its Member States could accept any form of disclosure requirement, but it was conditionally supportive of a specific form of requirement that would 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 interest. In coordination with its position expressed in document WIPO/GRTKF/IC/8/11, the Delegation could eventually consider a mandatory requirement. However, all components of the IGC were complex issues, with potentially far reaching ramifications. It was imperative that the IGC got things right. It believed that that could only be ensured if the IGC’s work was guided by solid evidence of the implications and feasibility in social, economic and legal terms. It noted that, especially in relation to TK and TCEs, there was an absence of evidence of the effects that the instruments under negotiation would have on stakeholders. It observed that many WIPO Member States would see the IGC’s work as being to develop *sui generis* IPRs which afforded economic protection and the right to exclude others from using knowledge and cultural expressions that were deemed “traditional”, regardless of whether that knowledge or those cultural expressions were in the public domain or not. Would the IGC set up such a broadly designed system, that system would be built on a paucity of national experiences and poor clarity regarding the potential effects. Evidence that the contemplated measures would encourage innovation and creativity while safeguarding the rights of, not just indigenous but, all peoples in society, should be the foundation on which the IGC’s work should proceed. In the present circumstances, the Delegation did not see that such evidence had been presented. That was probably one of the reasons why, despite many years of work, the Member States had not yet been able to establish common objectives for the IGC’s work. Against that background, it had become increasingly clear that the IGC would not succeed in balancing both a better recognition of TK and TCEs and safeguarding existing freedoms and the public domain, if the IGC continued working in the context of binding instruments. Consequently, the Delegation proposed that nonbinding solutions be considered. From an IP perspective, actions including raising awareness, encouraging the use of existing national legal frameworks, including patent, trademark, design and copyright systems, and improving access to those frameworks to

safeguard both TK and TCEs, could usefully be explored and would provide important progress compared with the *status quo*. Such an approach could sit usefully alongside encouraging the prevention of unauthorized disclosure, and preserving use within the traditional context and use which did not disrespect the cultural norms and practices of holders. The Delegation reaffirmed its commitment to the IGC process, and fully supported negotiations in which the Member States would engage constructively and with appropriate representation. However, the work of the IGC should not continue down a blind alley, but should be pragmatic and efficiently guided by economic evidence, clear objectives and a clear picture of the likely effects.

21. The Delegation of Egypt, speaking on behalf of the Development Agenda Group (“DAG”), was confident that the IGC would continue to advance its work towards the successful conclusion of the negotiations with the finalization of the text(s) of the legally binding international instrument(s) ensuring the effective protection of GRs, TK and TCEs. It said that after more than twelve years of negotiations and holding of twenty-five sessions of the IGC, it firmly believed that time had come to successfully conclude the negotiations. It was true that different options on technical issues still existed. Yet, in absence of political will, those issues stood little chance of ever being decided upon. There was an urgent need to give the negotiators the political instructions to find solutions to the pending technical issues. With that view in mind, the Delegation offered the following elements of what it described as a comprehensive and credible roadmap that could lead to the successful realization of the IGC’s mandate: first, to identify the negotiations timeframe. With honest and good faith engagement, the remaining technical issues could be harnessed, thus paving the way for a Diplomatic Conference to be held in 2015. Second, to maintain focus throughout the negotiations. In that regard, the Delegation thanked the Chair for having prepared and circulated an informal issues paper that identified the main normative question before the IGC, namely the proposal for a mandatory disclosure requirement. Attention should be accorded to finalize key questions associated with that proposal. Third, the technical discussions should be intensified. Experts and negotiators should sustain their search and consultations for mutual solutions, not only during the IGC meetings, but more importantly before and after the IGC meetings. And fourth, there was a need to reach political consensus that the main, yet admittedly not the sole, objective of the IGC negotiations should be using IP rules to prevent misappropriation of GRs, TK and TCEs. After twelve years of negotiations, that had become a political imperative. The Delegation reaffirmed its commitment for positive and constructive political engagement needed to successfully conclude IGC negotiations and effectively implement Recommendation 18 of the Development Agenda.

22. The Delegation of Indonesia, speaking on behalf of the Like-Minded Countries (“LMCs”), stated that the IGC had been discussing the issue of GRs, TK and TCEs for more than a decade. It recalled that the Fifty-first Session of the GA had decided to renew the mandate of the IGC for the biennium 2014-2015, and had requested the IGC to expedite its work with open and full engagement with the objective of reaching an agreement on a text(s) of an international legal instrument(s) on the protection of GRs, TK and TCEs. Against that background, the Member States had done a good job in raising the issues and preparing the draft texts which were the basis of the IGC negotiations. The LMCs therefore requested that the IGC negotiations be provided with a strong political impulse towards the conclusion of a legally binding instrument(s) that would be complementary and consistent with the existing international framework. Thus, the IGC needed to rigorously pursue the robust program of work mandated by the GA in order to finalize its work in a timely manner. In light of that, the Delegation underscored the importance of convening a Diplomatic Conference in 2015. With a view to achieving that target, the Delegation also suggested that the Ambassadorial/Senior Capital-based Officials meeting recommend Member States to intensify their efforts by convening informal intergroup and inter-sessional meetings which would complement the agreed work program. Such informal process should be Member States-driven and open-ended in nature and report its work to the IGC. The meetings, which might be held between the regular sessions as deemed appropriate, would provide Member States with more opportunity to tackle some outstanding issues and identify possible solutions to them. The Delegation

reiterated that the absence of such a legally binding instrument(s) had allowed the continued misappropriation of GRs, TK and TCEs, and had contributed to the imbalance of the global IP system. Within that context, it was important to emphasize that the issues of mandatory disclosure requirements, PIC, ABS and MATs were inevitably essential to the protection of GRs, TK and TCEs.

23. The representative of INBRAPI, speaking on behalf of the Indigenous Caucus, wished to express the indigenous peoples' vision and to contribute to the process of establishing an international legally binding instrument which would ensure the effective protection of GRs and associated TK. Indigenous peoples came to the IGC to gain the recognition of their rights over their TK and GRs in order to protect them against misappropriation and the patenting of innovations based on TK and GRs without their PIC. This was not merely about preventing bad patents, but protecting, based on a broader concept, their TK and GRs as sacred gifts transmitted by their creators. It was essential to the human dignity of the indigenous peoples, their existence as peoples and their right to self-determination in freely pursuing their economic, social and cultural development, as outlined in the United Nations Declaration on the Rights of Indigenous Peoples ("the UNDRIP"). The representative reiterated that no instrument or instruments developed at WIPO might be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements. With regard to the issue of databases for the defensive protection of TK and associated GRs, she wondered how such databases would be constructed, how information would be included, what the status and ownership of any stored information was, and what the future controls and safeguards over the use and ownership were. Indigenous peoples could not accept any statements about their TK or associated GRs pertaining to the public domain. The representative expressed her deep concerns about whether such databases could be kept confidential, and whether information in them could be used as evidence of prior art under current patent laws. Contracts did not address issues of TK and GRs shared among indigenous peoples, but put the burden of monitoring and defense on the holders of TK and GRs. The IGC negotiations must ensure that international legal instruments which acknowledged the rights of indigenous peoples over their cultural heritage, including TK and GRs, were respected and not undermined, in accordance with the principles of complementarity and harmonization which international laws. Access to GRs and TK should comply with the principles of PIC by indigenous peoples and their self-determination, according to their customs and patterns of life regarding their economic, social and cultural development. Thus, the creation of international legal instruments on GRs, TK and TCEs which would directly affect their cultural heritage must be predicated first and foremost upon the recognition of their rights as owners, possessors and holders of sovereign rights over TK and GRs, especially the right to good-faith consultation prior to the adoption of legislation or administrative measures which might affect their lives and cultures. The legal instrument engendered by the work of the IGC must support international standards governing access to GRs and associated TK and a share in the benefits, while also ensuring that IP offices had the necessary information to take the appropriate decisions on the granting of IPRs, to prevent the granting of IPRs in error as well as the illicit use of their GRs and associated TK. In that sense, indigenous peoples strongly supported the inclusion of mandatory disclosure requirements as a precondition for granting IPRs, which should include information on compliance with PIC given by indigenous peoples and the fair and equitable sharing in the benefits arising from the use of GRs and associated TK. The representative emphasized that the broad, full and effective participation of indigenous peoples in the IGC process was essential for the creation of an international legal instrument that would be consistent with the recognized international rights which indigenous peoples held. She deplored that the Voluntary Fund could not support the participation of but one person for the present session. That was inconsistent with the cultural and biological diversity represented by 5000 indigenous peoples living in the seven geo-cultural regions recognized by the UN Permanent Forum on Indigenous Issues ("the UNPFII"), who harbored within their territories with the highest biological and genetic diversity on the planet. She requested that, for reasons of gender, linguistic and regional balance, as well as in the interests of greater participation of indigenous peoples, that more indigenous peoples be able to attend the meeting.

24. The Delegation of Poland supported the statements made respectively by the Delegations of the EU, on behalf of the EU and its Member States, and the Czech Republic, on behalf of the CEBS. It recognized the importance of the work carried out by the IGC. It welcomed the outcome of the work of the IGC under the mandate adopted by the GA. Although the work on principles and objectives for the protection of GRs as well as on draft articles on the protection of TK had made considerable progress, many delegations were not satisfied with the results achieved so far, since many fundamental and important issues still remained outstanding and needed to be resolved in order to move the negotiations forward and bring them to a successful conclusion. The Delegation believed that the reasons why the IGC was not in a position to proceed with the negotiations faster were the following ones in its view. First, it seemed that there were different expectations as to what outcome was to be achieved. Some Member States favored strong IP protection and harmonization of systems, while others advocated weaker protection and broad exceptions and limitations in that regard. Second, different opinions existed between Member States on the ways of protection. Those differences came from the various fashions GRs, TK and TCEs were understood, as well as from the different expectations, experiences or situations in those areas. Third, there was lack of clarity regarding the common objective and what economic, legal, and social effects and implications the adoption of the instruments would entail. The Delegation believed that one of the key concerns related to the potential burden on the IP system and possible consequences, which could limit access to GRs and TK associated with GRs, cause uncertainty in the IP system and, thereby, impede innovation and achievement of economic benefits. A possible instrument or instruments should set up international standards that ensured transparency and legal certainty, while avoiding hampering innovation or creativity. The instrument(s) should also be sufficiently flexible and responsive to the diverse realities prevailing in each Member State and among indigenous peoples and local communities, taking into account the fair interests of all stakeholders concerned. An excessively rigid solution would not provide an adequate response to the various needs and realities. Therefore, the Delegation believed that the best approach was to continue negotiations towards the adoption of a non-binding instrument or instruments, which would balance a better protection of GRs, TK and TCEs without affecting the public domain and access to GRs, TK and TCEs. With respect to GRs, the critical issue blocking progress was the lack of consensus in relation to a disclosure mechanism. It was essential that a disclosure requirement did not create legal uncertainty in the use of the patent system. The Delegation could support a mandatory mechanism in that respect, only if the patent system remained unaffected and the sanctions for failure to disclose the source or origin of genetic material in patent applications stayed outside of the system and did not result in revocation. The Delegation supported the IGC future work and was looking forward to achieving a solution which would be acceptable to all interested parties.

25. The Delegation of Peru asked that the international community address the misappropriation of GRs, their derivatives and the associated TK, TK in general and TCEs as a priority of first importance. One or more binding international instrument(s) in that area would not only make it possible that such misappropriation be put to end, but would also allow the right holders to finally exercise their rights in full. Applications made through national patent offices should necessarily contemplate the principle of disclosure of origin. Only by such means could the central elements, namely, PIC and MATs, of the interaction between the holders of such resources and those who wish to use them be guaranteed. Those elements underpinned the equitable sharing of benefits in addition to offering a legal guarantee of access to GRs, their derivatives and associated TK, TK in general, as well as TCEs. It had been argued that such a disclosure requirement would result in negative implications for the IP systems, due to the high costs it would entail, and the possible adverse effect on the confidentiality or secrecy of the applications. Regarding the second argument, it sufficed to note that the protection of test data in pharmaceutical patent applications provided an effective and satisfactory antidote to that issue. As to the first argument, it would suffice, especially in those systems which already included the disclosure of source or origin, to assess the costs. In addition to the formal sessions which should focus on the negotiation of the instruments, the Delegation would support any initiative to organize informal meetings in Geneva at the ambassadorial level to

discuss the issues that were essential in an open, informal and non-binding manner. Such meetings, which must be rigorously inter-group or exogamic, could contribute positively to the formal proceedings of the IGC. The sharing of national experiences, exercises in comparative law and the examination of issues of common interest could also make a valuable contribution to the attainment of the goal which was to conclude those thirteen years of negotiations with a Diplomatic Conference during the current biennium.

26. The Delegation of Mozambique aligned itself with the statement made by the Delegation of Algeria, on behalf of the African Group. The Delegation had been following the negotiations in the IGC process and remained deeply committed to seeing a constructive and mutually beneficial result from the current session. The question of a multilateral regime for the protection of GRs, TK and TCEs had occupied the attention of the international community for well over a decade. During that time, many developing countries, including its country, had become increasingly concerned about the seeming lack of meaningful progress to achieve what ought to be a relatively simple set of ideals well recognized in WIPO and other inter-governmental organizations, namely, the protection of the intellectual and scientific contributions and knowledge of communities whether they be described as “indigenous”, “traditional” or “modern”. The Delegation believed strongly that well-established principles of international laws and IP laws already set the stage for the recognition within WIPO that all creativities were equal, and that knowledge in its various forms had economic and cultural value that could be appropriated or misappropriated. The IGC process had spent considerable time on discussing a legally enforceable framework to facilitate the protection of GRs, TK and TCEs. It was time for meaningful and credible action and commitment. To advance the negotiation process, Member States should act concertedly with good will, conscious that the process would certainly contribute to an outcome that strengthened a number of WIPO’s organizational mandates, including the promotion of IP for development, strengthening the interests of developing countries in a more comprehensive regulatory approach to the protection of knowledge goods, and ensuring that the rights and interests of all knowledge creators, no matter where they resided or how they were categorized, were protected. The Delegation was fully aware of the stakes involved. Many industries were accustomed and benefited immensely already from the existing system in which GRs, TK and TCEs were easily accessed, utilized and marketed globally without attribution, much less compensation, to the source communities, whose collective historical and ongoing investment of resources, both human and material, were responsible for the first generation of that knowledge. It would make a mockery of the system of IP protection, if that process failed to produce a credible outcome. In the IGC, Member States should have strong political will and pursue a long-term view of development. As seen in other forums, a renewed commitment to prevent misappropriation of GRs, TK and TCEs required from all Member States that they engaged meaningfully in the IGC process. There should not be one system or one set of principles of protection of knowledge goods emanating from one part of the world, and another for those goods coming from other parts. History had shown time and time again that any regime based on inequity would not succeed and, instead, could generate systemic challenges for those successes that the international community and WIPO had already attained. The Delegation believed strongly that WIPO, with the aid of experts and the political will of governments, could and would do better in the IGC process. The several commitments on solidarity, assistance and support to developing countries must be translated within the IGC, in letter and spirit, into an international instrument that strongly and equally defended the knowledge goods of developing countries, thus allowing their further integration in the world economy and within WIPO itself. Political will was needed to conclude the negotiations of the texts and to move expeditiously to convene a Diplomatic Conference by 2015 with a view to adopting an international legally binding instrument for the protection of GRs, TK and TCEs. The Delegation was ready and willing to continue working towards that end in good faith, with an attitude of responsibility and consensus building, in order to ensure that 2015 would witness the end of the long road to protect GRs, TK and TCEs.

27. The Delegation of South Africa aligned itself with the statements delivered respectively by the Delegations of Algeria, on behalf of the African Group, and Indonesia, on behalf of the

LMCs. The Delegation noted the broad consensus that existed among developing countries for a Diplomatic Conference that would adopt a legally binding instrument for the effective protection of GRs, TK and TCEs. A legally binding instrument constituted the sole option for an effective and comprehensive solution to the misappropriation of indigenous knowledge within the IP context. It reiterated its support for the African Group position that reflected that the first objective of protection should be to prevent the misappropriation of GRs, TK and TCEs. The importance of elaborating a rights-based international instrument for the protection of GRs and associated TK and acknowledging the urgency of addressing misappropriation with a clear focus on IP was crucial and remained the biggest challenge for the present session. Another core normative issue that needed to be addressed was disclosure. There was no disagreement toward the need for defensive measures, as proposed in the Joint Recommendations tabled by some Member States (WIPO/GRTKF/IC/26/5 and WIPO/GRTKF/IC/26/6), as they underpinned a normative approach. However, those proposals addressed prior art in examination and did not address the key issue of concern to developing countries, that those using GRs and TK in innovation should be able to transparently indicate in patent applications that they had complied with the laws of disclosure, PIC and on ABS as envisaged by 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"). Disclosure of origin requirements already existed in South African legislation and in some other countries as well. Hence, without mandatory obligations, national disclosure of origin requirements would not be recognized and enforced by other countries in which IP was applied for. It recalled that it had always maintained that the country of origin must refer to "the country which possesses those genetic resources in *in situ* conditions". However, the Delegation was also acutely aware that there might be a large number of countries of origin; for example, the *hoodia* straddled a number of southern African countries. It also took note of the concern raised by business industry and delegations of a few developed countries regarding the trans-border nature of GRs. In that context it was confident that that issue could be negotiated as was done with the TK and TCEs texts. It was of the view that the critical issue blocking progress was a lack of consensus in relation to a mandatory disclosure mechanism. Key concerns related to the potential burden on the IP system and business and unintended consequences which could create uncertainty in the IP system and limit access to GRs and associated TK impeding innovation and the achievement of economic benefits. It acknowledged the progress that had been made in the IGC and was committed to participating in the negotiations in good faith and hoped that the IGC would reach a desired outcome that could lead to a Diplomatic Conference and the adoption of a treaty that could effectively protect GRs, TK and TCEs. There were differences between Member States, and all of the IGC participants were familiar with them. But with the necessary political will and flexibility, the Committee should be able to reach agreement and the Delegation looked forward to a constructive outcome

28. The Delegation of Kenya supported the statement made by the Delegation of Algeria on behalf of the African Group. It welcomed the decision to hold this Ambassadorial/Senior Capital-based Officials meeting to share views on key policy issues and to provide guidance on the process. After more than a decade since IGC 1 was held, it was time to muster the political will to conclude the process. An international legally binding agreement for the effective protection of GRs, TK and TCEs was likely to strengthen the IP system as it would facilitate knowledge sharing, collaboration and partnership among local communities, research institutions and industry leading to innovative solutions to address various challenges in the society. An agreement was within reach, given that the knowledge and understanding of the subject matter was much broader and clearer, including the challenges and risks associated with a lack of international agreement to protect GRs, TK and TCEs. Time had come to put that understanding and knowledge into a binding agreement, so as to ensure that communities where those TK and GRs resided could benefit from the IP system. Regarding some of the elements which needed to be agreed to push the process forward, the Delegation believed that a mandatory disclosure requirement at the international level which obligated users of GRs to disclose the source and origin of GRs and associated TK was critical in the agreement. An agreement on that matter would anchor discussions on firm ground and make progress in other

areas easier. The agreement should adhere to the principles of PIC and benefit-sharing. That was needed to ensure coherence of those principles with the Nagoya Protocol and the CBD, so as to create synergy in their implementation. The Committee needed to agree on the nature of the instrument. An internationally legally binding treaty would be the most ideal mechanism if the agreement was to achieve its objectives.

29. The Delegation of Algeria fully supported the statement it made on behalf of the African Group. The Delegation considered that the main policy issues regarding GRs were the mandatory disclosure of GRs and the sovereign rights of the states over their GRs, which implied that an IPR, in particular a patent, based on GRs should be granted with the consent of the country and provided the establishment of benefit-sharing mechanisms. Regarding TK and TCEs, the main policy issues were the beneficiaries and the scope of protection. It was essential that nation states be considered the beneficiaries of protection, since the local communities that held the TK and TCEs were integral parts of the nation states and could not be dissociated from them. It considered that the scope of protection should give exclusive rights to the beneficiaries, the right to allow or to prevent third parties from accessing and using their TK. The forthcoming treaty should also clarify the issue of whether TK and TCEs could be considered to be in the public domain. The Delegation was of the view that they should be dissociated from the public domain, since expired IPRs only could belong to the public domain.

30. The Delegation of Colombia stated, on the subject of priority policy issues, that the challenge of the conservation of biodiversity should matter to all countries. That meant that political decisions had to be taken leading to the consolidation of a harmonized system promoting fair trade and recognizing the importance of the conservation of GRs and associated TK. The IP system had a role to play in this field and the importance of harmonizing both systems had been widely acknowledged. The challenge therefore was to provide protection through a binding international instrument. Practically speaking, IP offices should be obliged to check and guarantee that the patented inventions based on GRs recognize the rights of the countries of origin and that GRs had been accessed to legally, bearing in mind that an IPR on an invention that was based on the misappropriation or misuse of the GR or associated TK should not be granted. The Delegation recognized the difficulties of IP offices in carrying out that work, but understood that a binding legal instrument should establish a mandatory disclosure requirement regarding the origin of the GR or TK used in a patent application. In line with this mechanism and the requirement for transparency of patent applications, the applicant should be responsible under each national legal system for the veracity of the information provided. Member States would give the applicant exclusive IPRs in exchange for getting all the information related to the invention and making it available to society. Twelve years were needed to open negotiations for the establishment of disclosure requirements in patent applications. The establishment of those requirements would guarantee the transparency of the patent system. The Delegation associated itself with the statements of the Delegations of Uruguay on behalf of GRULAC and Indonesia on behalf of the LMCs and, in particular, supported their methodological proposals to make further progress.

31. The Delegation of the Islamic Republic of Iran associated itself with the statements made by the Delegations of Bangladesh on behalf of the Asia-Pacific Group, Indonesia on behalf of the LMCs, and Egypt on behalf of the DAG. It wished to highlight that it seized the present Ambassadorial/Senior Capital-based Officials meeting as an important opportunity to get the political attention of all Member States at a higher level and to decide how to reinforce and finalize the process. In line with paragraph (b) of the GA mandate for the 2014-2015 biennium, it proposed that the high-level meeting be continued and held during future IGC meetings. It supported the idea of having a Chairman's summary, and for the sake of more certainty and removing any misunderstanding, it proposed that the Chairman's summary be prepared and presented in a normal written form and that its elements be discussed in parallel with the discussion that the IGC would have during the week. In line with paragraph (d) of the GA mandate, it proposed scheduling two informal thematic sessions as well as an intersessional meeting to further develop the draft instruments, prior to the 2014 GA, with the aim of finalizing

the instruments and convening a Diplomatic Conference, setting out a fixed date in the first half of 2015. The Delegation emphasized that the Committee was at a point to seriously decide what it wanted to do with a task taken up over fourteen years ago, and how it wished to accomplish it. Needless to mention that the subject matter under discussion was of high importance to developing countries, due to the fact that the issue had a close link with the overall WIPO Development Agenda. The conclusion of the instrument or instruments would be an essential step towards filling the considerable gaps that existed in the legal framework of the IP regime.

32. The Delegation of Brazil associated itself with the statements made by the Delegations of Uruguay, on behalf of GRULAC, and Indonesia, on behalf of the LMCs. The work of the IGC should be concentrated in developing practical and simple texts on the core subjects or building blocks of an instrument or instruments raised by Member States. In the specific case of GRs, there was no request for IP positive protection of GRs as such, since GRs themselves were not subject to IPRs. The most important matter however was to prevent misappropriation of those GRs by patent holders, in accordance with obligations related to PIC, MAT, and fair and equitable benefit-sharing, as provided by the CBD and its Nagoya Protocol. The Delegation was of the view that the link between preventing misappropriation of GRs and the IP system was very clear. Every patent applicant should have to declare, at the time of the patent application, whether or not it had been obtained due to access to GRs and whether this access had been in compliance with the laws of access in the country of origin of that resource. An international agreement on GRs should include: a requirement of mandatory disclosure of origin for every patent application based on a GR and its derivatives and/or associated TK; effective and dissuasive sanctions against noncompliance of ABS requirements and fraud; the incorporation of the concepts and principles of the CDB into the IP regime in order to establish a mutually supportive relationship between both systems. Further elements, such as ABS requirements, should be tackled by domestic laws. The connection between the laws of access and IP was not intended to injure the granting of patents or inhibit technological innovation. The opposite was true, as the use of the IP system as a checkpoint for the ABS system would improve its implementation and reliability. It was necessary to send a strong message of support and political will to advance negotiations with a view to conclude international instruments in the IGC. The Delegation recalled the existing mandate, approved by the GA, which instructed the Committee to do so. The Delegation believed that organizing a process of informal consultations on the building blocks of the negotiations was a pathway that could lead the IGC further on in its aim to prevent misappropriation of, and to adequately protect, GRs, TK and TCEs by the IP system.

33. The Delegation of Argentina said that it was committed to the negotiating process, which had been carried out in the IGC since 2009. Its aim was to achieve agreement on an instrument or instruments that were legally binding and provided protection to GRs, TK and TCEs. To provide protection for GRs pertained to the interests of developing countries. The Delegation supported therefore the negotiation of a binding agreement. It saw the need to convene a Diplomatic Conference in 2015 in order to achieve an international agreement, which would provide more predictability and transparency in the process. There was a need for establishing international instruments to prevent the misappropriation of GRs and to set high standards for IPRs, such as a mandatory disclosure requirement regarding the access to GRs. Likewise, it was very important to ensure fair benefit sharing in order to provide more predictability and transparency in those standards, which had to be in line with other international agreements, in particular the CBD, the Nagoya Protocol, the International Union for the Protection of New Varieties of Plants (UPOV) and the Food and Agriculture Organization Treaty. It was important to take into account other IP systems such as that of the UPOV and the patent system. It was important that the international instrument emerging from the negotiations strengthened both trade in GRs and IPRs. At the same time, there had to be a firm approach to the possibility of third parties protecting their position with regard to the application for IPRs and its processing in IP offices. There should also be databases to facilitate IP offices' work and to enhance the protection of TK. The protection of GRs, TK and TCEs was very

important, as an intrinsic part of the wellbeing of indigenous peoples. The Delegation recalled that there were fourteen indigenous languages and twenty-two indigenous communities in Argentina. The Delegation wished to continue to play an active role in the process for it to be successful. It supported the statements made by the Delegations of Uruguay on behalf of GRULAC and of Egypt on behalf of DAG.

34. The Delegation of Sri Lanka supported the statements made by the Delegations of Indonesia on behalf of the LMCs, of Bangladesh, on behalf of the Asia-Pacific Group, and of Egypt, on behalf of DAG. It attributed significant importance to the work carried out by the IGC and the efforts to formalize the international legal instruments that would prevent the misappropriation of GRs, TK and TCEs, and offer the necessary protection to human and natural resources. That would be enormously beneficial to people in the developing world. The IGC had been in existence for more than a decade, and its main objectives were yet to be realized. The Delegation saw the issues at hand reflecting a desire on the part of the international community to respect rights related to GRs, TK and TCEs. The IGC had to continue its work to ensure that those areas were well protected in a manner that balanced the rights of the creators and holders of GRs, TK and TCEs on the one hand, and the interests of users on the other. It highlighted the importance of the need for a legally-binding instrument(s) which contributed in a fair and balanced manner to the preservation of biodiversity, TK and TCEs. It also underscored the importance of holding such high-level dialogue in order to seek new pathways and make further progress in the negotiations, where some basic aspects of the instrument still needed further clarification. Having a strong political will to overcome the differences would ensure substantive progress on all three issues in order to reach a final conclusion in a timely manner.

35. The Delegation of Sudan supported the statements made by the Delegations of Algeria on behalf of the African Group, and of Egypt on behalf of DAG. It had concerns with regard to the pace of the negotiations in the IGC. The IGC had to work quickly in order to be able to convene a Diplomatic Conference in 2015. It hence reaffirmed the need to set out a calendar for negotiations. It hoped that the conclusion of a Diplomatic Conference would allow achieving the goals and objectives of all Member States and peoples.

36. The Delegation of Ethiopia endorsed the statements made by the Delegations of Algeria, on behalf of the African Group, and of Indonesia, on behalf of the LMCs. It said that there was an increased use and growing demand for GRs to deal with different problems including technological and biomedical challenges. That had unfortunately resulted in growing cases of misappropriation, with no benefits to countries or to local communities that had kept and nurtured those GRs for generations. It would require a considerable amount of resources from countries to secure the invalidation of patents granted to GRs and associated TK or to inventions involving TK, or even to understand the extent of misappropriation, or to track the GRs in order to overcome challenges to IP titles associated with the use of GRs. The CBD and the Nagoya Protocol were major advances on access to GRs and benefit sharing. Those instruments required further international regulation to prevent misappropriation of GRs using IP tools, such as patents, and to guarantee the sharing of benefits with the countries and communities that conserved, developed and made those vital resources accessible. The Delegation proposed adopting a binding international instrument that included a mandatory disclosure requirement of the origin of GRs, as well as the associated community and TK. The disclosed information should include evidence of compliance with access rules, free prior and informed consent ("FPIC") and benefit sharing agreements. The instrument had to include the consequences for non-compliance with such obligations, and a monitoring and verification regime. The Delegation also proposed that a system of resolving opposing or conflicting claims of origin or applicants be established. It added that it was critical that the IGC adopt a binding international instrument. The developing countries' demand for such an instrument was legitimate, reasonable and feasible in terms of its legal inclusion within the international IP system. It was not the first time that the global IP system would rise up to the occasion of new demands and new developments. The alternative to accommodating a binding legal instrument

that would address the legitimate demands for protection of GRs and associated TK would be for Member States to take further restrictive defensive measures at the national level. That would be unfortunate. It would be for the benefit of all countries that there be a predictable, enforceable international legal regime to supplement the CBD and the Nagoya Protocol. In parallel, the IGC should encourage further joint research in scientific fields and encourage innovation and further work involving GRs and associated TK through the IP system. The Delegation hoped that other delegations would understand that its legitimate claims were very serious and critical, and endorse the need for a binding international instrument.

37. The Delegation of Zambia associated itself with the statements made by the Delegation of Algeria on behalf of the African Group and the Delegation of Indonesia on behalf of the LMCs. It called on the Chair for some concerted effort within the IGC to the negotiations that were underway, so that it could at least conclude the work which had taken so long.

38. The Delegation of India supported the statements made by the Delegations of Indonesia, on behalf of the LMCs, and of Egypt, on behalf of DAG. It said it would not go into all the questions the Chair had raised, as some would be left to be discussed by the expert group that would address the Consolidated Document under Agenda Item 7. It however had some key concerns and preferences. The Delegation supported the idea of a single binding instrument on all three themes and did not support the idea of an early harvest on any particular issue that seemed to be mature. It therefore believed the instrument needed to cover widely-spread TK. Mandatory disclosure requirements of source or other GRs, evidence of FPIC and evidence of benefit sharing were essential in a normative regime. Flexibility in implementation at the national level also needed to be discussed and agreed upon, wherever required.

39. The Delegation of Sweden supported the statements made by the Delegation of the EU, on behalf of the EU and its Member States, and Japan, on behalf of Group B. The main issue that needed to be resolved was the legal nature of the instruments. The international instrument or instruments to be created in the IGC had to be non-binding, as well as flexible and sufficiently clear. Indeed, many current proposals had the potential to undermine the delicate balance of the IP system with serious consequence for the possibilities of innovation and creativity. If they were to be implemented in a binding instrument, it would create considerable uncertainty and severely interfere with the public domain. The Delegation believed that non-binding instruments would serve the overarching benefits best. Those non-binding instruments could set up an international framework, while the precise nature of the safeguarding measures should be left to be decided at the national level. One issue that was best regulated at the international level was the question of beneficiaries. That said, the protection of TK and TCEs was related to the broader interest of respecting indigenous peoples and local communities and the right to self-determination. Therefore indigenous peoples and local communities should be the beneficiaries and not the nation or state. Given that there were fundamental differences of opinion on the nature and content of protection or safeguarding of TCEs, TK and GRs, the IGC needed to take a realistic approach to the negotiations and the goals that it had set for itself. Such a realistic approach was to aim for flexible non-binding instruments. The Delegation believed that the IGC as all other WIPO committees and norm-setting activities had to be inclusive and member-driven. The work of the IGC had to be the result of a participatory process which took into consideration the interests and priorities of all Member States and the viewpoints of other stakeholders. In this line, the Delegation referred to Recommendation 15 of the WIPO Development Agenda.

40. The Delegation of Bangladesh aligned itself with the statement that it made on behalf of the Asia-Pacific Group, and the statement made by Indonesia on behalf of the LMCs. The single most important policy issue to be settled was whether to have a legally-binding instrument or not. In all likelihood, there would be three different agreements based on the current status of the texts. The Delegation said that Bangladesh, like all developing countries and Least Developed Countries (LDCs), considered that a non-binding agreement would only mean the continuation of ongoing denial. An international legal instrument had to recognize the principles

of the disclosure in relation to ABS through FPIC, based on MATs. At the national level, on a *sui generis* basis, more detailed provisions for the implementation mechanisms of those principles would be required. As far as the common ground for international cooperation was concerned, an understanding on disclosure and protection against misappropriation was the minimum common ground to engage all parties. More importantly than new negotiating pathways and modalities, political will, demonstrated flexibility and a constructive spirit among Member States to have a legally-binding treaty with adequate measures against misappropriation were keys to make expeditious progress.

41. The Delegation of Switzerland viewed the following six principles as essential to finding a mutually acceptable international solution on the issue of GRs. These principles also applied *mutatis mutandis* to the two other issues of TK and TCEs. First, transparency: the Delegation was of the view that introducing a requirement to disclose the source of GRs and TK in patent applications would strengthen transparency in the patent system concerning the access to GRs and TK and the sharing of the arising benefits. Second, predictability: in exchange for the disclosure requirement, and in order to ensure that the patent system continued to serve the purposes for which it had been established and remained attractive to applicants, applicants should know exactly what information they would be required to provide. This information should be accessible to them and the procedure for examining and granting patents should continue to be fully manageable by IP offices. Third, legal certainty: the solution must guarantee legal certainty for all actors involved. On the one hand, the countries that provide access to GRs and the interested indigenous peoples should have proper access to the necessary information regarding access to their GRs and TK and the sharing of the arising benefits. On the other hand, legal certainty should also be provided to IP offices, which should have a clear idea of their obligations regarding patent examination, and to the users of the patent system, who should be fully informed of the information they were required to provide, where to obtain it and the consequences of a failure to provide such information. Fourth, feasibility and usefulness: the solution should be feasible and useful for all actors involved. On the one hand, provider countries and indigenous peoples should be afforded easily accessible information and protection to prevent the illicit use of GRs, TK or TCEs with respect to IPRs. On the other hand, users of the IP system should be in a position to be able to complete the formalities necessary to obtain protection and use the arising rights, and the processing of this information should correspond to the limited processing capacities of IP offices. Fifth, the setting out of maximum requirements or standards: the Delegation explained that this fifth principle was, in a way, the logical culmination of the preceding principles. If the international instrument that the IGC was seeking to develop was to provide the required transparency regarding the information and the protection required, then that instrument should establish maximum requirements to be met by users of the IP system in order for them to duly secure protection and exercise their arising rights. Similarly, the envisaged instrument should establish limits on certain sanctions in order not to jeopardize the IP systems. For example, such instrument could provide for procedural or criminal sanctions, but prohibit the revocation of a patent as a sanction where the requirement to disclose the source of GRs was not met in the patent application. These maximum requirements and standards would obviate a proliferation of different approaches and requirements in national legislations, thereby ensuring the legal predictability necessary for innovators and inventors who used IP systems to continue to work in different countries, while ensuring the provision of the information and protection necessary for GRs, TK and TCEs. Sixth, the instrument should meet a real need and be specific. It was essential that any instruments currently under discussion respond to clearly identified needs and gaps and that these clearly related to IP. In a number of areas, the existing instruments were aimed at responding to needs or interests that, while evidently legitimate, fell outside the scope of a regulatory instrument negotiated under the auspices of WIPO. The Delegation emphasized that efforts to simplify the texts in the light of this final criterion would be most welcome. All those six principles should be taken into account when drafting an international legal instrument for GRs. Such an instrument should also regulate areas including the trigger for and contents of the declaration, exclusions, sanctions and the tasks of IP offices. As mentioned earlier, the Delegation of Switzerland was of the view that the above-mentioned

principles were also applicable to TK and TCEs. With regard to these two issues, it was essential that the Committee resolve the core issues, in particular the definition of the holders, as well as the rights arising from the protection envisaged by the instruments negotiated by the Committee.

42. The Delegation of Finland expressed its full support for the statements made respectively by the Delegations of the EU, on behalf of the EU and its Member States, and Japan, on behalf of Group B. The Delegation reminded the IGC that Finland was one of those Member States of the EU that had indigenous peoples within its population. It intended to preserve the existence and culture of indigenous peoples in the world and was therefore supportive of the work of this Committee to proceed and be finalized. It added that there was a need to agree on the nature of the instrument or instruments to be concluded. A practical and reasonable solution should be reached in the near future. The Delegation of Finland considered that in order to make progress in this direction, the IGC needed a clear evidence of the benefits and effects of a specific type of instrument in legal but also in social terms. On this basis, it considered that a framework as regarded the minimum levels of protection to be ensured should be set out at the international level. It added though that numerous issues should better be resolved at the national level. These issues included the specific matter to be protected and the precise means by which protection should be ensured. With regard to both TK and TCEs, the IGC should sort out the issue of the subject matter that already pertained to the public domain. It believed that the stage had been reached in the discussions where decisions should be taken. It was its sincere hope that the IGC be able to take a stance, in good faith and based on mutual understanding of each other's concerns.

43. The Delegation of El Salvador recalled that the IGC negotiations were taking place based on a mandate that foresaw the expeditious conclusion of the process as a priority, so that, taking into account the level of maturity of the draft texts, the IGC could recommend the convening of a Diplomatic Conference in order to adopt an instrument or instruments that would be relevant to the protection of the intangible rights under negotiations. The Delegation reminded the Committee that GRs had been one of the main objects of negotiations and agreements at the international level such as the CBD and the Nagoya Protocol. The IP system should contribute to, and provide defensive or preventive protection for GRs and associated TK in order to prevent erroneous granting of patents for applications that do not meet the requirements of novelty and inventive step, and submit the use of GRs and associated TK to PIC and fair and equitable benefit sharing. Consequently, the national patent offices should be placed in a position that enable them to make right decisions regarding the granting of patents based on the information that should be requested from, and provided by the applicants. The Delegation believed that the IGC should identify the level of ambition and political will of each Member State and consider whether the IGC could conclude the negotiations. It asked for pragmatism and said that the goal of having one single instrument that would cover the three subject matters should be left aside for the moment. It suggested a sequencing approach that would start with the finalization of one instrument and adoption by a Diplomatic Conference, and then follow with the second instrument and, eventually, the third one. The Delegation was flexible with regard to which of those three areas should be completed first. It could, for example, argue that the subject that has matured the most, technically speaking, should be taken up first. The Delegation did not think that a rise in the numbers of meetings was a guarantee of maturity of the subjects, but did believe that the IGC needed high level meetings as a driving force towards the completion of its mandate.

44. The Delegation of Trinidad and Tobago concurred with the statements made respectively by the Delegations of Uruguay on behalf of GRULAC and Indonesia on behalf of the LMCs. With regard to policy issues, it suggested the need to split the subject matter of GRs, TK and TCEs into three discrete and separate issues. It noted that GRs, TK and TCEs were at different stages of completeness and required different sets of experts. It considered that the slow pace of progress on GRs had unnecessarily slow down the very near completion of the others subjects. It was of the view that the subjects of TK and TCEs were mature enough and ready

for a Diplomatic Conference that could have taken place in 2014 already. The Delegation considered that the Member States should work towards convening a Diplomatic Conference on TK and TCEs in 2015. A Diplomatic Conference on GRs could take place later on. With respect to the content of the international legal instrument on GRs, the Delegation was of the view that the treaty should contain the main components of protection, including provisions regarding ABS. The operational issues and timelines could be left to the Member States' national laws. In addressing the issue of common ground, the texts were mature regarding folklore and TCEs. It noted that the IGC lacked time to address GRs issues and called for a plan of action whereby more time was to be devoted to GRs in 2014 and beyond. In this way, a consensus on GRs could be reached at the IGC.

45. The Delegation of Thailand said that after several years of work, it was of the utmost importance to make concrete progress in the text-based negotiations. Priority should be given to articles which were cross-cutting and for which there was common ground. The solutions agreed upon cross-cutting issues could be applied across the three themes, namely GRs, TK and TCEs. It considered that the issue of beneficiaries, for example, was close to reaching consensus. Regarding disclosure, it believed that compulsory disclosure requirements were necessary to ensure benefit sharing and avoid erroneous granting of patents. Consideration should be given to setting a minimum international standard on disclosure requirements that would complement existing international norms on PIC and ABS. The Delegation added that creating databases on GRs, TK and TCEs was another important element in support of an effective protection of these resources. It was however a tool that could and should be implemented mainly at the national level. In terms of approach, it considered that the legal instrument(s) on GRs, TK, TCEs should be legally-binding and completed as a single-undertaking. While they should include rights-based provisions, regulatory or measure-based provisions could help to ensure full materialization of those rights. These two kinds of provisions could complement each other and there was no need to choose one over the other. The key point regarding the regulatory provisions was to accommodate built-in flexibilities in implementing those in each national IP system. The Delegation said that the IGC should try to maximize its time in order to conclude its work by 2015. It noted that negotiations of each text were scheduled to take place only once a year. It was of the view that the IGC should rather establish a mechanism to allow continuous discussion on each issue, especially in between IGC sessions. As proposed by the Delegation of Indonesia on behalf of the LMCs, an open-ended and informal working group could be established in order to continue to develop the text(s) and discuss contentious issues for submission to IGC28 on cross-cutting issues before sending the text(s) to the GA. This implied that all texts should remain open until IGC28 in order to allow adequate time for and to expedite negotiations.

46. The Delegation of Japan was of the view that there was a commonly shared objective among Member States regarding the need to take effective measures to address cases of misappropriation of GRs, TK and TCEs. The Delegation pointed out that, despite divergences amongst delegations regarding the understanding of misappropriation of GRs, TK and TCEs, it had continued to make active contributions to the discussions within the IGC based on its understanding of the concept. The Delegation cited, as examples, its proposal for the establishment of a GRs and TK database for the purpose of preventing the erroneous granting of patents (document WIPO/GRTKF/IC/26/6), as well as its efforts to shed light on outstanding issues which it believed could serve as catalysts for further discussions. The Delegation was of the view that, till date, the IGC had not been able to move closer towards resolving key issues within the various areas of its work. With respect to GRs, the Delegation noted that the rationale for utilizing the patent system to address compliance with domestic ABS regimes of Member States, especially in cross-border situations, had not been fully demonstrated. It believed that the international dimension of ABS compliance had already been addressed by the Nagoya Protocol and noted that the effectiveness of a mandatory disclosure requirement in promoting ABS compliance had not been shown. With respect to TK and TCEs, the Delegation noted that the IGC had not been able to find a common ground on fundamental issues, namely, policy objectives, guiding principles, subject matter and beneficiaries. For this reason, the

outline of protection for TK and TCEs could not be defined and, consequently, the possible effects of the protection of TK and TCEs were still unclear. On this basis, the Delegation expressed its present preference for a non-legally binding instrument(s), such as a measures based approach. It noted that different approaches should be explored in order to come up with solutions. It suggested, with respect to GRs, that a good deal of time and effort should be devoted to fact-based studies on the mandatory disclosure requirement while continuing in the text-based negotiations. Such a study could involve a careful consideration of the pros and cons of the disclosure requirement. The Delegation called on the proponents of the mandatory disclosure requirement to back up their points with concrete examples or explanations which would assist its reflection on the issue. It was of the view that the concept of misappropriation of GRs consisted of two different and independent elements. These were the inadequate compliance with the ABS regime and the erroneous granting of patents. It noted that WIPO, as an agency that was specialized in IP, was mandated to seek solutions to the issue of misappropriation from the perspective of IP and, therefore, the focus of the IGC was to be on seeking appropriate measures to address the erroneous granting of patents. To achieve the prevention of the erroneous grant of patents, the Delegation opined that the database proposal should be further worked on, such as through the conducting of feasibility studies for setting up databases, and taking into account the concerns of Member States. It noted, in this regard, that the modified proposal by the database proposal's co-sponsors, which included the Delegation of Japan (document WIPO/GRTKF/IC/26/6), reflected these points in an appropriate and neutral manner, and would, therefore, provide a good base for further discussion. With respect to TK and TCEs, the Delegation noted that the IGC should not be afraid to return to the discussion of its policy objectives and guiding principles, as such a fundamental discussion would enable the Committee reach a shared understanding on the subject matter to be protected. In this context, it stated that a minimum scope for the subject matter that was acceptable to all Member States needed to be found. This scope could be such TK that had a direct link with indigenous peoples and communities and that was collectively preserved and passed on from generation to generation among them and was unknown to other communities. The Delegation reiterated its support for appropriate measures against the misappropriation of GRs, TK and TCEs and stated that it would continue to take part in the negotiations with a constructive spirit.

47. The Delegation of the United States of America aligned itself with the statement made by the Delegation of Japan on behalf of Group B. It also noted the request put forward by the Delegation of the Czech Republic on behalf of the CEBS Group for a fact-based discussion, the protection approach to TK and TCEs proposed by the Delegation of the EU, speaking on behalf of the EU and its Member States, and the statement made by the Delegation of Japan. The Delegation stated that it shared, with Member States, the objective of finding a balanced approach towards the matters under discussion within the IGC. It believed that to achieve this objective, there was a need for a shared understanding of the policy objectives and core principles of the Committee's work. Until common agreement could be reached on the importance of preserving IP fundamentals, such as, promoting innovation and maintaining the existing international legal IP framework, it feared that the IGC would continue to be deadlocked in its work. The Delegation noted that it had suggested on numerous occasions that the IGC's work should be focused on resolving the need to prevent the erroneous granting of patents on inventions involving GRs and TK. It believed that a database approach would help the IGC achieve this objective without establishing a new and uncertain international legal IP framework. It was of the view that this was a possible solution which all Member States should be interested in developing further, as well as a solution which would not be difficult to implement. It noted that it was yet to see any concrete evidence which established that new disclosure requirements would be a viable way forward. It informed the Committee that some of its stakeholders were currently experiencing serious problems in countries that had imposed disclosure requirements, such as patent processing delays and uncertainty in obtaining and exercising patent rights. The Delegation stated that any international instrument from the IGC should be non-binding and should result in a framework that improved efficiency, was non-controversial and was agreed to by all Member States. It regretted that the IGC had run into impasses, and noted that these impasses were due to the "one-size fits all" approach which had

been followed by the Committee, an approach which had only allowed for work based on a Treaty-like text initiated by the WIPO International Bureau. It was pleased to see that the questions outlined for the Ambassadorial/Senior Capital Based Officials meeting were only points of departure, as it was of the view that Member States had other new ideas which differed from the current text-based proposal and which needed to be discussed in parallel with the discussions on the proposed text. The Delegation believed that a single textual approach would not address the needs of all Member States and would not result in a solution that was acceptable to everyone. In the examination of new pathways and modalities, the Delegation noted that it was important to consider the contributions of observers, whether private or public organizations or indigenous peoples, as all had important perspectives to consider within the IGC process. It hoped that Member States would positively consider new, more inclusive and more flexible negotiating pathways that would accommodate new proposals or new paragraphs in the negotiating text.

48. The Delegation of Malaysia aligned itself fully with the statements made respectively by the Delegation of Indonesia on behalf of the LMCs, the Delegation of Bangladesh on behalf of the Asia-Pacific Group and the Delegation of Egypt on behalf of the DAG. It reaffirmed the importance it attached to the protection of GRs, TK and TCEs and noted that, like many other developing countries, it was deeply concerned with preventing the misuse, alteration and misappropriation of GRs, TK and TCEs. It expressed its support for the idea of an internationally legally binding instrument for GRs, TK and TCEs in the form of a Treaty or Treaties. It believed that a Treaty would provide the necessary legal international framework which would serve to enhance and augment the national legal systems that had been put in place to address issues of misappropriation of GRs, TK and TCEs. As discussions within the IGC had lasted for more than twelve years, and taking into account the positive implications that the forthcoming Treaty or Treaties would bring to Member States, the Delegation was of the view that it was timely and crucial that a Diplomatic Conference be held in the year 2015. In this regard, it urged Member States to begin discussions with a strong political will and to work positively, constructively and in good faith in the IGC sessions of 2014 to ensure that all remaining issues be resolved. The Delegation further expressed its support for the proposal of made by the Delegation of Indonesia on behalf of the LMCs with respect to the convening of intersessional meetings to resolve the outstanding issues.

49. The Delegation of Norway associated itself with the statement made by the Delegation of Japan on behalf of Group B. It observed that, within the IGC, there was presently huge disagreement between Member States on several crucial subjects with respect to all the topics discussed. It noted that this situation had existed for a while and that there had still yet been no sufficient movement by Member States that would make it realistic to believe that the IGC would be able to reach agreement in the coming years. It therefore could not see how any new negotiation pathways or modalities would assist the IGC to accommodate progress. It was of the view that without greater flexibility from all Member States, there was no possibility of reaching agreement. With respect to GRs, the Delegation believed that the question of whether a mandatory disclosure requirement should be introduced was the most important but also the most difficult to solve. It noted that the issue of introducing a mandatory disclosure requirement was one which had to be dealt with at the international level, and one which also needed to be prioritized. It believed that the provision of more information on various national experiences involving the introduction of disclosure requirements would be of benefit to the work of the Committee. With respect to both TK and TCEs, the Delegation was of the view that the question of how the protected subject matter should be defined, including the delimitations of protected subject matter as against knowledge and expressions that could be utilized freely by the public, was the most important and also very difficult to solve. It expressed its support for the view that an agreement on all topics was not needed before the Committee could conclude on anything. It acknowledged, for instance, that though TK and TCEs were clearly connected, GRs were not connected to TK and TCEs in such a way that a possible outcome on GRs could not be separated from an outcome on TK and TCEs.

50. The Delegation of Canada associated itself with the statement made by the Delegation of Japan on behalf of Group B. The Delegation reiterated its view that there were two main interrelated policy issues at stake within the IGC. The first issue related to the integrity of the IP system as a whole. It believed that a number of proposals in all three texts would add burdens, create uncertainty and add new patentability requirements, based on compliance with the administrative rules, which were unrelated to patentability itself. The second issue was the integrity of the public domain as it related to the IGC's subject matter. The Delegation was of the view that several options in each of the three texts contemplated an outcome which would arguably result in the greatest quantitative expansion of subject matter protected by an ownership right or, in other words, the single greatest privatization of knowledge in human history. The Delegation noted that this would subject creation, innovation and intercultural dialogue to prior authorization, bureaucracy, paperwork and litigation. These would drastically complicate how people lived together, how knowledge was shared, enhanced and expanded and, ultimately, how respective experiences could benefit everyone. The Delegation of Canada noted that the integrity of the public domain was a serious issue, which, if ignored, would result in an ill-designed outcome which, even if it worked, would bear severe consequences which would extend beyond the strict confines of IP. It reiterated that any IGC instrument, while providing a flexible but well-defined policy framework, would have to allow Member States to define how best to address the protection of GRs, TK and TCEs according to their respective and various national circumstances. The Delegation noted that this meant that an international instrument had to provide clear objectives and principles as well as clear definitions so that its intent and scope were broadly understood. These were to be complemented by provisions that established a well-defined framework for flexible practical measures which were compatible with, and which built on the strengths of, the existing IP system. The specific design and implementation would be left with the Member States, however, within the framework that such an instrument provided. On the theme of GRs, the Delegation noted that consensus had emerged with respect to the understanding that patents should not be granted in error with regard to GRs and TK associated with GRs. It believed that the patent system was fundamentally equipped to prevent patents from being granted in error but noted that patent offices needed to have the appropriate information, and awareness of the issues at hand, to make informed decisions. For this reason, along with other Member States, it had supported proposals for Joint Recommendations that leveraged these fundamental strengths of the patent system (documents WIPO/GRTKF/IC/26/5 and WIPO/GRTKF/IC/26/6). It believed that the Joint Recommendations represented common grounds, and proposed practical measures which would go a long way toward raising awareness of, and addressing concerns relating to, patents granted in error with regard to GRs and TK associated with GRs if the proposals benefited from broad multilateral support. It regretted that there had been limited openness to the proposals and was of the view that this stance had contributed to preventing the emergence of practical, effective and mutually acceptable solutions within the Committee. With respect to TK, the Delegation believed that the common denominator within the negotiations was that an IGC instrument on TK needed to provide for the attribution of the origin of TK when used by a third party, and on respect for the cultural norms and practices related to such TK and its use by its holders. The Delegation proposed that the focus of the Committee should be on these shared views and on the development of practical approaches to the protection of TK. The Delegation also pointed out that there was agreement amongst Member States that an IGC instrument should encourage creators and innovators, that made use of TK, to establish MATs with the holders of such TK. With respect to TK associated with GRs, the Delegation noted that it had already supported a proposal regarding measures for the prevention of the erroneous grant of patents and was of the view that this would largely address the protection of TK associated with GRs. With respect to TCEs, the Delegation noted that there was agreement amongst Member States that an instrument on TCEs needed to provide for the respect of the moral interests of the holders of TCEs. It noted, in this regard, that it could support a flexible approach that addressed both the economic and moral interests of the holders of TCEs. Regarding the process as a whole, the Delegation expressed its full support for the mandate and work program adopted by the GA in October 2013. It invited Member States to take full

advantage of the possibility included in the mandate to request studies or to provide examples which could inform the Committee's discussions. In this regard, it pointed out that along with others, it had already proposed new negotiating pathways. It expressed its disappointment in the strong reticence by the Committee to the introduction of new proposals, such as the two proposals for Joint Recommendations which it had supported. It hoped that the renewed mandate would provide fresh impetus for the consideration of the proposals as part of efforts to identify and develop mutually agreeable solutions, including through the discussion and study of facts and evidence that could guide the Committee in its work and towards an outcome. It noted that the discussion of information and evidence, as well as the identification of common ground and areas for compromise, including through new proposals, were all normal parts of the negotiation of international instruments. It believed that the identification of the right approach to address the issues at hand, and arrive at consensus, could only emerge from a fact-based discussion and from the identification of common grounds. The Delegation signified its readiness, as always, to undertake such a fact-based discussion, and to engage with all Member States toward a mutually agreeable outcome.

51. The Delegation of Germany aligned itself with the statements made by the Delegation of the EU, speaking on behalf of the EU and its Member States, and the Delegation of Japan, speaking on behalf of Group B. Concerning the first question as submitted to the Ambassadorial/Senior Capital Based Officials meeting, the Delegation said that the IGC primarily needed to achieve a common understanding on the desired purpose of protection as a basis for the drafting of a legal instrument, taking into account existing and well-functioning mechanisms of protection, such as patent law, copyright law, design law and the respective international treaties, which should not be affected with regard to their respective scope of protection. Without a prior agreement on the common ground, it would be extremely difficult, if not impossible, to finalize the draft articles. The Delegation highlighted that the nature of the envisaged instrument was another key point which needed to be addressed. The three complex topics of the IGC should be addressed in separate, non-binding, clear and flexible instruments. The Delegation noted as well that there was still a wide divergence of views and policy approaches regarding the public domain. Regarding the second question, the Delegation noted that policy objectives, definitions, general guiding principles, and a framework for their implementation and application could be dealt with within an international instrument. The implementation and application should be incorporated though in respective national policies. As to the third question, the Delegation stated that it should be possible to reach consensus on the prevention of uses which do not respect the cultural norms and practices of the holders of TK and TCEs. It said that the IGC might reach consensus on the question as to which users do not comply with respective cultural rules and practices, based on factual evidence. The Delegation called for joint measures to raise awareness of the fact that existing national and international legal frameworks could already provide useful tools to safeguard TK and TCEs. With regard to GRs, existing national and international tools could already provide an equitable sharing of benefits arising from their utilization. Concerning the last question, the Delegation noted that text-based negotiations without prior common understanding of the objectives and principles had proven to be ineffective. Such common understanding should be achievable within the year to come. The Delegation was flexible concerning the forum within WIPO or other negotiating pathway to continue on. It would be very helpful if Member States could provide concrete examples of protectable subject matter and subject matter for which protection was not intended. Those examples would be a valuable basis for the further discussion of objectives and principles.

52. The Delegation of the United Kingdom stated that the agreement needed to ensure certainty, be workable and bring real benefits to indigenous peoples that hold GRs, TK and TCEs. It continued to support the position across the three themes expressed by the Delegation of the EU, speaking on behalf of the EU and its Member states. It believed that protection should be, to the greatest extent possible, kept within the existing copyright and patent systems and minimize any uncertainty or additional burdens. In relation to GRs, the Delegation continued to support the proposal of the Delegation of the EU for a disclosure

requirement that could be included within an appropriate international legal instrument. The Delegation believed that it was right that indigenous peoples should be able to track the use of and derive benefits from their GRs. However, for that to be workable, disclosure should be made in a standardized, non-bureaucratic manner. The proposal made by the Delegation of the EU on behalf of the EU and its Member States was balanced and aimed to provide the transparency essential to an access and benefit sharing regime. The Delegation wanted to achieve an agreement that met the requirements of indigenous people and local communities, and would allow them to share in any benefits arising from the use of GRs, TK and TCEs. In order for that to succeed, it was essential that any agreement would be based on sound evidence and proper consideration of its practicability. The Delegation looked to the forthcoming stocktaking sessions to help the IGC identify where there were significant issues that needed to be addressed. Equipped with that information, the IGC could then focus on clarifying and refining the objectives and principles that would be the basis of further negotiations at the IGC.

53. The Delegation of Chile associated itself with the statement made by the Delegation of Uruguay on behalf of GRULAC and wished to add the following points. On the questions posed to the delegations, it considered that a number of elements had to be resolved in a priority way. Firstly, the IGC should seek to remove any doubts about the nature of the instrument which the IGC should produce. Secondly, the IGC should decide on the interaction between that instrument and other international instruments, and decide whether it should cover subjects that were already covered by other international instruments. With regard to international legal instruments and international norms, the Delegation believed that any international instrument should focus on the general aspects in connection with GR, TK and TCEs. Member States should agree to carry out their international commitments in line with their own realities, bearing in mind that some of the existing international instruments were not administered by WIPO. It further observed that the focus of the IGC's work should be on the IP aspects. The IGC should not include subjects dealt with by other forums avoiding cross references. Regarding the negotiations pathways, the Delegation believed it was necessary to achieve a consensus a mandatory disclosure requirement on GRs.

54. The Delegation of the Netherlands stated, with regard to GRs, that it considered mandatory disclosure requirements to be the most important policy issue. It supported the proposal made by the Delegation of the EU, on behalf of the EU and its Member States on mandatory disclosure requirements, which, the Delegation noted, contained certain safeguards. It agreed that that issue should be resolved at the international level. The Delegation emphasized that setting the rules at the international level enhanced transparency for providers and users. With regard to TK and TCEs, the Delegation pointed out that there was still no agreement on the common objectives and goals to be reached and regarded that as the most important issue. The Delegation considered evidence of the impact of the contemplated measures on TK and TCEs on all stakeholders of the utmost importance. At this stage, after many years of negotiations, the IGC had not seen evidence being presented. The Delegation therefore saw, at this stage, more merit in pursuing non-binding solutions such as raising awareness and encouraging the prevention of unauthorized disclosure. It remained committed to this very important topic.

55. The Delegation of Yemen supported the statements made by the Delegation of Bangladesh, on behalf of the Asia-Pacific Group, and the Delegation of Uruguay, on behalf of GRULAC and. In order to reach agreement on an international instrument, the Delegation wanted that the necessary information be disclosed in order to ensure benefit sharing. It asked that the deadlines, as defined by the mandate for the 2014/2015 biennium, be respected by the IGC. The Delegation requested that the text of the proposed instruments be put into conformity with any other relevant international existing instruments.

56. The Delegation of France was concerned about repetition of positions that were well known but also rather antagonistic. The Delegation stated that, despite the progress made, a

number of difficult obstacles had not yet found any solution in the drafting texts. Convening a Diplomatic Conference in such circumstances, when the IGC had not managed to get the political context right, would be perilous and might antagonize the different parties even further. The Delegation reminded that a lot of work, listening and learning still needed to be done, as political consensus would not be reached by decree but by persuasion, as the CBD negotiation process had illustrated. It proposed that the IGC focused on guidelines and best practices first, so that the IGC could, when the work would be more mature, move forward and then perhaps look at changing the international legal order.

57. The Delegation of Australia supported the statement made by the Delegation of Japan, speaking on behalf of Group B. It believed that the priority policy issues were questions of IP policy. How to balance the costs and benefits of granting monopolies over technical and creative works? How to promote the publication of these works so as to promote further creativity and innovation? How to enable businesses to make commercial use of their branding and reputation and provide consumers with confidence they were buying authentic goods and services, whilst ensuring that the original owners of the source of knowledge or material had appropriately allowed access to those resources and knowledge and that the economic benefit from them was fairly distributed between the parties? This latter issue was essentially the broad policy issue that had led to these negotiations, that was, concern from some Member States that their resources and knowledge, and that knowledge and resources of indigenous peoples, were being accessed without their knowledge or consent and that benefits obtained from the commercialization of resulting IP was not being fairly distributed to the original owners and holders. In other words, the priority IP policy question for TK and TCEs was to know when permission should be sought to use another's knowledge or culture. This policy question was important as knowledge and culture had economic and social value and could be the subject of a monopoly in some cases, but could be freely shared in other cases. In addition, mechanisms needed to be considered that ensured that economic benefits were shared fairly. This policy question was reflected in the difficulty Member States had defining the boundary between the public domain and protected TK and TCEs. The priority IP policy issue for GRs was to know in what circumstances an applicant for IP rights should disclose information about GRs. This policy question was also important, as it was particularly difficult to identify the role of GRs in innovation even though there were very significant innovations that arose from innovations using GRs. This was about ensuring transparency within the patent system, directed at maintaining certainty within the IP system. If that certainty was undermined, the innovation process, the potential economic benefit that may flow from GRs as well as the guarantee that the benefits of these resources would be shared appropriately with the owners of those resources, would be prejudiced. The key questions related as well with the intersection between, on the one hand, systems relating to environmental protection of GRs, and particularly compliance with ABS regimes, both domestic and international, and, on the other hand, the IP system. This policy question was reflected in the difficulty that Member States faced in reconciling the two objectives of a supportive relationship between the patent system and environmental regulation and ensuring IP rights were not granted when such a monopoly was not warranted in light of prior information about TK and GRs. On the question of what should be dealt with at an international level and what at a national level on TK and TCEs, the Delegation believed that there was a clear need to develop a common approach to recognizing indigenous peoples' moral rights to their respective TK and TCE. This was about respect and acknowledgement. It was of the view that this was an area of common agreement amongst Member States. The Delegation had often argued that such recognition should be the first step in the process. The second step should deal with the more complex issue of economic rights, which would require a much more prescriptive approach and legal certainty. This was where the challenge lied, as any rights conferred would need to be defensible in a court of law to maintain certainty without which investment would not flow and innovation would be prejudiced. Significant work remained to be done in the area of the economic rights, whilst balancing the needs of the users and holders and taking account of the different national environments, including environments in which indigenous peoples and communities lived in. The Delegation emphasized that one size would not fit all. A flexible agreement that would provide

implementation flexibility at a national level would be critical for the success of the negotiations. The IGC needed to focus on providing an international common ground on the key technical policies issues which would guide domestic implementation. These were definitions, beneficiaries, scope of protection, exceptions and limitations, and importantly the impact on the public domain, how to address diffused knowledge, and how to deal with conflict over ownership. In deciding what should be dealt with at an international level on GRs, the Delegation pointed out to the need to consider a common framework for dealing with different approaches in patent systems that required disclosure, on matters such as the trigger for disclosure and revocation as a sanction for non-disclosure. Another issue to be considered was ways for patents applicants that had acquired GRs legitimately, to signal, in patent applications, their good faith to the market, including compliance with the domestic and international ABS regimes. It also noted that there were a significant number of domestic disclosure regimes in operation already with significant variability in approach, which was creating uncertainty within the patent system. There was clear merit in addressing this issue in accordance with an international standard.

58. The Delegation of Ecuador believed that the Ambassadorial/Senior Capital Based Officials meeting should allow delegations to exchange views on key policy issues and enable the IGC to move forward in its negotiation process towards an international instrument. Taking the Secretariat's questions as a guide, one of the important issues to be debated was that of GRs. The Delegation felt that it was a priority that the countries of origin of the GRs be disclosed. With regard to TK, it believed that PIC should be granted to be able to access the knowledge. With regard to TCEs, it was important that protection be provided for those expressions that had gone beyond national boundaries. The Delegation believed that protection had to be granted through legally binding instruments at the international level so as to prevent the continued misappropriation of GRs, TK and TCEs.

59. The Delegation of Mexico supported the statement made by the Delegation of Uruguay, speaking on behalf of GRULAC, and agreed with the Delegation of Chile. The Delegation believed that Member States still had very diverging views on the issue of disclosure. More work and more thought were needed in order to determine what type of instrument was viable so that the IP system would be able to cover the realities that were already contained in the CBD and the Nagoya Protocol. The Delegation took note of the practical advices on informal and intersessional consultations that had been submitted by some delegations. It believed that such consultations would enable the Committee to move forward. He proposed the following to move the process forward: to maintain high-level meetings, to look at the benefits of concrete examples, to create a map which would record what the main issues and concerns were, and what were the delegations' positions on those..

60. The Delegation of Morocco hoped that the IGC mandate for the 2014-2015 biennium would give the Committee a new impulse, so that several legally binding instruments guaranteeing the effective protection and the promotion of GRs, TK and TCEs could be adopted. It was vital to establish a schedule to look at substantial issues that needed to be addressed. It was also important to mobilize the international community to commit itself politically and accelerate the work of the IGC with a view to holding a Diplomatic Conference in 2015.

61. The Delegation of Cote d'Ivoire supported the statement made by the Delegation of Algeria on behalf of the African Group. It was pleased that an Ambassadorial/Senior Capital Based Officials meeting had been convened. It called on delegations to build on a constructive spirit towards protecting GRs, TK and TCEs. The Delegation emphasized that its country, like all other Sub-Saharan African Member States, had a rich heritage of GRs, TK and TCEs. These resources, knowledge and folklore would not be able to get protection without a legally binding international instrument or instruments. The Delegation was in favor of convening a Diplomatic Conference in 2015 and was available to continue to work alongside the Chair and other delegations in order to ensure that GRs, TK and TCEs could be protected.

62. The Delegation of the Republic of Korea supported the statement made by the Delegation of Japan on behalf of Group B. It recalled that it had joined the CBD and was a signatory of the Nagoya Protocol. It believed that the spirit of fair and equitable benefit sharing arising from the use of GRs had to be respected. Moreover, the authority of the providing parties also had to be acknowledged. Providing parties and user parties had to enter into mutual and symbiotic relationships through benefit-sharing. In the meantime, it noted that users and stakeholders had expressed concerns regarding the legal uncertainties caused by the disclosure requirements and the fact that those uncertainties could encourage them not to use the patent systems anymore and bypass the IP regime altogether. New disclosure requirements would constitute an excessive burden and unexpected obstacles to those wishing to utilize the patent system. Since users were central players within the patent system, user's views were very important. The views of industry and the wider business community had to be taken into consideration in maintaining the patent system and allowing it to work as intended. Accordingly, the IP and patent systems had to be made more convenient for users in order to encourage their active use. The Delegation believed that securing rights for providing parties and user parties could also be achieved through means that did not related to the patent system, such as private contracts, rather than by revoking IPRs or imposing sanctions. In this context, it was necessary for the IGC to take more time for deep discussions and research, give more consideration to users' opinions, and consider the potential ripple effect on industry and other related areas of the measures that were being proposed by some delegations in the IGC.

63. At the conclusion of the discussion, the Chair took the floor and summarized the discussion as follows:

"This summary is simply provided to reflect the highlights of the Ambassadorial/Senior Capital-based officials meeting. The summary is not intended to be exhaustive, nor to be seen as conclusions arising from the discussion. It is offered on my own responsibility to reflect my sense of what we might take away from the wide ranging discussions on GRs, TK and TCEs. The interventions by Heads of Delegations and Senior Officials will be compiled in the usual manner and it is this report that will constitute the definitive record of the meeting on which delegations should rely. I suggest that delegations consult that report in order to assess fully the outcome and impact of the meeting. I recall that the questions circulated for consideration at the Ambassadorial/Senior Capital-based Officials meeting were:

1. In respect of each theme of the IGC (genetic resources, traditional knowledge and traditional cultural expressions):
 - a. What is the policy issue that needs to be resolved as a priority and why?
 - b. What should be dealt with in an international legal instrument and what could be left to be dealt with at the national level?
 - c. What suggestions are there for common ground on the issues that need to be resolved internationally?
2. Regarding the process as a whole, what new negotiating pathways and modalities might there be to make further progress?

First, I detected that there was a general view amongst all delegations that the misappropriation of GRs, TK and TCEs that can be deemed to be legitimately held/owned, is not acceptable. The matter of defining what is/can be "legitimately held/owned", such that a right of control is recognized to lie with an entity, and what would constitute "misappropriation" thereof, needs further substantive discussion. No delegation expressed support for the view that misappropriation should be condoned or should be deemed unworthy of attention in this process.

Many delegations also expressed the view that a significant goal of the IGC process should be to find ways of assisting in preventing the erroneous granting of patents. Many delegations expressed the view that the instrument(s) being pursued should extend to different forms of intellectual property rights. Most delegations focused on the linkage with the patent system, at least in so far as GRs and TK are concerned.

Regarding the ways in which these concerns may be addressed, and with specific reference to GRs:

- (a) there was general support for the view that some form of disclosure could be helpful. However, there remain a number of delegations that oppose any new mandatory disclosure regime;
- (b) several delegations stressed the importance of ensuring that any disclosure regime be subject to certain conditions;
- (c) some delegations suggested that the experiences of existing national disclosure regimes should be brought to bear on the discussions on the way forward on disclosure in the IGC process.

At the same time there was no significant opposition to the possible benefit of using databases to help in checking whether a patent application should be denied on the basis that it constitutes prior art. A number of delegations and the Indigenous Caucus stressed, however, that any database mechanism would need careful consideration and must have adequate safeguards.

In terms of the relationship between the instrument(s) under negotiation and existing IP and other international regimes, there were different views. Some who felt that the regime should reinforce certain existing IP and other instruments, including the Convention on Biological Diversity (the CBD) and the Nagoya Protocol, while others wished to ensure that no direct or significant link between the instrument/s under negotiation in the IGC and these other instruments, is made.

With respect to the cross-cutting subject matter, some delegations stressed the importance of reaching common definitions of certain elements (such as “beneficiaries”).

There was an understanding of the need to address the balancing of interests - the interests of holders/owners of the covered subject matter; users including commercial users and businesses; and, consumers. There seemed to be a general view that the integrity of the relationship between all three groups would need to be considered carefully.

In terms of the ways in which the instrument could address the subjects under consideration (GRs, TK and TCEs), delegations underlined the importance of due respect, acknowledgement and attribution. They also addressed the issues of exclusive rights, authorization of access and mutually-agreed arrangements in terms of benefits/benefit-sharing.

There were interesting views expressed as to the character of the instrument. A few delegations introduced the concept of a framework-type agreement, which would leave many areas for coverage by national law, mechanisms and measures, as opposed to a more in-depth agreement, which, of course, is the preference of others.

Many delegations recognized the importance of reaching an understanding on the issue of the “public domain”, in particular on the relationship of any possible exclusive right with what is ultimately determined to be the “public domain”.

There are differences of view on binding versus non-binding solutions. It is not clear whether the approach to binding/non-binding solutions is a prejudgment of the outcome or simply an articulation of a perspective on what some consider “doable” at this time.

In terms of process, mention was made of new pathways but no clear expression of what those new pathways would be.

There was a view that the process should be open to new proposals and I would assume new text. It is not clear whether we should anticipate parallel texts. There was mention of other high level engagements including at the Ministerial level. There were also suggestions that there be more Ambassadorial-level meetings.

There were a number of calls for a calendar, or roadmap, for the way forward. This was often accompanied by suggestions that the IGC should be working towards a fixed outcome in terms of a Diplomatic Conference.

There was a call for a matrix or map of positions on key issues which could assist delegations in reflecting on the levels of convergence and levels of divergence.

There were different points of views expressed regarding the relationship between the three pillars. There was a distinct view, on one hand, that the three be kept intact and not be separated, and other views that they were at different levels of maturity, or capacity for maturity, and should be treated separately. The question whether there should be a single undertaking with action all at once, or sequential, was implied in some of the discussions that took place around these items”.

The Chair then closed the Ambassadorial/Senior Capital-based Officials meeting.

64. [Note from the Secretariat: Before opening the next Agenda Item, the Chair orally delivered to the plenary the same summary that he had provided at the conclusion of the Ambassadorial/Senior Capital-based Officials meeting (see paragraph 63 of the present report)].

AGENDA ITEM 3: ADOPTION OF THE AGENDA

Decision on Agenda Item 3:

65. *The Chair submitted the draft agenda circulated as WIPO/GRTKF/IC/26/1 Prov. 4 for adoption and it was adopted.*

AGENDA ITEM 4: ADOPTION OF THE REPORT OF THE TWENTY-FIFTH SESSION

Decision on Agenda Item 4:

66. *The Chair submitted the revised draft report of the Twenty-Fifth session of the Committee (WIPO/GRTKF/IC/25/8 Prov. 2) for adoption and it was adopted.*

AGENDA ITEM 5: ACCREDITATION OF CERTAIN ORGANIZATIONS

Decision on Agenda Item 5:

67. *The Committee unanimously approved the accreditation of all the organizations listed in the Annex to document WIPO/GRTKF/IC/26/2 as ad hoc observers, namely: Community Resource and Development Center (CRDC); Cordillera Peoples Alliance (CPA); Dublin City University (DCU), School of Communications; Fiji Native and Tribal Congress (FNTC); Groupe d'Action pour le Développement Durable (GAD) (Action Group for Sustainable Development); Indian Education Foundation (IEF); Indigenous Information Network (IIN); International Potato Center (CIP); IPR Aware World; Nepal Thami Society; Nga Kaiawhina a Wai 262 (NKW262); Réseau National des Populations Autochtones du Congo (RENAPAC) (National Network of the Autochthonous Populations of Congo); SAMUSA; Uganda Pentecostal University, Grotius School of Law; University of Arizona, James E. Rogers College of Law.*

AGENDA ITEM 6: PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES

68. The Chair introduced documents WIPO/GRTKF/IC/26/3 and WIPO/GRTKF/IC/26/INF/4. The Chair recalled that the GA had decided in 2005 to create a Voluntary Fund to support the participation in the IGC of indigenous and local community representatives of accredited NGOs. Since its establishment, the Fund had benefited from different contributors: SwedBio, France, the Christensen Fund, Switzerland, South Africa, Norway, Australia and New Zealand. Most agreed that the Fund had operated successfully and that the Fund was widely regarded as transparent, independent and efficient. The Chair drew attention to document WIPO/GRTKF/IC/26/INF/4, which provided information on the current state of contributions and applications for support. He noted with great concern that the Fund was out of funds. He again called upon delegations to consult internally and urgently 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. The IGC would later on in the week be invited to elect the members of the Advisory Board. The IGC would, therefore, revert to this question later. The Chair informed the Committee that he had invited Ms. Alexandra Grazioli, Vice-Chair of the Committee, to serve as Chair of 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/26/INF/6.

69. In accordance with the decision of the IGC at its seventh session (WIPO/GRTKF/IC/7/15, paragraph 63), a half-day panel of presentations took place during a suspension of the IGC session on the following topic: "Intellectual Property and Genetic Resources: What is at Stake for Indigenous Peoples?". The Chair acknowledged the presence of the keynote speaker

Professor James Anaya, United Nations Special Rapporteur on the Rights of Indigenous Peoples. He also welcomed the two other panelists: Ms. Hema Broad, Director, Nga Kaiawhina a Wai 262 (NKW262) and Mr. Marcial Arias Garcia, Policy Advisor, *Fundación para la Promoción del Conocimiento Tradicional* (FPCT). He also invited the Chair of the Panel, Ms. Jennifer Tauli Corpuz, representative of *Tebtebba* Foundation, to come to the podium. The presentations were made according to the program (WIPO/GRTKF/IC/26/INF/5 Rev.) and would be available on the TK website as received.

70. The Advisory Board of the WIPO Voluntary Fund met on February 5 and 6, 2014 to select and nominate a number of participants representing indigenous and local communities to receive funding for their participation at the next session of the IGC. The Board's recommendations were reported in document WIPO/GRTKF/IC/26/INF/6 which was issued before the end of the present session.

Decisions on Agenda Item 6:

71. *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.*

72. *The Chair proposed, and the Committee elected by acclamation, the following eight members of the Advisory Board to serve in an individual capacity: Ms. Hema BROAD, representative, Nga Kaiawhina a Wai 262 (NKW262), New Zealand; Mr. Nelson DE LEON KANTULE, representative, Asociación Kunas unidos por Napguana/Association of Kunas for Mother Earth (KUNA), Panama; Ms. Simara HOWELL, First Secretary, Permanent Mission of Jamaica, Geneva; Mr. Nazrul ISLAM, Minister, Permanent Mission of Bangladesh, Geneva; Ms. Edwina LEWIS, Assistant Director, International Policy and Cooperation Section, IP Australia, Canberra, Australia; Mr. Mandixole MATROOS, First Secretary, Permanent Mission of the Republic of South Africa, Geneva; Mr. Arsen BOGATYREV, Attaché, Permanent Mission of the Russian Federation, Geneva; Mrs. Jennifer TAULI CORPUZ, representative, Tebtebba Foundation – Indigenous Peoples' International Centre for Policy Research and Education, Philippines*

73. *The Chair of the Committee nominated Ms. Alexandra Grazioli, Vice-Chair of the Committee, to serve as Chair of the Advisory Board.*

AGENDA ITEM 7: GENETIC RESOURCES

74. The Chair referred to the working methodology, as agreed by the Regional Coordinators, that would be used in dealing with Agenda Item 7 and, in particular, in revising the Annex to document WIPO/GRTKF/IC/26/4 (“Consolidated Document relating to Intellectual Property and Genetic Resources”) (“the Consolidated Document”). This methodology, that would combine the IGC formal plenary and expert group informal meetings, would basically be the same as the one that had been used in past sessions of the IGC. In addition, coordinated informal discussions (or “informal informals”), in which facilitators would meet with delegations in various configurations, would take place around specific issues on which delegations had significant diverging views and perspectives that needed to be resolved and bridged. The Chair referred *inter alia* to the issues of databases and disclosure. The expert group meetings would keep covering all issues in the text and further elaborate the Consolidated Document, taking into account the results of the informal discussions conducted by the facilitators. Each regional group would be represented within the expert group by a maximum of six experts, one of whom could be the Regional Coordinator. The Chair hoped that the Regional Coordinators would be able to remain in the expert group meetings, so as to manage, for example, the shifting and changing of experts depending on the groups' agreement as to who would speak on various issues. The Indigenous Caucus would be invited to nominate two experts to participate in, and contribute to, the expert group meeting as observers with speaking rights, and two additional experts to sit in without speaking rights. The combination of experts could be changed based on the subject matter, as that had been the case for previous IGC sessions. 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. There would not be live drafting in plenary or during the expert group meetings. The Chair informed the plenary that the facilitators for the session would be Mr. Ian Goss from Australia, who would act also as a Friend of the Chair regarding the GRs, TK and TCE cross-cutting negotiation process, Mrs. Chandni Raina from India and Mr. Emmanuel Sackey from ARIPO. After two forthcoming rounds of expert group meetings and informal informals, the facilitators would draft two successive revised versions of the Consolidated Document for consideration by the IGC in plenary under the guidance of the expert group. For the time being, the Chair would open the plenary for a brief review of the Consolidated Document and then suspend the plenary for a first round of discussions in the expert group. The plenary would convene again on a revised text (“Rev. 1”) as elaborated by the facilitators. After a reading by the plenary of Rev.1, Rev. 1 would be submitted to a second round of discussion in the expert group. The final plenary segment under Agenda Item 7 would be about addressing omissions or elements in the revised text (Rev. 2) as submitted by the facilitators, which might not have been properly captured, for transmission of the revised text to the GA. The Chair referred as well to the other documents that had been submitted to the IGC, namely a “Joint Recommendation on Genetic Resources and Associated Traditional Knowledge”, submitted as document WIPO/GRTKF/IC/26/5 by the Delegations of Canada, Japan, Norway, the Republic of Korea and the United States of America, and a “Joint Recommendation on the Use of Databases for the Defensive Protection of Genetic Resources and Traditional Knowledge Associated with Genetic Resources” (document WIPO/GRTKF/IC/26/6), submitted by the Delegations of Canada, Japan, the Republic of Korea and the United States of America. He also referred delegations to the information documents available: the “Report on the Implementation of Cluster C Activities (“Options on Mutually Agreed Terms for Fair and Equitable Benefit-Sharing”)” (document WIPO/GRTKF/IC/26/INF/7), the “Glossary of Key Terms Related to Intellectual Property and Genetic Resources, Traditional

Knowledge and Traditional Cultural Expressions” (document WIPO/GRTKF/IC/26/INF/8) and the “Report of Indigenous Expert Workshop on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions” (document WIPO/GRTKF/IC/26/INF/9). The Chair mentioned as well the “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/26/7), which had been submitted that day by the Delegations of Canada, Japan, Norway, the Republic of Korea, the Russian Federation and the United States of America. This proposal could not appear on the agenda as adopted because of its late submission. The Chair said that the two joint recommendations as well as the proposal for the terms of reference of a study would be opened for comments by proponents and discussion in plenary after the present session had completed its work on the Consolidated Document. The Chair referred to the Informal Issues Paper that he had prepared and circulated in view of the present session. This non-paper served for reflection only and not as a working document. He reminded the IGC about what he considered as the main IP issues related to GRs, noting that some of them had also come up during the Ambassadorial/Senior Capital-Based Officials’ meeting that had taken place at the beginning of the present session. The first issue and possible objective was the prevention of erroneous patents based on GRs and associated TK that did not fulfill the patentability requirements of novelty and inventiveness. He noted that there was a broadly shared view that every effort should be made to prevent the granting of erroneous patents. To the extent that the mechanisms and measures under discussion, including those that had been recommended by some Member States, would be helpful to that end, those mechanisms and measures should be worth consideration. The second issue and possible objective was to regulate the interface between IP and access to, and benefit-sharing in GRs, in order to ensure compliance with international/national laws relating to PIC and ABS through a disclosure of origin mechanism. It should be recalled that in the last session on GRs, namely IGC 23, the text had placed more emphasis on transparency in defining the modalities of a disclosure requirement and addressing the key issues. The Chair noted though, that there was presently no convergence among Member States on this key normative issue and objective, despite a clear, broad and general support for such requirement and objective among some delegations. He invited delegations to reflect on how to resolve differences on those two main objectives and issues and participate in the forthcoming expert group meetings and informal informals in a creative, focused, and solution-oriented way. The Chair opened the floor for comments on the Consolidated Document.

75. The Delegation of Peru noted that the Chair, in his introductory remarks, made reference to documents WIPO/GRTKF/IC/26/5 and WIPO/GRTKF/IC/26/6. It asked the Chair whether those documents would also be part of the discussions within the expert group meetings.

76. The Chair responded that those documents would not be part, directly, of the expert group discussions.

77. [Note from the Secretariat: this part of the session took place after the expert group had met for the first time] The Chair reopened the floor on Agenda Item 7 and asked the facilitators to introduce Rev. 1 of the Consolidated Document (“Rev. 1”) as well as the textual changes that the facilitators therein introduced, so that those changes could be better understood. He anticipated that once that was done, the plenary would be suspended and delegations would withdraw to their various regional groups to reflect on the text. Plenary would be reconvened in order to record focused observations on Rev. 1 from delegates and observers with a view to a second round of discussions within the expert group.

78. Mr. Ian Goss from Australia, speaking as a facilitator on behalf of the facilitators, pointed out that facilitators were neutral and did not represent a national perspective. He emphasized that their duty was to take account of the interests of all Member States, and to try to facilitate and move the text forward. Very frank and open discussions had been held within the expert group and some informal informals had also been held. The facilitators had had fairly limited

time to produce Rev. 1. He apologized if there were any errors or omissions or confusion in the text they had produced. He saw Rev. 1 as a rough draft which would be worked on in the next phase. The facilitators had focused on the core principles and issues. Since they could not address all the interventions of the Indigenous Caucus, the facilitators wished to discuss with the Indigenous Caucus and find a way to best capture their interventions. He explained that the text had changed significantly in certain areas. Regarding the Policy Objective, only one policy objective of a higher nature had been retained relating to the prevention of misappropriation, followed up by the mechanisms to be used within the IP system and within this particular draft instrument to reach that objective. Mr. Goss emphasized that Rev. 1 reflected what the Ambassadorial/Senior Capital-based Officials meeting clearly indicated, namely that misappropriation was the core, high-level policy issue to be dealt with. Article 1 and Article 2 had been significantly revised, to reflect accurately in the text that the instrument was not about conferring rights. Much time was spent, including in an informal informal, on disclosure requirements. Efforts were made to move towards a more common ground on them. The facilitators considered that this had been achieved in some areas, while not in other areas. There were still divergences among the Member States regarding what a disclosure regime would encompass, but there had been a much tighter reflection among the demanders on what would be required in terms of trigger, contents, obligations of the IP/patents offices, and deadlines. Sanctions and remedies had also been discussed, particularly around how to address key concerns of the industry in relation to ensuring legal certainty within the IP system, and the potential implications that revocation could have on enabling beneficiaries of benefit-sharing mechanisms to benefit from innovation in the IP system. By splitting the issue of sanctions and remedies between the pre-grant and post-grant phases, it had been possible to start teasing out more effectively what sanctions would there be and how they would work within the operational environment. The issue of sanctions and remedies was a work in progress. Exclusions had been discussed briefly but predominantly positions had not changed, as there was no agreement on whether exclusions should be included or not in the draft instrument. The reference to the Nagoya Protocol in paragraph 3.6(f) of the Consolidated Document had been removed, but this removal was open for discussion. The rationale for such removal was that the CBD conferred the rights, while the Nagoya Protocol was about following up on ABS mechanisms. Paragraph 3.7 remained unchanged. The section previously called "Option 2 No disclosure requirement" in the Consolidated Document had been renamed "No new disclosure requirement", to better reflect the language of the proponents. The proposed content of that part had also changed significantly. Defensive measures had also been briefly discussed and additional information, taken predominantly from the Joint Recommendations submitted by a number of countries (WIPO/GRTKF/IC/26/5 and WIPO/GRTKF/IC/26/6), had been included in Rev. 1, at the request of some delegations. More work needed to be conducted on that issue, since the expert group did not have the opportunity to go into detail. Articles 6 to 9 had not been discussed in any detail. Mr. Goss emphasized that, amongst the proponents of disclosure requirements, it had been recognized that flexibility was needed in implementing disclosure requirements and ABS mechanisms at a national level. Accordingly, facilitators had tried to accommodate such flexibility in Rev.1.

79. The Chair opened the floor for procedural observations on Rev. 1.

80. The Delegation of Peru commended Rev.1 as an additional step forward in the right direction. It took note of the proposed removal of the former Article 2 entitled "Beneficiaries", in the Consolidated Document. It reserved the right though, depending on developments in Rev.2 of the Consolidated Document, to request the Committee to reintroduce it.

81. The Delegation of the Plurinational State of Bolivia noted that the paragraphs 3.8 to 3.12 of the Consolidated Document on "Actions of the Office" had been deleted. It asked for its reinsertion, since its deletion had not been discussed. It emphasized that it was important to discuss paragraphs 3.8 to 3.12, and not only paragraph 3.11.

82. The Chair thanked the Delegations of Peru and the Plurinational State of Bolivia for pointing out on some work that the expert group and the facilitators needed do to regarding those removals. He asked participants to consult on Rev. 1 and come back in plenary on focused observations on this text. He then suspended the plenary.

83. The Chair reopened the plenary and opened the floor for focused observations on Rev. 1.

84. The Delegation of the EU, speaking on behalf of the EU and its Member States, had some concerns regarding Rev. 1. Its intervention was limited to a few key areas. The Delegation reserved the right to comment further on the drafting text in its entirety at a later stage. With regard to the Policy Objective, it had some continuing reservations regarding the term "misappropriation" as that term did not have a clear definition in the list of terms and the function of the operative parts of the text were not yet clear in this regard. Notwithstanding this, the Delegation suggested that a clear chapeau for the Policy Objective would read "prevent the misappropriation of genetic resources by". In that way, it would not read as if preventing misappropriation was an aim of the patent system. It requested that the term "associated traditional knowledge" be bracketed and replaced with "traditional knowledge associated with genetic resources" wherever it occurred in the text, pending a full discussion on TK and GRs. Further, the Delegation requested that the term "IP" be replaced by "patent" as it believed that any disclosure requirement should relate to patent applications. Regarding the use of the term "ensuring" in paragraph (c) of the Policy Objective, it suggested that a better word would be "facilitating" as it was not clear how complementarity could be ensured through this instrument. With regard to Article 1, it welcomed the improved clarity in the subject matter, but pointed out again that it would only support disclosure as it applied to patent applications. Additionally, it pointed out that Article 1.1 should refer to "claimed invention directly based on GRs" instead of "patent application". The Delegation was not clear about the operative benefit of Article 2 or about what it added to the Policy Objective. There seemed to be some duplication. With regard to the chapeau of Article 3.1 and in Article 3.1(a), it was the "claimed invention" which should be based on GRs and not the claims *per se* or the claimed GRs. Further, in respect of Article 3.1(a) it preferred the wording "country of origin or, if unknown, source". The Delegation found Article 3.1(b) unclear as it was not apparent whether national laws should refer to those of the country of origin or the country in which the patent was filed. Furthermore, the language in this option seemed to build in aspects of the ABS system to the requirement. It could not understand the general aim of Article 3.1(b) and wished to bracket it until clear language could be found. With regard to Article 3.3 it was a little unclear of the practicality of the provision and believed that having patent offices notified of the clearinghouse mechanism of the CBD might be a better system. With regard to the chapeau of Article 3.4, the Delegation did not believe it should be incumbent upon countries to provide dispute resolution mechanisms, especially when the nature of the disputes to resolve was not clear. It requested that this reference be removed. With regard to Article 3.4(a)(i) and Article 3.4(a)(ii), it suggested that there might be some overlap. With regard to Article 3.4(a)(iii), further work on the language was required to make it clear that any withdrawal had to be in accordance with the relevant national law. With regard to Article 3.4(b)(i) it considered that these sanctions lied outside patent law and covered areas in which WIPO might not have competence. It therefore requested that these terms be bracketed. With regard to Article 3.4(b)(ii) and Article 3.5, it believed that this instrument should have a firm ceiling. Revocation of a patent was an extremely strong penalty and one which not only undermined legal certainty but ran counter to the policy objective of this instrument, which in its view had to be to enhance transparency in the patent system to facilitate the ABS regime. Clearly if a patent was revoked, the invention contained therein entered the public domain and the opportunity to sharing benefits was reduced. Additionally, if there was an obligation on the patent office to verify disclosure, the Delegation was unclear how a patent office might be expected to detect fraud. In this view, it requested that Article 3.4(b)(ii) be dropped and that the reference to fraud in Article 3.5 be excised. Consequently the words "including revocation" should be removed from Article 3.4(b)(iii). The Delegation was supportive of the exclusions contained in Article 3.6. However, it recalled that a full discussion of these had not taken place

for some time. It indicated that it had not yet had time to fully study the language on defensive measures contained in the text but looked forward to exploring it bilaterally with the proponents.

85. The Delegation of Switzerland only wished to make a few general comments with regard to this document. The Delegation considered that the instrument under negotiation could and should have several objectives on an equal footing. It thus did not support the newly introduced focus of the objectives on the prevention of misappropriation, not because it deemed misappropriation to be something negligible but because it thought that there were several objectives deserving to be on the same level. Moreover, the concept of misappropriation remained very vague and it was not possible to clarify it in negotiations on the Nagoya Protocol. This comment not only applied to the objectives but also to Article 2 on the scope of the instrument. Furthermore, by introducing a disclosure requirement the intention was to increase transparency, primarily in the ABS system and only secondarily in the patent system. The Delegation therefore did not support the current focus of letter (b) of the Policy Objective. Moreover it noted that there were a number of terms in Rev. 1 which were not contained in the existing international instruments on GRs and TK. With regard to the disclosure requirement, it questioned whether the focus of Article 3.1 on the claims adequately covered all situations the disclosure requirement was intended to apply to. What about inventions based on the GRs and TK which did not refer to GRs and TK in the claims? Were these meant to be excluded from the disclosure requirement? The Delegation welcomed the distinction between pre-grant and post-grant sanctions. As it had stated at the Ambassadorial/Senior Capital Based Official meeting, the instruments that were being negotiated ought to set, among others, maximum standards and provide for legal certainty for all stakeholders concerned. The Delegation thus questioned the use of the word "may" in the chapeau of Article 3.4 on sanctions and remedies. The Delegation would provide additional comments in the subsequent expert group.

86. The Delegation of Uruguay, speaking on behalf of GRULAC said that Rev. 1 was a clear and more flexible text. The Delegation pointed out that the part on databases was a new proposal and it was looking at it closely. It would come back on that part once it had received clarifications from the proponents in the expert group.

87. The Delegation of El Salvador supported the statement made by the Delegation of Uruguay, speaking on behalf of GRULAC. The Delegation was very pleased to see the new wording of Rev. 1 and, in particular, that the article on "Beneficiaries" was not part of Rev.1 anymore.

88. The Chair indicated that focused discussions would take place in the expert group on points where delegations felt there was a lack of clarity, such as, for example, the exact meaning of misappropriation. In that view, he urged delegations not to take positions based on lack of clarity.

89. The Delegation of France wished to take into consideration the concerns of indigenous populations but added that its country had to do so in compliance with the principles of equality and indivisibility of the French Republic which came out of the French Revolution. The French Constitution did only recognize one people, the French people, without any distinction between origin or race, and could therefore not recognize any group or community based on ethnic, cultural or linguistic criteria. The Delegation recalled that it had already referred to this specificity in the past and that it was trying to get over this difficulty. But for the time being, it felt still obliged to request that the word "peoples" in the sentence "encourage respect for indigenous peoples and local communities" in the preamble, be put between square brackets. The Delegation drew the attention of the Committee to the fact that the wording "indigenous and local communities" was the one that was used in such relevant international instruments like the CBD and the Nagoya Protocol. It said that by removing the term "peoples" from the IGC drafting texts, those would align with those international instruments.

90. The Chair suggested, as this was a recurring concern of the Delegation of France, that the “s” in the word “peoples” be bracketed and put this proposal forward for consideration by the Delegation of France and the Indigenous Caucus. A creative solution had to be found since the concern of the Delegation of France was not based on a lack of inclination to address the specific concern of peoples and communities, but to find a way to assure compatibility of the terms used in the instruments with the French constitution. The process was at a stage where this definitional challenge had to be confronted and he asked the Delegation of France, the representatives of the Indigenous Caucus and any delegation that wished to join that discussion to begin an informal conversation on this issue.

91. The representative of Tupaj Amaru expressed his surprise at hearing the statement made by the Delegation of France, whose objective, he claimed, was to raise an obstacle in the negotiations leading to the adoption of an international instrument protecting GRs. He said that it was not the objective of the IGC to try and find a definition of indigenous peoples and argued that nobody had tried to define what the French people was, as it was sovereign in defining itself. He added that the objective of the IGC was to establish an international instrument that was not dependent on the French constitution but valid for everyone. He asked the Delegation of France to refrain from constantly referring to its difficulty with indigenous peoples. That was a problem that had been resolved twenty years before in the United Nations. He added that private, closed-door meetings of government experts were taking place year after year without achieving results or tangible progress. He argued that those meetings undermined the credibility and the transparency of the debates and were prejudicial to the authority of the IGC. He said that there was a conflict between the states and indigenous peoples that needed to be resolved. Member States were under the pressure of lobbies of pharmaceutical and agricultural companies that were divvying up the GRs and TK and taking away the secrets from indigenous peoples. In his view, Member States were having sterile debates on general considerations which were lengthening the IGC process, whose mandate was to lead to a binding instrument on GRs, TK and TCEs. He argued that the IGC had become a political and diplomatic quagmire that was blocked because of the absence of political will on the part of Member States. Given those attempts to dilute the debate and to draw out the discussions indefinitely, the process was weakened. He said he had come to the IGC every year with concrete, substantive proposals that had time and again been put aside because of the economic, military, and western powers using GRs. He observed that it was normal that new standards were being drawn up, constantly changing over time and space.

92. The Delegation of the United States of America proposed some definitions to help clarify the subject matter within the drafting text. “Member State” should mean a “Member State of the World Intellectual Property Organization.” “Patent Office” should mean “the authority of a Member State entrusted with the granting of patents.” “Misappropriation” should mean “the use of genetic resources and/or traditional knowledge associated with genetic resources of another where the genetic resource/ associated traditional knowledge has been acquired by the user from the genetic resource/ associated traditional knowledge holder through improper means or a breach of confidence and which results in a violation of national law in the provider country.” The Delegation added that the use of GRs and associated TK that had been acquired by lawful means such as reading publications, purchase, independent discovery, reverse engineering and inadvertent disclosure resulting from the GRs and associated TK holder’s failure to take reasonable protective measures was not misappropriation. In the first paragraph of the Preamble, the Delegation wished to change the word “ensure” for “encourage” because “ensure” was a stronger formulation than what the instrument could support. It wished to bracket the last two paragraphs of the Preamble until there would be time to further consider them. Under the Policy Objective, in the chapeau, it suggested replacing “through the intellectual property system” with “in the context of the patent system.” In paragraph (a), it suggested replacing “ensuring that intellectual property offices have” with “providing patent offices.” It wished to bracket paragraph (b) because it was not clear that the instrument would provide transparency at that stage. In paragraph (c), it wished to change “ensuring” to

“promoting” and to add “and those related to intellectual property” at the end of the paragraph. It said that it had other suggestions to make, which could be made later.

93. The Chair thanked the Delegation of the United States of America for beginning the process on key definitional issues. The Chair noted that the definitions needed to be cleaned up. He expected it would be a robust discussion, which would take place in the expert group.

94. The Delegation of Canada wished to add in the Preamble, in the penultimate paragraph, starting with “Recognize that those accessing,” the phrase “where required” after “should” and before “comply,” such that the part in question would read “should, where required, comply with the national law of that Member State”; further, it wished to bracket that paragraph. Still in the Preamble, it noted that the last paragraph was in fact operative, considering that it was drafted so as to create an obligation, and as such, it had to be moved to, and discussed as part of the operative provisions; further, it wished to bracket that paragraph, in line with its well-known position. In any event, strictly for the organization of negotiations, mandatory disclosure was already covered in other, existing paragraphs of the Preamble without the need to add the last paragraph. Regarding the Policy Objective, it wished to start that section with the phrase “The objective of this instrument is to” followed by a colon; that could entail consequential minor changes to the verb tenses. Then, in the chapeau, it wanted to add the word “protected” before “genetic resources”; it could also consider the suggestion made by the Delegation of the EU on behalf of the EU and its Member States in that respect. In paragraph (a), it wished to replace “intellectual property rights” with “patent,” such that the relevant part would read “through the patent system” as matters related to patents had to be the focus of the IGC’s work; that latter change would apply to all references to “the intellectual property system,” although references to “intellectual property offices” were acceptable. Further, it reserved its position on the chapeau, as its ultimate position depended entirely on the ultimate definition of “misappropriation” and for the same reason it reserved its position on all instances of the term “misappropriation.” It noted that paragraph (b) in the Policy Objective was language that had been previously bracketed in the Annex of document WIPO/GRTKF/IC/26/4; it wished to retain those brackets. In paragraph (c) it wished to replace “ensuring” with “promoting.” Moving to defensive protection, the Delegation welcomed the introduction of language from the two proposals for Joint Recommendations that it had supported (documents WIPO/GRTKF/IC/26/5 and WIPO/GRTKF/IC/26/6). While it welcomed the interest that certain Member States had shown towards defensive measures as complements to mandatory disclosure, it believed that defensive measures were independent, stand-alone and practical alternatives to mandatory disclosure, and not merely complementary to it. Defensive protection would provide in and of itself effective protection in the IP context. The Delegation also wished to insert the term “traditional knowledge associated with genetic resources” as an alternative to “associated traditional knowledge” throughout the text. So as to ensure consistency with the negotiating texts on TK and TCEs, it requested that every instance of “should” or “shall” be replaced with “should/shall,” so as not to prejudge the outcome. It also supported some of the suggestions made by other delegations, which it did not wish to repeat. It looked forward to continuing the discussions based on the clearer delineation of issues that Rev.1 provided, and reserved the right to make further comments at a later time.

95. The Chair flagged the issue of “intellectual property office” versus “patent office” and encouraged a discussion to resolve that. The question as to whether there was any harm in referencing IP offices would not be addressed by the specificity of the provisions. He urged the IGC to focus instead on core elements.

96. The Delegation of the Plurinational State of Bolivia recognized the work done to date, which was a step in the right direction. However, like any work in progress, it required some polishing. Firstly, it wanted to have the sections under “Actions of the Office” included again (especially Articles 3.11 and 3.12 of the Consolidated Document). Secondly, there were various articles that required more work in the expert group, in particular the ones on exclusions and defensive measures, as well as a number of issues related to indigenous peoples.

97. The Delegation of South Africa, speaking on behalf of the African Group, said that Rev. 1 was a good basis for continued negotiations. It also welcomed the approach to focus on high-level principles as a guide in the discussions. In regard to the Policy Objective, the Delegation welcomed the definition of “misappropriation,” as that was consistent with the discussions on the importance of the issue. Further discussions on definitions were welcome, as there were elements that required more reflection in the expert group. It also welcomed the simplicity in which the articles were written and especially on subject matter, scope and disclosure, save some further fine-tuning by the expert group. The sections on exclusions required further attention. The section on the relationship with the Patent Cooperation Treaty (PCT) and Patent Law Treaty (PLT) were not in the right place and had to be deleted. On defensive measures, the Delegation welcomed the output and looked forward to a discussion thereon. It noted however that the title had been extended to include voluntary codes of conduct, and it wished to go back to the original title of the Consolidated Document. The defensive measures were acceptable because they reflected common sense, as long as they were in line with dealing with the overall problem of misappropriation and some form of disclosure requirement. It also welcomed the new section on due diligence, which should apply across the entire document because due diligence was required not only in databases but also in patent/IP offices. On databases, it took note of the indigenous peoples’ concerns raised in the discussions, which deserved attention. The expert group had to give more attention to a portal with “one-stop one-touch” access, especially on issues of confidentiality, placement of a burden on states and clarity on the operations. That particular section on databases also had to be subject to the high-level principles. But the Delegation noted that it did contain high-level principles as well as a lot of implementation and administrative issues that needed to be attended to at an appropriate level, but probably not in the drafting text.

98. The Delegation of Norway was of the view that Rev. 1 represented a substantial improvement and made the document much easier to grasp. It did not see though the merits of Article 1 on subject matter and Article 2 on scope and requested them to be deleted as they had no operational function in its view. It noted that the subject matter was dealt with in the provisions on disclosure and defensive measures, while Article 2 contained language that was more suitable for a preamble. The Delegation expressed support for a mandatory disclosure requirement. It said that its position on that issue, which was quite flexible with regard to the content of such a requirement, was covered by Article 3 as drafted. It wished though to comment only on sanctions and remedies as it found them the most crucial issues. With respect to the pre-grant phase, it supported all the sanctions and remedies listed under Article 3.4(a). Regarding the post-grant phase, it opposed all the sanctions and remedies listed in Article 3.4(b) and expressed support for the option contained in Article 3.5. The Delegation emphasized that failure to fulfill the disclosure requirement should not affect the validity or enforceability of granted patents. In other words, it had a strong preference for an instrument that would disallow states to impose invalidation and unenforceability, as a sanction against non-compliance with the disclosure requirement. However, in case of forged or fraudulent information, states should be able to impose sanctions outside of the patent system, for instance sanctions according to criminal legislation for false testimony. The crucial point here would be to sanction a violation against ABS laws as such, not a breach against the disclosure requirement within the patent system *per se*. Regardless of the fact that a violation of ABS law would be revealed in the post-grant or pre-grant phase of a patent, compensation for the non-compliance with benefit sharing obligations would be imposed according to ABS laws. In addition to a disclosure requirement, the Delegation supported the introduction of defensive measures, as drafted Article 5.1, which stemmed from the Joint Recommendation submitted in document WIPO/GRTKF/IC/26/5 that was co-sponsored by the Delegation. It supported as well the idea of establishing a database that would be accessible through a WIPO portal site as provided for in Article 5.8. Regarding databases containing traditional knowledge, the Delegation though noted that there was a need to accommodate the concerns that had been raised by the indigenous representatives.

99. The Chair referred to the principle of proportionality in defining sanctions for non-compliance with disclosure and ABS requirements in relation to the patent system. On the one hand, the revocation of a patent would put the invention into the public domain and prevent that any benefit arising from a genuine invention be shared with the legitimate holders of GRs. The Chair noted that revocation remained a sensitive issue. On the other hand, the patent system and patent owners should not be above a constitutional obligation to respect certain principles. A proportionate deterrent may, therefore, be needed to prevent fraud and misappropriation.

100. The representative of CAPAJ pointed out that the virtue of Rev. 1 was that concepts were being clarified. It was his understanding that there was an attempt to include adequately the wisdom of indigenous peoples as regards GRs in the patent system. If one wished indigenous peoples to make a contribution to the patent system, it had to be under the concept of the FPIC principle. He proposed to add one subparagraph to paragraph 3.1: "(d) obtain the free prior and informed consent of the indigenous peoples that hold the required knowledge".

101. The Chair asked whether any delegation supported the proposal made by the representative of CAPAJ. He noted that there was none and encouraged the representative of CAPAJ to have further conversations with the representatives from the Indigenous Caucus within the expert group and delegations on how exactly that principle could be reflected.

102. The Delegation of Indonesia, speaking on behalf of the LMCs, welcomed Rev. 1 which, in its view, had emerged from convergent views and shared understandings achieved during the informal consultations. The Delegation believed that Rev. 1 could serve as a workable document for the Committee's future negotiation. It therefore proposed that in order to move forward, time should be devoted to discussing the provisions over which concerns remained. With respect to the issue of a disclosure requirement, it welcomed the salient understanding reached during the informal consultation. It, however, noted that further work was required to make the provision ripe for future work. On sanctions and remedies, the Delegation expressed its willingness to engage in further discussion on the issues, particularly with respect to the division of measures into pre-grant and post-grant phases. The Delegation maintained that, as far as exclusions were concerned, further reflection and cautious consideration were still required. The Delegation needed more time to study the provisions regarding a database and reflect on how it would work as a practical tool to prevent the misappropriation of GRs.

103. The Delegation of the Islamic Republic of Iran believed that Rev. 1 was a step forward and that it presented a higher level of clarity and coherence between different components of the document. It was of the view that the instrument should extend to all GRs, including their parts and components, their derivatives and their associated TK. In this regard, the Delegation noted that the measures provided for defensive protection, specifically database search systems, held some merit. However, the measures should be merged with the disclosure requirements, since both should serve as a platform for preventing misappropriation and the grant of any erroneous IPRs. It requested that both parts be seen as one package to prevent misappropriation and prevent the erroneous grant of IPRs. In this line, it was concerned that the prevention of the erroneous grant of patents within the text was contained only under the part relating to defensive measures, and not under the part relating to disclosure requirements. The Delegation believed that this conveyed the unfortunate impression that the prevention of the erroneous grant of patents could be interpreted as an alternative to a disclosure requirement or a stand-alone element. As a general observation, the Delegation noted that, although the formulation of sanctions and remedies section had improved in Rev. 1, paragraph 3.5 of Rev. 1 had become redundant with paragraph 3.4(b)(ii). It also believed that there were discrepancies between some of the provisions and ideas under the part relating to exclusions and those relating to defensive protection and the use of databases. Specifically, it noted that Article 3.6(d) was difficult to comprehend within the context of the defensive measures which provided for the use of a database system in granting patents. It further noted that the TK which was being placed within the databases could be placed thereby in the public domain and, thus, excluded from the coverage of the instrument. The Delegation expressed concerns over

paragraphs 3.6(e) and 3.6(f) and noted that further discussion on these paragraphs was required.

104. The Delegation of India was of the view that Rev. 1 was an improvement compared to the Consolidated Document. It believed that the issue of revocation was extremely important as patent rights were not inviolable. It observed that, within the jurisdictions of Member States who had opposed revocation, there were occasions in which patents had been revoked because they violated the public interest. It was surprised that attempts were being made to circumscribe further the public interest by eliminating references to revocation when it concerned violations relating to the use of GRs and associated TK. The Delegation aligned itself with the views expressed by the Delegation of South Africa, on behalf of the African Group, concerning due diligence in using databases. It noted that further time was needed to reflect on the specificities of the database proposals, like confidentiality.

105. The Delegation of Japan aligned itself with the interventions made by the Delegations of the United States of America and Canada with respect to the Policy Objective. It sought clarification from the facilitators as to why changes had been made to the Preamble as it believed that the expert group had not yet discussed it. The Delegation specifically sought clarification regarding the rationale of the two last paragraphs as they were new text, especially the second to the last paragraph, and requested that they be bracketed.

106. The Chair clarified that the Preamble had not been discussed in detail and would require further discussion.

107. The representative of INBRAPI, speaking on behalf of the Indigenous Caucus, noted that the Preamble made reference to the rights of indigenous peoples on TK and GRs and believed that this reference should also be contained within the Policy Objective. She therefore suggested the insertion of the following sub-paragraph within the Policy Objective: “recognizing the rights of Indigenous Peoples and local communities over TK and GRs in compliance with relevant international instruments”. With respect to the disclosure requirements, the representative aligned herself with the intervention of the representative of CAPAJ. She was concerned by the lack of any reference to the FPIC of indigenous peoples. She proposed the insertion of such a reference as it constituted an efficient and effective tool for the prevention of the misappropriation of TK and GRs. She further proposed the re-inclusion, under the disclosure requirements, of paragraph 3.7(j) of the Consolidated Document, as she noted that this paragraph made reference to information on TK and GRs held by indigenous peoples. Finally, she expressed support for the intervention made by the Delegation of the Plurinational State of Bolivia with respect to the prohibition of IPRs over forms of life, including human beings. In response to the intervention made by the Delegation of France, she noted that while the Indigenous Caucus respected the national legislation of France, indigenous peoples existed and had rights, resources and their own legal systems which they had developed long before the French revolution or the existence of the French State. She called upon the Delegation of France to acknowledge that indigenous peoples had their own organizations and their own ways of organizing themselves, their ways of considering themselves as legal subjects, as well as ways of engaging in the international system. She thanked the Delegation of South Africa, speaking on behalf of the African Group, the Delegation of Norway as well as other delegations that had taken into account the concerns of indigenous peoples with respect to databases and safeguards.

108. The Delegation of China welcomed the fact that Rev. 1 was simpler and clearer, which it found to be a very good basis for further discussion. There were a few issues it found crucial. It supported, in principle, the article regarding a disclosure requirement, but did not understand why there were exclusions, although it did understand that some GRs did not need PIC. If they were to be excluded completely, maybe the relevant office would not be able to decide whether the lack of disclosure was on purpose or not. With regard to defensive protection, the Delegation noted that the term “database” was used many times in the relevant part of the text,

and wondered whether it referred to one type of database or different types of databases. For example, in Article 5.1(d), the utilization of the database was encouraged. However in Article 5.6 the use of databases was limited to the patent offices. The Delegation wondered what the relation between to two articles was. Lastly, it attached great importance to the confidentiality of the database and requested that rules to prevent misuse of the information in the database be put in place before establishing such databases.

109. The Delegation of Nigeria aligned itself with the statement made by the Delegation of South Africa, speaking on behalf of the African Group, and agreed that Rev. 1 was an important and material step forward. The Delegation commented, first, that the process should be aimed at establishing a mandatory general rule regarding disclosure, while giving patent offices and IP offices significant policy space in line with the public interest. The Delegation supported the statement made by the Delegation of China regarding exclusions. With regard to sanctions and remedies, it recognized that a delicate balance should be ensured between the desire to provide incentives to innovate, how the public interest is promoted and the way in which sanctions are calibrated to accomplish those goals. It said that fraud was clearly an area on which all patent offices in the world should converge. That said, regarding the question of the possibility of stripping patents of enforceability or even invalidating patents, it strongly emphasized that there were levels of culpability that may not technically rise to fraud and called for further discussion concerning willful failure to disclose, negligent or reckless failure to disclose and repeated failure to disclose by a patent applicant. The Delegation agreed with the statement made by the Delegation of South Africa, speaking on behalf of the African Group, that paragraph 3.7, regarding the relationship with the PCT and PLT, was unnecessary. It wondered whether it was actually outside the scope of the jurisdiction of the IGC. Regarding due diligence in implementing defensive measures, the Delegation identified with the concerns that had been raised by many other delegations and noted the importance of the principle of due diligence as something that should be constructively considered and should permeate the entire document, if a productive outcome of the instrument was to be reached. The Delegation noted that the aspects of the defensive measures that had been introduced, notably the database search systems and the portal site, had to be bracketed. Finally, it pointed out an incomplete sentence in Article 5.8(a).

110. The representative of HEP asked for a definition of the time limit that was requested from certain applicants in Article 3.4(a)(iv).

111. The Delegation of Ghana expressed concern about the changes that had been made to Article 4.1. It noted that the previous draft made references to novelty, whereas in the revised text the focus was on best practice. That focus diverted significantly from the scope of the instrument, which targeted misappropriation. The Delegation was more concerned about preventing misappropriation than about enabling people to practice the art. The Delegation proposed that the reference to novelty be brought back and also that the reference to the best mode of practicing the invention should be deleted because it was irrelevant. Furthermore, it proposed the following language: "IP applicants should only be required to state where the genetic resource can be obtained, where that location is relevant to novelty".

112. The Chair suggested that the Delegation of Ghana engage in an informal exchange with the Delegation of the United States of America.

113. [Note from the Secretariat: this part of the session took place after the expert group had met for the second time] The Chair reopened the floor on Agenda Item 7 and referred to Rev. 2 of the Consolidated Document ("Rev. 2") that had been circulated among participants. He recalled the work that had been carried through on the Consolidated Document. In the first place, an initial discussion had taken place in plenary followed by the informal expert group discussions. A series of open-ended informal informals had been led by the facilitators in parallel. The facilitators thereafter produced Rev. 1. A plenary had been held on to review document Rev. 1. The expert group had resumed work immediately with a view to developing

Rev 1. The facilitators had conducted again open-ended informal informals which had been subjected to further deliberations in the informal expert group. Based on those discussions, the facilitators had produced Rev. 2 of the Consolidated Document. The Chair reminded delegations that the use of open-ended informal informals had been greatly relied on during the present session to good effect. Though he had not attended any of these informal informals, he had received consistent feedback that the atmosphere and exchanges had been extremely positive and helpful in fashioning compromises on difficult areas of the discussions. He recalled that as per the methodology and work program that had been agreed on, the plenary would be able to point out and correct any obvious errors and omissions in Rev. 2. The reference to those obvious errors and omissions, as well as any other comment, including drafting improvements and other textual proposals, would be included in the report of the present session as usual. At the end of the present discussion, Rev. 2, as corrected in accordance with those obvious errors and omissions, would be noted and transmitted to the GA taking place in September 2014, subject to any agreed adjustments or modifications on cross-cutting issues at the 28th session of the Committee taking place in July 2014. The Chair emphasized that the text would not be adopted at that stage but simply noted and transmitted. He invited the facilitators to introduce Rev. 2.

114. Mr. Ian Goss, speaking on behalf of the facilitators, introduced Rev. 2. He thanked all members for their support in carrying out a difficult task. He pointed that this had been the most cooperative and positive meeting over the past twelve months. It had been conducted in very good spirits with much sharing of knowledge and ideas. He thanked his fellow facilitators for the work that had been done collectively. He indicated that the text had been refined and that the key positions were now clear. Work had moved forward in relation to the two core elements, disclosure and defensive measures, and greater clarity had been brought to the objectives and scope around negotiations, while he accepted that there was no full consensus. The duty of the facilitators was to make their best in order to represent the views of all members, and he hoped that they had achieved that. He indicated that in some areas, such as brackets, they might not have captured every delegation's views. Mr. Goss then presented the key changes from Rev. 1. Two new definitions had been added to the List of Terms, those of "Member State" and "Patent Office". In addition, a new alternative definition of the term "Misappropriation" had been included. Some minor edits had been made in the Preamble. He noted as well that the whole Preamble had been bracketed. Under the "Policy Objective[s]" part, the facilitators had attempted to address concerns regarding hierarchy and bracketed areas. The part related to "Subject Matter of Instrument" included additional text tabled by a Member State at the end, which was bracketed. With respect to the "Scope of instrument", additional text relating to the prevention of the granting of erroneous patents had been added. More work however needed to be done to ensure that the two key concepts within the scope were accurately captured. Minor edits had been done on paragraph 3.1. In paragraph 3.2, text in relation to guidance to IP applicants had been added. In paragraph 3.3, text from the original Consolidated Document had been introduced relating to notification procedures. The old paragraph 3.11 had been reintroduced and placed in its original place following the request of the Delegation of the Plurinational State of Bolivia. Paragraph 3.12 of the original Consolidated Document was now included in the new paragraph 3.3. With respect to the "Exceptions and Limitations", the word "Limitations" had been included in the title and a paragraph 4.2 had been added. In relation to "Sanctions and Remedies", there had been some minor changes and some consolidation of words, but the central issue around revocation in the Post-Grant phase, was still unresolved. With respect to "Defensive Measures", Mr. Goss pointed out that the paragraphs had not been preceded by a title including the term "Article" in line with the view of the original proponents of such part. However, the bracketed terms "Article" could be introduced at a later stage in those titles. The section on "Due Diligence" had remained unchanged from Rev. 1. It had been placed in a different location though, in order to make it more stand-alone. The text had been significantly reduced in the section on "Prevention of the Erroneous Grant of Patents and Voluntary Codes of Conduct", with the assistance of the proponents. He noted that there could be some questions on sub-paragraph (d) and a view that there was duplication with paragraph 9.2. However he had felt from the proponents that they had wanted to capture that

and in particular to maintain the linkages with the two Joint Recommendations (WIPO/GRTKF/IC/25/5 and WIPO/GRTKF/IC/25/6). The facilitators had attempted to review Article 10 based on interventions at the experts group and focused on the principles in this area. Mr. Goss noted that paragraph 10.2 should be bracketed. Lastly, he noted that some minor modifications had been made to Article 12. He asked Member States to indicate if any brackets were missing or misplaced. He noted that in the List of Terms, the word “first” was missing before the words “country which” and that the omission would be edited. Further, Article 5 on the “Relationship with the PCT and PLT” would be bracketed in its entirety, as would paragraph 4.1(e). Mr. Goss reminded that the facilitators had tried, as far as possible, to ensure that there was consistency in language throughout the document in relation to references to “intellectual property” and “patents”, “associated traditional knowledge” and “traditional knowledge associated with genetic resources” and “shall” and “should”. The issue around the word “peoples” had been addressed by putting a bracket around the “s”.

115. The Chair opened the floor for comments regarding errors and omissions in Rev. 2.

116. The Delegation of Ghana referred to “Misappropriation” as mentioned in the List of Terms of Rev. 2. It noted that the core of the contention regarding the definition related to using a definition based either on acquisition or on utilization. The Delegation believed that the definition could accommodate both within the same definition. Regarding the alternate definition of “Misappropriation”, it said the definition of what did not constitute misappropriation according to the proponents of such definition contained examples of acquisition of GRs and associated TK that were not lawful in terms of civil and common law.

117. The Chair regretted that the substantive content of Rev. 2 could not be submitted to a third revision by the expert group and be discussed further in the limited time left in the present IGC session. At this particular juncture, he requested delegations to focus on errors and omissions in editing Rev. 2 and leave comments on substance for a later session.

118. The Delegation of Ghana referred to paragraph 4.1 (e) and argued that it should be deleted for reasons related to basic principles of international law. The Delegation recognized as self-evident that the parties to the forthcoming instrument would not have a right to regulate GRs beyond their own national jurisdictions based on this instrument.

119. The Chair confirmed that the paragraph would be bracketed.

120. The Delegation of Ghana, in relation to paragraph 4.1(f), emphasized that GRs acquired before the entry into force of the CBD should be submitted to a disclosure requirement whenever the related patent application was submitted after the entry into force of the said Convention.

121. The Delegation of Switzerland referred to paragraph 3.1(a) in Rev. 2 and asked that brackets be added around the words “country of origin and” as in Rev. 1 in order to maintain the self-standing nature of the concept of “source”, as requested by the Delegation. In paragraph 4.1(a), it wished to reintroduce the wording as contained in Rev. 1, namely “human genetic resources,” as it considered this to be different to the present wording of Rev. 2. The Delegation did not recall any discussions in this regard in the expert group. In the chapeau of paragraph 6.1, it requested that the final three words, namely “include, inter alia:” be bracketed and that the alternative wording “consist of” be added. This would reflect the comments the Delegation made in plenary on Rev. 1 with regard to the maximum standards that should be set in this context. As already stated in the expert group, the mutually supportive relationship in paragraph 10.1 should be between the instrument that was being negotiated and other relevant international instruments. It wished that brackets be added at the end of the first line of paragraph 10.1 after the word “relationship” which would go until “genetic resources and” in the last line. Before the word “relevant”, the Delegation asked that the word “with” be added. Article 10.1 would thus read “This instrument shall/should establish a mutually supportive

relationship with relevant existing international agreements and treaties”. The Delegation referred to the statement made by Mr. Goss, on behalf of the facilitators, who informed the IGC that, regarding the List of Terms, the word “first” would be introduced in the definition of the “Country of Origin” before the words “country which”. The Delegation commented that this definition would not be in line with the relevant definition as provided for by the CBD. For this reason, the Delegation would not support this addition of the word “first”.

122. The representative of Tulalip Tribes, speaking on behalf of the Indigenous Caucus, said that there was consensus that the creation of databases and the proposed WIPO Web Portal required safeguards, as reflected in Rev.2. He also agreed that issues related to the construction, type of content and operation of such databases would require further elaboration at a later stage, potentially after the adoption of an instrument. He added that there was also an agreement that some baseline principles for the elaboration of safeguards would be needed. Baseline safeguards must include recognition of the right of indigenous peoples and local communities to require their FPIC for the inclusion of information on their GRs and associated TK in such databases, and their right to have a continuing association and participation in decision-making processes on any of their information saved in such databases. In the WIPO Portal Site section (paragraph 9.3), he wished to have the following words put between brackets: “contain information on genetic resources and non-secret traditional knowledge associated with genetic resources”. The representative did not disagree that secret knowledge should not be included, but he pointed out that an adequate discussion of what should be included in the Web Portal should take place before providing that all information on non-secret TK should be included. He recalled that indigenous peoples had significant amounts of TK associated with GRs that was not secret, but regulated by customary law that would not allow the knowledge to be stored in databases.

123. The Chair took note of the fact that discussions should take place at a later stage regarding safeguards in the context of the overall discussion on defensive measures. One aspect for discussion would be to determine whether the instruments would enumerate all of those safeguards or establish a principle requiring safeguards to be developed in another instrument or in national legislation based on certain benchmarks.

124. The Delegation of the United States of America expressed its support for further discussion on safeguards in the context of the next discussion on defensive measures. One safeguard that would need to be discussed was the free, prior and informed consent of indigenous peoples and local communities on how such databases would be structured and operated with respect to indigenous peoples and local communities.

125. The Delegation of Brazil pointed out that “jurisdiction” was referred to as a plural in paragraph 3.6(e) in Rev. 1 and a singular in paragraph 4.1(e) in Rev. 2. It asked that “jurisdiction” be put back into a plural as in Rev. 1. On paragraph 9, the Delegation asked that the word “their derivatives” be included after “genetic resources” in order to ensure consistency with the rest of the text.

126. The Delegation of Canada believed that the definition of “misappropriation” in the List of Terms was of paramount importance, as it would circumscribe how the objective of the instrument would be interpreted and applied. In that sense, it welcomed the worthwhile efforts made by the Delegation of the United States of America within the expert group to develop an alternate definition of the term “misappropriation,” which it would review with interest. Regarding the last paragraph of the Preamble, it noted, without otherwise commenting on the paragraph’s merits, that Article 15.1 of the CBD whence it originated referred to the “sovereign rights of states over their natural resources,” and not biological resources. While the Preamble of the CBD indeed recognized the sovereign rights of states over biological resources, the relevant paragraph of the Preamble CBD made no mention of access to GRs, which was rather made in Article 15.1, alongside natural resources. Therefore, so as to maintain the appropriate context and intent of the CBD, the Delegation preferred using “natural resources” in the IGC

text, without prejudice to its position on that paragraph. With respect to paragraph 8.1 on “Due Diligence”, it noted for the record that this important concept should not to be reflected in the context of the present draft instrument as a means to monitor compliance with ABS legislation or requirements. It believed that due diligence in the context of the present instrument could and should aim to prevent patents from being granted in error with regard to GRs and associated TK. It wanted to make it clear that it was in no way a comment on the merits of ABS, nor should be construed as such, but rather an expression of the view that the IP system was separate from the ABS system. Regarding the presentation of provisions on disclosure and on defensive measures in relation to each other, it welcomed the addition of the Facilitator's footnote on page 9, which accurately reflected that certain Member States viewed defensive measures as complements to mandatory disclosure while others, including the Delegation of Canada, viewed defensive measures as an independent, stand-alone and practical alternative to mandatory disclosure and not complementary to it. It continued to believe that defensive protection would provide in and of itself effective protection in the IP context. It was pleased that the text reflected language from the two Joint Recommendations (WIPO/GRTKF/IC/25/5 and WIPO/GRTKF/IC/25/6), which it had supported, and that there had been technical discussions about those contributions. The Delegation remained open for any IGC participant to discuss those proposals. Finally, it reiterated its request that every instance of “should” or “shall” be replaced with “should/shall”, so as not to prejudge the outcome.

127. The Delegation of the United States of America requested that the word “should” in the first line of paragraph 4.2 be changed to “shall/should,” to stick with the convention used in paragraph 4.1. As captured by the facilitators and based on the informal discussions, it wished to pluralize the word “law” at the end of the sentence in paragraph 4.2, and add “that existed prior to this instrument.” It also noted that paragraphs 7 through 10 were not identified as “articles.” It preferred not to have the word “Article” before any of the paragraphs, in order not to prejudge the nature of the instrument. However, if “Article” was to be used in any portion of the agreement, it preferred that it be done consistently, and that “Article” be included for paragraphs 7 through 10 as well between brackets..

128. The Delegation of South Africa, speaking on behalf of the African Group, said that Rev.2 served as a reasonable basis for further discussions. With respect to the footnote on page 9, the Delegation had made the case that defensive measures and a disclosure requirement were complementary. It requested that the footnote read “alternative/complementary” so as to cover its view as well. It argued that it had been agreed that certain sections of Rev. 1 were not high-level issues, especially Articles 9.1, 9.2 and 9.3 and that an agreement had been reached during the informal discussions on four high principles. It noted that this had not been reflected in the text and that this situation raised a procedural issue.

129. The Chair took note of the comment made by the Delegation of South Africa regarding Articles 9.1, 9.2 and 9.3.. He wished to request from the facilitators that they help him as to whether there had been a clear meeting of the minds among delegations regarding high principles. He did not want the impression to be given that an agreed outcome had not been reflected as agreed in Rev. 2.

130. The Delegation of South Africa, speaking on behalf of the African Group, argued that paragraph 9.2 had been generally considered as redundant with paragraph 9.3.

131. The Chair noted that the issue of considering whether the facilitators had not disposed of a recognized redundancy within Rev. 2 was distinct from the issue of considering whether an agreement regarding four principles had been reached within the expert group.

132. The Delegation of South Africa, speaking on behalf of the African Group, said that both issues were linked, since paragraph 9.2 resulted from a request from the proponents of a defensive measures section, while the identification of high principles had been the result of a collective informal discussion.

133. The Chair asked the facilitators to respond.

134. Mr. Goss, speaking on behalf of the facilitators, said that in the informal discussions, it had been agreed to try a principle-based approach with respect to the part regarding defensive measures, and to identify where to make changes. Rev. 2 had been condensed significantly as a result, even though there was still some duplication. Mr. Goss noted though that the proponents wished to maintain a clear linkage between Rev. 2 and their two Joint Recommendations (WIPO/GRTKF/IC/25/5 and WIPO/GRTKF/IC/25/6). The facilitators had to take both points of view into account and had made their best endeavors to have them reflected in Rev.2.

135. The Chair recommended that the issue of elevating the treatment of defensive measures on the basis of certain high principles be further addressed at the next stage of the drafting process.

136. The Delegation of South Africa, speaking on behalf of the African Group, acknowledged the clarification made by the Mr. Goss on behalf of the facilitators and endorsed the recommendation made by the Chair on this issue.

137. The Delegation of India pointed out that the last paragraph of the Preamble, which was its proposal, was taken from paragraph 4 of the Preamble of the CBD and not Article 15 as the Delegation of Canada had suggested. It had to read as “biological resources.” It suggested bracketing Article 3.4. It asked that at the end of Article 6.1(b)(iii), the phrase “in accordance with national law” be added, as that had been the case in Rev 1. Lastly, on Article 6.1(a)(i), “disclosure” had to be added before “requirements,” at the end of the first line.

138. The Delegation of the Islamic Republic of Iran pointed out two omissions. The first was in the definition of “Patent Office,” which had to refer to “IP/patent office” and to the “granting of IP/patents.” The second was with regards to Article 6.1, which had to contain, as in document Rev. 1, the phrase “including dispute resolution mechanisms.” There was even a point to establish a separate article on that particular aspect, but the Delegation recognized that this could be addressed at a later stage. The Delegation further said that the scope of the instrument had to cover all forms of IP on all GRs, including components, derivatives and associated TK. It considered that defensive mechanisms had to be part and parcel of the procedure for preventing misappropriation. It wished to see them as complementary with disclosure requirements. It could by no means adopt defensive mechanisms as an alternative to disclosure requirements.

139. The Chair said that the facilitators would take care of the omissions mentioned by the Delegation of the Islamic Republic of Iran. He recalled that the Delegation of South Africa, on behalf of the African Group, had proposed that the facilitators' footnote refer to both views of “alternative/complementary”. He asked the facilitators to incorporate this proposal within Rev. 2.

140. The Delegation of Peru noted that in paragraph (c) of the “Policy Objective” in Rev. 1, the term “ensuring” had been included. It wished to reinsert that term in Rev. 2, so that paragraph (c) of the “Policy Objective[s]” in Rev. 2 would read: “c. ensuring/promoting/facilitating [...]”. In paragraph 3.1 of Rev. 2, it wished to add “subject matter/” before “claimed invention”, as an option, to make it more coherent, since “claimed invention” referred to patent applications and “subject matter” referred to IPRs. Regarding the term “acquired” in paragraph 4.1(f), the Delegation considered that it could be useful to recall the definition of “access” that was included in Decision 391 of the Andean Community, which read: “the obtaining and use of genetic resources conserved *in situ* and *ex situ*, of their by-products and, if applicable, of their intangible components, for purposes of research, biological prospecting, conservation, industrial application and commercial use, among other things”. Regarding defensive measures, it reserved the right to make further comments at the next session. The Delegation wished to

maintain consistency through the text, always inserting the term “derivatives” whenever GRs were referred to. It also wished to bracket paragraph 4.1(e).

141. The Delegation of the EU, speaking on behalf of the EU and its Member States, requested that the word "peoples" be placed in brackets in its entirety, as was the case in previous drafts, to reflect the constitutional arrangements in some of its Member States. It had some reservations regarding the term “misappropriation”, as it did not have a clear definition in the List of terms and as its function as described in the operative parts of the text was not yet clear. It requested that the term “associated TK” be bracketed and replaced with “TK associated with GRs” throughout the text, pending a full discussion of TK in respect of GRs. With regard to the term “intellectual property”, it stated its preference for any disclosure requirements to relate to patent applications. It remained unconvinced of the operative benefits of Article 2 on the scope of instrument, and of what it would add to the “Policy Objective[s]”. The Delegation found paragraph 3.1(b) unclear, as it was not apparent whether “national laws” should refer to those in the country of origin or in the country in which a patent was filed. The language of that paragraph seemed to build on aspects of the ABS system. While it could understand the general aim of that paragraph, it wished to place it in brackets until clearer language was found. It wished to bracket paragraph 3.4, pending a further discussion on it, since its practicality was unclear at that stage. It did not support paragraph 3.5, as it extended to the area of substantive patent law, and not patent formalities. It pointed out that there might be some overlap between paragraph 6.1(a)(i) and paragraph 6.1(a)(iii). It believed that some further work on the language of paragraph 6.1(a)(ii) was required to make it clear that any withdrawal must be in accordance with the relevant national law. It requested the deletion of paragraph 6.1(b)(ii), since those sanctions lied outside the patent law, in areas in which the Committee did not have competence. With regard to paragraphs 6.1(b)(iii) and 6.2, it pointed out that the instrument should have a firm ceiling. It emphasized that revocation of a patent was an extremely strong penalty, which could not only undermine legal certainty, but ran counter to the policy objectives of the instrument, which should be to enhance transparency in the patent system to facilitate the ABS regime. If a patent was revoked, the invention contained therein would enter the public domain and the opportunity for sharing of benefits would be reduced. It wished to place the reference to revocation in square brackets and to see that reference deleted in the future. The Delegation was in general supportive of the exclusions contained in paragraph 4.1, though it recalled that a full discussion of them had not taken place for some time. It wished to place in brackets in its entirety the new language on defensive measures, since it had not yet had time to fully study it, but looked forward to exploring the text bilaterally with the proponents.

142. The Delegation of Nigeria believed that the text was a positive move forward. It pointed out that Article 3 should read “Disclosure requirement”, since it dealt with one requirement encompassing different elements, not several disclosure requirements.

143. The representative of KUNA argued that the term “indigenous peoples” should be used in the text without brackets. He explained that the collective rights to their TK and GRs were vital to indigenous peoples. He emphasized that the term “peoples” had been agreed on by consensus by the international community, after long discussions in different forums. He reminded the IGC that 143 countries had voted in favor of the UNDRIP and only four against. Later, those four countries all accepted the Declaration. He called on Member States not to be unfair with the indigenous peoples and to recognize at least their collective rights.

144. The Chair recalled that it had been agreed that the issue of the use of the terms “indigenous peoples” was a cross-cutting one. He had urged the Indigenous Caucus and the Delegation of the EU, as well as Member States that had concerns in relation to those terms, to hold consultations. Considering that the representative of KUNA had reinforced with vigor that that issue needed to be resolved with sensitivity to the concern of indigenous peoples, he recommended that he join the consultations to help to resolve the matter. He was confident that

the IGC would find a way to resolve the issue in a manner that was acceptable to indigenous peoples in due course, subject to consensus.

145. The representative of INBRAPI pointed out that she expected that the future instrument under the IGC would recognize the sovereign rights of the indigenous peoples, as owners and holders of TK and GRs, throughout the text in line with the relevant international instruments, which should not be undermined by the IGC's mandate. She emphasized that disclosure requirements should be mandatory and that they were an efficient mechanism to provide additional information, so as to prevent the erroneous grant of IP rights on TK and GRs of the indigenous peoples and local communities, as well as their misuse. She was pleased to see that Rev. 2 had included a reference, under the disclosure requirements, to the PIC of indigenous peoples and local communities, which should be free PIC. She emphasized that the full and effective participation of the indigenous peoples in the IGC process was essential for them, and called on the full support from the parties and perhaps a change in the procedure to ensure their future participation in IGC sessions.

146. The representative of CAPAJ referred to Article 3.1(b) and highlighted that, compared to Rev. 1, Rev. 2 mentioned indigenous peoples and PIC but between brackets. The representative asked for clarification of whether the inclusion by the facilitators of PIC also included the concept of free PIC.

147. The representative of the HEP expressed her support of the statement made by the representative of KUNA. Further, she stated that it was not enough to know the position of indigenous peoples. That position needed to be taken into account by the IGC.

148. The representative of BIO, speaking on behalf of BIO, the Intellectual Property Owners Association, IFPMA and CropLife International, stated that those non-governmental organizations represented hundreds of companies and institutions that conducted research and developed innovative technologies in the healthcare, agricultural and environmental sectors. The representative noted with interest the inclusion of the new paragraph 5.2 which provided for the establishment of a due diligence system by Member States, to ascertain that protected GRs were accessed in accordance with applicable ABS requirements. While much remained to be clarified, she understood that this might be similar to due diligence requirements used presently in national or regional laws that were instructive in working towards ensuring that GRs were accessed and that benefits were shared consistent with national ABS laws. She supported the objectives of the CBD in relation to ABS, and considered that IP law provided an incentive to spur the development of new technologies related to GRs and/or associated TK. One example could be the development of a new variety or trait in agriculture. She reminded that that process took years and involved hundreds of thousands of exchanges from diverse sources per year, preparation of hundreds of commercial candidates and, ultimately, the selection of a small number of commercial materials that subsequently would be available to others for future research and breeding. For certain regions, more than half of the food production relied on original non-indigenous plant genetic resources (PGR). It was worth noting that most recipients of such PGR were developing countries. It was no exaggeration to state that all countries, for their food, depended on the PGR obtained and/or developed in other countries. Access and use within a workable legal framework, providing legal certainty to users was therefore essential for worldwide food security. The representative continued to believe, as she had indicated for the record in past meetings, that new mandatory requirements for patent disclosure would introduce significant legal uncertainty into the patent system, which would impede investment into the research and development of innovative products and technologies. As such developments were capable of generating benefits, these types of requirements would undermine benefit-sharing by discouraging innovation, and would therefore run counter to the objectives of the CBD. Furthermore, the industry remained unconvinced that the patent system was the appropriate tool to achieve benefit-sharing. She said though that the non-governmental organizations on behalf of which she spoke remained keen partners with the shared objective to ensure appropriate access to GRs and equitable benefit sharing with the holders of GRs and

associated TK; as well as to enhance the ability of IP offices to prevent the erroneous grant of patents or other IPRs.

149. The Chair noted the statement made by the representative of BIO with interest. He strongly encouraged the engagement of industry with Member States and the rest of the stakeholders within the IGC process.

150. The Delegation of Kenya noted that the mandatory disclosure and defensive protection measures were not alternatives, but were rather complementary measures to fight misappropriation, misuse and unlawful exploitation. With respect to databases, it reiterated that there was no need to limit the room of adjustment as far as the detailed design and architecture of databases were concerned. It was of the view that the technical details on the implementation of the database search system should be in line with the goals of the instrument.

151. The Delegation of Ghana was of the view that the intention of the IGC was to make the emerging instrument complement all relevant instruments including those which were in existence presently and those which would be adopted in the future. To ensure there was no misunderstanding in this regard and to prevent the instrument from being construed as being limited to instruments in existence at the time of its entry into force, the Delegation proposed the deletion of the word "existing" in Article 10.1. It also expressed concerns over Article 7.1 which had closed brackets without corresponding open brackets and was of the view that this could lead to ambiguity in the construction of the Article.

152. The Delegation of Brazil was of the view that the present document was a better and clearer text and provided a good basis for future work. It stressed the need to maintain a consistent and mutually supportive relationship between the IP system and the ABS system. It believed that it was fundamental that the IGC built on the progress made by the CBD and its Nagoya Protocol. It reiterated its concerns over Article 4 which dealt with exceptions and limitations and believed that the content of Article 4 would be better placed within national ABS legislations as they related more to exclusions on requirements of ABS, rather than the disclosure requirement. To prevent the duplication of the work undertaken by other UN agencies, the Delegation recommended that the proponents of the provisions on due diligence, analyze further the Clearing-house system developed by the CBD as, in its view, there existed a good amount of overlap between the two systems.

153. The Delegation of the EU, speaking on behalf of the EU and its Member States, requested, with respect to Article 3.1(a), that the word "and", after "Disclose the country of origin", be placed in brackets. With respect to Article 4.2, it requested that the phrase, "subject to national law", be placed in brackets. Finally, the Delegation clarified that its earlier comments relating to defensive measures related to both paragraphs 8 and 9 in their entirety. It also aligned itself with the clarification which was made by Mr. Goss, on behalf of the facilitators, with respect to Article 5.

154. The Chair proposed that Rev. 2, as amended to fix the obvious errors and omissions that had been pointed out during the final round of plenary discussion, be transmitted to the September 2014 GA, subject to any agreed adjustments or modifications arising on cross-cutting issues at IGC 28 in July 2014; and that was agreed. He then closed the discussion on Rev. 2 and opened the floor for comments on documents WIPO/GRTKF/IC/26/5 and WIPO/GRTKF/IC/26/6 under Agenda Item 7.

155. The Delegation of the United States of America informed the Committee that, in order to save time and in light of the fact that there had been some discussions on the substance of those two Joint Recommendations in the context of the discussions about the Consolidated Document, it was willing to hold off discussing the documents at this session. It noted, however, that it would like to return to a discussion on the two documents in future sessions.

156. The Chair took note of the statement made by the Delegation of the United States of America on the documents WIPO/GRTKF/IC/26/5 and WIPO/GRTKF/IC/26/6. He then invited the co-sponsors of the “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/26/7), which, he noted, had been submitted after the adoption of the Agenda of the present session, to introduce, and provide comments on this proposal..

157. The Delegation of the United States of America noted that, in accordance with the 2014/2015 mandate of the IGC, the WIPO GA had taken note of “the possibility for members of the IGC to request studies or to provide examples to inform the discussion of objectives and principles, and each proposed article, including examples of protectable subject matter and subject matter that [was] not intended to be protected, and examples of domestic legislation.” It drew attention to the fact that the co-sponsors had reintroduced an amended version of the proposal. Discussions had taken place between the co-sponsors and the Delegation of Norway, which had provided revisions and additional questions that were now included in the proposed terms of reference. The Delegation was pleased to advise that the Delegation of Norway had become a co-sponsor of the proposal, along with the Delegations of Canada, Japan, the Republic of Korea, the Russian Federation, and the United States of America. The Delegation invited other delegations to express their support for the proposal and welcomed additional questionings or improvements upon the terms of reference that other members could have. It stated that in past sessions of the Committee and throughout the present session, the IGC had engaged in constructive discussions regarding national laws and the ways in which disclosure requirements and ABS systems functioned. These types of discussions had helped to progress the Committee’s work and, in this connection, the proposed study would carry forward the work without slowing it down.

158. The Delegation of the Republic of Korea, as one of its co-sponsors, expressed its support for the proposal. It maintained that, with respect to a disclosure requirement, it was very crucial, based on facts-based analyses, to assess costs and budgets for national offices and patent applicants as well as the impact of such a requirement on the credibility of the patent system. Such an analysis would assist the IGC to make informed decisions on the Committee’s work on GRs and TK associated with GRs. It believed that the study would help delegations to understand whether disclosure requirements could contribute to the prevention of misappropriation and granting of erroneous patent rights and whether disclosure requirements affected the incentive to innovate.

159. The Chair noted that document WIPO/GRTKF/IC/26/7 could not be discussed fully at the present session. He invited the co-sponsors of the proposal to re-circulate document WIPO/GRTKF/IC/26/7 for its inclusion in the Agenda of IGC 27, for further discussion at that session. He encouraged the co-sponsors to engage with other delegations on the proposal in the meantime.

160. The Delegations of the United States of America and Canada deferred to the statement made by the Chair regarding document WIPO/GRTKF/IC/26/7 and looked forward to seeing this proposal being further discussed at the next IGC session.

161. The Chair confirmed that this understanding would be put on record. He read out the draft decision under Agenda Item 7 and it was approved. He then closed the agenda item.

Decisions on Agenda Item 7:

162. The Committee developed, on the basis of document WIPO/GRTKF/IC/26/4, a “Consolidated Document Relating to Intellectual Property and Genetic

Resources Rev. 2". The Committee decided that this text, as at the close of the session on February 7, 2014, be transmitted to the WIPO General Assembly taking place in September 2014, subject to any agreed adjustments or modifications arising on cross-cutting issues at the Twenty-Eighth session of the Committee, taking place in July 2014, in accordance with the Committee's mandate for 2014-2015 and the work program for 2014, as contained in document WO/GA/43/22.

163. *The Committee also took note of documents WIPO/GRTKF/IC/26/5, WIPO/GRTKF/IC/26/6, WIPO/GRTKF/IC/26/INF/7, WIPO/GRTKF/IC/26/INF/8 and WIPO/GRTKF/IC/26/INF/9.*

AGENDA ITEM 8: ANY OTHER BUSINESS

164. There was no discussion under this Agenda Item.

AGENDA ITEM 9: CLOSING

165. The Chair expressed his sincere appreciation to the Vice-Chairs, Ms. Alexandra Grazioli from Switzerland, Ms. Ahlem Sara Charikhi from Algeria and Mr. Abdulkadir Jailani from Indonesia. The Chair also offered special thanks to the Friend of the Chair and facilitator, Mr. Ian Goss from Australia, for his support, for the way in which he had earned and retained the confidence of Members States, and for the important role he had played in convening the informal informals. The Chair thanked the other facilitators, Ms. Chandni Raina from India and Mr. Emmanuel Sackey from ARIPO. He expressed his gratitude to the Regional Coordinators and urged that the various regional groups continue to play their crucial role in engaging with each other. The Chair thanked the interpreters for their support and flexibility. He strongly reaffirmed and recognized that the process had importantly benefited from the constructive engagement of representatives of indigenous peoples. He thanked in particular the Indigenous Caucus which brought together the views of many representatives. He thanked the representatives from industry for joining the discussion in this session. In closing, the Chair thanked all delegations and observers, as well as the Secretariat, for their support.

Decision on Agenda Item 9:

166. *The Committee adopted its decisions on Agenda Items 2, 3, 4, 5, 6 and 7, on February 7, 2014. It agreed that a draft written report, containing the agreed text of these decisions and all interventions made to the Committee, would be prepared and circulated before March 3, 2014. 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-Seventh session of the Committee.

[Annex follows]

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