

WIPO



WIPO/GRTKF/IC/6/14

ORIGINAL: English

DATE: April 14, 2004

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

Sixth Session
Geneva, March 15 to 19, 2004

REPORT

Prepared by the Secretariat

INTRODUCTION

1. Convened by the Director General of WIPO in accordance with the decision of the WIPO General Assembly at its thirtieth session (document WO/GA/30/8, paragraphs 94 and 95) to extend a revised mandate, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the Committee”) held its sixth session in Geneva, from March 15 to 19, 2004.

2. The following States were represented: Algeria, Argentina, Armenia, Australia, Austria, Barbados, Belgium, Benin, Bolivia, Botswana, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Chad, China, Colombia, Comoros, Congo, Costa Rica, Côte d’Ivoire, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Ethiopia, Fiji, Finland, France, Germany, Ghana, Greece, Guatemala, Guinea, Haiti, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Japan, Jordan, Kenya, Kiribati, Kyrgyzstan, Latvia, Liberia, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Malaysia, Mali, Malta, Mexico, Mongolia, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Panama, Pakistan, Peru, Philippines, Portugal, Republic of Korea, Romania, Russian Federation, Rwanda, Saudi Arabia, Senegal, Serbia and Montenegro, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Syrian Arab Republic, Swaziland, Switzerland, Tajikistan,

E

Thailand, the former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United States of America, Uruguay, Venezuela, Viet Nam, and Zambia (109). The European Commission was also represented as a member of the Committee.

3. The following intergovernmental organizations ('IGOs') took part as observers: United Nations (UN), African Regional Industrial Property Organization (ARIPO), African Union (AU), Arab Educational Cultural and Scientific Organization (ALECSO), Asian -African Legal Consultative Organization (AALCO), Commonwealth Secretariat, Economic Commission for Africa (ECA), European Patent Organization (EPO), Food and Agriculture Organization of the United Nations (FAO), General Secretariat of the African, Caribbean and Pacific Group of States (ACP Group), International Union for the Protection of New Varieties of Plants (UPOV), League of Arab States (LAS), Pacific Islands Forum Secretariat, Secretariat of the Convention on Biological Diversity (SCBD), South Centre, United Nations Conference on Trade and Development (UNCTAD), United Nations Development Programme (UNDP), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Environment Programme (UNEP), United Nations Permanent Forum on Indigenous Issues, and the World Trade Organization (WTO) (21).

4. Representatives of the following non-governmental organizations ('NGOs') took part as observers: Aboriginal and Torres Strait Islander Commission (ATSIC); American Folklore Society; Assembly of First Nations; Association Tamaynut; Benelux Designs Office (BBDM); Berne Declaration; Brazilian Association of Intellectual Property (ABPI); *Bureau des ressources génétiques (BRG)*; Call of the Earth (COE); Canadian Indigenous Biodiversity Network (CIBN); Center for International Environmental Law (CIEL); Central and Eastern European Copyright Alliance (CEECA); *Centre de documentation, de recherche et d'information des peuples autochtones (DoCIP)*; Centre for International Industrial Property Studies (CEIPI); Consumer Project on Technology; *Coordinadora de las Organizaciones indígenas de la Cuenca Amazónica (COICA)*; Creators' Rights Alliance (CRA); CropLife International; Foundation for Aboriginal and Islander Research Action (FAIRA); Friends World Committee for Consultation and Quaker United Nations Office (FWCC); *Fundación Nuestro Ambiente (FUNA)*; Genetic Resources Action International (GRAIN); Global Education and Environment Development (GEED-Foundation); *Groupement européen des sociétés de gestion des droits des artistes interprètes (ARTIS GEIE)*; Health and Environment Program; Ibero-Latin-American Federation of Performers (FILAIE); Indian Council of South America (CISA); Indian Movement *Tupaj Amaru* Bolivia and Peru; Indigenous Peoples Program; Institute of Professional Representatives Before the European Patent Office (EPI); Institute of Social and Cultural Anthropology; International Association for the Protection of Industrial Property (AIPPI); International Centre for Trade and Sustainable Development (ICTSD); International Chamber of Commerce (ICC); International Confederation of Music Publishers (ICMP); International Environmental Law Research Centre (IELRC); International Federation of Industrial Property Attorneys (FICPI); International Federation of Musicians (FIM); International Federation of Pharmaceutical Manufacturers Associations (IFPMA); International Federation of Reproduction Rights Organizations (IFRRO); International Indian Treaty Council (IITC); International Institute for Environment and Development (IIED); International League of Competition Law (ILCL); International Plant Genetic Resources Institute (IPGRI); International Publishers Association (IPA); International Seed Federation (ISF); Inuit Circumpolar Conference (ICC); Kaska Dena Council (KDC); Max-Planck-Institute for Intellectual Property, Competition and Tax Law; Mejlis of the Crimean Tatar People; National Aboriginal Health Organization (NAHO); *Promotion des médecines traditionnelles*

(*PROMETRA International*); The Rockefeller Foundation; SAAMI Council; Third World Network (TWN); Union of National Radio and Television Organizations of Africa (URTNA); World Conservation Union (IUCN); World Federation of Culture Collections (WFCC); World Self Medication Industry (WSMI); and the World Trade Institute (60).

5. Discussions were based on the following documents and information papers prepared or distributed by the Secretariat of WIPO ('the Secretariat'):

- "Draft Agenda" (document WIPO/GRTKF/IC/6/1 Prov.1),
- "Accreditation of Certain Non-Governmental Organizations" (WIPO/GRTKF/IC/6/2), (WIPO/GRTKF/IC/6/2 Add),
- "Traditional Cultural Expressions/Expressions of Folklore: Legal and Policy Options" (WIPO/GRTKF/IC/6/3),
- "Traditional Cultural Expressions: Defensive Protection Measures Related to Industrial Property Classification Tools" (WIPO/GRTKF/IC/6/3 Add.),
- "Traditional Knowledge: Policy and Legal Options" (WIPO/GRTKF/IC/6/4),
- "Genetic Resources: Draft Intellectual Property Guidelines for Access and Benefit-Sharing Contracts" (WIPO/GRTKF/IC/6/5),
- "Traditional Knowledge and Traditional Cultural Expressions: The International Dimension" (WIPO/GRTKF/IC/6/6),
- "Update on Legal-Technical Assistance and Capacity-Building Activities" (WIPO/GRTKF/IC/6/7),
- "Defensive Protection Measures relating to Intellectual Property, Genetic Resources and Traditional Knowledge" (WIPO/GRTKF/IC/6/8),
- "Genetic Resources and Patent Disclosure Requirements: Transmission of Technical Study to the Convention on Biological Diversity" (WIPO/GRTKF/IC/6/9),
- "Participation of Indigenous and Local Communities" (WIPO/GRTKF/IC/6/10),
- "Certain Decisions of the Seventh Meeting of the Conference of the Parties to the Convention on Biological Diversity" (WIPO/GRTKF/IC/6/11),
- "Submission by the African Group: Objectives, principles and elements of an international instrument, or instruments, on intellectual property in relation to genetic resources and on the protection of traditional knowledge and folklore" (WIPO/GRTKF/IC/6/12), and
- "Certain Decisions of the Seventh Conference of the Parties to the Convention on Biological Diversity" (WIPO/GRTKF/IC/6/13).

6. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions and provides the essence of interventions, without reflecting all the observations made in detail nor necessarily following the chronological order of interventions.

AGENDA ITEM 1: OPENING OF THE SESSION

7. The session was opened by Mr. Francis Gurry, Deputy Director General of WIPO, who welcomed the participants on behalf of the Director General of WIPO, Dr. Kamil Idris.

AGENDA ITEM 2: ELECTION OF THE OFFICERS

8. The Committee re-elected Mr. Henry Olsson (Sweden) as Chair, re-elected Mr. Ahmed Aly Morsi (Egypt) as Vice-Chair and elected Mr. Tian Lipu as its Vice-Chair, each for one year, and in each case by acclamation. Mr. Antony Taubman (WIPO) acted as Secretary to the sixth session of the Committee.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

9. The Agenda was submitted by the Chair, and adopted by the Committee. At the request of the African Group, wishing to stress the importance of the international dimension and to introduce the contents of document WIPO/GRTKF/IC/6/12, the Committee agreed to hear opening statements on agenda item 8 (International Dimension) prior to taking up items 5, 6 and 7.

AGENDA ITEM 4: ACCREDITATION OF CERTAIN ORGANIZATIONS

Accreditation of certain non-governmental organizations

10. At the invitation of the Chair, the Secretariat introduced documents WIPO/GRTKF/IC/6/2 and WIPO/GRTKF/IC/6/2 Add, which gave details of ten additional non-governmental organizations (NGOs) that had requested *ad hoc* observer status for the sessions of the Committee since its fifth session. The Committee unanimously approved accreditation of all the following organizations as *ad hoc* observers: Australian Folklore Association Inc., Call of the Earth (COE), *Federación Folklórica Departamental de La Paz*, Foundation for Research and Support of Indigenous Peoples of Crimea, Indian Council of South America (CISA), Indigenous Peoples (Bethelchilokono) of Saint Lucia Governing Council, BCG, *La Diablada Juventud Tradicional "Union de Bordadores"*, Third World Network (TWN), *Unisféra International Centre*, and *Wara Instituto Indígena Brasileiro*.

Participation of local and indigenous communities

11. The Secretariat introduced document WIPO/GRTKF/IC/6/10, drawing attention to various proposals for enhancing the participation of local and indigenous communities in the work of the Committee that had been initiated, the proposal for enhanced voluntary funding of representatives of such communities, and the ongoing development of proposals for a more formal Voluntary Fund to support such participation.

12. The Delegation of Egypt on behalf of the African Group reaffirmed its support for enhancing participation of indigenous and local communities in the work of the Committee and added that the participation of indigenous and local communities had enriched the discussions of the Committee with their contributions. It supported paragraph 17 of document WIPO/GRTKF/IC/6/10, noting that it contained pragmatic and concrete steps to enhance participation of local and indigenous communities, especially that of the creation of an informal consultative forum for indigenous representatives. The Delegation reiterated its support for the establishment of a voluntary fund in accordance with the approach taken in the United Nations in consultation with Member States through regional coordinators.

13. The Delegation of Ireland on behalf of the European Community, its Member States and the Acceding States stated that the involvement and participation of indigenous and local communities in the Committee and in all other work of WIPO on genetic resources (GR), traditional knowledge (TK) and folklore was of great importance and enhanced measures to facilitate cooperation should be undertaken. The Delegation welcomed the initiatives that had been taken since the fifth session of the Committee, including the organization of consultations and workshops at national, regional and international level and the creation of the WIPO web site for the submissions of accredited NGOs on the issues before the Committee. The Delegation endorsed the pragmatic framework approach to realizing further improvements as suggested in the document and supported the creation of an informal consultative forum for indigenous and local representatives in advance of sessions of the Committee based on the elements in paragraph 11 of document WIPO/GRTKF/IC/6/10. With regard to the issue on financial support, the Delegation recalled the view put by the European Community and its Member States at the Committee's fifth session that participation of indigenous and local communities should be assured through the establishment of a voluntary fund modeled to the extent appropriate on the United Nations Voluntary Fund for Indigenous Populations. The Delegation welcomed the continued work on the possible establishment of formal structures for a voluntary fund. In particular, it was important that the voluntary fund be based on objective, transparent and low cost selection mechanisms. The Delegation concluded that the selection criteria mentioned in paragraph 15 of the document should be developed further.

14. The Delegation of the United States of America welcomed the proposals contained in document WIPO/GRTKF/IC/6/10 as a practical way forward to promote the immediate enhanced participation of accredited NGO representatives within WIPO's existing budgetary resources. The Delegation noted that the proposal in the document would allow for enhanced participation with little administrative cost by drawing on existing funding mechanisms, facilities, contacts and expertise of the International Bureau and the United Nations Permanent Forum on Indigenous issues. This proposal would avoid unnecessary delays in enhancing NGO participation that might otherwise result from protracted discussions on, and the administrative machinery involved in, the establishment of a separate WIPO voluntary fund for NGO representative participation. The Delegation welcomed the participation of the United Nations Permanent Forum on Indigenous issues and donor organizations in enhancing the participation of indigenous and local communities in the work of the Committee as proposed in the document. While it remained open to examine future proposals on the establishment of more formal structures in the future, the Delegation believed that experience with interim steps proposed would facilitate and inform these future discussions. The Delegation hoped that a positive experience gained through the interim steps proposed would obviate the need to establish a more formal structure within WIPO itself.

15. The Delegation of Japan supported the creation of an informal consultative forum for indigenous and local representatives based on the factors in paragraph 11 of document WIPO/GRTKF/IC/6/10. It added that such a forum could also facilitate and contribute to the further understanding on GR, TK and folklore, through the exchange of views by the representatives of indigenous and local communities. Additionally, the Delegation thought it appropriate that WIPO provide informative and technical briefings prior to the Committee sessions, from the view of Secretariat, on the activities of the Committee as mentioned in paragraph 13 (iii) of the document. The Delegation welcomed the encouragement of voluntary donors to support the participation of representatives of accredited observers in the Committee. With regard to the consideration and elaboration of the possible establishment of formal structure for a voluntary fund, the Delegation supported continued discussion on this

issue as this structure might facilitate and promote the participation of indigenous and local communities. The Delegation thought it was important and appropriate to consider this issue cautiously, taking into account the budgetary implications and the relationship with other WIPO activities.

16. The Delegation of the Islamic Republic of Iran supported the participation of indigenous and local communities. The Delegation thought that the system of a voluntary fund would work in allowing participation. The Delegation added that, taking into account budget restrictions, the budget of WIPO should also be open, taking into consideration the transparency and simplicity of the administrative system of allocating the budget.

17. The Delegation of New Zealand considered participation of indigenous and local communities as an issue of fundamental importance, noting that the Committee should keep in mind whose knowledge was being discussed. The solutions or mechanisms which may be developed in the Committee are in fact a response to concerns raised by indigenous and local communities about intellectual property (IP) and TK. For these mechanisms to be effective they had to be appropriate to the needs of these groups and to ensure that their active participation was essential. The Delegation supported the creation of informal consultative forum if welcomed by those participants. The mechanism should not put more additional resource pressures on these participants and also should not be a primary means of indigenous and local community involvement. If a consultative forum was established, formal report back from forum should be provided to the Committee as part of the agenda. The Committee should set aside more time and opportunities for indigenous and local community NGOs to make interventions during the Committee. The procedures of the Working Group on Article 8(j) of the Convention on Biological Diversity (CBD) were a useful model. The Delegation supported the interim steps on funding as suggested in the document. It would be useful for the Secretariat to play an informal facilitative role in assisting voluntary funding agencies to contact accredited NGOs who may be interested in obtaining funding for attendance. The Delegation recommended that should a consultative forum be established and the convenors of such a forum were interested in undertaking a similar role, WIPO should resource them to do this. The Delegation expressed its concern at the slow progress made on the funding issue and called for a more formal or distinct fund to be created as soon as possible, in addition to coordinated voluntary funding. While interim measures suggested might have the advantage of providing better understanding of needs and possibilities, opportunities for indigenous participation would be lost as time went by. Overheads and administrative delays be minimized in the creation of such a fund. The Secretariat should explore the possibility of co-operation with existing funders. Should a fund be established, selected participants should reflect a broad geographical distribution and reflection of cultures. The Delegation expressed its support for the other selection criteria listed in the document.

18. The Delegation of Morocco supported all the proposals contained in document WIPO/GRTKF/IC/6/10 which reflected mechanisms that enabled the participation of local and indigenous communities in terms of funding. It supported the creation of an informal forum as it believed that it was a good decision to have indigenous and local communities participate as it enhanced the work of the Committee. The Delegation supported also the establishment of a voluntary fund and encouraged donor countries to participate in the financing of local and indigenous communities while respecting the criteria called for by the African Group in prior meetings.

19. The Delegation of Ecuador reiterated the importance of indigenous and local communities' participation in the Committee. It agreed that there should be more active participation through the creation of an informal forum as mentioned in the document WIPO/GRTKF/IC/6/10, namely a forum for local and indigenous representatives based on the elements in paragraph 11. The Delegation stated that this forum should include the active participation of members of local and indigenous communities and that its deliberations should be incorporated into a document and put forward to the Committee. The voluntary fund should, taking into account budgetary restrictions, still be considered within the budget. The Delegation stated that in the interim, the Committee could have voluntary funds to avoid having conditions imposed, and to limit the effect of budgetary restrictions. The Delegation concluded that the specific elements mentioned in the document should also be present in a voluntary fund.

20. The representative of the United Nations Permanent Forum on Indigenous Issues (Permanent Forum) stated that the work of the Committee was not easy and that there was a great deal at stake: politically, economically, socially as well as culturally for all. There were conflicting interests and it would be technically difficult to combine highly different legal concepts and systems. She stated that the Committee was dealing not only with different systems of law but with entirely different views of the world, of how it was constituted, operated, how society should function, how old and young and how men and women ought to behave towards one another, the role of the individual *vis-à-vis* the society, what was wrong and what was right – ultimately questions of life and death. The task truly mattered, however, not the least to the 375 million indigenous peoples who so far identified themselves as such. The Committee should not forget that there were innumerable marginalized ethnic groups around the world with similar problems regarding the protection of their genetic, cultural and intellectual property. It was their way of life, the very essence of being which was at stake. The representative illustrated her statement with an example of a tiny ethnic group, the Punan Bah, of Central Borneo. This was a group which supported itself by means of a sophisticated form of swidden-agriculture cultivating 63 species of rice alone, by fishing and hunting and through various kinds of paid work. The Punan Bah live in longhouses with several hundred peoples under the same roof. They speak a language of their own plus two ritual languages and they possess an incredible richness of myths and fairytales. When a Punan Bah expert recites a myth, the performance is not only an entertaining and highly aesthetic experience for the crowd listening to the adventure and love affairs of the divine ancestors: the performance is also a lesson in a legendary past, and a legal course in norms of behavior. The myth transfers knowledge about the environment, its animals and plants, and about the divine powers which have created and govern the world. A recital does not only pass on knowledge and lends meaning to life, the occasion will also spur comments on the present from the crowd, interpretations of the changes taking place in light of traditional values and insights. It is crucial that myths are recited in the dark, as it is believed that the ancestral heroes and heroines of the myths will be present during the performance and that they are offended by or scared off by light. But at the heart of any recital is the belief that the souls of the listeners will join the ancestors of whom the myths tell on their adventurous journeys. For this reason a myth must be told to its very conclusion, which invariably ends at the very longhouse site of the recital in order that the souls may return to the bodies of their mortal owners or these might fall ill or die. A Punan Bah recital of a myth is thus much more than mere entertainment or the passing on of traditions, knowledge and cultural insights. It is a profound unification of man and his environment – the visible and the invisible– and of the living with their ancestors. It is a unification where the past and the present blend and for a night or two become one. The representative stated that everyone was aware of the crucial importance of protecting biological diversity – and progress made internationally to see to that

mankind did not do irreversible harm to the environment and the many living species which depended on it. Yet, strangely enough there seemed to be little awareness and concern about the urgent need for protection of cultural diversity – i.e. knowledge systems, art form, symbolic expressions and cultural ways which took mankind thousand of years to develop and refine. At this moment, she added, this invaluable heritage was being discarded in the global garbage bin. This was a loss not only to the various people who were culturally deprived – but to all. The work of the Committee was therefore of the greatest urgency. She encouraged indigenous peoples and local communities to contribute to the work of the Committee to ensure that the vital issues of indigenous intellectual property, TK were fully understood and afforded adequate protection. She drew attention to and welcome the new Accredited Observers' web page and encourage communities to make use of it to ensure its effectiveness. She encouraged the increased facilitation by States of the participation by indigenous peoples and their representative bodies, in these crucial discussions. Effective participation could also be advanced in other ways such as the new web page facility that allowed for indigenous submission on-line. She requested the full support of Member States to ensure that the Permanent Forum continued to be represented in these important meetings and reminded the Committee of the decision of the Forum formalized and supported by ECOSOC in their decision of 2003/302 regarding the participation of members of the Permanent Forum on Indigenous Issues in meetings of subsidiary bodies of the Economic and Social Council: 'The Economic and Social Council, taking into account the importance for the Permanent Forum on Indigenous Issues to be represented, by its Chairperson or designated members, at various meetings of relevance to its mandate throughout the year, decides to confirm such representations one of the methods of work of the Forum and further requests that all subsidiary bodies of the Council welcome the Forum and its members by issuing open invitations to Forum members to attend all relevant meetings, conferences and seminars.' She welcomed the holding of the indigenous caucus and other preparatory meetings before and during the Committee and called upon States, foundations and organizations to fund these to ensure that indigenous peoples voices were heard and that their perspectives were included in deliberations. The representative encouraged participants to consider recognizing indigenous customary law in building an international legal system that was truly pluralistic and inclusive of diverse legal traditions (such as those that recognize collective rights and obligations to shared knowledge). She referred to a joint paper submitted by the United Nations system to the Third Session of the Permanent Forum on the concept of free, prior and informed consent and it was clear that this basic concept must be taken on board in the work of the Committee. She added that the Permanent Forum was a UN body and that it was not here to represent indigenous peoples, however, it was their job to provide technical expertise to WIPO's work on matters relevant to their broad ranging mandate. She encouraged the Committee to focus, in the short term, on the substance of protection in order to establish agreement on common objectives, principles and elements, rather than fixating on the nature of the final outcome of what form the protection may take (such as international instrument) and was happy to learn that the Committee was working to do so. Work on the substance would be necessary whatever the nature of the outcome. Work on substance would also make the nature of possible outcomes clearer. The Permanent Forum through the Inter Agency Support Group (IASG), was pleased that it had a fruitful relationship with WIPO and close cooperation and wanted to nurture this and progress their common work. She also noted that WIPO has been an active member of the IASG and had hosted the previous meeting held in September 2003. Having said this, she called for WIPO's participation in the Third Session of the Permanent Forum as it would greatly enhance the mutual work and assist them in the consideration of TK as a potential theme for their Fourth session in 2005.

21. The representative of Indian Movement *Tupaj Amaru* stated that participation in the work of the Committee was the legitimate right of the indigenous and local communities. He reiterated that at the first session, the Committee had put forth the need for communities to participate through local representatives. The representative believed that it was their right and moral obligation to participate when the issues being discussed concerned their natural resources and TK. He asked for their legal right to participate. The regular WIPO budget provided for various developing countries to participate in WIPO meetings and to access technical and financial assistance and capacity building. The representative felt that indigenous populations should not be represented by governments. Transparency and clarity was needed in addressing these issues. The representative referred to voluntary funds within the United Nations, and added that the countries making use of indigenous resources had not contributed to the Voluntary Fund for Indigenous Populations. The fundamental issue was the participation of indigenous populations and that this should be the priority and feature under the regular WIPO budget, so that resources were available for indigenous and local communities to participate. The representative referred to the Accredited Observers' web site and stated that this was not helpful as most indigenous and local communities did not have access to the Internet and proposed that they be allowed to participate under the ordinary budget of WIPO.

22. The representative of the Saami Council expressed disappointment that there were still not many indigenous representatives present at the Committee sessions. He welcomed the proposals contained in document WIPO/GRTKF/IC/6/10 and added that it was time that they moved on to create the mechanisms for indigenous participation in this forum. The representative welcomed all the suggestions in paragraph 17, and regarding paragraph 17 (ii) informed the Committee that there had already been an informal indigenous caucus held the day before the meeting and that he hoped for more attendance at future sessions of such a caucus. He supported paragraph 17 (iii) which encouraged voluntary donors. The representative mentioned particularly paragraph 17 (iv) which discussed the voluntary fund and stated that he would like to see a decision made and that there be a mandate given to the Secretariat to establish this fund by the next session.

23. The representative of the International Indian Treaty Council (IITC) supported the comments and suggestions made by the Delegation of New Zealand. He referred to the lack of interest by parties on the voluntary fund and hoped that this would not cripple the process. He hoped that something concrete would be developed for the next session of the Committee.

Conclusions

24. The Chair noted that all the comments provided welcomed the document (WIPO/GRTKF/IC/6/10) and the idea of encouraging donors to provide voluntary funding for participation by representatives of local and indigenous communities, and that remarks were made concerning paragraph 17 (iv).

25. Noting the observations made by participants, the Chair proposed and the Committee agreed:

(i) to note the existing informal consultative processes and voluntary funding initiatives that contribute to the enhanced involvement of Indigenous and local communities in its work;

(ii) to welcome the creation of an informal consultative forum for Indigenous and

local representatives in advance of sessions of the Committee, based on the elements in paragraph 11 of document WIPO/GRTKF/IC/6/10;

(iii) to encourage voluntary donors to support the immediate participation of representatives of accredited observers in any such consultative forum and in the Committee's sessions; and

(iv) on the basis of an updated proposal, to continue its consideration and elaboration of possible establishment of formal structures for a Voluntary Fund, depending upon the overall direction set for the Committee or other bodies within WIPO.

AGENDA ITEM 5: FOLKLORE

Legal protection of expressions of folklore/ traditional cultural expressions

26. At the invitation of the Chair, the Secretariat introduced documents WIPO/GRTKF/IC/6/3 (Traditional Cultural Expressions/Expressions of Folklore: Legal and Policy Options) and WIPO/GRTKF/IC/6/3 Add. (Defensive Protection Measures related to Industrial Property Classification Tools), as well as WIPO/GRTKF/IC/6/7 (Update on Legal-Technical Assistance and Capacity-Building Activities).

27. The Delegation of Ireland, on behalf of the European Community, its Member States and the Acceding States, welcomed the continuation of the Committee and confirmed that they were committed to participating in a constructive manner in its discussions. The results of the first biennium of the Committee were well set out to produce a structured overview of the concerns and wishes of the indigenous communities as well as the policy options and practical solutions. To keep the discussion structured and focused, the Delegation encouraged the Committee to keep discussions on more culturally orientated issues – TCEs/ expressions of folklore - separate from those on TK. The Delegation encouraged WIPO to continue its activities in the context of TCEs/expressions of folklore. It added that, as already explained in its submission during the first biennium of the Committee, expressions of folklore in the European Union were nurtured in the public domain and that the European Community, its Member States and the Acceding States were sympathetic to concerns expressed by some participants of the Committee. The Delegation supported the conclusion made in document WIPO/GRTKF/IC/6/3 (paragraph 211) that the Committee's substantive work on TCEs/expressions of folklore should be accelerated, including the preparations of drafts of an overview of policy objectives and core principles for the protection of TCEs, as well as an outline and brief analysis of the policy options and legal mechanisms for the protection of TCE subject matter, based on the approaches already considered by the Committee. The Delegation looked forward to participating in the elaboration of solutions in order for each State to make decisions on the policy it wished to adopt for the particular circumstances found on its territory and within its population. Protection of certain aspects of TCEs could be satisfied with improved access to, and better use of, the current IP systems, which would entail appropriate technical assistance, and other fields of law outside IP such as protection against unfair competition, the law of advertising or blasphemy. This would have to go hand in hand with the use of modern technology which should be made available to those who need it but require assistance in acquiring and setting it. The Delegation looked forward to receiving the study on customary laws and the Practical Guide, both of which would contribute to the on-going discussions within the Committee.

28. The Delegation of Panama said that document WIPO/GRTKF/IC/6/3 was extremely helpful; it noted that the work of the Committee was becoming increasingly technical, and hoped that all issues would be addressed. The Delegation reported that its country was working on a draft law on local communities, which was intended to complement its existing law protecting the IP of indigenous peoples. It was important not to be overprotective, but still to ensure the benefits accruing to the owners of TK and TCEs. In Panama there was a draft *sui generis* law in force that addressed the issues, but not for indigenous communities. Panama did not want to lose the opportunity to promote the sharing of such knowledge, and had tried to maintain some balance in that area. The law under preparation in Panama on the collective rights of local communities had 69 articles which covered a great many issues, including definitions, consideration of collective rights, prior informed consent and disclosure of origin. Panama had also investigated and studied traditional customary laws as well as traditional IP laws and *sui generis* protection systems. A draft of Panama's proposed law would be submitted to WIPO in due course for comment. The national level of protection would be synchronized with the work of the Committee in such a way that it could be applied internationally, and for that reason the Delegation of Panama recommended that the studies on the international dimension referred to in document WIPO/GRTKF/IC/6/6 continue.

29. The Delegation of Colombia stated that it was important to have a *sui generis* system for the protection for folklore different from existing systems. While literary and artistic works may be protected by copyright, there were difficulties such as the collective character of works where individual authors could not be identified. The collective nature of some works was key. Thus an international *sui generis* protection for collective works of folklore should be an important focus of this Committee.

30. The Delegation of Mexico was in favor of working on drafts with which to define policy options and legal protection machinery for expressions of folklore. The Delegation agreed with what was reported in paragraph 83 about protection not being an end in itself, adding that not all expressions of folklore belonged to indigenous peoples, and that it was necessary also to consider non-indigenous expressions of folklore. The Delegation maintained that an effective system would consist of a combination of *sui generis* provisions and existing intellectual property concepts. It was necessary to have protection operating nationally before proposing a system for application at the international level, but that should not prevent the Committee from drawing up general guidelines for countries to adapt according to their own circumstances.

31. The Delegation of Japan stated that TCEs could be protected under existing IP international treaties, and referred to the WIPO Performances and Phonograms Treaty, 1996 as an example. It was indispensable to make the core principles and objectives clear as a first step, and to take into account the possible impact of TCEs protection on current IP regime. While next steps should address core principles and objectives, it would be premature to discuss options and specific legal mechanisms.

32. The Delegation of China noted that document WIPO/GRTKF/IC/6/3, together with WIPO/GRTKF/IC/5/3 and the list of options (WIPO/GRTKF/IC/5/INF/3) would play the role of piloting and assisting countries wishing to formulate legislation and conduct policy research work on the protection of expressions of folklore/TCEs. As had been highlighted in the previous sessions, as far as China was concerned, it went without doubt that the protection of TCEs/expressions of folklore was both important and necessary. The key lay in the first step, namely to assess and determine the policy objectives, and then in choosing the appropriate means of protection. The Government of China had always attached great

importance to the protection of folklore/TCEs, and had adopted various effective measures since the 1950s. In January 2003, the Government had launched a nation-wide project, the “Project on the Protection of Ethnic Culture and Folklore in China”, which covered research into folklore, nomination of successors of folklore, related training, and protection of cultural ecology. Currently, the Project was being fully implemented. In the area of legislation on the protection of expressions of folklore/TCEs, great efforts had been made by legislators and research workers alike since the promulgation of the Copyright Law. Firstly, as early as in the 1990s, the relevant Chinese authorities had started to formulate the Draft Regulations on the Protection of Folklore Expressions, which was currently under discussion by related parties. Secondly, in view of the economic, cultural and political implications of the protection of folklore as well the need for coordination with other relevant legislation, the Chinese Authorities had taken a prudent approach. Following several years of fact-finding and feasibility studies, including the WIPO fact-finding mission on folklore to the Yunnan Province in 2002, the Draft Law of the People’s Republic of China on the Protection of Traditional and Folk Culture had been formulated by the Education, Science, Culture and Public Health Committee of the National People’s Congress (NPC) in 2003, which had since been distributed for comments by relevant parties and was now ready for submission to the NPC Standing Committee for its consideration. As regards the subject matter of traditional and folk culture under protection, the above mentioned Draft Law provided that the State protected the following ethnic culture and folklore or traditional culture, which were precious, in imminent danger and of historical value within the territory of China: (i) traditional oral literature and spoken and written language; (ii) traditional drama (such as traditional opera, puppet show and shadow play), all kinds of folk art forms, music, dance, fine arts (such as drawing, sculpture and paper-cutting) and acrobatics; (iii) traditional arts and crafts, and processing techniques; (iv) traditional etiquette, festivals, celebrations and ceremonies, and sports; (v) representative original materials, objects and sites related to the above items; (vi) other special objects to be protected. As another important concern by the legislators of the Draft Law, the issue of IP in ethnic culture and folklore or traditional culture was currently under further research. Thirdly, in judicial practice, a case concerning disputes over folklore heard by the Beijing Second Intermediate People’s Court in 2003 had given rise to controversy among the academic circles in China. The controversy concerned mainly the following questions: (i) who should own rights in folk music, local ethnic minorities or the State? (ii) in the case of adaptation, can folk music be adapted without the authorization by right holders/competent authorities? Should remuneration be paid? To whom? (iii) How should the moral rights of the local people be respected? Should the source be given? (iv) What should be the resolution mechanisms for disputes over places of origin? As concerned the trend of international protection of expressions of folklore/TCEs, the Delegation endorsed the new mandate accorded to the Committee by the WIPO General Assembly in 2003, i.e. without excluding any outcome including the possibility of setting international norms. On the question of what constituted the key elements in a *sui generis* system for the protection of expressions of folklore/TCEs, the Delegation was of the view that respect for the moral rights of the local people was a subject to be taken into serious account not only in terms of maintaining tradition, but also in terms of encouraging development and innovation. Each country would have its own considerations on the nature and ownership of rights. Therefore, the Delegation proposed that the Committee continue to hold discussions and conduct research on relevant issues, and provide additional information of relevance for countries to make use of, as they choose.

33. The Delegation of Congo remarked on the complexity of TCEs and on their protection in time, emphasizing the need to take due account of customary law and also national and regional legislation. The complexity was due to the large number of different ethnic groups

living in countries such as Congo, with some of the same ethnic groups to be found outside Congo as well. A country could have laws of its own, of course, but it would have to allow for the existence of groups living both within and beyond its national borders, and that should also be reflected in agreements concluded at regional level. The need to take such complexity into account would provide material for inclusion in any international instrument.

34. The Delegation of Venezuela supported the statement made by the Delegation of Ecuador on behalf of GRULAC under the agenda item concerning the international dimension and in particular its references to advances made on folklore. Having a menu of options as suggested in document WIPO/GRTKF/IC/6/3 was a good idea, bearing in mind the international dimension. The Delegation fully agreed with paragraph 7 of the document that setting objectives was the first key step and made the following comments on paragraph 8: the requirement of 'originality' noted in point (i) should not be applied; point (vi) was appreciated; the time period for protection discussed in point (ix) should be unlimited; there were doubts about point (xii); and point (xiii) was supported and should receive special attention. The Delegation also supported practical measures, and agreed that an annotated menu of policy and legal options should be prepared. This would be a basis for guidelines or other instruments. The flexible approach in paragraph 17 was also supported. Many sectors in Venezuela preferred very broad definitions. Paragraphs 19 (i) and (ii), especially the latter, were important. Regarding paragraph 20, it was important to address the international dimension of these issues. The Delegation also supported the development of the practical guide referred to in paragraph 24. On paragraph 27, the Delegation agreed that it was necessary, without losing sight of the linkages between them, to address folklore and technical TK separately. Paragraphs 31 and 32 could be addressed at a later stage. There were some doubts regarding paragraph 45, referring to the WPPT, but this was one of the options to study in the future. It was important to take into account the summary in paragraph 50 on definitions. Regarding paragraph 54, changes in the long-term objectives of IP protection were foreseen. The questions posed in paragraph 56 had to be answered later. It was not thought that an individual could enjoy exclusive rights, as these were collective rights. As for the framework of options, it might be possible to use what already existed, but there would have to be adaptation and the creation of new systems. Regarding paragraph 106, these issues were not in the competence of WIPO and the Delegation supported what was said in paragraph 108, as well as the contents of paragraphs 113 and 114. The contents of paragraph 119 were fundamental: these criteria had to be borne in mind. The description of policy options and legal mechanisms were fundamental to focus the work of the Committee and paragraph 211 was supported, especially paragraph 211(ii). Many solutions could be found in existing systems, but there was a need for additional protection, as the diagram at the end of the document showed.

35. The Delegation of the United States of America appreciated the extensive research and analysis conducted in outlining the complex policy considerations involved in developing systems for the protection of TCEs. The study looked beyond individual Member States' systems for protection and distilled common policy considerations that nations must contemplate when developing such systems. The Delegation found the document helpful when read with the comparative materials that outlined the various options for *sui generis* protection. The Delegation expressed its interest in learning of the practical experiences other countries have had in enforcing their *sui generis* protection laws, and asked whether there had been many enforcement actions to date; what issues arose; whether issues ever arose as to what constitutes a TCE; and whether there had been disagreements between groups, or between groups and individuals, as to who has rights to a particular TCE. The Delegation concurred that it was timely to set out a range of objectives and core principles that would

clarify and focus many of the policy issues raised by the various options as a possible basis for recommendations or guidelines. It was essential to the successful completion of the Committee's mandate to start taking a hard look at the substantive issues now, as well as determine what the Committee's objectives were, and it was important to take a considered approach to the work. The Committee needed to address the substantive issues before determining the appropriate international vehicles and that the Committee needed to separate the issues in order to best address them. At this point there were many questions and the Committee had not even reached an agreement on a single term, or a common understanding as to what should fall within the parameters of that subject matter. It was unclear how particular TCEs could be attributed to one nation or another during a period when indigenous and local cultures are found throughout the world. The Delegations suggested that work be done now to find answers to these important questions, and stated that until then the notion of discussing an international framework was premature. The Delegation recommended that each Member State look carefully at the questions raised on page 51 of the document and try to address the issues. The Delegation stated that it had looked at these issues for years and had taken a multifaceted approach to these issues recognizing that no single approach could provide a complete solution. In respect to TCEs, the United States of America was in a unique situation as its citizens were people from cultures all over the world, including from indigenous American cultures and other indigenous cultures from all over the world. Many continued to practice the TCEs of their former or ancestral homes. The Delegation explained that the United States of America had put in place a variety of mechanisms to protect and preserve traditional culture. As expressed in the subject document, one size does not fit all. The Indian Arts and Crafts Act has been used successfully to ensure the authenticity of handicrafts labeled 'Native American.' Existing IP laws, for example copyright laws, were also used more often to gain shared benefits for tradition bearers. Often, the active network of folklorists, ethnomusicologists and ethnographic archivists who were collecting and archiving TCEs as they exist in the United States of America, initiated these efforts. TCEs in the United States of America had provenance from every corner of the world, and thrived in a nation that was increasingly culturally diverse and increasingly technologically linked to the world. The American Folklife Center at the Library of Congress was created by an act of Congress in 1976 to "preserve and present American folklife" in all of its diversity. It had a national folklore archive with over three million sound recordings, photographs, films and manuscripts that document traditional creativity as it is practiced today. The Center's work had pointed to the complexity of the task of the Committee to ensure IP rights to tradition-bearers and folk communities. A field survey of folklore in Lowell, Massachusetts, with an average population, disclosed over sixty different ethnic groups practicing TCEs derived from sixty other nations, although none were indigenous to the United States of America. The Center had looked at ethnic schools and their transmission of folklore and cultural heritage for first generation Americans, and found hundreds of programs that provide for the continued life of traditional culture and language for immigrants who had retained their TCEs or expressions of folklore. The government had supported the documentation and preservation of these world TCEs through the Center, and tradition-bearers had been supported and encouraged through the National Endowment for the Arts which awarded National Folk Heritage Fellowships to master folk artists based in the United States of America, such as Sam Ang Sam, who had preserved Cambodian classical dance; Flako Jimenez, master *conjunto* musician from Mexico teaching *conjunto* in Texas; Djimo Zouyatae, a traditional *griot* and *kora* player from Senegal; Kepka Belton, a Czech *pysanki* artist who continued her art in North Dakota; and Phong Nguyen, master of the *dan tran*, or Vietnamese zither. The rights of many such artists, who continued to thrive in the United States of America, merited consideration as the Committee undertook the complex task of

providing IP protection for all citizens who create, wherever they live. Culture has resided in people not within a national border.

36. The Delegation of the Islamic Republic of Iran noted that paragraph 8 of document WIPO/GRTKF/IC/6/3 referred to regional folklore. Intergovernmental regional organizations could, through regional agreements, provide alternatives for dispute resolution. In connection with the “customary and indigenous laws” referred to in paragraph 19 of the document, the Delegation emphasized that customary laws should not be opposed to national laws and that customary laws should be taken into account in law making. In connection with paragraph 47, the Delegation suggested that a fifth expression of folklore be included and referred to as “mixed traditional cultural expressions”. The opinion of the Delegation was reflected in paragraph 32 of the final draft report of the fifth session. In connection with paragraph 17 of the document, the Delegation believed clear comprehensive and precise definitions for “expressions of folklore” or “traditional cultural expressions” in national laws and WIPO documents to be of utmost importance. If the nature of each subject was not clear for the legislators, they could not prepare correct and comprehensive laws and regulations to provide rights owners with legitimate legal protection. The Delegation noted that in the Islamic Republic of Iran, folklore, traditional culture, national culture and arts and cultural heritage sometimes bore the same meaning which indicated that legislators had the same understanding of these subjects.

37. The Delegation of Switzerland noted that the document provided a good overview of the many and complex issues that arose with regard to the legal protection of TCEs and provided (in paragraph 208) a list of practical steps that would help the policymakers navigate through these issues. The Delegation considered this list to be very helpful for national policymakers and legislators, and that it may also provide guidance and structure to the Committee’s discussions. The first measure regarding the determination of national policy objectives was of great importance. On future work, the Delegation supported the tasks proposed in paragraph 211. Reiterating its position at previous Committee sessions, the Delegation stressed that the policy objectives and core principles for the protection of TCEs should be clarified at the outset. This step should also include clarification of the use of terms. The Delegation supported the preparation of an outline of the policy options and legal mechanisms for the protection of TCEs, together with a brief analysis of the policy and practical implications of each option. Both of the tasks proposed in paragraph 211 would further advance the work of the Committee and help find timely solutions.

38. The Delegation of Syria stated that in some countries protection of folklore was achieved through IP but this was not the case in all countries. The Delegation supported the proposals contained in paragraph 211 of document WIPO/GRTKF/IC/6/3.

39. The Delegation of Canada acknowledged document WIPO/GRTKF/IC/6/3 as a characteristically comprehensive contribution to the growing body of analysis of the protection of TCEs. Building as it did on previous work of the Committee in this area, the document reviewed the policy objectives underlying the protection of TCEs, identified various policy options and legal mechanisms, and proposed practical steps for setting overall directions. The Delegation stated that the success and influence that this analysis and any forthcoming guides and options papers would have, dispelled any notion, among even the most skeptical, that the Committee had not produced concrete outcomes for the protection of TCEs. The roadmap proposed to help navigate the questions and issues related to the options for protection was endorsed, and the more extensive development of the practical guide referred to in the document was looked forward to. In particular, the Delegation supported the

conclusion that the evaluation and choice of policy options and legal mechanisms began with the identification of the overall policy objectives, and that this process should take into account the needs of indigenous and traditional communities as well as the relevant cultural policy issues of interest to the whole society. The identification of the overall policy objectives would provide guidance, for example, on possible mechanisms for protection and on what subject matter could be included under that protection. This first step would also help to identify some of the areas that might be less well served by IP law than by other forms of legislative protection. The identification of the overall policy objectives would also better inform consideration of other legal and policy issues identified in the document. For example, the choice of the scope of protection would influence the legal or other tools that might give effect to this protection. That is, whether one was going to limit protection to traditional artistic heritage, or seek protection for subjects that were not traditionally covered by IP law, such as languages in general, would change the way one approached the issues. The related issue of identifying appropriate beneficiaries needed also to deal with the reality of cultural and socio-economic diversity in many states, including that which existed within indigenous and local communities. For example, the issue of how protection applied to holders of TCEs that lived outside their community of origin, or TCEs that overlapped established political or cultural boundaries, would need further analysis. These situations would require a particular approach based on input from the affected communities. The Delegation wished to note a few areas of particular interest. Further work was needed to improve understanding of the implications of the relationship between customary protocols and the formal IP system. The Delegation reaffirmed its support for any work that the WIPO Secretariat proposed to undertake in this area and indicated its willingness to contribute to such study. There was also interest in the distinct but related question of the scope of the public domain, particularly the consequences of extending IP protection to TCEs already in the public domain, a concept that many in the Canadian Aboriginal community contested. Canada had taken steps to better understand the objectives of Canada's Aboriginal peoples regarding the protection of TK and TCEs, although it was acknowledged that much more work needed to be done. Canadian Aboriginal people were nonetheless playing an invaluable role in bridging the gaps and informing of the issues of importance to their communities. In this regard, particular reference was made to the WIPO Regional Workshop on IP and TK that took place in Ottawa in September 2003, and which had involved representatives from the United States of America. WIPO was thanked for assisting with the workshop. Ultimately, however, IP law and policy was about more than just creating new forms of IP rights in new forms of subject matter. IP law and policy was also about sharing knowledge and information. It was about finding an appropriate balance between creators, users, and the public interest. It was this difficult balance that was needed as work continued on finding possible IP solutions to the protection of TK and TCEs. It was clear, however, both from a consideration of this document and of the companion document on the International Dimension, that the development of international mechanisms to support the protection of TCEs followed upon - they did not precede - a development of common principles and legal mechanisms implemented at the national level. This was not a rejection by the Delegation of an international dimension; it was simply a statement of the sequence by which work should proceed. The Delegation fully supported the recommendations in paragraph 211 of the document.

40. The Delegation of the Islamic Republic of Iran referred to the diversity of expressions of folklore found in different countries, which led to diverse views. Existing IP did not fulfill the requirements for the protection of TCEs/expressions of folklore. However, existing IP, *sui generis* laws and customary laws could be used. The Delegation agreed with embarking on substantive work, by extracting the core common principles for the protection of

TCEs/expressions of folklore. Acceleration of the work could be achieved by an *ad hoc* working group during sessions of the Committee, without prejudice to the work of the Committee on other subjects like TK and GR. The working group could then elaborate the practical implications of each option.

41. The Delegation of New Zealand stated that document WIPO/GRTKF/IC/6/3 was a very useful document, and it excellently distilled a large amount of technical information into what was a very–user friendly document for IP officials. It supported the suggested process for considering options for the protection of TCEs which could, even in its present form, be adapted by States to form the basis for domestic policy processes. The legal and cultural policy issues set out in the document provided a useful framework to guide further work in this area. The chief aim of TCE protection must be to achieve the goals and aspirations of TK-holding communities and peoples. A further key aspect was the relationship between IP and cultural policies relating to heritage. It would be interesting to see how many of the issues raised by TK-holders and communities about TCEs could be more appropriately addressed by cultural heritage policy rather than IP. It might be that the heritage sector could provide more flexibility than a property rights-based system. The Delegation was very supportive of the “menu of options” approach taken in the document, including the focus on non-IP as well as IP approaches. It was unlikely that any single “one-size-fits-all” solution could be found to protect TCEs and meet the needs of their holders and communities in all countries. The document also referred to a number of “practical tools” to assist with TCE protection. These included codes, guidelines, checklists and model clauses for folklorists, museums and archives. Further work by WIPO on these practical tools was encouraged on the basis that it made sense to focus on prevention of misappropriation. The provision of these practical tools could, for example, assist libraries, archives, museums and other repositories of TCEs to attach conditions to the use of images or other materials in databases maintained by that organization. The National Library of New Zealand, for example, required that users acknowledge the source of TCEs, both the library and the traditional owners. It also suggested that WIPO develop an additional practical guide, or extend the potential audience of the practical tools already identified, aimed at the commercial users of TCEs. This might include advertisers, designers, publishers, business associations and the music and film industries. The guide would serve the purpose of alerting these industries to the concerns of TK-holders about the inappropriate use of TCEs and include best practice guidelines. The guide could be produced in collaboration with indigenous participants of the Committee and others. Anecdotal evidence suggested that in many cases the cultural offence caused by the inappropriate use of TCEs might be done in ignorance. A practical guide would therefore meet the needs of corporates wanting to use TCEs in a culturally appropriate manner. These practical guides were seen as an educational response to complicated issues which in many cases it was difficult to legislate for. It therefore supported the further work proposed in decision paragraph 211 of the document. Referring to the *sui generis* mechanism contained in the New Zealand Trade Marks Act 2002, it provided that the Commissioner of Trade Marks may not register a trade mark if the use or registration of a mark was likely to be offensive to a significant section of the community, including Maori. A Maori Trade Marks Advisory Committee had been established to assist the Commissioner to make determinations about offensiveness in relation to marks based on Maori text and imagery. To date, the advisory committee had met on three occasions and assessed approximately 251 trademarks containing Maori text and imagery. Of these, the committee had found that six trademarks were likely to be considered offensive to Maori. These included: the use of a *koru* (a fern frond symbolizing new life) in relation to biological tissue and biotech processes; a reference to *Tane*, the god of forests and human kind; and, the concept of *mana* (meaning power authority, prestige and honor) in relation to alcohol. The advisory committee was currently

developing a set of guidelines to assist trade mark examiners. The guidelines would, for example, address issues such as the use of spiritual, ancestral and sacred words in relation to alcohol. Policies were also being developed on the use of commonly used Maori words such as “kiwi” (an indigenous and fairly popular bird). These guidelines would also be useful to trade mark lawyers and applicants. The Delegation would provide copies of these guidelines to the Secretariat when they were finalized. The Delegation then introduced Mr. Maui Solomon, a member of the New Zealand Delegation and legal practitioner specializing in indigenous issues. Speaking in his personal capacity, he provided some practical examples of the misappropriation of TCEs in the New Zealand context and his experiences in attempting to use existing IP to address these cases. The last few years in New Zealand had seen an increasing practice of New Zealand based and overseas companies utilizing Maori language and TCEs to enhance the commercial value of their products. This increasing level of use or misuse was driven off the vastly enhanced access provided by the Internet to cultural knowledge but also the “added value” that unique and “mystical” indigenous cultures were perceived (by the western world) to give to products in a competitive market place. Examples were provided of the Ford motor company using Maori *moko* (facial tattoo) on the canopy of a truck thus associating the warrior qualities of the moko wearer with the Hot Rod, as well as a Sony Play Station game using Maori imagery. Mr. Solomon noted that none of these companies had applied for IP rights. Maori had had limited success in appealing to the moral/ethical conscience of these companies to refrain from misappropriating their knowledge. From a Maori knowledge holder’s perspective, it was critically important for any menu of options or *sui generis* systems of protection to include some form of protection for TK and TCEs in the public domain. This could include practical guidelines and perhaps even international declarations or treaties that encouraged and promoted appropriate conduct by users to seek prior informed consent of knowledge holders. In his personal experience as a practitioner, to have been able to point to a national protocol (in the case of local misappropriation) or an international protocol or treaty (in the case of international misappropriation) would have had significant benefit in persuading or preferably preventing, these companies from misappropriating this knowledge and/or encouraging them to be more responsive to the needs and concerns of Maori knowledge holders.

42. The Delegation of Egypt stated that in its view the discussions were in a vicious circle which would not lead to constructive solutions. Up until now, no clear way forward had emerged. There were many divergences in views in the Committee, while among experts on folklore there were no divergences. Yet, it was non-experts in folklore who were intervening and who were the most influential. Specialists in folklore knew well what the purpose of protection was, who benefited and how protection was provided. The existing legal frameworks were not adequate. Accordingly, the Delegation proposed that the WIPO Secretariat should work in conjunction with folklore experts to prepare legal provisions for the protection of folklore and these should be put before the Committee’s next session.

43. The Delegation of Nigeria noted with satisfaction the immensely helpful preparatory work that had been done by the Secretariat. The Delegation expressed its deep appreciation for the rich materials including the special studies, regional reports of experiences, the reports of experts and background reading materials all of which had gone a long way to enrich our knowledge and understanding of the delicate issues involved in this area. It realized that the Committee process was still on-going and far from being conclusive, but the work already done had yielded interim dividends through capacity building and policy redirection in various countries and regions. It was therefore pleasing that the General Assembly at its last session had accepted to extend the mandate of the Committee, and this was an endorsement of the importance that the General Assembly attached to the work of the Committee. The

Member States at the General Assembly had looked forward to seeing significant progress in moving the work of the Committee from mere academic discussions, however brilliant, to more concrete steps of action. This was why the Committee should now shift emphasis to the consideration of the international dimension of folklore, TK and GR as a step towards norm setting for what had come to be referred to as “the third pillar of the IP community”, the other two being the Berne and Paris Conventions. Most countries in the developing world did not participate in the negotiation of the first two pillars through no fault of theirs. But this third pillar was being pushed by concerned member countries, many of which were in the developing world and it was interesting to note that this was the first time that the agenda for an international norm setting procedure, at least within the framework of WIPO, was being set by developing countries. It was realized that every culture and people, be it developed or developing, had its own share of TK, expressions of folklore and GR, but it would be sad indeed if one were to be left with the impression that the IP system worked better for one group of people than it did for others. Developing countries had over the years evolved a renewed faith in the IP system and had accepted higher international standards of protection in new areas, often to their own inconvenience. The outcome of the Committee would therefore be a litmus test of the flexibility and adaptability of the IP system and how it worked in practical terms when the interests and concerns of developing countries were in the front burner. It was the Delegation’s sincere hope that the IP system would not fail the developing countries at this crucial moment in IP history. The Delegation of Nigeria fully supported the statement presented on behalf of the African Group and shared by many other delegations. It also fully endorsed the submission of objectives, principles and elements of an international instrument, or instruments, on IP in relation to GR and on the protection of TK and folklore put forward by the African Group (WIPO/GRTKF/IC/6/12). It was the Delegation’s understanding that these submissions would provide guide rails in this dimly lit area of IP law by positively identifying key policy options that would eventually steer the Committee, in carrying out its renewed mandate, towards evolving an acceptable international legal instrument. In other words, the Committee should begin the process by identifying building blocks for a possible international instrument. As alluded to in paragraph 22 of document WIPO/GRTKF/IC/6/3, the establishment of effective systems for the protection of expressions of folklore posed both legal/conceptual as well as operational/practical challenges. But considering the wide range of expertise and experience available in the field of IP today, it was believed that none of these challenges was insurmountable. First, the broad classification employed in paragraph 6(i) – (iv) of the document under reference was agreed with, and while the term ‘expressions of folklore’ was preferred (if only for the sake of consistency and convenience) it was not at this point in the work of the Committee considered that the choice of terms was a matter of priority. It was however needed to narrow the field in determining the subject matter of protection. Close as they may be, expressions of folklore (or more appropriately, protectable expressions of folklore) were only a part of, and not synonymous with, culture. It was not conceivable that every expression of folklore would be an appropriate subject of protection within the IP framework. Parallel work in other international forums for the protection of elements of folklore must be kept going and intensified in order to ease pressure on the present initiative within the framework of WIPO. Even within the framework of WIPO other facilitative and protective measures should be promoted to preserve elements of folklore and folklore-based activities in those areas that might not benefit from IP-like protection. The open-ended questions highlighted in paragraph 8 of document WIPO/GRTKF/IC/6/3 were very germane and should be addressed as part of the preliminary work in the norm setting process. An understanding of the breadth (however rough that may be) of the subject matter of protection was very crucial if the Committee was to remain focused in the search for appropriate solutions. Conversely, there might be need to prioritize the demands to be made on the IP or IP-like system bearing in mind the delicate

balance that must be maintained, for instance, between protection/preservation on the one hand and use/exploitation on the other. The Delegation noted with some satisfaction that various legal mechanisms existed already for the protection of separate elements of expressions of folklore but these mechanisms did not necessarily exist in every country with the same level of development to warrant any conclusion that further protection was not required. Besides there were clear cases where the mechanisms was either not appropriate for or was not sufficiently adapted for the protection of issues under consideration. A clear instance was the widely accepted limitations of classical copyright or trade mark systems within the contexts of expressions of folklore. This was akin to the perceived limitation of classical copyright law for the protection of the matters arising from the Internet environment rather than forcing them into old and inappropriate mechanisms. Again as experience in other classical IP areas had shown, the existence of alternative or parallel protections had never been a reason to deny protection within an IP-like framework. In fact, adequate accommodation had in the past been made for peculiar situations even in binding international instruments. Besides legal frameworks, the customary laws of indigenous communities might not be sufficiently developed to cater for the intense and wide usage envisaged for folklore in this time and age, hence the need for a deliberate formulation of something that could be considered adequate. It was true that the subject matter of folklore might appear unclear in some cases as pointed out in paragraphs 30 – 31 but the same cannot be said of all cases. As in classical IP situations, the threshold of protection was often a broad spectrum rather than a single mark off point. In any event, one should not find it hard to conceive of a layer of rights each of them subject to separate legal frameworks. In classical IP, elements of copyright, trade marks and patents co-existed in one and the same product without the risk of confusion of the separate elements. The Delegation was aware that the concerns of many developing countries, as far as folklore was concerned, was to protect those elements of creativity for which authorship had become unidentifiable with a single individual either because of the affluxion of time or because of the communal manner in which the materials had evolved. For this reason, folklore materials might have to be time bound to separate them from the rights of identifiable authors which might be the proper subject of classical IP laws. On the question in paragraph 32 whether individuals could create expressions of folklore, there was no doubt that societies and communities were made up of people and individuals and it was these people and individuals acting alone or in concert with others that created. It should not be imagined that they were creations of “folk minds”. The inappropriateness of narrowly-defined IP terms like “authorship” and “ownership” should not force premature abandonment of further exploration of more appropriate and conceptually correct concepts. The Delegation did not see the difference, alluded to in paragraph 35, between the expressions of folklore and classical IP matters merely on the ground that the former derive their significance and worth from community recognition and identification rather than an individual’s mark of originality. Originality alone was never the measure of the value or worth of a work and the concern about “authenticity” mentioned in that paragraph did not appear to be radically different from the treatment of pirated copyright works in classical IP terms. Expressions of folklore had their unique character, but they were not to be disqualified merely on this ground. For instance, genuine exportation might arise where there has been a cross-cultural movement. While such cases might easily be excused or justified, the same justification might not exist for cases of clear abuse or misappropriation by persons who had no connection with the source of that folklore. Similarly, mechanisms for identifying the true owner of a folklore material that was shared between two contiguous groups might be worked out without derogating from the need for appropriate remuneration. Even classical copyright law with its lower threshold of originality recognized the possibility of having two identical works co-existing with the rights residing in different persons who might lay separate claims to remuneration for use of their respective works. The Delegation was also aware of the

genuine concerns of some delegations for the possible impact of the proposed direction on preexisting rights and obligations. But again these concerns could be addressed, for instance, by carefully drafted clauses to preserve such rights or through the use of exemptions similar to those available in other international instruments. As suggested by the Delegation at the fifth session of the Committee, there was nothing inherently wrong or contradictory in defining the protection of expressions of folklore within a time frame, especially in those cases that are only of commercial importance or orientation. This would provide for certainty and help balance the competing interest of the originating community to have financial returns on its assets and that of the larger international society to ultimately have access. The Delegation wished to show in this intervention that the questions raised over the nature and difficulties associated with expressions of folklore were not insurmountable and that although different in character they were not entirely alien to existing classical IP models. Instances of practical application in many countries might not be as many as one would have expected but the difficulty encountered in the enforcement of the provisions that existed in many national laws might be attributable to the absence of an international norm in this area. The Delegation was in agreement with the statement in paragraph 83 that the protection of expressions of folklore should not be undertaken for its own sake or as an end in itself, but “as a tool for achieving the goals and aspirations of relevant peoples” including the respect for cultural rights and the protection of tradition-based creativity as an ingredient of sustainable economic development. Expressions of folklore were closely tied to the identity - historical, cultural, spiritual and social - of a people, but more than all that, they were also economic assets with significant economic value. Rather than walk away from the genuine expectations of developing countries, the Committee should work hard at the challenge of balancing IP protection of expressions of folklore with the maintenance of respect for the cultural and spiritual values they connote. The Delegation was optimistic that these challenges can be surmounted and should be confronted, and expressed its profound gratitude to the Secretariat for the various legal and cultural policy options so well articulated in Section III of document WIPO/GRTKF/IC/6/3. These were the issues that should be considered in any norm-setting instruments of this nature. The specific legal options provided in section IV of the same document were very instructive and the submission of the African Group brought out key points in these policy options. The African Group submission should therefore help the Committee focus on the smaller picture to accelerate its work in providing content including the preparation of the draft instruments. The Delegation was aware of the importance of consensus on these issues and joined the African Group in inviting other delegations to consider the submissions in document WIPO/GRTKF/IC/6/12 and make further inputs with a view to enriching the emerging instrument.

44. The Delegation of Cameroon noted that the work of the Committee took place in an international context increasingly conscious of the importance of IP for economic development. Cameroon, whose capital Yaounde housed the African Intellectual Property Organization (OAPI), was committed to contribute to work of the Committee. This was due to Cameroon’s rich natural resources, as well as the immense cultural and artistic heritage of its 250 tribes. The Delegation expected the elaboration of a specific international instrument to protect against the exploitation by third persons of TK and TCEs. Cameroon would provide support for regional initiatives, and the Delegation expressed support for the submission of the African Group (document WIPO/GRTKF/IC/6/12). It was hoped that adequate resources would be made available for capacity building at the national level. The Delegation recognized the good cooperation between WIPO and Cameroon.

45. The Delegation of the Russian Federation mentioned the importance of establishing clarity on goals and the subject of protection. Further work was needed on appropriate

policies and there was a need for definitions. The meaning and scope of some of the terms were unclear in the Russian language. Regarding paragraph 6 of document WIPO/GRTKF/IC/6/3, a balance was needed between protection of TCEs and allowing them to thrive. The experiences of countries that have *sui generis* laws would be helpful, the Delegation added.

46. The Delegation of Australia thanked the Secretariat for document WIPO/GRTKF/IC/6/3 and supported the recommendations in paragraph 211, provided these were non-prescriptive and inclusive. This should lead to greater understanding of what measures might be appropriate in different circumstances. There were a range of options that might be used to provide effective protection of TCEs, and different elements might play a greater or lesser role. One should not ignore non-IP and non-legislative measures. Regarding the amendments that had been proposed to the Australian Copyright Act to make provision for communal moral rights, which the Delegation had reported on at the Committee's fifth session, the amendment was expected to be introduced in parliament in the next few months. The development by the Committee of core principles and objectives would help shape domestic developments, which would also in turn illustrate the options and objectives that might be available.

47. The Delegation of Cambodia stated that Cambodia was rich in TCEs and it was considered that exclusive rights on these were national rights. UNESCO had listed the Cambodian Royal Dance as part of the world's cultural heritage, and it was important to safeguard this national property as stated in paragraphs 55 and 56 of document WIPO/GRTKF/IC/6/3. The continued cooperation between WIPO and UNESCO was appreciated. The Cambodian Government had also defined a national policy to preserve and protect these national properties through documentation and inventories. The Delegation expressed appreciation for the information provided by the Delegation of the United States of America on the support a Cambodian dancer had received in the United States of America. National and international instruments were needed. The contents of the document under discussion were appreciated.

48. The Delegation of India stated that document WIPO/GRTKF/IC/6/3 had moved forward from the policy objectives set out in previous documents to setting out policy options. The Delegation noted specific aspects of the document under discussion, namely whether there was a need for the distinction between TCEs *stricto sensu* and contemporary TCEs, the applicability of existing IP standards, and the special characteristics of TCEs with regard to lack of identification of the owner, availability in the public domain and the need for protection beyond the time limits recognized in copyright. There was a need to identify areas of consensus and of conflict. There was a fair degree of consensus that TCEs are a resource of vital importance in the emerging knowledge economy. Existing IP laws must be utilized to prevent abuse and wrongful imitation as had been done by the United States of America with its database of Native American insignia. Consensus needed to evolve on how to benefit communities who had been responsible for preserving TCEs by evolving appropriate norms and standards. The Delegation was aware of cases in which trademarks had been obtained over words of immense value to India, such as Ayurveda, Veda and Yoga. Therefore, there was a strong need for an international register for the official insignia of local communities, as well as for measures to invalidate trademarks granted in ignorance. The Delegation agreed with the contents of paragraph 8 of document WIPO/GRTKF/IC/6/3, and recommended further work for evolving and implementing norms in each of these elements in the context of TCEs *stricto sensu* for the benefit of communities, to provide positive rights going beyond existing copyright. Reference was made to the 1984 Working Group of Experts of WIPO and

UNESCO, which had recognized the need for international protection, but had identified two problems at that time: lack of appropriate sources for identification and of a mechanism to address the interregional ownership of expressions of folklore. Reasons for not having realized the desired level of protection for TCEs were well set out in document WIPO/GRTKF/IC/5/3 considered at the previous session, where references were also made to the 'public domain', and its distinction from 'publicly available'. The 'public domain' was a creation of the IP system, and it was because of this that there was a major bias against TCE-based innovations *vis a vis* modern science and technology-based innovations. The distinction between contemporary and traditional TCEs was artificial and would create enormous emotive and economic concerns for TCE holders. The possibility of providing an unlimited term of protection for TCEs as mentioned in paragraph 8 (ix) of document WIPO/GRTKF/IC/6/3 was supported, as was the suggestion in paragraph 8 (xiii) on setting up of databases and registries for communities. The Delegation recommended the establishment of an expert group for evolving technical specifications on TCE databases and registries. Finally, it was necessary to take a holistic view of positive and defensive protection, and to analyze why previous efforts in regard to the protection of TCEs did not work. The protection of TCEs should be suitably integrated into holistic norms and a legally binding international instrument on GR, TK and TCEs.

49. The Delegation of Algeria commended the Secretariat for the document and said that the action was consistent with the spirit of the African document WIPO/GRTKF/IC/6/12, and also with that in which the future international legal instrument on GR, TK and expressions of folklore was being contemplated. Protection in those areas should not be confined to mere commercial, free-trade arrangements and compensatory measures. Expressions of culture and folklore were part of the very soul of certain peoples and communities. The Delegation of the United States of America was thanked for having given precise examples concerning people who had received fellowships with a view to exploiting cultural expressions on US territory. Such exchanges did of course have to be developed in the interest of mutual enrichment, but at the same time one should avoid the uprooting effect, which was liable in the long term, through dilution, to make such cultural expressions disappear. One of the dimensions of the right to development was the right to develop such TK and TCEs just where they were. The Delegation proposed the setting up of a monitoring committee which would hear and record the concerns of member countries and other organizations with a view to devising a framework agreement.

50. The Delegation of Indonesia expressed great interest in the work of Committee and stated that the information provided by the Committee was useful in assisting the work of Member States in dealing with the issues of GR, TK and TCEs. The Delegation reiterated that natural resources, TK and TCEs could be shared, explored and transferred from one country to another. It added that although several countries had set up their own regulations for the protection of GR, TK and TCEs, a proper and stronger international instrument was expected to overcome existing misappropriations as well as eliminate any disputes at the earliest possible time. The Delegation stated that documents concerning disclosure of source and country of origin of biological resources and TK, evidence of prior informed consent and benefit sharing were prerequisites to support this expectation. Secondly, the Delegation stated that most of them were members of other international foras that deal with these issues and supported the continuous efforts of effective consultation between WIPO and those organizations. The Delegation concluded that with regard to document WIPO/GRTKF/IC/6/3, it supported the decision to expedite further work as mentioned in paragraph 211.

51. The Delegation of Morocco stated its strong concerns with the issue of TCEs given that Morocco had a wealth of TCEs. The Delegation stated that the protection of TCEs would have social, economic and political consequences. The Delegation attached great importance to this and therefore requested WIPO to coordinate efforts amongst States in this field. It recalled that in Rabat in May 2003, a WIPO Arab Regional workshop had been held regarding TCEs, and added that various forms of TCEs in relation to economic and social elements were studied and various national experiences were noted. It added that the workshop had adopted recommendations which reflected the concerns of the participants and the importance attached by them to TCEs. The Delegation stated that these recommendations affirmed the need to coordinate among parties to achieve an international instrument for the protection of TCEs with the participation of other international fora. It added that there was a need to create expert committees to compile TCEs and requested that WIPO provide support to these efforts. It also requested WIPO to draft a strategy to ensure the protection of TCEs. It hoped that the recommendations would be implemented. In regards to document WIPO/GRTKF/IC/6/3, the Delegation stated that it was a practical guideline containing many core issues even though it had complex policy options. It added that the document was a roadmap to move the work forward. The Delegation stated that the document contained many questions that needed to be approached. With reference to paragraph 24, the Delegation supported the creation of a practical guide on the protection of TCEs and stated that such a guide would contribute to the work of the Committee. Referring to paragraph 32, it stressed the importance of protecting folklore, as well as works inspired by folklore which make up creativity, which naturally required authorization. The Delegation stated that in paragraph 40, regarding works inspired by folklore, a definition must be clear in order to clarify the goal of protection and parties benefiting from protection. The criteria of protection in paragraph 121, to which the contents of paragraph 119 should be added, contained core issues that needed to be followed up on; these were key issues in achieving an international framework in the work of the Committee. The Delegation agreed with paragraph 211 and encouraged the Secretariat to implement it in order to succeed in the work. Concerning paragraph 79 on timeframes of protection, it felt that the duration should be unlimited.

52. The Delegation of the Islamic Republic of Iran expressed its support for the Delegation of Egypt's suggestion to utilize folklore experts with the cooperation of the Secretariat to have a concrete draft proposal for the Committee to examine for acceleration of the work and having a concrete outcome on TCEs/folklore.

53. The Delegation of Norway stated that document WIPO/GRTKF/IC/6/3 provided further essential mapping of the landscape that the international community was grappling with in trying to find common ground for fruitful international discussions on IP-solutions for the protection of TCE/folklore. In dealing with conceptual issues such as what "traditional cultural expressions/expressions of folklore" constituted, the document provided an enlightened and very constructive analysis, which it believed brought the Committee closer to a common understanding of the subject matter for international debate. As was also pointed out in the document, deciding on the appropriate term or defining the subject matter for further international discussion in this forum, did not of course limit the choice of focus at national level in national laws or in discussions in other international fora. It was of the view that the document presented important conceptual clarifications. This provided policy makers with a sound basis to consider what elements of these traditional cultures they wished to protect through regulatory means, and to balance the needs and interests involved. The menu of options presented in the document, highlighted what many delegations and NGOs had pointed out - that no single solution would necessarily meet all the needs of communities to protect their TCE comprehensively. The balance between preservation, promotion and

protection led also to different priorities in different cultures, according to what their most pressing needs were. To comment briefly on the more copyright and neighboring rights based considerations in the document, it provided a very useful analysis of the relationship between the traditional IP-based individual right - which can be an effective tool for contemporary TCEs - and collective rights, which proved more of a challenge, especially for possible international application. In this regard, it was interesting to note that further analysis on some elements of practicability can draw on the widespread use of collective management of individual rights within the copyright system. The overview of how existing international legal norms could meet certain needs of TCE-holders, illustrated the vital importance of continuing legal technical assistance to the communities and peoples affected. The Delegation commented also on some international perspectives, which in its view should not be seen in isolation. The Secretariat had produced a very interesting document WIPO/GRTKF/IC/6/6, dealing with some of the international issues involved. The issue of protection for expressions of folklore has been on the international agenda for many years. The reuse of TCE/expressions of folklore is increasingly taking place across national borders, and the challenge of finding common international ground should not be lost. As was pointed out in the document, international discussions enabled greater convergence of opinions on both concepts and possible legal solutions between nations. Whether or not such a convergence led to a binding legal instrument or recommendations or model provisions, a certain convergence was important in addressing for instance the challenge of principles for treatment of foreigners in national systems. In conclusion, it supported the continued focus on defining essential principles and outlining policy options for TCE-protection with the goal of finding common international ground for which needs of communities and indigenous cultures could be addressed by the Committee. It supported the proposals included in paragraph 211 of document WIPO/GRTKF/IC/6/3. Though the document WIPO/GRTKF/IC/6/6 on international dimensions presented to the Committee gave a useful, overall perspective, it would find it constructive for further work to link issues of international dimensions within the context of each element, not in isolation. This would possibly better highlight which of the various protection objectives were in most need of international coordination.

54. The representative of the United Nations Educational, Scientific and Cultural Organization (UNESCO) provided details on the Convention for the Safeguarding of the Intangible Cultural Heritage adopted by UNESCO in October 2003 ('2003 Convention'), noting that UNESCO Member States had felt the need to bridge the gap in international law. Previous UNESCO conventions for protecting cultural heritage had addressed tangible heritage such as objects and monuments. UNESCO instruments on intangible heritage included one soft law recommendation prior to the 2003 Convention, the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore. UNESCO had wished to take a substantial step and to move from soft to hard law in protecting intangible cultural heritage. Developing the notion of intangible cultural heritage for the 2003 Convention had required much work and setting a balance between scientific notions and operational notions, as found in Article 2 of the Convention. The Convention had defined 'intangible cultural heritage' and broadly codified the idea of safeguarding (Article 2(3)). Safeguarding of intangible cultural heritage could take on various concrete forms. The 1972 Convention on World Cultural Heritage had provided inspiration for the 2003 Convention. Once the 2003 Convention entered into force, it would create an Intergovernmental Committee within which Member States would make proposals and take decisions as to the relevant manifestations of intangible cultural heritage and what would be found in the lists provided for in Article 16 (i.e. Representative List of the Intangible Cultural Heritage of Humanity). A second list, concerning urgent elements that required safeguarding, was

referred to in Article 17. He stressed that there was a clear difference between the 1972 Convention and the 2003 Convention in that under the latter convention, Member States were obliged to safeguard intangible cultural heritage from a general point of view: this went beyond safeguarding heritage from that provided in the lists, and thus entailed a much broader safeguarding of heritage. The 2003 Convention expressed the need for a broader participation by communities and Member States (Articles 11(b) and 5). Mechanisms for international assistance were also provided for, such as training assistance which was expected to be funded by a specific fund yet to be established. The 2003 Convention only covered cultural aspects of intangible cultural heritage and did not touch on the activities of WIPO or of other international organizations. It was decided that this Convention would cover cultural aspects and that WIPO would deal with the international regulations on technical and legal aspects applicable to TCEs and contained in the definition of intangible cultural heritage. He referred to Article 3(b) which stated that nothing in the Convention could be interpreted as affecting rights and regulations of Member States which covered IP aspects. The Convention had been unanimously adopted. UNESCO hoped for a rapid ratification process.

55. The representative of the African Regional Industrial Property Organization (ARIPO) recalled that at the fourth session of the Committee, he had informed the Committee that the Council of Ministers of the Organization, at its eighth session in August 2002, extended the mandate of the Organization to include copyright and related rights, after which the Administrative Council had considered and approved proposals for the implementation of the mandate. He added that one of the important proposals approved by the Administrative Council at its 27th session held in November 2003, related to the inclusion of an additional policy objective on copyright in the Lusaka Agreement which had established ARIPO. He stated that the policy agreement sought to promote the development of copyright and related rights and ensure that copyright and related rights contributed to the economic, social and cultural development of members and of the African region as a whole. The representative stated that he shared and endorsed the views expressed by the African Group and affirmed the need for the Committee to consider all the issues in a flexible and concerned manner bearing in mind the interest of the custodians of TK and folklore. With respect to agenda item 5, he stated that he shared the view that the various options under the policy framework would enrich discussions and chart the way forward. The representative was concerned about the specific issues mentioned in paragraph 139 to 141 on questions related to the expressions of folklore that were multicultural in nature and cut across national boundaries. He added that in considering the legal and policy options for the protection of TCEs, it would be equally important for the Committee to critically examine problems such as overlapping of rights, co-ownership and dispute resolution that may be associated with folklore shared by several communities. He stated that ARIPO had taken steps towards sensitizing its member states and other stakeholders on these issues. He added that an symposium was held concurrently with the Administrative Council on topical IP issues for the heads of industrial property and copyright offices, where a joint statement had been adopted identifying priority areas of focus, coordination of policy and approaches for the protection of TK and folklore, the establishment and strengthening of collective management societies and the development of a regional framework for the protection of GR, TK and folklore. He supported the recommendation for the Committee to further explore the role that regional organizations could play in addressing problems that may arise. The representative believed that efforts at the national and regional levels should not be seen as an end in itself but necessary measures for the development of an international instrument and that it was imperative for the Committee to synthesize the shared common principles and elements at the national and regional levels as a basis for the international dimension of the protection of TCEs.

56. The representative of International Federation of Reproduction Rights Organizations (IFFRO) referred to a cooperation agreement recently signed between WIPO and IFFRO and stated that an important part of their work went to development and that under new agreement, reiterated their support and availability for further cooperation in relation to folklore protection.

57. The representative of the Saami Council supported the proposal made in paragraph 211 (ii) of document WIPO/GRTKF/IC/6/3 and stated that the Committee should accelerate its substantive work on TCEs, including the preparation of an overview of policy objectives and core principles for the protection of TCEs as well as an outline of the policy options and legal mechanisms for the protection of TCE subject matter. He supported these proposals on the understanding that such work constituted a step towards the developing of an international instrument that protected TCEs. The representative agreed with the Delegation of New Zealand that such an instrument could be a property protection regime, but perhaps more likely a cultural heritage protection regime or a combination of both, as also identified by the document for example paragraph 110. He stated that an international instrument would, in order to adequately protect indigenous peoples' TCEs, have to include elements that went beyond traditional IP, and believed it crucial that the Secretariat seek to cooperate with other relevant UN bodies in this work. In this context, he highlighted the importance of WIPO seeking the co-operation with the Permanent Forum on Indigenous Issues in all activities relating to TCEs. In continuing its work as suggested in paragraph 211, the representative called on the Secretariat to focus on two issues. Firstly, it referred to paragraph 97 as to whether there it was necessary to establish a protection for TCEs currently deemed to be in the so-called public domain. He stated that indigenous organizations had repeatedly stressed and given concrete examples of ongoing thefts and disrespectful use of indigenous TCEs. The representative urged the Secretariat to direct increased attention to this issue of protection for TCEs in the so-called public domain in its future work. The representative believed that in order to speed up the process, it would be useful if the Secretariat started to experiment with some more "legalistic" language for the Committee to consider. The representative believed that only then would the discussions be really focused and concrete. Secondly, he welcomed to paragraphs 19 to 21, which elaborated upon the need to consider customary laws in the protection of TCEs. The representative stated that Member States must recognize that indigenous peoples were equally entitled to have legal values respected as non-indigenous peoples. He added that indigenous TCEs must be protected in accordance with the relevant indigenous peoples' legal systems and legal thinking, which any international instrument must recognize. The representative stated Member States should acknowledge that there was nothing dramatic in recognizing legal pluralism in a country, as indicated in paragraph 20. The representative was encouraged by the Secretariat having commenced on the study on the role customary laws play in protection of TCEs. As stated by the Delegation of Canada, the representative was prepared to contribute to this study. The representative referred to the proposal of the Delegation of New Zealand that the Committee elaborate a practical guide for protection of TCEs and asked the Committee to consider the proposal carefully.

58. The representative of the Indian Council South America (CISA) agreed with the proposals laid out in document WIPO/GRTKF/IC/6/3. He stated that he was also representing an *Ayamara* community in Bolivia where they still promoted indigenous music and arts. He stated that his organization was well-known in Bolivia and that with their experience they had been able to promote the interests of their culture and people. The representative stated that the Committee had to separate dances and music from the collective notion as sometimes music was created individually and that the dancers were also individual creators. He stated that often alien groups exploited their cultural heritage and that there

should be a right to protect these cultural heritage and TCEs. He stated that he had seen an adaptation of indigenous arts by other communities and these were protected by copyright and patent law. He added that they were not being recognized or even referred to as authors in terms of the arts. He stated that it was necessary raise the status of this issue both nationally and internationally in order to officially recognize all Indian cultural expressions. The representative concluded by mentioning another issue that was cross-cutting through all the Indians in Bolivia and Peru, namely the presence of religious sects that prevented them from engaging in their arts as it went against their beliefs.

59. The representative of the Kaska Dena Council (KDC) stated that it was clear that the Secretariat was mindful of the diversity and vastness of rights that fell under the broadly termed phrase indigenous knowledge and with the guidance of the Committee was pragmatically moving forward. The representative supported the intervention of the Saami Council, particularly with respect to his emphasis on the role of customary law in the protection of indigenous knowledge. He added that he looked forward to the further development of this important work by the Secretariat. He hoped that the case study on customary laws and protocols would be a substantive agenda item at the next session of the Committee. The representative stated that he was aware of the concerns of States that it was premature to meaningfully examine a binding legal regime but did not necessarily agree. He added that it may be premature to establish and create a binding regime but this should not prevent the Committee from continuing its gradual steps towards an international framework. The representative stated that whether it was by soft or hard legal mechanisms their steps forward must be appropriately dynamic and recognize that the law was evolutionary. The solutions must be as dynamic as the subject matter and nature of the rights. The representative supported the pragmatic approach suggested specifically in paragraph 211 (ii), namely the development of core principles for the protection of TCEs. This approach would allow flexibility and was appropriate to the diverse circumstances of Indigenous Peoples throughout the world. It would be presumptuous and prejudicial to assume that one single approach would address all concerns. The representative stated that the Committee was in a unique situation to invest its mutual efforts to design a regime or regimes that ensured minimum standards and created some certainty, where there were deficiencies. An international regime could complement national laws and that a well designed regime would not conflict with national, regional and international frameworks but complement them. The representative stressed that any proposed international regime must: (i) recognize, respect and fully guarantee the collective rights of Indigenous Peoples as Peoples; (ii) establish mechanisms for the full and effective participation of Indigenous Peoples at all stages of access and benefit sharing arrangements including capacity-building measures and the establishment of a financial mechanism(s); (iii) establish clear procedures to secure the prior informed consent of Indigenous Peoples to any proposed use of TK and associated GR; and, (iv) affirm legal, policy, administrative and other measures, including *sui generis* systems and customary law, of Indigenous Peoples with respect to the protection and preservation of TK and associated GR. The representative supported the Delegation of New Zealand's proposal with respect to guidelines for potential commercial users regarding appropriate and inappropriate uses of indigenous symbols and saw a real need for minimum standards on appropriate commercial uses with the prior informed consent of Indigenous peoples. Protection would be much more expedient and efficient were there clear policies and procedures to follow within IP offices.

60. The representative of the Indian Movement *Tupaj Amaru* stated that IP rules had been evolving over time ignoring the legitimate interests of the TCEs of indigenous peoples. He added that western cultures continued to impose their way of life on indigenous peoples to the

detriment to indigent cultures and therefore was necessary to protect TCEs. The basic reason for this was that GR, TK and folklore were handled and controlled by rules of the market and that TCEs would constantly remain a subject of national and international piracy. The representative added that it was necessary to protect folklore as it was the national heritage of many states and that globalization had seen many protection mechanisms being dismantled. Folklore was the soul and strength for the indigenous people without which they fail to exist. The representative stated that the culture of indigenous peoples had contributed enormously to the past and present civilization and presently in the globalized world TCEs had become more of a merchandise for sale. He added that for this reason it was important to harmonize existing legislation in the international community and requested that the international community recognize the customary values of TCEs and TK. He believed that they had a collective right and that western values did not recognize collective but individual rights. The representative concluded that the Committee start preparing an international instrument as mentioned by the Delegation of Cameroon, which would result in an international treaty which would provide protection or TCEs of indigenous peoples and minorities.

61. The representative of the International Indian Treaty Council (IITC) supported the statement of the Delegations of Nigeria and New Zealand. He called attention to the United Nations Draft Declaration on the Rights of the World's Indigenous Peoples with which this topic coincided. The representative sympathized with statement of Mr. Maui Solomon of New Zealand and the examples he provided and added that this was not new for the American Indian people in the United States of America. The representative continued to provide further such examples within the United States of America. He expressed his support for document WIPO/GRTKF/IC/6/3, page 10 and stated that it needed to be expanded further.

62. The representative of the American Folklore Society (AFS) congratulated the Secretariat on compiling a very useful and deeply well informed guide to legal and policy options for the protection of folklore. He wished to advocate for the creators, practitioners, and performers of folklore or traditional cultural expressions. At its foundation, folklore was a product of the cultural creativity of individuals or small communities. In an increasingly globalized world, the market found cash value in forms of cultural production once largely overlooked. In the West, terms such as "world music" and "ethnic cuisine" stood for that process by which small-scale forms of cultural creativity had come to have significance in the market. At the same time, these forms of cultural production stood for deeply held values, connected to identity, or work as the glue that held communities together, helping people maintain a sense of worth and integrity. These were fundamental forms of human creativity, and much of what was humane and good in social life derived from these expressive traditions. In that context, the AFS congratulated WIPO for undertaking the very difficult task of outlining the issues involved in establishing protective IP measures for expressions of folklore. The AFS recognized the complexity of the issues and that much of that complexity came from the fact that definitions, national experiences, and vantage points differed considerably. At the same time, it was recognized that languages were disappearing at an enormous rate, that many forms of cultural creativity were being exploited to the disadvantage of the communities from which they derived, and that many communities, especially indigenous ones, faced huge threats to their cultural and economic well-being. Consequently, the AFS stood with the African Group in advocating for international IP measures to protect traditional cultural creativity. The AFS asked two things of the Member States of WIPO. First, that they recognize the fundamental fact that the creators of folklore—individuals and communities—represented one of the wellsprings of culture, and that at a time when their creativity was increasingly besieged, it behoved humankind to develop protective measures to

encourage the continuity of such forms of creativity. And, second, the AFS asked that the Committee recognize that, after decades of discussion, it was time for action.

63. The representative of the Ibero-Latin-American Federation of Performers (FILAIE) stated that there was no doubt that this work required an international instrument and added that it should correlate with existing treaties. The representative supported the protection of TCEs and stated that there needs to be a clear identification of expressions of folklore and the this identification would have to work within communities and also resolve territorial problems. It was here where States would have an important role to play to aid the communities as well as consider collective management societies for future instruments and the protection of to moral rights. The representative stated that the legal notion should be broaden to include not only the individual but also the community. He added that the term of protection should also be unlimited. He concluded that that had defined the artist as the intermediary for folklore as he/she had an important role to safeguard and at the same time abuse folklore, and thus was a need to have a moral code to respect the source of the work.

64. The representative of the Health and Environment Program stated that with regards to the international dimension, local communities were often the victims of unfair competition from the side of large companies. With regards to document WIPO/GRTKF/IC/6/3, the representative stressed the role of WIPO in capacity building in the protection of folklore and that this had to be done by means of implementing documents and materials to help communities better understand their options. She added that the Committee must realize that NGOs had a role to play and supported the statement of the African Group and document WIPO/GRTKF/IC/6/12. She called for the documents to be implemented to protect TCEs. The representative hoped that WIPO and WTO would coordinate their health policies in respect of the Doha Declaration.

65. The representative of the International Publishers Association (IPA) stated that the protection of these subjects was of great importance to IPA with its diverse membership spanning all five continents. Regarding TK and TCEs as a potential third pillar of the IP system, he stated that the IP system was a balanced system with clearly defined rights, their ambit and depth leading to legal certainty and that a presumption of freedom of use applied. At present, TCEs were a relatively open concept that did not yet meet with the habitual rigor of a clear definition and identification of what ought to be protected and what should not. If TK and TCEs were to become truly the third pillar of IP, the necessary rigor should be pursued further. He added that not all states were perhaps at *idem* over what items of TCEs may merit protection and that perhaps there was scope for a deliberation on what items were sufficiently identified and where a sufficient consensus existed for defining which aspects of these items required protection against what conduct. Regarding beneficiaries of rights, the representative encouraged the Committee to search for alternative mechanisms of protection that designate, involve and empower beneficiaries of a possible international protection scheme more directly and strongly than would be the case under a *domaine public payant* system. Thirdly, regarding database protection, the representative stated that the IP system also evolved and that he strongly supported the international protection of non-original databases. He added that without some form of defense, databases were vulnerable to exploitation and piracy by free riders. The representative understood from the documents, that in this aspect, database publishers were very much in the same situation as those wishing to disseminate traditional expressions of folklore. The representative concluded that he remained confident that a suitable arrangement could be devised to allow different forms of IP to co-exist.

Conclusions

66. The Chair observed that the Delegations that had spoken either supported, or expressed no opposition to, the future steps proposed in paragraph 211 of document WIPO/GRTKF/IC/6/3. Taking into account the remarks made in the course of the debate, the Committee requested the Secretariat to prepare drafts in accordance with the proposal in paragraph 211 (ii) of the document. The Committee noted, with some comment, the contents of documents WIPO/GRTKF/IC/6/3 Add. and WIPO/GRTKF/IC/6/7.

AGENDA ITEM 6: TRADITIONAL KNOWLEDGE

67. The Secretariat introduced documents WIPO/GRTKF/IC/6/4 and WIPO/GRTKF/IC/6/8.

68. The Delegation of South Africa stated its wholehearted support for the contents and proposed activities of document WIPO/GRTKF/IC/6/4 on the legal protection of TK. It suggested that the document should form the basis of the development of core principles and policy options for TK protection. It supported the contents of the document but noted that the conclusions would not be the same as on WIPO/GRTKF/IC/6/8, since there were certain dangers inherent in defensive protection.

69. The Delegation of Brazil stated that any measures for the protection of TK should clearly enshrine a norm against the misappropriation of these resources. This should be a fundamental objective of any initiative to protect TK, in addition to other objectives such as equity, the conservation and sustainable use of biodiversity, the preservation of the cultural integrity of indigenous peoples and the social and economic development of local and indigenous communities. The Delegation also clarified that the provisions on the protection of TK in Brazil's current legislation (Provisional Measure 2.186-16) had a very specific defensive purpose. Regarding the principles of protection, the Delegation sought to clarify the significance of the "comprehensive and combined approach to TK protection" (document WIPO/GRTKF/IC/6/4, paragraph 19). The Delegation disagreed with the suggestion that conventional fields of IP law can be used to protect TK, pointing out that existing categories of IP, such as patents, were frequently the source of the problem of bio-piracy and misappropriation, not their solution. They are systems from which, and not by which, TK should be protected. The Delegation did not recognize the relevance of instruments such as the Madrid Protocol and the Lisbon Agreement on Appellations of Origin to the protection of TK. In order to protect TK, developing countries should not have to take on new obligations in respect of conventional categories of IP rights. Any proposed combined approach to the protection of TK would necessarily have to include the use of defensive protection measures, such as disclosure of origin and prior informed consent requirements in patent laws. The Delegation observed that *sui generis* protection norms for TK were not a replacement or substitute for measures of a defensive nature, such as the use of disclosure of origin, prior informed consent and benefit sharing requirements in patent laws. With respect to policy tools (Section III of WIPO/GRTKF/IC/6/4), the Delegation agreed with the need to explore the implications and relevance of alternative legal doctrines in formulating policy on these issues. The use of compensatory liability regimes could be further discussed. On the elements of protection, particularly formality requirements, the Delegation did not agree that TK should be registered and/or documented in order to be protected and expressed strong skepticism with respect to the use of registry systems and databases, which in some cases may

run counter to the very objectives of protection. The document (paragraph 69) suggested that there was a trend towards the use of registration systems for protecting TK subject matter. The Delegation clarified that Brazil was increasingly of the opinion that registries and databases may in fact have no role to play in protecting its TK, and recalled that it had expressed this position on several occasions in previous sessions of the Committee. The Delegation noted that paragraph 68 of the document mentions that there were provisions in Brazil's current access legislation that refer to databases, noting that they are not constitutive of any rights, as the paragraph rightly specifies. The Delegation advised that this legislation was currently being revised, with the likelihood that the possible role of databases would be further diminished. The prevailing opinion in Brazil was that the rights of indigenous and local peoples were inalienable and cannot be subjected to any limitations of a temporal nature, and that indigenous peoples cannot renounce the rights invested in them over their TK. Raising the proposed linkage of the Committee's works with ongoing discussions in the CBD on access and benefit-sharing, the Delegation raised concern that the Committee could do work of a prescriptive nature on the application of the principle of prior informed consent in regimes relating to access and benefit sharing (paragraphs 96 to 99 of the document), since this would seem to be the domain of the CBD, not WIPO. The CBD played a leading role in addressing issues related to the conservation and sustainable use of biodiversity, as well as benefit sharing. As the representative of the SCBD had explained, discussions in that forum were taking place on the establishment of an international regime on access and benefit-sharing, pursuant to the mandate established at the Johannesburg Summit on Sustainable Development. Brazil strongly supported the establishment of such a regime and believed that the CBD was and should continue to be the appropriate forum to undertake work on the matter. The CBD had exchanged information with other organizations working on related issues, it remained the leading forum on biodiversity matters and had the prerogative to address, without conditions, any relevant issues pertaining to the discussions on the international regime on access and benefit-sharing, for which it was and would remain the preeminent forum. CBD fora, namely the Working Groups on ABS and Article 8(j), WIPO fora, and other fora, such as the TRIPS Council, may at times address interrelated issues, but discussions in all these fora constituted parallel processes. Each forum had an autonomous mandate to address the issues before it from its own perspective. The proposed principle of coordination between different international processes, found in this document, would not be acceptable if it implied that the other fora would have to defer to WIPO on matters that were nevertheless within their mandates. Progress in the discussions on the international benefit sharing regime in the CBD should not be prejudiced or considered to be contingent upon developments in the Committee since this would be contrary to its very mandate, which clearly states that its work is to be "without prejudice to work in other fora". Because the CBD is the preeminent forum to negotiate and address access and benefit sharing, the Delegation had reservations with respect to the idea that the Committee should develop parameters that would limit negotiations in the Working Group on ABS. WIPO should instead consider areas within its mandate, particularly where it is necessary to ensure that IP rights are supportive of and do not run counter to the CBD's objectives. WIPO should acknowledge that there was an urgent need to establish, everywhere in the world, a requirement in patent laws that the patent applicant should disclose the origin of GR in patent applications for inventions utilizing such resources, as a means of combating biopiracy. With respect to the suggested coordination contained in paragraph 100 on access and benefit-sharing it was of the view that at the present time the relation between the two ongoing processes should not go beyond a mutual exchange of information.

70. The Delegation of Japan found that the document would provide a good basis for further discussion. In its view the document consisted of three levels and was not clear

enough with the differences of the contents at these levels. For instance, the question of unfair competition could be a very important aspects for the protection of TK and was found in principles and objectives in paragraphs 19 and 44. A clear distinction was needed to avoid confusion. The Delegation did not oppose a combined approach to TK protection as set out in paragraph 18 of the document but queried how the tools should be combined and felt it might be premature to decide definitively on the combined approach as the best basis for elaboration. On the principle of regulatory diversity in paragraph 23 the Delegation understood the importance of sectorial distinctions, such as traditional medicine, but at the same time felt it was necessary to consider the cross-cutting nature of the IP regime which would apply in all sectors. Regarding the nature and scope of rights in paragraphs 77 to 83, it suggested that the rights conferred to TK should be discussed further. In case the nature of the rights conferred were exclusive rights, it would be important to think about the balance of the right holder and the public interest. An example was the balance struck in the grant of patent rights. Finally, the term of protection appeared to be one of the most important elements to be carefully elaborated. Legal certainty on this element was important not only for the TK holders but also for the third parties, for whom it was important to know when the right over the TK would expire.

71. The Delegation of Norway supported all the suggestions in the last three paragraphs of document WIPO/GRTKF/IC/6/4. In its view the first step would be to explore whether the Committee could agree on some objectives and core principles that could serve as the basis for the discussions on protection of TK. The next step would be an analysis of policy options for implementing those objectives, based on the experiences of Member States. It suggested that the menu of policy options also would have to clarify the interface between IP and non-IP forms of protection as well as the relationship between conventional IP and *sui generis* approaches to protection. The Delegation supported every one of the identified principles in paragraphs 18 to 29 of the document. It felt that the approach of agreed common principles followed by an annotated menu of policy options were the right way forward.

72. The Delegation of Venezuela supported Section II of WIPO/GRTKF/IC/6/4 about the objectives of TK protection, which also provided a summary of the options for policies and means for legal protection. It was important to complete the proposed process of developing elements and provisions for TK protection without dissociating the process from the international dimension and the need to eliminate any illicit use of resources in foreign jurisdictions. It suggested that in paragraph 8 there was no reference to document WIPO/GRTKF/IC/4/8, which had previously been considered by the Committee. It was concerned that in subparagraph 16.3, the *sui generis* system and the register system for TK seemed to be assimilated to each other and recalled that in several countries, which had established registers, these had been rejected by TK holders. Regarding Section V, it noted that each country had its own forms of protection and this should be taken into account when developing the elements of protection described in Section V. In closing, the Delegation supported the activities proposed in the decision paragraph of the document.

73. The Delegation of Egypt speaking on behalf of the African Group emphasized that the international dimension was not separate from the principles and objectives and other contents of this document. For example, the first objective mentioned in the African Group's proposals in document WIPO/GRKTF/IC/6/12 was the prevention of misappropriation and another principle was the complementarity of defensive and positive protection. This document showed that any international dimension would have to accommodate the diversity of national and regional approaches. Especially in this area there could be no one size fits all. However, the Delegation did not agree with a bottom up approach, since in other areas of IP,

normative exercises had taken place with an exclusively top down approach in the past. It expressed its appreciation that numerous references to the OAU Model Law had been incorporated. Regarding the principle of interagency cooperation, it proposed to add UNCTAD in paragraph 29(b) of the document and supported the remarks of Brazil on coordination with other fora.

74. The Delegation of Mexico said that it was in favor of the drafting of a list of objectives and legal options for the protection of TK, as set forth in the document under discussion. It agreed with their contention in that document that the first measure adopted should be the definition of objectives. It emphasized that the legal protection of TK associated with GR should likewise cover the protection of the resources themselves and the sharing of the benefits deriving from them. It suggested that the framework of future work should include the drafting of standards and recommendations that addressed the policy objectives to be defined. As pointed out in paragraph 2, the incorporation of principles could lead to the creation of a combined regime that would provide for prior informed consent, equity and benefit-sharing, and also the safeguarding of traditional customs. Also, where appropriate, the regime should be consistent with the provisions governing access to GR. It pointed out that measures of both positive and preventive protection should be considered. The preventive protection could be based on the optional registration of TK; the delegation stressed the voluntary nature of registration in view of the fact that it was not always in the interest of communities. It suggested that the International Bureau might conduct studies on mechanisms whereby local legal systems might be used to settle disputes.

75. The Delegation of Ireland speaking on behalf of the European Community, its Member States and the Acceding States referred to its submission to the third session of the Committee contained in document WIPO/GRTKF/IC/3/16. In this submission the European Community and its Member States had expressed its support for the work towards the development of international *sui generis* models for the legal protection of TK. The Delegation considered it useful to develop drafts of an overview of policy objectives and core principles for TK protection, as well as an outline with commentaries of options and elements for the protection of TK subject matter. With regard to defensive protection measures, it recalled the Committee's past work on the development of a range of practical mechanisms for the protection of TK including extensive analysis of the role of TK as prior art to ensure that existing technical aspects of TK were taken into account in the patent examination process and indicated its support for the direction for future work as proposed in paragraph 27 of document WIPO/GRTKF/IC/6/8.

76. The Delegation of the United States of America supported the comprehensive approach in document WIPO/GRTKF/IC/6/4 to the protection of TK including the use of existing IP systems. It stated that a combination of approaches was often the most effective way of addressing concerns of access, benefit sharing and improper patenting that had been raised in the Committee. It added that customary laws within local communities may play an important role in regulating access to TK and in sharing any benefits that may arise. The Delegation supported the use of traditional IP laws to protect inventions related to TK, but remained cautious of new IP laws that would conflict with the principles of traditional IP law. It did not support the recognition of specific, intangible property rights in TK that are outside of the scope of traditional IP laws. The Delegation stated that IP laws reflected a careful balance between the dual goals of encouraging innovation and creation, and ensuring a benefit to the public. It added that any new form of intangible property rights that would apply to TK or TCEs had the potential to take vast amounts of material out of the public domain potentially for indefinite periods. The Delegation supported the protection of TK through the

suppression of unfair competition, including the use of national laws to criminalize false claims of “indigenous” or “authentic” products. It was in favor of focusing future work methods to adapt existing unfair competition practices to TK subject matter as suggested in paragraph 19 of document WIPO/GRTKF/IC/6/4. The Delegation believed that prior informed consent was a valuable practice that could be facilitated through the proper use of permits, contract systems and other national laws. It did not view prior informed consent as a natural right. The Delegation supported the idea of focusing and accelerating the work of the Committee on the protection of TK and believed that this was the correct forum for conducting work. It was necessary to achieve common policy objectives, core principles and appropriate legal mechanisms. Additionally, it added that the Committee needed to answer some fundamental questions as well as try to understand the motivation for TK protection and added that once all these questions were answered it would be easier to achieve common policy objectives, core principles and appropriate legal mechanisms. On document WIPO/GRTKF/IC/6/8, the Delegation supported the proposal for further responses to be submitted on the questionnaire WIPO/GRTKF/IC/Q4 and was surprised that few had responded. The Delegation supported the use of TK and GR databases and registries as source of prior art including those maintained by indigenous and local communities. TK and GR databases would help protect against improper patenting of TK and also ensure quality of patents. It was not clear how databases would facilitate positive protection for TK as proposed by the Asian Group. TK and GR databases were a source of prior art that may be used to prevent improper patenting. The Delegation recognized the concerns of indigenous and local communities and was cautious of suggestions to use databases of TK and GR information, where the information in the databases had not been disclosed to the public, as a source of prior art. The Delegation recommended that the Committee follow the progress of the International Patent Classification revision as part of its future work. It expressed its interest in sharing national experiences regarding information sources and search methodology that could be used to obtain prior art related to GR and TK. The Delegation supported the use of a questionnaire on prior art criteria as it would help Member States to understand how prior art could be made available to patent offices, as well as re-evaluate their own prior art criteria. The Delegation concluded that it would be willing to consider, at the appropriate time, a recommendation regarding search and examination.

77. The Delegation of Peru did not necessarily share the view that the Committee was the adequate forum to discuss this matter. Document WIPO/GRTKF/IC/6/4 was an excellent compilation of the doctrines on TK. It was important to look at the structure of the document as well as various national experiences. The policy objectives identified under paragraph 43 referred to an initiative by GRULAC at the Committee’s first meeting which covered the multiple and complex ideas to the protection of TK. It agreed with the conclusions of the documents regarding the need to have a combination of IP rights and some *sui generis* systems. This way, there could be a holistic approach, which was comprehensive and complete. On the international dimension, the Delegation stated that the Committee needed to look at different international fora not only dealing with IP but also with indigenous issues and TK, and the issue of human rights particularly relating to development. The Delegation stated there was a link between human rights and IP and hoped to continue to develop the subject in various fora and have the possibility to discuss IP and development as appropriate. The Delegation agreed with the preliminary approaches on the techniques mentioned in the document but added that these subjects should be developed more clearly. With regards to document WIPO/GRTKF/IC/6/8, the Delegation requested the Secretariat to include the work Peru had undertaken on *maca* discussed at the fifth session of the Committee (documents WIPO/GRTKF/IC/5/13 and WIPO/GRTKF/IC/6/8, paragraphs 16 and 18). There was a need to develop an international dimension regarding the issue of legal protection, and to look at all

the responsibilities of all IP offices in all countries, especially those where patents were granted. Peru favored a national registry and databases established on TK to develop the knowledge and was trying to implement this in accordance with the recommendations of the Committee. Regarding the case of *maca*, it stated that there were many countries involved in defensive measures and that these needed to further developed. The Delegation stated that it would like to see a database and registry and also prior art being mentioned, the use of TK and other measures. Concerning *maca*, there were two types of knowledge: the western knowledge protected by IP and spiritual knowledge that was of importance to the indigenous communities. These two did not go together. The spiritual issue needed to be addressed at the material level, and this created a dilemma in terms of patents. The Delegation stated that it was not possible to have eternal protection on certain IP but that knowledge needed to be shared. With regards to the work proposed in the conclusion of the document, the Committee needed to look at the contents of the protection of IP. As regards to prior and informed consent, the Delegation stated that there had to be benefit sharing and there was still much to discuss in this area.

78. The Delegation of Japan commented, with respect to paragraph 27 (iii) of document WIPO/GRTKF/IC/6/8, that it would be beneficial to survey the present criteria on prior art for the further elaboration of measures to be taken in order to strengthen effective and efficient defensive protection of TK and GR. The Delegation supported future work on the questionnaire on prior art criteria and its compilation. With respect to the development of recommendations to the authorities, the Delegation questioned whether it was appropriate and premature to decide such activities at this stage. The development of recommendations should be based on the detailed analysis of the responses to the questionnaire, and it would be appropriate to focus efforts on questionnaire-related activities, including detailed analysis on the responses.

79. The Delegation of Canada offered its full support of the recommendations in paragraph 104 of document WIPO/GRTKF/IC/6/4 for the preparation of drafts surveying the policy objectives and core principles, and outlining the policy options and legal elements for protection of TK. These documents would serve as useful tools in its own efforts to consult further with Canadians about the policy and legislative options available in this area. The Delegation supported the distinction between the development of principles and objectives on the one hand, and the development of an annotated menu of policy options and legal elements on the other, subject to the following comments. It agreed with the statement of the Delegation of Japan that there appeared to be some terminological confusion in the document. In the section dealing with principles and objectives, it stated that there was a discussion of principles, but little on objective. It added that some of the legal doctrines found in the subsequent section were actually principles, whereas some of the principles could also be possible doctrines. The Delegation stated that the first time a list of possible objectives appeared was under the section on policy tools. It acknowledged that this complexity emerged from an attempt to recognize those principles that have been elevated to the status of doctrine in certain states, and suggested that for the purposes of applicability to a wider audience, it might be better to simplify future versions. The Delegation placed considerable value on a clear and concise draft document that in lists all the possible objectives that a state or community may have for protecting TK, as well as all the possible underlying principles for such protection and in a second section, a menu of policy options and legal elements for achieving any given objective. With regards to the reference to the desirability of achieving a “unity of objectives”, the Delegation was not convinced that this was a necessary goal at this time but believed the Committee was still in an important stage of identifying the range of possible objectives of such protection. It added that it needed more time to ensure that the

objectives of Aboriginal people in Canada were taken into account in this process before seeking a “unity of objectives”. The Delegation stressed that flexibility, which was mentioned several times in the document, was a key issue. It added that the best way to assure appropriate application in various jurisdictions was to preserve flexibility in the identification of options. The Delegation agreed fully with the Delegations of Brazil and Egypt that had pointed to the importance of both the participation of TK holders in the development of national standards and the need to ensure co-ordination with other relevant fora. The norms emerging from various international forums should be mutually supportive and the best way to achieve this was through effective co-ordination. It shared the concerns expressed about avoiding duplication of work between various forums and said that better co-ordination would ensure that issues were dealt with in the forum with the appropriate mandate and expertise. On the issue of prior informed consent, the Delegation stated that this concept was considered a principle in one section, a doctrine in another section and a policy tool in the third. It wondered whether prior informed consent was not simply another example of a *sui generis* IP right. On the principles of equitable benefit sharing, the Delegation noted that in other fora the focus was often not on monetary benefits, but on other forms of benefit sharing that were closer aligned to the objectives of the knowledge holder. It wondered whether there was room for more analysis of other possible forms of benefit sharing in the next version. The Delegation reiterated the importance of a better understanding of the relationship between indigenous laws and customary protocols on the one hand, and the formal IP system on the other. It affirmed its willingness to contribute to any specific studies that may emerge in this area. With regards to document WIPO/GRTKF/IC/6/8, it considered that the numerous initiatives on defensive protection under the previous mandate were some of the most practical and immediate outcomes of this Committee’s work, and it continued to support the development and implementation of further initiatives in this area. The Delegation agreed with countries that defensive measures on their own were not sufficient, and that the Committee should continue to try to develop effective and widely accepted positive protection measures. On the particular issue of databases and registries, the Delegation recalled that the Secretariat was preparing a toolkit designed to help TK communities make informed choices about whether to proceed with documentation initiatives. The Delegation concluded by expressing its support of all the specific recommendations in paragraph 27 for follow up work, and looked forward to discussing in the future additional proposals for future work.

80. The Delegation of Syria stated that what was established in paragraph 32 in document WIPO/GRTKF/IC/6/8 could be used as a legal basis and that this principle could be adopted in protecting TK. The Delegation referred to the Treaty on Intellectual Property of Integrated Circuits (“Washington Agreement”, May 26, 1989) and stated that this kind of approach could be adopted to protect TK as it stated that any contracting party could freely apply the commitments in the agreements. It added that adopting such an approach would allow countries to protect TK in the way they found appropriate, thus giving sufficient flexibility in national laws.

81. The Delegation of India agreed with the perception that for realizing the objectives of TK protection the Committee would need to utilize fully the options available under the IP system. The Committee also needed to address the issue of misappropriation. Not only was it necessary to prevent future misappropriation but the Committee would have to evolve ways and means to provide remedial solutions for the past wrongs. It added that this clearly established the need for an agreed international framework for faster invalidation procedures of large-scale misappropriation, which happens due to lack of access to TK, related prior art in foreign patent offices. The Delegation felt the need for developing internationally binding

sui generis legal instruments which could benefit the holder of TK holder on whose knowledge systems a large number of modern SCT based innovations are based. The Delegation stated that multiple legal doctrines could and should be combined to form an effective basis for both national and international protection of TK. It added that there was no reason why protection at the international level could only be provided after every detail of principle and objective had been annotated, analyzed, examined and formally agreed by all Member States. The Delegation stated that it was fair to conclude that there was broad agreement on the question of the need for protection of TK. It concluded that given this broad agreement, it should be possible for the Committee to take up this challenge without further delay.

82. The Delegation of Fiji stated that Fiji had made much progress in formulating and coordinating TK, which reflects Fijian heritage dating back thousands of years. Pilot projects had commenced where two village settlements had been selected and data was collected to ascertain the owners of TK and cultural experiences. There were two distinct aspects of protection: first, the improvement of traditional IP and second, the protection of TK from commercial exploitation. A draft model law was currently being worked upon which would establish procedures whereby consent could be obtained for the non-customary use of TK and TCEs, including the making of derivative works. The Delegation stated that the creating of derivative works would not affect the benefits of a traditional owner, since ownership and moral rights would be acknowledged. It added that while the model law would aim to protect the rights of traditional owners, the identification of owners was the first obstacle given the communal aspects of Fijian ownership. The Delegation stated that Fiji had 14 provinces and therefore overlapping of knowledge. The Delegation acknowledged the assistance provided by the WIPO to the Forum Island and commended WIPO's initiative in providing expertise by making available technical assistance in developing legislative framework for the region.

83. The Delegation of Kenya stated that the document's policy and legal options on the protection of TK set out in document WIPO/GRTKF/IC/6/4 were encompassing and that the core principles and objectives it set out could and should provide guidance when it came to formulating a comprehensive platform for the protection of TK. It stated that the legal options provided flexibility and addressed the concerns of TK holders. The Delegation noted that the document's view on the limitation of the scope of the protected subject. With regards to future work, it supported the questionnaire on prior art and was of the view that a questionnaire would be able to provide good information that could be used to develop draft recommendations for authorities responsible for patent search and examination to take great account of TK systems. The Delegation stated that the matter in paragraphs 57 to 65 of document WIPO/GRTKF/IC/6/4 was due to the fact that there was a great overlap in various forms of TK. The Delegation concluded that protection of TK should be in the broadest possible sense.

84. The Delegation of Singapore stated that it supported the possible future direction as stated in paragraph 23 of document WIPO/GRTKF/IC/6/8, in particular the work of a compilation of TK information as a practical defensive tool.

85. The Delegation of Switzerland commented that document WIPO/GRTKF/IC/6/4 provided a good overview of the many and complex issues that arise with regard to the legal protection of TK and the options available in this regard. The Delegation supported the tasks proposed in paragraph 105 which would provide the basis for further work in the area of TK and also provide guidance and structure to our discussions in the IGC. As the Delegation had stated at previous sessions, it was very important that the policy objectives and core principles

for the protection of TK were clarified at the outset of the work. This step should also include clarification of the use of terms. The Delegation also supported the preparation of an outline of the policy options and legal elements for the protection of TK, together with a brief analysis of the policy and practical implications of each option and element. Both of the tasks proposed in paragraph 105 would further advance the work of the IGC and help us find timely solutions. On document WIPO/GRTKF/IC/6/8, the Delegation said that all of the proposed tasks merited further consideration and would help the Committee to make further progress in its work. The first task was to call for further responses to be submitted to the Questionnaire on Databases and Registries Related to Traditional Knowledge and Genetic Resources (GRTKF/IC/Q4). To date, only a limited number of responses had been received. The Delegation supported the task, as any additional response would aid further deliberations on this issue. The third proposed task, for a questionnaire on prior art criteria, was welcome, as it would provide important input to the further work of the Committee. The Delegation was aware of the great efforts taken by the Secretariat to invest in drafting questionnaires, and hoped that many responses would be received.

86. The Delegation of the Islamic Republic of Iran stated, in connection with document WIPO/GRTKF/IC/6/8, that providing combined defensive and positive protection of GR and TK to prevent their unauthorized use was an essential issue. Defensive protection in accordance with the principles of the Convention on Biological Diversity and the FAO treaty needed to be recognized. Effective positive protection would be possible if an agreement was reached on methods of protecting GR and TK. For this purpose, amendment of international agreements such as IPC and PCT would be a positive step but with recognition that the patent system would not alone be adequate for positive protection of GR and TK. In connection with section 8 of document WIPO/GRTKF/IC/6/8, agreement had not been reached on TK and GR to be collected in databases and the protection of the databases has not been established. It was clear that the amendment of the IPC and its relation with the database for TK would be useful and practical. Given the lack of a protection system for databases containing TK and GR, it would be possible for unauthorized use to increase and opportunities for positive protection could be lost. The Delegation recognized that defensive protection was a legitimate right of every country and that the principle of prior informed consent as discussed in section 17 of the document was important. Use could also be made of the contractual system based on the Bonn Guidelines. It was noted that positive protection could prevent unauthorized use by third parties if implemented by contract. Contractual systems should also be supported by the international community and an international mechanism to prevent violations of agreed principles must be prepared.

87. The Delegation of China explained that TK protection needed clear policy objectives and a comprehensive framework comprising multilegal systems, which could be coordinated to provide a full range of protection to TK. The Chinese Government placed great importance on protection of TK including reference in clauses in the Chinese constitution to traditional medicine particularly in Article 21. This laid a solid framework at the highest level for the protection of TK. To realize the objectives set in the Constitution, besides the full usage of the existing IP protection regime, rules were also published to protect TK. Including protection of TK in the civil law has also been proposed. Taking into consideration of the special nature of TK *sui generis* systems should be explored for the purpose of TK protection. The term TK should be clarified and differences between it and folklore explained and the technological nature of TK must be highlighted. Support was expressed for the scope given in document WIPO/GRTKF/IC/6/4. If the scope of subject matter encompassed by a *sui generis* system were defined too broadly, the *sui generis* approach may be weakened. Relative to document WIPO/GRTKF/IC/6/8 the Delegation supported the Committee in its

new mandate to conduct studies of the technical criteria as well as recommendations to be made to patent searching and examining authorities to give additional consideration to TK. Support was also given to the data base criteria and recommendations of the documents. Cooperation and exchanges of views with WIPO and member states on protection of TK and criteria of protection was welcomed by the Delegation. The Delegation of China would contribute its experience in the protection of TK in such exchanges.

88. The Delegation of New Zealand supported the development of both the overview of objectives and core principles and the outline of policy options and legal elements for the protection of TK recommended in decision paragraph 105 of document WIPO/GRTKF/IC/6/4. The menu of options approach was again advocated by the Delegation as it provided sufficient flexibility for domestic policy development and meets the diverse needs of TK holders. On the issue of basic principles and objectives, the Delegation agreed that it is necessary to first identify key principles on which to base the development of policy options and legal measures. All of the principles identified in document WIPO/GRTKF/IC/6/4 warranted further consideration and were supported by New Zealand as part of a 'menu of options' approach. A preference for the 'comprehensive and combined approach' was expressed. In response to the suggestion that these principles could also form part of a norm-setting exercise leading to some sort of international consensus or perspective, the Delegation agreed that it is necessary to consider the international dimension of TK protection. However, it would be premature to decide at this point what principles would ultimately underlie any future international mechanisms that may be developed. These principles, however, were a useful guide to progressing the work on the international dimension. On the issue of applicable legal doctrines and policy tools required to implement the broader objectives and principles, the Delegation agreed that flexibility at the level of national law is necessary to determine issues such as the identity of rights holders, conformation of legal personality, and the nature of benefits. The four legal doctrines and reference to customary law identified in the paper were all relevant to the development of more precise or detailed mechanisms for TK protection. The subject document did not ask Committee members to choose between these legal doctrines. Members were free to combine them flexibly in order to suit their needs, priorities and objectives. The Delegation supported this approach, and agreed that a "scaled bundle of protection mechanisms" was required, as different types of TK may require different means of protection. The comprehensive study about how these legal doctrines have been used in practice would be useful. On the more detailed elements and issues identified by the Secretariat, the Delegation commented that all elements warranted further examination as part of development of an outline of policy options and legal elements for the protection of TK. On the question of policy objectives, the focused approach (not the broad-brush approach) seemed to be more practical and achievable. Regarding the scope of protected subject matter, the Delegation agreed that it is not necessary to agree on a formal definition of TK and that the meaning of the term could be determined, in the development of particular protection mechanisms, through a general characterization of TK in relation to particular policy goals. The distinction between "TK" and "TK subject matter" was useful, in particular the protection of TK by sectors and its association with distinct tangible subject matter and communities, and the "differentiated scope" approach warranted further consideration. The Delegation had some concerns on the issue of formalities, in particular the risks associated with registration and documentation. On the question of substantive and eligibility criteria for protection, flexibility at the domestic level would be important especially to enable participation by traditional communities in the determination of eligibility criteria, but further examination of criteria in existing systems was warranted. Considering the scope of rights, further consideration of the five options was thought to be needed. On document WIPO/GRTKF/IC/6/8, the Delegation supported the

process for developing a menu of policy options and approaches, but did not necessarily agree with all of the options presented in the paper. It wished to consider the next draft, and at that point think about which options would be appropriate for the protection of TK in New Zealand. The Delegation also expressed support for the proposals for future work contained in paragraph 27 of document WIPO/GRTKF/IC/6/8.

89. The Delegation of Panama referred to the *sui generis* law for TK and TCE protection in Panama. Information in the subject document or conventional legislation could be used to protect some forms of TK with limited duration such as for renewable trademarks. The Delegation indicated that Panama's laws included a registration system that has been used by two indigenous groups. The system was based on the establishment of recognition of TK as collective rights. Date of origin was generally dealt with as being unknown. The object of protection in the case of copyright is a work of authorship, but the ideas and expressions of TK are indissoluble. In terms of conditions for protection: in copyright originality is required; for a patent, novelty, inventive innovation and industrial application was required. The *sui generis* law requires cultural identification of the TK with a community. These collective rights of TK could be perpetual. Unlike the acquisition of industrial property rights, there were no costs under the *sui generis* law and its use did not require legal services. The purpose of rights under the *sui generis* law was social and cultural recognition rather than economic. The Delegation agreed with the conclusion paragraphs of document WIPO/GRTKF/IC/6/4. The Committee was also urged by the Delegation to work on application of policies that supported education, research, and mechanisms for creating indigenous collective management organizations.

90. The Delegation of the Russian Federation supported paragraph 104 of document WIPO/GRTKF/IC/6/4 and favored work on practical experience at national levels to help protect TK. That would help define criteria for international for protection or systems; the type of protection provided; and ownership issues. On document WIPO/GRTKF/IC/6/8, the Delegation encouraged the Committee to continue to collect information on implementation of protection of TK and the level of technology involved.

91. The Delegation of Brazil indicated that document WIPO/GRTKF/IC/6/8 provided a very useful update to WIPO/GRTKF/IC/5/6 on defensive protection measures, considered at the last meeting of the Committee. It pointed out that use of defensive protection measures was rightly recognized as an essential ingredient for any strategy devised to address the problems of misappropriation of GR and TK. The Committee's activities in this area therefore constituted a fundamental aspect of its program of work. The Delegation indicated that document WIPO/GRTKF/IC/6/8 recalled the measures undertaken so far under the *aegis* of the Committee's mandate, particularly in respect of IPC Union and the revision of the minimum documentation under the PCT, which were without doubt useful measures. The Delegation noted that document WIPO/GRTKF/IC/6/8 rightfully pointed out there was still much room for further expanding and deepening cooperation between WIPO Member States on these matters. The Delegation affirmed that further work on defensive protection measures was of the essence if the Committee was truly to attempt to address the concerns that have been raised by the developing countries in respect of the need to protect TK and GR. Much of the work undertaken by the Committee in this area of its program had primarily dealt with documentation issues and the use of databases and registries for defensive protection, which has complemented efforts at the national level by countries in some regions to establish TK digital libraries, efforts which were to be commended. Though such efforts may play an important role in protecting TK in some regions, documentation initiatives and databases had significant limitations as a means of defensive protection. Given the sheer breadth and depth

of such knowledge, no effort at documentation could be completely comprehensive and exhaustive of all the TK available in a TK-rich country. Given the oral nature of much TK in the world and the peculiar ways in which it may be transmitted, one should ask whether it would be even morally correct to place such a burden on the resource-poor holders and custodians of TK in developing countries. Moreover, in many cases documentation may be irrelevant or even deleterious to the interests of TK-holders. Databases may be inappropriate, due to loss of confidentiality of TK which is not in the public domain. This led to much skepticism in Brazil as to the relevance and appropriateness of databases, and an emerging consensus that such tools may in fact only have a very marginal role, if any, in protecting its TK. This clearly pointed to the need to adopt other complementary tools and measures, to constitute an integral element of any effective defensive protection strategy, both at the national and international levels. Document WIPO/GRTKF/IC/6/8 pointed out interesting avenues for future activities, and Section III raised relevant issues for the Committee's discussion. On the suggestions for future work (Section IV), a questionnaire on prior art criteria could be one activity for the current biennium. The suggested purpose of such a questionnaire – ensuring effectiveness of defensive publication initiatives for patent purposes – would seem to be relevant to the Committee's activities undertaken to date, but would not be a sufficient means of advancing the Committee's ultimate goals. There might be something to be gained from compiling information on the standards applied and procedures followed by patent authorities in different jurisdictions, but the Delegation was concerned that this section of the document appeared to emphasize the need for the holders and custodians of TK in resource-poor countries to adapt to the standards and procedures of the patent offices, particularly of the developed countries, where most patenting activity took place. The Committee should consider the appropriateness and justice of such an approach, particularly given the peculiar nature of some of these standards and procedures – as illustrated by those national patent laws which recognize prior art outside their country only in the form of written and published information. The Committee should adopt a new approach to defensive protection and begin to discuss the role expected of the patent offices which granted the majority of patents. It was not fair, or effective, to place the burden on developing countries and resource-poor TK-holders. Patent offices everywhere should undertake measures to ensure that bad patents are not granted involving the GR and TK of other countries. The Committee had to go beyond the elaboration of a prior art questionnaire, and the proposed development of search and examination guidelines and recommendations for national patent offices to take greater account of TK systems. Their relevance would depend on their content and on the level of commitment of patent offices to prevent the misappropriation of GR and TK. Thus the Committee should agree that patent offices, should not impose a burden of documentation on developing countries wishing to protect their resources but adopt an absolute standard of novelty, whereby knowledge disclosed by any means, anywhere in the world, could be considered prior art for the purpose of determining the novelty of a claimed invention. Inspired by the contents of Section III of this document, the Committee should consider undertaking exploratory work to clarify issues relating to the application of the criteria of patentability in some jurisdictions that have allowed for the patenting of mere discoveries, as well as other acts that should hardly be deemed to fulfill the criteria of novelty and inventive step. This would appear to point to the need to improve significantly the quality of substantive examination in the patent system, in different jurisdictions. Finally, an effective global defensive strategy for GR and TK would be incomplete in the absence of one other important measure: the introduction within patent laws of provisions to require patent applicants for inventions relating to biological materials and/or associated TK to disclose the origin of the GR and submit evidence of prior informed consent and benefit-sharing under the national regimes of the countries providing the said resources. This would be considered in relation to document WIPO/GRTKF/IC/6/9. The Delegation observed that the facts and ideas

explored in Section III of the document do seem to provide a strong case for including a disclosure of origin and prior informed consent requirement in patent laws. A disclosure of origin requirement would make a significant contribution to improving the substantive examination of patent applications involving biological materials and/or associated TK, by, among other things, providing useful information to patent examiners that could facilitate the determination of prior art, as well as aid in assessing questions of patentability, such as ascertaining the “inventive step” claimed in a particular patent application. Such information could also help to identify possible cases of misappropriation of resources and TK and facilitate actions to challenge the validity of wrongly granted patents. A disclosure of origin requirement could thus significantly aid and buttress the initiatives for increased cooperation on defensive strategies explored in this document.

92. The Delegation of the Philippines agreed to the proposals of decision paragraph 105 of document WIPO/GRTKF/IC/6/4 but emphasized that accelerating and focusing on the substantive work of the Committee should not be separated from the mandate of focusing on the international dimension. That mandate excluded no outcome for the Committee’s work, including the possible development of an international instrument or instruments in this field. Acceleration should not be done without accounting for the international dimension and the possibility of an international instrument. In view of this, the Delegation proposed that any outline of policy options on legal elements for the protection of TK should consider the international framework and should not exclude the possible development of the parameters of an international instrument.

93. The Delegation of Norway supported that the Committee should look into the possibility of drafting guidelines for national patent offices concerning searching relative to TK. Continued integration of the outcomes of deliberations in this Committee into other parts of the WIPO system, particularly the PCT, was encouraged. The Delegation noted that Norway’s patent act had been amended to require disclosure of origin of genetic material used and an indication of whether prior informed consent was obtained. The issue of whether a patent is granted or not or the validity of an issued patent would not be affected by a lack of compliance but non-compliance could be punishable as false testimony.

94. The Delegation of Venezuela indicated that documents WIPO/GRTKF/IC/6/4 and WIPO/GRTKF/IC/6/8 were related. It also noted that protection of TK should be approached globally so that positive and preventive measures would be included. The provisions of paragraph 4 of document WIPO/GRTKF/IC/6/8 should not be focused only on documentation or dissemination. Patent examiners should be up to date on published TK and work on this objective should be continued and extended as suggested in paragraph 7. Existing databases should be identified without requiring the creation of additional databases by countries or indigenous peoples. Paragraphs 11 and 12 on search and examination guidelines should go beyond taking account of TK information; it should be made mandatory. In connection with paragraph 14 (which also refers to document PCT/MIA/9/6), the Delegation endorsed the conclusions in paragraph 127 and recalled in connection with paragraph 128 that it was often difficult to obtain technical descriptions and a remedy for this should be sought. The Delegation encouraged mandatory use of databases, where they have been created by countries, and requested that this report be passed to the PCT Committee considering minimum documentation. Paragraph 16 mentioned that work in other forums will not be prejudiced and expressed concern; the work of other forums, such as UNCTAD, should not be obstructed by the Committee. The Delegation noted that oral information should be recognized universally even if not published. Capacity building efforts by WIPO were appreciated but must be responsive to the countries themselves. It was noted that the manual

referred to in paragraph 17 was already being worked on and some of that work was contained in the tool kit worked on in the last session of this Committee. In connection with the example on pages 8 and 9 of the document the Delegation noted that principles of patent law could be applied. Paragraph 22 was noted to contain interesting references to ways of adapting and applying concepts of novelty and inventive activity that would aid the introduction of concepts of disclosure of origin and proof of prior informed consent. Paragraph 23 and its discussion of future directions was supported. In connection with the conclusions in part 4, the Delegation stated that much needed to be done to strengthen protection measures. The work had not been concluded. Paragraph 27 was also endorsed and specifically development of a questionnaire. Updated questionnaires would also be appropriate. The Delegation also endorsed the Delegation of Brazil's statement on further consideration of TK. Guidelines were described as just a step. Modification of WIPO treaties needed to be an option.

95. The representative of the South Pacific Forum stated that two of its member countries were in the process of developing their own legislation based on the Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture (document WIPO/GRTKF/IC/4/INF/2). She called on WIPO, its Member States and other international agencies to provide financial and technical support in assisting its members to adopt this model law. The representative stated that a draft was being prepared on a second model law, concerning traditional ecological knowledge, innovations and practices, and that the Forum Secretariat would consult with WIPO and hoped to gain from the discussions of the Committee. The representative concluded that while regional guidelines and national laws were important in protecting the Pacific Island peoples from unfair exploitation of their TK, there would still be a need for international protection treaties to allow the Pacific Countries and Territories to take legal action in other jurisdictions. She reaffirmed that participation in the Committee was to support the engagement of international players and contribute to the process of discussions on the initiation of international protection treaties.

96. The representative of UNCTAD stated that IP was one part of a country's potential toolkit and that the Committee must examine both the potential of IP to meet the range of objectives. She stated that the work of the Committee was limited to considering IP dimensions but it could come up with solutions to solve some of the TK-related concerns and problems. She added that this forum alone could not solve all the issues and reiterated the importance of partnerships with other international fora. The representative stated that only through multidimensional and holistic efforts could types of broad-based rational and well-coordinated solutions be found that were needed to address the complex set of issues, concerns and aspirations revolving around TK. The representative stated that this conviction of a need for a holistic, multi-dimensional approach, and to match objectives with tools led to UNCTAD and the Commonwealth Secretariats to join forces leading to a meeting held in Geneva in February 2004, upon which she provided a detailed report.

97. The representative of the African Regional Industrial Property Organization (ARIPO) explained that ARIPO had developed a concept paper on legal and policy options for protecting TK with a view to affording its member states an opportunity to chart a roadmap for the protection of TK and GR. An agreed platform was developed for comprehensive TK protection based on the identification and consolidation of policy objectives and core principles to help work towards an international instrument. On the topic of doctrines and policy tools dealt with in section 3 of document WIPO/GRTKF/IC/6/4, the representative believed that the basic principles of the combined and comprehensive approach was a common approach in the IP system: for instance, products with aesthetic properties could

also be registered as industrial designs in addition to trademarks used in marketing the products. He hoped that the Committee would not dwell extensively on policy tools as most Committee members appreciated them already. An approach that would accelerate development of an international instrument would be favorable. In view of the inadequacy of existing conventional IP rights to address the problems of protecting TK, the contextualization of such tools should be seen as interim complementary and should not prejudice development of an international instrument. ARIPO had already amended its protocol on patents and industrial designs and utility models to take into account some aspects of TK. These amendments entered into force in January 2004. This approach was a temporary solution to the problem. ARIPO thus supported the views of several delegations to accelerate development of an international instrument that would form part of the menu of options available for the protection of intellectual creations. ARIPO reported work on development of defensive protection strategies aimed at preventing acquisition of IP rights by third parties. Efforts were under way to undertake feasibility studies with a view to establishing with ARIPO member states a database of TK that is already in the public domain. Visits to countries that have developed such databases were under way. Development of such databases is consistent with positions presented by the African Group at the third session of this Committee that supported development and publication of databases of public domain TK, taking into account the characteristics and needs of African TK systems which are largely orally based as well as to provide positive protection for TK, particularly secret knowledge. Defensive measures, such as databases, were useful as prior art tools for substantive examination of patent applications that claim TK and associated GR. Prior art disclosure should be sufficient to make the technical information relevant for prior art search and examination purposes. This can not be achieved when TK is recorded or codified. The prevailing situation allows for the exploitation of TK under the conventional system due to the lack of reliable state of the art information. Use of oral disclosure in most cases can not be used to assess novelty and inventive step, as the date of disclosure, source and technical information can not be verified. ARIPO thus recommended that WIPO ensure that TK subject matter is incorporated into the classification system and forms part of the PCT minimum documentation requirements.

98. The representative of the Saami Council expressed support for the proposals made at the end of document WIPO/GRTKF/IC/6/4. He encouraged acceleration of protecting TK in accordance with relevant indigenous customary laws, even though it was regarded in conventional IP systems as being in the public domain. He urged the Committee to place the highest priority on the customary law study (approved by the Committee in accordance with document WIPO/GRTKF/IC/3/11) and repeated the Council's availability to contribute to this work. Unlike the views expressed by the Delegation of the United States of America, the representative indicated that conventional IP systems could not protect TK. He emphasized that any international instrument must recognize who was the actual custodian or owner of TK; that was normally a community as identified in paragraph 84 of the subject document or, in the case of indigenous peoples, a people. The principle of prior informed consent was emphasized as an important tool for the protection of TK. He also expressed the opinion that the applicability of the principle of prior informed consent to TK substantially limits the relevance of access and benefit sharing regimes to TK. These principles were essentially mutually exclusive since TK could only be accessed and shared with the consent of indigenous peoples. There was thus little need for the Committee to consider access and benefit sharing regimes. Those regimes should be considered in the context of the CBD, not WIPO. The Committee should focus instead on recognition of exclusive rights for TK holders as discussed in paragraphs 20 and 21 of document WIPO/GRTKF/IC/6/4 and leave access and benefit sharing issues discussed in paragraph 22 to the CBD. In connection with

paragraph 28 (b) of the subject document, the representative noted that some relevant forums have been omitted such as the Office High Commissioner on Human Rights, the Special Rapporteur on Indigenous Peoples' Rights and the Permanent Forum on Indigenous Issues.

99. The representative of *Coordinadora de las Organizaciones indígenas de la Cuenca Amazonica* (COICA), with reference to the general context of policy and legal options for the protection of TK, mentioned the matter of the handling of TK protection converged on a range of options, not only within the IPR regime but also in the form of *sui generis* systems or a combination of the two. He conveyed his concern over the focusing of the protection embodied in IPR schemes, especially with regard to the patent regime affording protection to the exclusive rights in an invention and monopoly control over it, two characteristics that were incompatible with the permanent innovation and inter-generational transfer which was the essence of TK. He shared the views expressed in paragraph 11 of the document regarding the limitations and possibilities of IPRs as an appropriate means of protecting TK. He stated that the subject being dealt with was of the utmost importance to their cultural survival as peoples and added that he was talking about one of the fundamental components of the very identity of indigenous peoples, as that was precisely what TK was, and their peoples, who were the owners and permanent custodians of TK, were taking part with only limited means of intervention in something which after all their collective IP. He stated that such an approach was at variance with the dictates of the ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, specifically as far as consultation and participation rights in all matters that affected them were concerned. The representative stated that one of the principles outlined in the document on prior informed consent had to be effectively one of the pillars on which to build up a future international instrument, so that they were accorded the right to take decisions on the grant of free and informed consent to the use or non-use of their TK, this being an aspect on which more and more marked progress was being made within the framework of the CBD. As mentioned in paragraph 34 (e), the preservation of TK continued thanks to the customary law and the cultural practices of indigenous peoples, by virtue of which the recognition of the rights in them became inescapable, the more so when *sui generis* provisions were included for the protection of TK. The devising of policies that promote and respect the cultural practices of indigenous peoples was a decisive factor and one that should be essential to the planning of a future international instrument, a factor the consideration of which should be given infinitely more priority, and in particular precedence over the introduction of registers or databases to be used in documenting indigenous knowledge: this technology was devised without the prior informed consent of the indigenous peoples, the aim being merely to implement the requirements of IP laws, with the focus clearly on access to rather than protection of TK, and the motivation coming from purely commercial interests. He referred to the declaration made by the International Indigenous Forum on Biodiversity (IIFB) at COP7 of the CBD, according to which: "...we [indigenous peoples] are not participating in these discussions to facilitate access to our traditional knowledge nor the genetic resources in our territories. Rather, we participate to ensure our rights are recognized and respected." He concluded that they would be advocating the integration, strengthening and development of measures for the protection of their collective rights.

100. The representative of the Assembly of First Nations (AFN), a collection of 634 First Nations from across Canada, extended his appreciation to the Committee and WIPO Member States for their continued dedication to these issues, and appreciation to the WIPO Secretariat, and the Governments of Canada and the United States of America for organizing a recent workshop in Ottawa. On section II of WIPO/GRTKF/IC/6/4 (Principles and Objectives for

Protection), concerning the principles of equity and benefit sharing, the representative requested that references to equitable sharing of benefits should also reference that this is undertaken on mutually agreed terms. This would ensure consistency with agreements between parties and indigenous people's organizations in relation to access and benefit sharing under the CBD. Another principle that arose within the scope of this particular document and which was present in a number of documents generated by the Secretariat was that of the recognition of customary law. In accord with some Member State Delegations, the representative believed that there was a need to expand the work in this area and look forwarded to a more comprehensive dialogue on this issue in the Committee's future work. Recognition of customary laws and protocols was an integral aspect of TK IP protection. It was a remarkable accomplishment to have the Committee's Member States contemplating the recognition of what were, fundamentally, issues of indigenous governance. However, the greater challenge may not be in the recognition of customary authorities but in the implementation. Issues of codification, jurisdiction, paramouncy, and enforcement would all have to be addressed in both the domestic and international contexts. The document highlighted another challenge, in many situations Member States were willing to incorporate aspects of customary law or the principles behind the customary law within their national legislative framework. The challenge was getting states to allow for the customary law to stand on its own as an independent aspect of the legal framework of protection. Currently, the application of customary law that affects the control or establishment of rights in and to the IP aspects of TK are limited to local applications. Therefore the question was how could customary law move out of the local or domestic setting into the international forum. The future work of the Committee should contemplate recognition and reconciliation of these issues associated with the application of customary law within the IP process. As is the situation within the Canadian context, consideration was needed for the legal authorities that arose through modern models of governance. In Canada, many of these models highlighted authority over language, culture, practices and customs and spiritual aspects of their culture. Within the scope of these authorities it is possible to enact laws that may have the effect of overlapping with traditional IP rights. Within the scope of the eligibility for protection, some of the evidentiary elements of these options appeared to echo some of the concepts set out in Canadian case law associated with aboriginal rights law. Within the Canadian context, the challenges had arisen on proof and the nature of evidence that is required, meaning that rules of evidence often had to be adjusted to accommodate these evidentiary burdens. The very nature of TK creates a challenge as it is generally in oral form. If eligibility criteria are to be applicable within the scope of an international regime, further examination of evidentiary issues would be further required.

101. The representative of the International Chamber of Commerce (ICC) welcomed document WIPO/GRTKF/IC/6/4 as a full survey of possible objectives and policy options for the protection of TK, and noted it was time to go beyond listing objectives and to select and prioritize them. Politics was about choices, whether one considered national regimes or international instruments. One way of selecting among possible objectives would be to follow the example of the CBD, in view of the constant reminder of the need to march in step with the CBD. Its objectives were set out very clearly and all were familiar with them: preservation of GR; sustainable use of such resources, and equitable sharing of the benefits of such use. GR are frequently closely linked with TK. Even when not, such objectives were clearly suitable for TK: it wanted to preserve TK, to use it, and have the benefits to be shared. Equally, we sought a balance between the interests of holders of TK, of users and the general public. It was the special interest of the ICC to see emphasis on promoting proper use. Part of the reason for preserving TK was to make its benefits available as widely as possible. Use – by the businesses the ICC represented, among others – was in itself a benefit for customers,

and created benefits that can be shared with the providers of TK. If the priority was to prevent misuse, this would create the temptation to impede use of all kinds: that would be a loss to TK holders, but even more to the world as a whole, which would be deprived of the advantages such use could bring. Instead, the example of the CBD should be followed, seeking to promote access to TK, under appropriate conditions, just as the CBD aimed to promote access to GR. The ICC, as a business organization, would also like to emphasize the importance of practical and workable arrangements in all systems for protecting TK. As recipients and users of TK, members of the ICC had from experience ideas about what rules would and would not work in practice, ideas and experience which need to be taken into account along with those of the providers of TK. One example among many was that it is important to find a solution to the issue of developments of TK. These should remain patentable. If, for example, the purified active constituent of a medicinal plant provided by TK cannot be patented, such constituents will certainly not be developed by pharmaceutical companies, and probably not developed at all. That would go against the principle the representative sought to support, of maximizing beneficial use.

102. The representative of the Consumer Project on Technology (CPTech) commented primarily on policy and legal options that relate to the commercialization of patented products or processes. The representative expressed concern, on the one hand, that new *sui generis* regimes for the protection of TK resources could be implemented in a way that leads to barriers to scientific progress or innovation, while on the other hand acknowledging and sharing concerns that there is inadequate benefit sharing when products that rely upon TK resources are commercialized. The issue of whether or not TK should be part of an IP system was appropriately controversial, because the implementation of some IPR systems have harmed the poor, impeded scientific progress and follow-on innovation, and are subject to a number of well-known abuses by right owners. The representative generally opposed new exclusive rights IP regimes, and noted that the choice of an exclusive rights regime is not even appropriate for some types of non-TK IP. For example, the representative supported much greater reliance upon compulsory licensing of patents to ensure access to essential medicines, and many countries use compulsory licensing to address a number of public interest objectives in the area of copyrighted goods. In the area of TK resources, the representative believed some non-exclusive *sui generis* approaches may be socially beneficial, while others could impose significant costs on society. The TK *sui generis* approaches the representative found particularly interesting and which may offer the best potential for social benefits were those described as compensatory liability regimes, discussed in paragraphs 34 and 44 of the document. It would be interesting to consider this in a manner that is analogous to the approach taken by the European Union biotechnology directive which, for genetically modified crops, provided for a mandatory cross license between patents and *sui generis* plant breeder rights, when both rights apply to the same product. The representative noted that, according to the European Commission, this Directive was consistent with Article 27 of TRIPS, and does not run afoul of provisions on discrimination by field of technology. One could imagine a regime that recognized a TK *sui generis* right, and also a patent system, but provided that when a patented invention is based in part on a TK resource, it must obtain a license to the TK *sui generis* right. In a liability rule approach, the license would be automatic or mandatory, subject to compensation to the owner of the patent or the TK resource. If one were to follow the EU example already cited, the patent owner would have a mandatory compulsory license to the TK resource, and the TK owner would also have an automatic license to use the patent. The patent owner could commercialize the invention, subject to making royalty payments to the TK resource owner, and the TK owner could also commercialize the patented invention, subject to making royalty payments to the patent owner. This would be similar in structure to the dependent patent provisions in TRIPS

Article 31. The representative noted that this model would provide for benefit sharing with the TK owner, and also, by providing the owner of the TK resource with a license to the patent, be a possibility of competition for the patented product. In Europe, the representative observed that the pro-competitive aspect of the mandatory cross-licensing of patent and plant breeder rights was seen as a mechanism that would mitigate and reduce the market power of Dupont and Monsanto in the seed market. The representative commented that, if the TK resource were implemented as a compensatory liability regime that only applied to patented products, it would not undermine the benefits of the public domain, except when the patent would otherwise have created a monopoly for a product. It therefore might both offer greater protection to consumer interests in developing countries, but also offer a greater chance of recognition and support in higher income countries, which will be important if one want the benefit sharing provision to be economically significant. The representative observed that the TK *sui generis* right, if implemented in this manner “combines the equitable reallocation of benefits without constraining open access to know-how” (as noted in paragraph 44), and also goes further, by providing a basis for the TK owners to use the patent and even compete against the patent owner for the product, which could benefit consumers. Since the mandatory patent/*sui generis* cross-licensing approach was already embraced in the European Biotechnology Directive, the representative suggested it may be appropriate for the Secretariat to provide information on its implementation. The representative urged the Committee to look at the very relevant experience of the modern free software movement, which sought to protect the work of a global community of programmers against misappropriation, leading to an important and effective legal strategy for protecting community knowledge, suggesting that the Secretariat convene an information session on this model. The representative recommended that the Secretariat provide a paper describing the Global Public License, and report on its success in protecting a global community of software programmers by ensuring that they have the opportunity to acquire, use and modify software.

103. The representative of the Kaska Dena Council (KDC) fully supported the further development and proposed annotation of core principles for the protection of Indigenous Knowledge. Similar to the decision under the TCE document, this approach provided a non-exhaustive list of soft and hard law options. He added that he spoke in full support of the substantive intervention of the representative of the Saami Council, particularly with respect to his emphasis on the role of customary law in the protection of Indigenous knowledge and his specific comments regarding paragraph 28(b). With the Saami Council, he looked forward to furthering development of this important work by the Secretariat. It was his submission that there were many Canadian Aboriginal law circumstances which would enrich these discussions. He identified a relevant legal area for this list of options that had not currently been thoroughly examined by the Committee: privacy law, particularly as it applied in the public domain context, where Indigenous Knowledge had been submitted into public information systems, in digitized formats or otherwise. The representative raised this in light of the Kaska Dena Council’s legal examination of Indigenous Knowledge submitted to into an federal environmental assessment. Their preliminary findings had been that a Canadian privacy commission had set a very supportive precedent in this regard, holding that Indigenous knowledge was collectively owned by the First Nation and deciding that the information was not to be public disclosed without the express consent of the Indigenous group as it would “be deleterious to the government to government relationship between the Aboriginal government and the provincial government”. He noted that prior informed consent of individuals was not a foreign concept in the domestic and international context when it came to personal or collective information in the control of possession of corporations, government bodies, societies. The approach proposed in paragraph 104 was a very constructive suggestion, most importantly because it was open-ended. There were many

areas of law that might be very applicable. For instance, in the development of dispute resolution mechanisms in national legislation or an international framework, *sui generis* or otherwise, there was wisdom in drawing upon administrative legal areas, such as labor law. This could entail, when determining disputes between TK holders and other parties, using an equitable structure whereby Indigenous Peoples have participatory rights on the decision-making board, where their customary laws may be considered on equal footing and where their standing is guaranteed. With respect to document WIPO/GRTKF/IC/6/8, particularly with respect to use of TK databases and registries, he noted that the Delegations of Brazil, Venezuela and the United States of America had raised and questioned the utility of TK registries as a defensive protection tool. Similarly, a multitude of Indigenous Peoples raise this same concerns. He added on behalf of the Kaska Dena Council that many of the indigenous concerns were specific to control and management of digitized Indigenous Knowledge. That is, where the information was Indigenous controlled and properly obtained with their prior informed consent many of their concerns were met. He stated that the Kaska were currently developing their own Indigenous-controlled and owned Traditional Knowledge Network. This Network preserved Indigenous Knowledge in its orally transmitted form by collecting all such knowledge in digital video format. The representative submitted for incorporation in the Committee's work, a United Nation University – Institute of Advanced Studies discussion paper titled "The Role of Registers in the Protection of Traditional Knowledge: From Concept to Practice", launched at the Seventh Conference of the Parties of the CBD, which examined at length many existing TK databases and registries in Canada, United States of America, Venezuela, Panama, Peru and India.

104. The representative of Aboriginal and Torres Strait Islander Commission (ATSIC) stated that in Australia, indigenous cultural expressions and TK were exploited in many industry sectors without the consent of indigenous peoples or benefit sharing arrangements. The ability of Indigenous Australians to use IP has been limited to protection expression of TK through copyright, trademark or designs where protection was available. Whilst other non-IP measures such as protocols and contracts were being used, the ability to use these mechanisms rested with the goodwill of the parties seeking to use TK from a moral or ethical position. The representative stated that the Australian Government's Bill for Indigenous communal moral rights proposed that the moral rights of attribution, false attribution and the right of integrity would only exist for indigenous communities if there was agreement between the creator and the community. This did not recognize indigenous peoples rights to culture or the right of prior informed consent. The right of the indigenous community to prior informed consent was the right to say what was acceptable for use and reproduction. The representative welcomed the work of the Committee towards the development of a framework that supported this principle of prior informed consent. The right of prior informed consent was important for indigenous peoples to maintain their cultural practices. She supported the principle in paragraph 22 of document WIPO/GRTKF/IC/6/4 which confirmed that TK should not be accessed, recorded or used without the prior informed consent of the TK holders. ATSIC was concerned about the number of fake products that were being made without the control of indigenous communities. The representative added that the Australian Consumer and Competition Commission recently took action against a souvenir manufacturer that used false labels on fake products. She stated that the development of international measures would be an aid for Indigenous Australians. The representative looked forward to a comprehensive framework that empowered Indigenous peoples to protect their cultures from exploitation but which allowed them to maintain the integrity of their cultural heritage and its continuing practice for another millennium.

105. The representative of the Health and Environment Program remarked particularly on paragraphs 87 to 89 concerning holders, owners and beneficiaries of rights. She stated that not all TK were considered collective property at the outset, and that the design of a policy in terms of communities rather than individuals would be liable to increase piracy. Apart from that, national legislation on TK was still not known at the African level, and she requested OAPI or the African Union to give an account of it. There were individuals in possession of TK passed down through generations and customary rights that belonged to the community. It was important to find a *sui generis* framework to protect TK at the individual and community level. She added that it was her wish that the ARIPO and the African Union would be able to work together on the enactment of a national legislation before the international dimension became reality. With regards to national legislation, she wondered just how the granting of compulsory licenses would take place, whether they would be granted to individuals, or to communities with the prior informed consent of the individual or community concerned?

106. The representative of the International Plant Genetic Research Institute (IPGRI) explained that it had done a pilot study on prior art searches and that IPGRI and WIPO could work together in a number of ways. The role of farmers, for instance, as creators, and users of GR was described as falling within the expertise of IPGRI. Examples of informal seed exchanges were provided. Information gathered by IPGRI has impacted government policies, such as increased financial support for seed fairs and registries. The representative emphasized that the expertise of IPGRI would be made available to WIPO.

107. The representative of the Max Planck Institute described a published a study on indigenous heritage and intellectual property that relied in part on information from WIPO studies and other contacts with indigenous peoples as providing a systematic analysis of how intellectual property systems apply to TK. It concluded, in part that no single solution is sufficient for all issues.

108. The representative of *Promotion des médecines traditionnelles* (PROMETRA International) explained that it promoted traditional medicine and spirituality and noted that traditional medicines often include TK. The representative emphasized that it was willing to offer its expertise on the issues raised by the subject document and the protection of TK.

Conclusions

109. On document WIPO/GRTKF/IC/6/4, the Chair noted that the Delegations that spoke either supported or expressed no opposition to the future steps proposed in paragraph 104 of the document. Taking into account the observations made in the course of the debate, the Committee requested the Secretariat to prepare drafts in accordance with the proposal in subparagraph 104 (ii).

110. On document WIPO/GRTKF/IC/6/8, the Chair observed that a number of observations on the contents of the document were made in the course of the discussion, which discussions were duly noted. The Chair observed that no opposition was expressed as regards the proposals for future work contained in paragraph 27 of the document which was also expressly supported by a number of Delegations. The Committee consequently accepted the proposals in paragraph 27 and requested the Secretariat to take action in accordance with that paragraph.

ITEM 7: GENETIC RESOURCES

Contractual Practices

111. The Secretariat introduced document WIPO/GRTKF/IC/6/5.

112. The Delegation of Brazil raised the problem that the document was distributed only recently and that delegations needed additional time to review the document to consult and coordinate. Delegations were not given sufficient time with this document and the Delegation therefore suggested this document not be considered. The deadline for comments suggested by the Secretariat was not viewed as appropriate. The Delegation also noted that the issues addressed in this document were marginal to the work of the Committee and that concrete measures should be the focus of this Committee.

113. The Delegation of South Africa noted the statement of the Delegation of Brazil but commented on documents WIPO/GRTKF/IC/6/5 and WIPO/GRTKF/IC/6/11. The Delegation agreed that the UN agencies should be guided by the UN policies and approaches on similar issues. Adoption and implementation by WIPO of the decision of the recent Conference of Parties (COP) of the CBD was proposed. The decision should be implemented at the level of WIPO's treaties and policies. Member States would then be given a chance to accede to the treaties. The Delegation therefore encouraged the Committee to implement access and benefit sharing provisions of the CBD, and the Bonn Guidelines on access to GR and equitable sharing of benefits arising out of their use. Paragraph 41 of document WIPO/GRTKF/IC/6/5 was supported with the following amendments: (1) that the guide contractual practices should be distilled into a model treaty law which WIPO intends to develop; (2) that laws of geographical indications and trade secrets should not be forgotten when GR, TK and folklore are considered; (3) plant variety rights should not be promoted at the expense of animal rights. It was recommended that the following should be the corner stones of the purported policy and treaty development: (1) disclosure of the origin of the genetic material; (2) prior informed consent of indigenous knowledge; (3) protection of indigenous knowledge; (4) benefit-sharing; and (5) technology transfer. Failure to recognize the above would result in the annulment of the patent or any form of IP. Member were urged to act in concert to invalidate IP that does not recognize the foregoing. Where possible, the invalidation should not be accompanied by costs. The Delegation further encouraged a globalized approach on IP issues and stated that bilateralism and regionalism should be viewed with suspicion. The Committee was encouraged to revisit and incorporate search and examination of patents in these debates because many countries rich in TK, GR and folklore do not have the capacity to conduct substantive search and examination. WIPO was encouraged to consider capacity building in this area.

114. The Delegation of Venezuela associated itself with the comments of the Delegation of Brazil. It was not possible to take a decision on the contents of this document because the competence of environmental ministries on access and related issues needed to be consulted and relied upon. Postponement of decisions was requested as instructions from capitals would be required before the next meeting. Some preliminary comments were provided. It was noted that Paragraph 41 has 2 parts and in the second part, future work of paragraphs 36 and 38 were mentioned but it was unclear what was meant by guidelines and why contractual provisions were distinguished. Also, the document appeared to adopt proposals of the Asian Group in paragraph 40 but the second part seems to propose more than the first would permit. In paragraph 19, possible principles are listed that related to paragraph 41. Regional

legislation was mentioned but this does not limit work being developed in other forums on this issue. In paragraph 7 of the Annex, a majority of developing countries said this was not the focus of this Committee's work. In paragraph 25, the need for prior informed consent should have been taken account of. This was an obligation adopted in the CBD framework. Inclusion of the Bonn Guidelines was requested. The document should be limited to IP issues and no decision should be taken now.

115. The Delegation of Algeria emphasized that prior informed consent was essential. The notion of know-how of TK holders should also be added. The Delegation also supported the position of Brazil that no decision regarding this document should be taken in this session. TK was not an inert raw material; it came into being after cycles of observations and successive experiments, and its holders were quite capable of innovation provided that they had the means.

116. The Delegation of the Islamic Republic of Iran supported the position of the Delegation of Brazil. The Delegation also noted that it did not reject technical transfer as a whole, but the Committee had other priorities.

117. The Delegation of Turkey emphasized the importance of protecting GR. The existence of several arrangements and laws in Turkey relating to the topic of GR were noted. In paragraph 11 of the subject document, the four principles described were welcomed by the representative. The terms of paragraph 19 were also welcomed but recognition of the sovereignty of countries over their resources should be emphasized. In the Annex of document WIPO/GRTKF/IC/6/5, page 3, Section II, General Provisions, paragraph 8, it was stated that "these draft guide practices may serve both providers and recipients of genetic resources." But it was noted that in some instances providers were different than the country of origin for the GR. Because disclosure of source or origin or legal provenance of GR and associated TK in patent applications was one of the tasks of the Committee, the Delegation suggested inserting the term "origin country of genetic resources" just before the term "providers." The Delegation also supported the African submission in document WIPO/GRTKF/IC/6/12.

118. The Delegation of Norway emphasized that the topic of contracts is related to topics of prior informed consent and disclosure of origin. The summary of Section 5 on further work was welcomed and support was emphasized for all three forms of future work. Model provisions should be emphasized because this would make a better tool for the end user. Work on contracts could continue separate from other issues.

119. The Delegation of New Zealand indicated operational principles listed were supported so long as they were non-binding. The additional principles of paragraph 19 and the draft guide were also supported as they meet an actual need in the area, particularly for parties with little experience. It was suggested that the approach taken to the tool kit might be applied here by using plain language and images. Illustrative examples would also be useful. No objection was made to developing model non-binding clauses. Paragraphs 38 to 40 were supported as possible bases for future work.

120. The Delegation of Switzerland noted that all the tasks proposed in paragraph 41 merited further consideration. With regard to the first task, that is, the development of operational principles for the development of the Guide Contractual Practices, the Delegation referred to its comments at the Committee's second session on document WIPO/GRTKF/IC/2/3, considering contractual flexibility to be of great importance. The Delegation noted that a

second task proposed was the distillation of model contractual provisions. It was important to consider the decision adopted by the sixth Conference of the Parties of the CBD encouraging WIPO to “make rapid progress in the development of model IP clauses which may be considered for inclusion in contractual agreements when mutually agreed terms are under negotiation.” In light of this decision, it considered it to be important that WIPO advance its work on model IP clauses, so it can present the CBD with concrete results in due time. The Delegation also supported the proposal to revise and further develop the draft Guide Contractual Practices annexed to document WIPO/GRTKF/IC/6/5. The need for close cooperation with the CBD and FAO when carrying out this task was also emphasized. This is necessary because both of these fora are important with regard to the Guide Contractual Practices.

121. The Delegation of Mexico approved the guiding principles and pointed out that account should be taken, when the guide to contractual practice was drafted, of the fact that GR did not qualify for the grant of intellectual property rights. It said that the guide should not work against the prior legal protection that States and their communities might already have, and that it should also allow for the protection of associated TK. It should be consistent with the provisions laid down in the Biodiversity Convention (CBD) and by the FAO. In that respect the Committee should also develop the issues highlighted by the CBD: exchange of legal, administrative and political information; incentives for complementary legislation; development of model contractual agreements and studies on the import and export of GR.

122. The Delegation of Japan believed document WIPO/GRTKF/IC/6/5 was useful. It was emphasized that guide contractual practices should not interfere with private contracts and thus should be non-binding, flexible and simple. In paragraph 14 of the Annex, ‘this does not mean that traditional knowledge needs to be old...in spite of their ancient roots’. The Delegation expressed its concern on how to deal with knowledge. It indicated that the term ‘related information’ should be changed to ‘related TK’. It was also suggested that in model provisions, the operational principles and draft guide should be considered further before discussing model provisions.

123. The Delegation of the United States of America noted that the document reflected that the Committee was moving towards specific outcomes. The Delegation supported continued work on these matters including model clause development. The Delegation also stated that contracts were believed to be useful tools to accomplish benefit-sharing.

124. The Secretariat advised that unexpected circumstances beyond its control had delayed the distribution of the document, but noted that it was put forward as a draft document for continued discussion only, not for decision or adoption. On dispute resolution, the Secretariat explained that this element had been included at the request of Member States in earlier sessions raising the possibility of a dedicated tribunal, and building on the proposals also of several Member States or regional groups. This document accordingly solicited comment on a voluntary body as distinct from a body with compulsory jurisdiction. While the draft guide was an information product only, because these topics were viewed as sensitive, they were submitted to Member States for comment.

125. The Delegation of the Dominican Republic indicated that the meaning of paragraph 38 was not entirely certain. The Committee had discussed certain principles but did not agree upon or establish principles. The representative noted that a contractual approach was not the most appropriate and thus it did not agree to synthesis of guidelines and model clauses. It was emphasized that none of the principles had been agreed upon.

126. The Delegation of the Russian Federation stated that the document was extremely important and that there were methodical recommendations being provided by numerous organizations that dealt with GR and TK. It added that the document could help in formulating its own recommendations, and were prepared to provide comments to the Committee.

127. The Delegation of Ireland, speaking on behalf of the European Community, its Member States and the Acceding States, supported the work programme proposed in document WIPO/GRTKF/IC/6/5 and expressed its flexibility on the deadline of April 30, 2004. The Delegation noted that the document had only recently been received, and looked forward to examining it in more detail.

128. The Delegation of Sri Lanka requested an extension of the deadline of April 30, 2004.

129. The Delegation of the Philippines asked for additional time to submit comments on this document and informed the Committee of regulatory changes to Executive Order 247, which had been previously submitted to the Committee.

130. The Delegation of Panama recommended a continuation of the work mentioned in paragraph 41 of the document.

131. The Delegation of Venezuela suggested revising the conclusions of the document, because in paragraph 41 in addition to the possibility of synthesizing model contractual provisions additional proposals were being made. It emphasized that the second task in paragraph 40 was an idea which was being advanced but which had not yet been discussed. It also felt that it was not appropriate to encourage Member States to take decisions on the Arbitration and Mediation Center. Chapter headings did not reflect what the Members had already discussed, for example in paragraph 40. The Delegation emphasized that it should be very clearly defined what was being submitted for the consideration of governments, so that there was more clarity when this task would again be discussed by the Committee.

132. The Delegation of Nigeria requested more time to consult with relevant domestic stakeholders, as it had insufficient time to reflect on document WIPO/GRTKF/IC/6/5. It made the following general remarks while reserving the right to elaborate and make further inputs as the discussions progressed. It stated that these rights were collective in nature and should take precedence over rights based on private interests. It added that states should regulate access to biological resources, community knowledge and technologies, but should also provide appropriate mechanisms for guaranteeing the just, equitable and effective participation of its citizens in the protection of their collective and individual rights and in making decisions which affected its biological and intellectual resources as well as the activities and benefits derived from their utilization. Access must be balanced with appropriate mechanisms for the assurance of benefit sharing. It added that the Committee must take cognizance of the agreements and understandings emerging in other international platforms dealing with access to GR, the preservation and maintenance of knowledge, innovations and practices of indigenous and local communities. It stated further that there should be a continuation of assistance to Member States in the areas of capacity building and dissemination of the Guide Contractual Practices.

133. The representative of the Food and Agriculture Organization (FAO) stated that, since the commencement of the work of the Committee, the FAO had brought to WIPO's

discussions the perspective and needs of the agricultural sector in a spirit of mutual respect for the respective mandates of the two organizations. FAO was the international apex organization in that sector and its chief objectives were food security and ending hunger, for which GR were key. The FAO's inter-governmental Commission on Genetic Resources for Food and Agriculture was the body within the UN system where Governments took policy decisions regarding, and negotiated international agreements on, all aspects of GR for food and agriculture. Agriculture was a complex and crucial undertaking, and plant, animal and microbial GR - which were currently at great risk of loss - were crucial in meeting the food demands of the future and in meeting unforeseen needs, including through climate change. The mandate of the FAO Commission included all components of biodiversity of relevance to food and agriculture. The representative thanked WIPO for having focused on the need to understand and respect the differences between sectors. He acknowledged the effective, practical working relationship between the FAO and the WIPO secretariats and noted that they were currently finalizing a framework co-operation agreement between them. In response to a request from the FAO Commission on Genetic Resources, WIPO was assisting the FAO by analyzing how IP rights affected the availability and use of GR for food and agriculture. This would be a major contribution to the work of the Commission and the Treaty. The International Treaty on Plant Genetic Resources for Food and Agriculture - the objectives of which were the conservation and sustainable use of plant GR for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the CBD, for sustainable agriculture and food security - would enter into force in June 2004. This will provide the sector with a major new forum in which to make policy for all aspects of all components of GR for food and agriculture. The unusual speed of ratification of this Treaty, which was only adopted in November 2001, was a sign of the importance that Governments give to it. As was reflected in paragraph 31 of document WIPO/GRTKF/IC/6/5, the FAO had repeatedly drawn attention to the fact that agricultural GR were characterized by two factors: they were crucial for food security, and countries were inter-dependent in this regard. All countries depended for food security on resources that originated elsewhere. Constant exchange of crops and varieties and their genes was the basis of food security. Governments had therefore chosen to create a multilateral access and benefit-sharing system for the world's key crops. This was categorically different from the bilateral, individual contractual systems, like those to which the "draft contractual practices" in the Annex to document WIPO/GRTKF/IC/6/5 applied. He suggested that this should be made clear in the document's Annex itself. Similarly, it would be important throughout the Committee's work on disclosure of origin of GR in patent applications, that it be made clear that the origin of materials from the Treaty's multilateral system was the multilateral system itself.

134. The representative of UPOV stated that the mission of UPOV was to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society. UPOV supported the view that a mechanism regulating access to GR and benefit-sharing should be operated in a mutually supportive manner with the relevant international instruments dealing with IP rights, including the UPOV Convention. The Council of UPOV had adopted a reply to the CBD, available on its web site, which gave guidance on UPOV's views on the process, nature, scope, elements and modalities of an international regime on access to GR and benefit-sharing. This explained that plant breeding was a fundamental aspect of the sustainable use and development of GR. Access to GR was a key requirement for sustainable and substantial progress in plant breeding. The concept of the "breeder's exemption" in the UPOV Convention, whereby acts done for the purpose of breeding other varieties were not subject to any restriction, reflected the view of UPOV that the worldwide community of breeders needed

access to all forms of breeding material to sustain greatest progress in plant breeding and, thereby, to maximize the use of GR for the benefit of society. In addition, the UPOV Convention had inherent benefit-sharing principles in the form of the breeder's exemption and other exceptions to the breeder's right and UPOV was concerned about any other measures for benefit-sharing which could introduce unnecessary barriers to progress in breeding and the utilization of GR. When discussing issues related to access to GR and benefit-sharing, the Committee should recognize these elements which were essential for the UPOV Convention.

135. The representative of the Third World Network (TWN) stated that the paper was premature and delicate, and supported the proposals of those delegations which had requested a postponement of any decisions. He felt that some of the most fundamental issues in relation to IP rights still had to be resolved. It questioned what was the legitimate subject matter of GR and TK in relation to IP and who were the legitimate owners of TK. For him, biopiracy was the most important issue that had to be addressed. If it was not curbed through a proper definition of what was patentable and what was not, then the signing of material transfer agreements and other contractual agreements might be facilitating bio-prospecting of the wrong kind. He referred to Section B of the Annex on page 14 which posed the question whether a project might result in a patentable invention and to paragraph 42. He referred to controversies in the TRIPS Council of the WTO over patentability, and statistics of current patenting trends in respect of plants, animals and microorganisms and TK. He quoted statistics of patents that were being sought for genetic material, referring to claims covering naturally occurring materials. There was no system of PIC to notify the communities involved, which was perceived as theft of knowledge and living material. He also referred to patents on transgenic plants in order to illustrate the extent of biopiracy, and proposed that the TRIPS Agreement should be revised to clarify that microorganisms and microbiological processes which occur in nature should not be patentable. He supported the proposal of the African Group that plants, animals and microorganisms should not be patentable, and suggested that if this proposal formed the outcome of the TRIPS review process, half the problems that were being discussed here would not occur. He noted that proposed requirements that patent applications to disclose the biological material used in claimed inventions struck at the root of biopiracy. He requested that the paper be revised to be more sympathetic to those proposals and the provisions contained in the OAU Model Law. Many improvements were needed to this paper, especially if patent offices and stakeholders around the world would look to WIPO's products as a guide.

136. The representative of the Consumer Project on Technology (CPTech) cautioned that one should not prejudge the scope of patentability of GR by considering contractual or licensing provisions. He referred to the Hague Conference on Private International Law, which now had a draft treaty that would be applicable to all contracts. He was pleased to see that the document in several places spelled out problems of public policy in limiting freedom of contract in cases where there was coercion, unequal bargaining power, fraud, deception or terms contrary to public policy. He felt that the document put too many issues on the table. He pointed out that the social reach through clauses in the United States of America under the university funding system under the Bayh-Dole Act were implemented through contractual provisions. He informed that there was now considerable controversy in the United States of America over how universities should license patents in developing countries and one of the problems that were faced by universities was that the more that licenses became concessionary the less economic incentives they had to file patent applications claiming the invention in the first place. This had raised questions whether there should be standards for licensing practices, sometimes referred to as a 'social license'. He referred to examples from the free software movement and the 'GNU' public license and the creative commons in the

copyright field. People were now searching whether there could be an analogous model in the patenting field to bring a social mission to certain kinds of voluntary licensing agreements. He suggested that there was an ethical issue in the questions about access to GR. It had to do with human bodies, with the testing of drugs in developing countries, in markets where the product was never to be sold in the first place or the pricing strategy was such that it was unlikely ever to be sold in the developing country. He announced that CPTech would submit written comments on the draft Guide Contractual Practices for the Secretariat to provide additional information that related to these public policy issues.

Conclusions

137. The Chair concluded that a great number of observations had been made on the content of document WIPO/GRTKF/IC/6/5, and also noted that a number of Delegations had supported the proposed future work as proposed in paragraph 41 of the document.

138. The Chair furthermore noted that some Delegations had stated that they did not have sufficient time to study the document and had requested it to be discussed at the next meeting of the Committee, and also that questions had been raised on the priority to be given to the issue.

139. At the proposal of the Chair, the Committee took note of the statements and the observations made and decided to invite further comments and input relating to the issue by June 30, 2004, whereupon a revised version of the document would be published for the next session of the Committee.

Disclosure Requirements Related to Genetic Resources and Traditional Knowledge

140. At the request of the Chair, the Secretariat introduced document WIPO/GRTKF/IC/6/9, with reference also to WIPO/GRTKF/IC/5/10, WIPO/GRTKF/IC/4/11 and WIPO/GRTKF/Q.3, and described the process of transmission of the technical study on disclosure requirements related to GR and TK to the CBD. The Secretariat observed that the recent meeting of the CBD COP had made a decision that could potentially have bearing on the future work of the Committee on the disclosure issue, as it had extended an invitation to WIPO to undertake specific work on this issue, as detailed in the intervention by the representative of the SCBD. It noted that the Committee may wish to consider this development in considering its own future work on this issue.

141. The representative of the Secretariat of the CBD (SCBD) stated that the CBD COP at its sixth meeting in April 2002 had invited WIPO to carry out a technical study on disclosure requirements in IP rights applications concerning GR and associated TK and to report to the COP at its seventh meeting. The Committee at its third session had responded positively to this invitation. Further to approval by the fifth session of the Committee, the draft Study was transmitted to the General Assembly for adoption. Further to adoption by the WIPO General Assembly the Study was transmitted to the CBD Secretariat as technical input to facilitate policy discussion. The Technical Study was then made available for the second meeting of the Working Group on Access and Benefit-sharing, held in December 2003 and at the seventh meeting of the COP. COP-7 had noted with appreciation the Technical Study, considering its contents to be helpful in the consideration of IP rights aspects of user measures. Building on this work, the COP had further invited WIPO to examine issues regarding the interrelation of

access to GR and disclosure requirements in IP rights applications, as set out in Decision VII/19E, paragraph 8, and to regularly provide reports to the CBD on its work. It also noted that the COP had invited UNCTAD and other relevant international organizations to examine these issues and to report to the CBD on this work. Further to COP 7, a letter had been sent to the Director General of WIPO to inform WIPO of the relevant outcomes of COP-7, including relevant decision of the COP. She thanked the Secretariat for making the information available to the Committee and hoped that WIPO would be able to respond to the invitation of the COP and to continue to report to the CBD on this work and other relevant work of WIPO. She added that of course the CBD would *vice versa* continue to report relevant work of the CBD to WIPO.

142. The Chairman invited comments on the invitation issued to WIPO by the COP of the CBD as contained in document WIPO/GRTKF/IC/6/11.

143. The Delegation of Egypt speaking on behalf of the African Group commented on the invitation of the CBD. It observed that the information which had been extended to the Committee went beyond the mere exchange of information and that it had potentially far-reaching implications. It emphasized that it was up to the Membership of WIPO to decide whether and how it should respond to the invitation of the CBD. It noted its understanding that the words “where appropriate address” in the text of the Decision meant that it was subject to a common agreement among the WIPO Member States. It finally made reference to procedural modalities: it was not addressed to any particular body of WIPO but rather to the general membership of WIPO. The Delegation recalled that proposals on this issue were already on the table in other WIPO fora.

144. The Delegation of South Africa supported the position of the African Group and requested that its comments on document WIPO/GRTKF/IC/6/9 be transferred verbatim into the context of document WIPO/GRTKF/IC/6/11.

145. The Delegation of the Islamic Republic of Iran supported the position of the African Group and did not oppose the exchange of information with other organizations but felt that at this time the Committee had other important priorities.

146. The Delegation of Mexico stated its satisfaction with the efforts made to prepare and distribute the Technical Study, which showed the Committee’s readiness to cooperate with other international bodies. In the light of the CBD Decision, it was clear that there was a need to strengthen collaboration with that Convention. Mexico was in favor of the drafting of recommendations and guidelines on access to GR and patents, as proposed in paragraph 12 of document WIPO/GRTKF/IC/5/10. That could make for greater uniformity of practice among patent offices. The Delegation asked the Secretariat to produce a draft of such guidelines.

147. The Delegation of Canada recalled that Decision VII/19E and its invitation to WIPO had emerged from a detailed discussion of the relationship between WIPO and the CBD. The resulting decision represented a consensus view on the appropriate division of labor between the two organizations. The Technical Study provided a summary of the issues related to disclosure requirements, an overview of current national practice, and made several concluding comments. On the basis of those conclusions, and taking into account the COP invitation, Canada supported future work in the Committee on the whole range of patent disclosure issues, including those that emerged from the initial technical study, those identified by the COP in its invitation, and any others that members may make related to this issue. It invited the delegation of Switzerland to submit for consideration by the Committee

the proposal it had circulated in the PCT Working Group on Reform so that the entire range of issues related to disclosure of origin could be dealt with in a comprehensive fashion here. Given the wide ranging policy considerations involved in issues related to access and benefit sharing mechanisms in the IP system, and in particular their relationship with other issues on the agenda of the Committee, it felt that this Committee was the most appropriate forum for continued discussion of proposed patent disclosure requirements. Completion of a thorough analysis by this Committee was therefore a prerequisite to further discussions on these issues in other WIPO bodies. It supported continued study of this question based on the premise that if a party had a legitimate claim to share in the benefits from the use of a resource of some form, there were public policy reasons to consider, providing mechanisms to facilitate the enforcement of such a claim. Canada was a Party to the CBD and, as such, respected the sovereign rights of states to determine access to GR and to share in the benefits arising out of their utilization. The question was to identify appropriate mechanisms, including the appropriate role, if any, of the IP system.

148. The Delegation of Brazil supported the statement of the African Group and the Chair's suggestion to address procedural points before getting to the substance of the issues. It appreciated the Technical Study and the information provided on the outcomes of the CBD. It recalled that the Committee was not the only subsidiary body in WIPO that was discussing disclosure issues. Unfortunately, the Committee had played a rather marginal role on this and other bodies in WIPO had engaged in a more substantive debate on disclosure. The invitation of the COP was directed at WIPO and did deliberately not refer to any specific subsidiary body within WIPO. The Committee was being asked to respond to the invitation without knowing whether the invitation was intended to be addressed to the Committee. It believed that the Committee was not in a position to respond to this invitation.

149. The Delegation of Venezuela informed that its authorities had advised that the invitation was to the Membership of WIPO, not to the Secretariat; and that the invitation was being addressed to the PCT Reform Working Group and to the SCP, so it was surprised to find the invitation presented to the Committee. After the PCT Working Group and the SCP had been requested to give an answer, it did not mind considering the invitation in the Committee. Until then it supported the African Group position. It recalled that the Group of Latin America and the Caribbean States had made some very basic suggestions prior to the Diplomatic Conference for the Adoption of the Patent Law Treaty (PLT) and that this had led to the creation of the Committee.

150. The Delegation of Norway supported Canada and expressed its difficulty to understand the hesitation in taking up the invitation. The Committee dealt with the interfaces between IP and GR, TK and folklore. The Delegation had no doubt that the Committee was competent to address the issues. It saw no reason why this should not be discussed in other places within WIPO even if the Committee decided to respond to the invitation in Decision VII/19E.

151. The Delegation of Ireland speaking on behalf of the European Community, its Member States and Acceding States reaffirmed that the European Union was prepared to engage in a positive manner to agree on a multilateral system and/or other solutions for disclosing and sharing information about the geographical origin of biological material used in patent applications. The European Union had supported the decision of the General Assembly to transmit the Technical Study to the COP. The Delegation believed the technical study represented a good basis for future discussions, not only in CBD but also in the Committee. It invited the Committee to continue working to develop an international regulatory system on the disclosure of geographic origin of GR in patent applications in synergy with the CBD and

other international bodies such as the WTO. The Delegation considered that such a system should positively support the achievement of the objectives of the CBD, while at the same time should not place an unreasonable burden upon patent offices and patent applicants. In a communication (IP/C/W/383), submitted to the TRIPs Council in September 2002, on the review of Article 27.3 (b) of the TRIPs Agreement, and the relationship between the TRIPs Agreement and the CBD and the protection of TK and folklore, the EC and its Member States had expressed the view that WIPO, as the specialized UN agency responsible for the protection of IP world-wide, was, from a technical viewpoint, the most suitable forum for tackling the legal protection of genetic resources. It had also agreed to examine and discuss the possible introduction of a system, such as a self-standing disclosure requirement, that would allow Member States to keep track at a global level of all patent applications with regard to GR. In this regard, the Delegation intended to present a concrete, balanced and effective proposal. The European Community, its Member States and the Acceding States were currently considering a communication (COM/2003/821/FINAL) which the European Commission had submitted, in December 2003, to the European Parliament, and the Council on the implementation by the EC of the Bonn Guidelines on Access to Genetic Resources and Benefit Sharing under CBD. The Communication referred, inter alia, to the possible introduction of a self-standing disclosure requirement for patent applicants in the EC legal order. It welcomed the invitation to WIPO from the seventh CBD COP, and indicated its support for the work as outlined in paragraph 8 of document WIPO/GRTKF/IC/6/13.

152. The Delegation of the Dominican Republic felt that the SCBD presentation should have been formal and supported the Chair's procedural focus. It supported the African Group, Brazil and Venezuela that this should not be addressed by the Committee but by other fora in WIPO.

153. The Delegation of Sri Lanka supported a process that would culminate in the adoption of an international instrument or instruments. It informed that its Ministry of Indigenous Medicine in cooperation of IP Office was preparing a national law for the safeguarding of medicinal plants and traditional medicine. It also informed that SAARC had held an Expert Workshop which had prepared a document containing summaries and conclusions. It supported and endorsed those summaries and conclusions.

154. The Delegation of Japan indicated that it needed more time to examine the invitation contained in the Decision and felt that the Committee was the most adequate forum to address the issues set out in paragraph 8 of COP Decision VII/19 in the Committee's work on disclosure issues from the view point of its high expertise as well as the view point of avoid the duplicated works.

155. The Delegation of Switzerland advocated that WIPO should respond to the invitation as proposed.

156. The Delegation of Peru supported the position of the African Group and found that the cooperation between the CBD and WIPO was going on very smoothly. This was a procedural issue and the Delegation found that the Committee was not the sole WIPO body that should receive the invitation.

157. The Delegation of the United States of America took note of the transmission of the Technical Study and that the COP had invited WIPO to examine issues related to IP and disclosure requirements. It believed that it was premature to address the issues set out in paragraph 8 of Decision VII/19E, but felt that the Committee was the appropriate body in

which to consider the invitation. It had not had sufficient time to study and consider the recommendations and stated that the Technical Study had not been completed. It suggested allowing more time for the questionnaire and encouraging interested Member States to respond. It repeated its concerns over the CBD's request for further work on this issue, particularly its suggestion that the Committee consider options for model provisions on disclosure requirements and options for incentive measures to applicants. It believed that new disclosure requirements raised more questions than answers and likely could not be implemented. It fully supported the goals of equitable benefit-sharing from the use of TK and GR. It also fully believed in eliminating erroneously issued patents, in discouraging misappropriation of TK, and in respecting indigenous peoples cultures and beliefs. It did not, however, support the misconception that the patent system was the best mechanism for obtaining these goals. A new disclosure requirement would not prevent misappropriation. Those who steal would not be deterred by new disclosure requirements. Where TK and GR was commercialized but not patented, patent disclosure requirements would not apply. Several prudent and effective mechanisms had already been established to protect GR, permit access to them on set terms and to provide for the sharing of benefits from their use outside of the patent system. It therefore strongly counseled against imposing new disclosure requirements, particularly when it was doubtful that such requirements would achieve the Committee's shared objective of equitable sharing of resources. It recommended that the Committee should discuss the invitation in document WIPO/GRTKF/IC/6/9 at the next session. It suggested that the Secretariat encourage all Member States to respond to the questionnaire that led to the Technical Study so that the Committee had as complete and comprehensive a Study as possible. Once the Technical Study had been completed, it would be interested to hear whether the Member States that had disclosure requirements in their patent laws believed that these requirements achieved the Committee's shared goals and saw any evidence that supported this. It suggested that these Member States provide case studies, which explained how disclosure requirements helped to ensure that prior informed consent was obtained for access to GR and that benefits were equitably shared with the provider of the TK and/or GR.

158. The Delegation of Algeria considered that the work of the Committee was so widely dispersed that its task had become very complex. It considered that the Committee did not have the competence to consider the invitation made by the CBD, and that it should rather be put before the General Assembly.

159. The Delegation of New Zealand considered that the Committee should take up SCBD's COP invitation. Its reasoning was similar to that of the Delegations of Canada and Norway on this issue.

160. The Delegation of India stated that the invitation of the CBD COP be handed over to the WIPO General Assembly for further decision since several bodies handled the issue. It was the task of the General Assembly to consider the invitation and allocate tasks as necessary.

161. The Delegation of Senegal believed that the invitation by the COP fitted into the framework as complimentary to and in coordination with various agencies concerned. It had always supported this approach particularly the principles of compliment and coordination. It added that the invitation was addressed to WIPO and not to any specific committee and that it should be examined by the General Assembly before receiving the technical treatment in the committees concerned. The invitation affected the questions under the discussion in the Committee and as well as other bodies within WIPO. It mentioned that the response to the SCBD invitation should take into account the volatile nature of the work and avoid

prejudicing the dynamics of the work of the Committee. The Delegation was of the opinion that this discussion was more of a general policy and should be discussed by the General Assembly.

162. The Delegation of the Russian Federation agreed with the delegations in favor of responding positively to the invitation of the SCBD since cooperation of this kind were repeated mentioned. Regarding the question of requirements of revealing information of GR, it stated that this required a more detailed and exhaustive study, which the Committee had not yet carried out.

163. The Delegation of Ireland on behalf of the European Community its Member States and the Acceding States supported the recommendation of paragraph 8 in document WIPO/GRTKF/IC/6/13 and was concerned at negative procedural remarks made and made clear that it believed that the Committee was the appropriate forum to address these issues and that there were no obstacles in accepting the invitation and commencing the work as it was clearly in the mandate.

164. The Delegation of Australia supported the statements of the Delegations of Canada, Norway, New Zealand as well as others that stated that the Committee should consider the CBD COP's invitation as set out in paragraph 8 of WIPO/GRTKF/IC/6/13. It stated that it understood that as paragraph 8 merely asked the Committee to consider the invitation this would not prevent other WIPO bodies from considering the COP request.

165. The Delegation of Uruguay believed that the Committee needed to discuss these topics and examine the invitation. It believed that by examining the invitation, the Committee could express opinions of what could be considered. It supported paragraph 8 of document WIPO/GRTKF/IC/6/13.

166. The Delegation of Egypt on behalf of the African Group clearly supported coordination and synergies between the SCBD and WIPO. It appeared that there were different conception as to what the mutual support was and how it should be operated. It stated that the General Assembly would be competent body to consider the invitation and added that procedures were important. It hoped that the SCBD had noted the debates of the Committee and hoped they would assist in the work not only in the Committee but also other WIPO bodies. It concluded that the Committee was not in the position in this Committee to proceed on these procedures.

167. The Delegation of Canada noted that there was nothing in the mandate that restrained the Committee's ability to decide on the work that it feels was appropriate and necessary to proceed on the issues under its mandate. It stated that technical study of the SCBD was drafted and presented to the COP by the Committee and that the invitation was merely requested for follow up on the technical study itself. It did not preclude other WIPO bodies and the General Assembly. It concluded that the Committee should not become to overly procedural as would not satisfy the mandate of the Committee to accelerate its work.

168. The Delegation of France considered that the Committee should without further delay draft a reply to be put before the General Assembly, even if that meant other committees doing the same thing within their areas of concern. The Delegation of France was moreover surprised that some of the delegations that had wished to press forward at the General Assembly in September should now be holding back on such an important issue.

169. The Secretariat observed that the SCBD COP had invited WIPO to undertake a considerable substantive task, which would require extensive preparatory work. The choice of means and forum of responding to the invitation was the sovereign domain of WIPO Member States. The WIPO General Assembly would discuss any draft materials in determining WIPO's response to the COP invitation. The Secretariat recalled the creation of the Committee following consultations and an agreed statement by regional groups on the formulation of a distinct body within WIPO to facilitate discussions on GR issues, together with the related fields of TK and expressions of folklore, noting that "the three themes were closely interrelated, and none could be addressed effectively without considering aspects of the others." The Secretariat noted that the Committee established a precedent on this issue by commencing work on the technical study in line with the previous invitation by the CBD COP, and then submitting the draft output to the General Assembly for its consideration in line with the Assembly's general consideration of the invitation and for approval for transmission as a technical document to the CBD.

170. The Delegation of Germany endorsed and supported the statement of the Secretariat.

171. The Delegation of Venezuela recalled that not all members of Committee had been convinced of the need to renew this mandate of Committee, and it had not been clear that this Committee was focusing on substantive matter that was of importance to Venezuela. It had been participating with a constructive frame of mind in order to try to better focus the work of the Committee. It stated that there was very important work ahead for the Committee and added there were other matters that were more urgent, such as *sui generis* mechanisms, and that those States requesting acceleration in the work should request it for all sectors of the work of the Committee. It referred to the statement of the Secretariat and stated that the paragraph decision quoted did not suggest that the invitation could not be considered in other fora. It added that if the Committee were to consider this and report to the GA, the study would be incomplete if it lacked inputs from other important working bodies within WIPO. It felt that the Director General should extend the invitation to the bodies referred to and thereafter the Committee would take a decision. The Delegation noted its understanding that the CBD Decision would be sent to the General Assembly and added that it was also important for other WIPO bodies, which are dealing with this issue, to be informed. It requested the WIPO Secretariat to send the invitation contained in the Decision to those other bodies as well, so that it could be passed on to the General Assembly.

172. The Delegation of Brazil stated that it was clear that many did not think that the Committee had the competence to act upon the invitation. It stated that the manner in which the Committee chose to address these procedural questions could have a significant impact on the very nature of the substantive the work of the Committee. It made clear that this invitation was not directed to the Committee and that it must be dealt with by the General Assembly. Referring to the advice provided by the Secretariat, the Delegation noted that the Secretariat had referred to the previous mandate of Committee, not the new mandate which clearly specified that the work of the body had to be without prejudice to the work of other fora and that this was what was agreed to. The Delegation agreed that the Secretariat might have a role in the preparation of documents of a technical nature, which could facilitate discussions and negotiations among Member States, but did not agree that the International Bureau could determine what the documents would be before the Member States agreed on what should be discussed and the nature of the work involved. It concluded that the issue of inter-relationship among different fora addressing this issue that was fundamental to them was an issue of a political character and had to be resolved by the Member States.

173. The Delegation of Ecuador stated that it was important to recall their stance regarding the origin of the Committee supported by explanations provided by the Secretariat. It stated that it should not be forgotten that the basic subject that led to the creation of the Committee was related to the matter of patents and its relationship to GR. This was the matter that prompted the Patent Law Treaty Diplomatic Conference to take the step of creating the Committee. It was clear then, that this was to facilitate the understanding of the relationship between GR and patents. This Committee was then expanded to include other issues such as TK and folklore. It was important to remember that this was the origin of the Committee. It was logical to voice the opinion that other committees that dealt with these issues should be involved. It could be argued that there was a relationship with IP *per se* and the subject matter dealt by the SCBD, and this could not be restricted to this Committee as there were many other committees and bodies involved. The multidisciplinary nature of the subject made it essential that there be an overall and comprehensive position to express the views of an organization, and that the inter-relations also be taken into consideration.

174. The representative of the Asian African Legal Consultative Organization (AALCO) stated that the conservation and promotion of GR, TK and folklore were receiving increased international attention in various forums, as different policy areas were involved. There was lack of an international system of protection and existing laws were inadequate. Many countries were currently grappling with these issues. WIPO had become the most important forum for these discussions. Past activities of WIPO and the establishment of the Committee were recalled. The Committee's work had clarified the issues. The African and Asian countries were rich in natural and cultural resources and these issues were of the greatest importance to them. AALCO appreciated the work of the Committee greatly. There was a need to negotiate an international binding instrument on these issues and a model law for the Asian and African countries. The representative recalled the excellent relations and cooperation agreement that existed between AALCO and WIPO. AALCO offered a legal forum for its Member States. AALCO would include protection of expressions of folklore at its next general session and its deliberations could pave the way for a joint meeting between AALCO and WIPO, including WIPO possibly drafting an international instrument on the protection of expressions of folklore.

175. The representative of the SCBD stated that she had taken careful note of the discussions on documents WIPO/GRTKF/IC/6/11 and WIPO/GRTKF/IC/6/13 with a view to see how the CBD's decision VI/19 could be implemented.

176. The representative of the Third World Network (TWN) commented on documents WIPO/GRTKF/IC/6/13 and WIPO/GRTKF/IC/6/6. The NGO community had doubts that WIPO and the WIPO Secretariat had the appropriate conceptual understanding of the philosophical objectives of the CBD. The work of WIPO should not run counter to the objectives of the CBD. On what basis was WIPO going to provide the model provisions referred to in the CBD's invitation, for example, and who was going to draft them, the representative asked. If States could not agree on the drafts of the Secretariat, the drafts could be submitted to the CBD only as a technical Secretariat input. The decision as to what to do about the CBD's invitation should not be taken now. Time would clarify the role of WIPO and which part of WIPO should deal with it. Regarding the international dimension, it was a pity that so much time had been spent on the CBD's invitation. Document WIPO/GRTKF/IC/6/6 was disappointing as it placed undue emphasis on the national treatment principle. This principle had been introduced in TRIPS for the first time while TRIPS had since been discredited. There was a major controversy over TK and GR and the WIPO paper should have reflected the principle of State sovereignty over GR, the rights of

indigenous and local communities, prior and informed consent, and the prevention of foreigners from removing GR. The representative raised various issues relating to the patenting of GR and life forms, biopiracy and access and benefit sharing regimes. The international dimension was crucial. One key goal was to prevent erroneous patents, and PIC, the disclosure requirement and benefit-sharing were important, as was clarity on what was patentable, especially in relation to life forms. The representative proposed that WIPO and the Committee should identify cases of misappropriation of GR and TK and a mechanism should be established to review existing patents and take corrective measures in cases of erroneous patents. WIPO could also identify methods to prevent national granting of erroneous patents. The overall aim was to prohibit the patenting of life forms, including modified life forms, and products derived from TK, and there had to be a disclosure requirement.

177. The representative of the World Conservation Union (IUCN) stated that IP was one form of protection of TK, but it was not the only tool available, and therefore it must be further integrated in interdisciplinary and holistic systems, thereby ultimately moving towards an integral and ample form of protection while assuring the recognition of the fundamental rights of the holders of TK. IUCN called on the Committee to concentrate its efforts in providing the necessary tools to support processes taking place in other forums, particularly in the CBD, and its discussion on the development of an international regime for access to GR and the equitable distribution of benefits. She therefore called on Member States to pay particular attention to the tasks identified by the recent COP related to IP, such as the issues related to disclosure requirement, prior informed consent and the certification of origin. In order to contribute to the establishment of an equitable ABS regime, bearing in mind the importance of biodiversity conservation, IUCN was organizing three regional workshops during the coming months in relevant locations, where countries and regions can evaluate ideas and exchange experiences made with respect to these subjects.

178. The representative of the Indian Movement *Tupaj Amaru* regretted that the Committee had been focusing on procedural questions, which was a loss for the Committee. Regarding natural resources, there were many UN resolutions and activities on this subject and there was an interdisciplinary aspect to the issues. The pillaging of resources was very serious for indigenous communities and the representative provided some examples in this regard. Not everything should be patented. The SCBD, UNESCO, FAO and WIPO were asked to consider appointing indigenous expert staff members in their secretariats.

Conclusions

179. The Chair noted that a number of Delegations had supported the acceptance of the invitation by the CBD COP and said that the work on the issues mentioned there should start. On the other hand, a number of other Delegations had expressed rejection or hesitation in this respect, for a number of reasons which are reflected in the respective interventions.

180. The Chair noted that the invitation from the CBD COP was addressed to WIPO and that it obviously was not for the Committee as such to accept the invitation on behalf of WIPO.

181. The Chair noted that the paragraph 8 of the document called for the IGC to consider the invitation issued “in the context of the Committee’s ongoing activities” and that the decision that was requested in that paragraph concerned whether the Committee

should in particular “examine and, as appropriate, address the issues set out in paragraph 8 of the CBD Decision VII/19”.

182. Against this background, the Chair asked informally the Committee to consider whether the Secretariat should be requested to start work on the issues mentioned in the invitation and submit a background document to the next Session of the Committee on the understanding that the invitation would be considered by the General Assembly of WIPO and that no document relating to the invitation would be published before that point in time.

183. Following informal consultations, the Chair concluded that there was no consensus on how to proceed and that the invitation would be submitted to the General Assembly for consideration.

184. The Committee agreed with the Chair’s conclusion

185. The Delegation of Switzerland thanked the Secretariat for document WIPO/GRTKF/IC/6/9. The technical study carried out by WIPO had greatly helped to guide the work of the various CBD bodies. With respect to the disclosure requirement issue, the Delegation recalled previous proposals made to the WIPO Working Group on Reform of the Patent Cooperation Treaty (PCT) in May 2003, contained in document PCT/R/WG/5/11. In summary, Switzerland’s proposal was that contracting parties should be able to require the declaration of the source of GR and TK in international patent applications. Switzerland would present to the sixth session of the above Working Group a new submission containing additional comments on its original submission. These would concern use of terms, the concept of ‘source’ of GR and TK, and the scope of the obligation to declare source in patent applications. The new submission would complement not modify the original submission.

186. The Delegation of Venezuela added that the Director General of WIPO should also send the SCBD invitation out to other international bodies.

ITEM 8: INTERNATIONAL DIMENSION

187. At the request of the Chair, the Secretariat introduced document WIPO/GRTKF/IC/6/6 as a background reference document concerning the international dimension of the Committee’s mandate.

188. The Delegation of Egypt, on behalf of the African Group, noted that while the documentation provided by the Secretariat had significantly contributed towards improving understanding of the issues under consideration, it was important to build upon the body of knowledge and analysis accumulated and advance the work. The new mandate of the Committee provided the point of departure. Four elements of the new mandate required attention. First, the new mandate urged the Committee to accelerate its work, which the African Group fully supported. Misappropriation of GR, TK and folklore continued unabated and were well documented. The Committee should establish clear priorities and revisit its methods of work, and the Delegation thanked the Delegation of Canada for its suggestions in this regard. Second, the new mandate also stipulated that the work of the Committee should be without prejudice to the work pursued in other forums. No forum had an exclusive mandate to address the issues at hand. Different organizations should work in mutually supportive ways to achieve a common goal, namely devising effective international measures

for the preservation and protection of GR, TK and folklore. Work should proceed simultaneously, and work in one forum should not be used to preclude work in another organization. The Delegation regretted that the work of the Committee had on some occasions been used to prevent the issues from being taken up in other forums. Third, the Committee was requested to focus on the international dimension. The international dimension was not a separate issue but an integral part of all the questions facing the Committee. It was meeting because no effective international mechanisms existed. Fourth, no outcome was excluded. The position of the African Group had since the start of the work of the Committee remained unchanged. The outcome of the Committee's work should be an international instrument, universal in character, which would bind and require Member States to protect GR, TK and folklore and enforce certain rights conferred to the knowledge owners. The possibility of such an instrument was clearly envisaged by the new mandate. The Delegation then referred to a submission by the African Group (document WIPO/GRTKF/IC/6/12), on the objectives, principles and elements of an international instrument or instruments on IP in relation to GR and on the protection of TK and folklore. The African Group's main goal in presenting the document was to focus the work of the Committee in a structured manner. It stressed the complementarities of defensive and positive measure of protection and the importance of introducing a disclosure requirement in patent legislation and developing a *sui generis* system of protection of TK and expressions of folklore. In introducing the document, the Delegation wished to make certain comments. First, it was non-exhaustive, and a framework document only to highlight key issues, to guide the work of the Committee and in elaborating a relevant international instrument or instruments. The African Group also had views on issues not fully developed in the submission. For example, the rights relating to GR, TK and folklore should include in relation to any local community or holder, the right to (i) have respected their decisions on whether or not to commercialize their knowledge, (ii) have respected the honor or sanctity they attach to their knowledge, (iii) give prior and informed consent for any access and any intended use of their knowledge, (iv) full remuneration of the use of their knowledge, and (v) prevent parties from using, offering for sale, selling, exporting and importing their knowledge and any article or product in which their knowledge is input, unless all requirements under the instrument have been met. The African Group reserved the right to supplement its submission in the future. Second, the African Group was conscious of the differences between the issues, their complexity and the need to address them in a differentiated manner. Third, the instrument should build upon and develop synergies with other relevant regional and international instruments. In conclusion, the African Group invited other participants to comment on its submission and contribute towards it. The African Group requested the WIPO Secretariat to prepare for the next session a basic proposal containing provisions which could be included in an instrument addressing one or more of the issues at hand.

189. The Delegation of Ecuador, speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), stated that the dedicated and technical work of the Committee had clarified the issues to a great extent. The Secretariat was thanked for having made the working documents for this session available in Spanish well before the session. There was a diversity of opinion on how to move forward with the issues, and GRULAC wished to contribute to this process so that consensus could be achieved. The setting of the new mandate had been the object of intense debate, and it provided an order of priorities to reach goals not yet clearly identified. It was important to determine these goals. The Delegation recalled the terms of the new mandate, and noted that GR, TK and folklore issues were discussed in numerous forums, such as the CBD, the Human Rights Commission, the International Labor Organization, the Sub-Commission on Human Rights, the Permanent Forum on Indigenous Issues, UNESCO, the WTO and UNCTAD, as well as in WIPO bodies

such as the Standing Committee on Patents. The international dimension was a most important aspect of the new mandate. The three issues before the Committee were highly complex and needed different approaches and each might need different kinds of protection. The work of the Committee should not impede work in other forums. There was a need to identify the essential principles, to avoid IP rights, under defensive protection, when TK was involved. One of the objectives that must be clearly set was to find formulae to avoid misappropriation. A disclosure requirement was also needed, as was prior and informed consent and equitable benefit-sharing. Bearing in mind the international dimension, it was necessary to take a differential approach to each one of the issues, despite their obvious links, because they emerged from different processes and belonged to different processes, and the results of each would likely be different. It was necessary to explicitly recognize the advances made on the folklore question. With this example, it was hoped that it would be possible to make further progress on the other two issues of the Committee. In conclusion, the Delegation stated that the Committee must seek concrete solutions and doing so would be a milestone for IP, demonstrating that the IP system could address development issues.

190. The Delegation of the Republic of Korea on behalf of the Asian Group pointed out that in spite of efforts that had been undertaken over the past years, the Committee had been unable to help effectively facilitate any substantial outcomes with regard to protecting GR and TK. It shared the concern that the work of the Committee had proceeded slowly. The Delegation expressed the hope that a definite roadmap would be drawn up at the sixth session, and all members to remain open-minded, so that a consensus could be reached to realize an effective protection system of GR, TK and folklore. The Asian Group was committed to work in cooperation with other Member States to find necessary solutions. The Delegation concluded that it hoped that the sixth session of the Committee would emerge as a landmark occasion as it broke through the deadlock that had inhibited the Committee.

191. The Delegation of Canada, speaking on behalf of Group B, welcomed the opportunity to discuss the international dimension of the Committee's work. In that light, Group B found that document WIPO/GRTKF/IC/6/6 provided a very helpful overview of the possible international dimensions of the Committee's mandate, including the international policy, legal, technical and practical elements, and the potential interaction of those elements with various national and regional practices. The document usefully put the present deliberations into context by outlining the evolution of existing IP standards, including the interplay between the development of national and international frameworks for protection. Group B found the paper's summary of some of the various approaches to international norm-building, including both binding and non-binding instruments, and the substantive elements of these options, to be a welcome contribution to the work in this area. The document pointed out that, ultimately, this Committee had to consider whether to approach the international dimension of its work in isolation - by considering separately the international elements of substantive protection for TK, TCEs and the IP aspects of GR - or whether it should instead approach the substantive policy and legal aspects of the issues comprehensively, including through discussion of national, regional and international approaches and mechanisms. The approach outlined in the paper was a possible reference tool. The Committee should pursue its work along the lines suggested in paragraph 69 of the document. Group B welcomed the proposals put forward by the African Group in document WIPO/GRTKF/IC/6/12, which proposed objectives, principles and elements of an international instrument or instruments. This distilled and highlighted in a useful way many of the points covered in document WIPO/GRTKF/IC/6/6. Group B agreed with several of the objectives and principles set out by the African Group. It also welcomed the pragmatic flexibility in the African Group paper, which left options open with respect to the ultimate product or products of the Committee.

Group B agreed that now was not the time to foreclose options in this regard. Group B expressed its hope that in the next phase of this Committee's work, Members could agree to pursue a pragmatic workplan along the lines suggested in document WIPO/GRTKF/IC/6/6. Group B felt that elements of the African Group paper could be incorporated into these deliberations.

192. The Delegation of Ireland on behalf of the European Community, its Member States and the Acceding States, welcomed the document WIPO/GRTKF/IC/6/6 as a possible reference tool for the future work of the Committee in the context of the new mandate requiring it, in particular, to focus on the international dimension of IP, and GR, TK and folklore. It stressed the need for continuing coordination of WIPO's work in this area with the work of other international fora such as CBD, WTO, UPOV and FAO. It supported suggestion (ii) and (iii) of paragraph 69. As outlined in (iii) of paragraph 69, it was convinced that TCEs, TK and GR were different issues and deserved in-depth discussion in their own right of the implications at international level. In particular more time was needed for traditional cultural expressions. It agreed with the statement of Delegation of Canada on behalf of Group B in relation to the African Group proposal in document WIPO/GRTKF/IC/6/12.

193. The Delegation of the Czech Republic on behalf of the Group of the Central European and Baltic States, noted that the proposed list of objectives, principles and elements was submitted as a contribution to the actual process based on the conclusions of WIPO General Assembly in 2003, which confirmed the importance of IP in relation to GR, TK and folklore and decided that the work would continue not only on the previous mandate of the Committee but would focus also on a consideration of the international dimension of those questions without prejudice to any form of outcome of this work. It was of the opinion that many of the aspects highlighted in the African Group paper could be subject to further clarification. It welcomed all proposals, especially to accelerate and put forward the work of the Committee. It concluded that it needed more time to study the African Group's proposal carefully from a substantial point of view.

194. The Delegation of China believed that the efforts made by WIPO on the protection of IP in GR, TK and folklore were of great practical and historical significance, and expressed appreciation that the Committee had over three years met five times, held in-depth deliberations on various issues concerned, and made preliminary achievements. The Delegation noted that the Government of China had always supported all efforts by WIPO and was ready to do its utmost in making its own contribution. The Government had made useful attempts and explorations in using the existing IP system and other legal systems to protect TK, resulting in some preliminary experiences. The Delegation was ready to conduct, under the *aegis* of WIPO, extensive exchange and cooperation with other countries through various means by drawing lessons from and sharing respective experiences and practices, thus continuously improving legislation and measures concerned, and achieving even greater progress in the protection of TK. WIPO had sent two groups of experts to China to conduct fact-finding and research work on the protection of TK and folklore in China. The relevant Chinese authorities gave strong support to the expert groups, and prepared well-conceived and varied programs. The Delegation of China supported the recent decision by the WIPO General Assembly for the Committee to continue probing into relevant issues under a new mandate. According to this mandate, the Committee would concentrate on the international dimension on related issues, taking into full consideration of the results of the work done by other international fora, without excluding any outcome, including the possibility of setting international norms. The protection of TK, GR and TCEs required synergy among various

legal systems, both at the international and national levels. All legal systems should coordinate with, support and complement each other, shaping a comprehensive and inclusive protection system. Different legal systems can only protect the subject matters within their jurisdiction to a certain extent, based on their respective legislative purposes. With one single legal system, one cannot solve all problems. Protection of IP in TK, GR and TCEs was an important component part in the entire protection system, be it with a new *sui generis* legislation or with existing IP laws. As regards *sui generis* protection, the Delegation endorsed such an approach, and believed that the Committee should focus its future work on seeking solutions to the protection of IP in TK, GR and TCEs, giving full consideration to existing achievements of other international fora, such as those dealing with the environment, human rights, access to GR and protection of cultural heritage, in the spirit of mutual coordination and promotion among relevant international treaties. The Delegation considered the African Group proposal for an international instrument to be excellent food for thought in furthering their discussions on international dimension. It was important that this work should continue. Under its mandate, the Committee should conduct consultations on issues of a common character that all Member States were concerned with but national legislation failed to address, so as to guide and coordinate national legislative efforts. Issues of a common character could include: how to reflect and implement the basic principles embodied in the existing international conventions on IP while formulating *sui generis* legislation on the protection of IP in TK, GR and TCEs, such as the principles of national treatment, non-discrimination, independent rights (i.e. independence of the protection granted by the country of origin from that by other countries), and exceptions and limitations to rights; the scope of protection by *sui generis* systems; and the ownership of IP concerning cross-border TK. The Delegation of China would continue to support the work of the Committee, and to take an active part in its deliberations. With the coordinated efforts of WIPO and other relevant international organizations, and with the participation of all Member States, reasonable solutions which are acceptable to all can be found for the protection of IP in relation to GR, TK and folklore, addressing in a better way the concerns and needs of all countries, especially developing countries.

195. The Delegation of Brazil recalled that in renewing the Committee's mandate, the General Assembly instructed it to "focus on the international dimension" of the issues before it. It considered document WIPO/GRTKF/IC/6/6 to be valuable, as it sought to address the primary concern that should drive the work of this Committee in the coming biennium. The international dimension was not properly a new element in the Committee's work. On the contrary, biopiracy and the misappropriation of TK and folklore were, by their very nature, international problems, requiring international solutions. It was the very recognition that these issues have a significant international dimension that led developing countries to place them on the agenda of a number of different international fora, including WIPO, in the first place. Addressing the international dimension has been the *raison d'être* of the IGC since its establishment several years ago. Unfortunately, despite the gravity and urgency of the problems it was established to address, this Committee did not during the first two years of its existence deliver any concrete outcomes of true relevance to the *demandeurs*. Developing countries from Africa, Asia and Latin America shared the same concerns in respect of the grave international problem of biopiracy. It was the lack of significant progress in the IGC in effectively tackling the core issues before it that had led the General Assembly to emphasize that the Committee should "accelerate its work" and "focus on the international dimension". With its decision to renew the Committee's mandate, the General Assembly sought to establish a new level of commitment to addressing the same problems that faced the Committee in its previous mandate. It was now up to the Committee to put that commitment into practice, recalling that its work is to take place "without prejudice to the work of other

fora”, both within and outside of WIPO. Properly to discharge the mandate of the General Assembly, the Committee’s future work had to be approached in a practical and results-oriented manner. The Committee should identify priorities and goals, and then proceed to deliver concrete measures and solutions on the basis of that examination. Given the gravity of the problems faced, and the results-oriented mandate, it would not be appropriate to spend time delving into areas of limited importance, that may contribute only marginally to the attainment of our goals. In this spirit, the Delegation noted that document WIPO/GRTKF/IC/6/6 was a helpful reference text, which could be drawn upon in future discussions, even though it is exploratory in nature and not intended to prejudge the outcomes of the Committee’s work in the current biennium nor any decisions of Members on the direction of that work. Turning to the suggestions in the document (paragraphs 65 to 69) as to how the Committee could address the international dimension under its new mandate, the Delegation observed that because the international dimension is inherent to the mandated issues, it should be addressed simultaneously in the course of discussions on those issues under their respective agenda items. The Delegation agreed with the African Group that the international dimension is not to be dealt with as if it were a separate issue before the Committee. The main problems it was concerned with were essentially international in character, and could only be addressed by international means. The most expedient and appropriate manner to proceed would be to try to always bring to bear a consideration of the international dimension to all of the Committee’s work. This would not be difficult, since the problems are essentially international in character. Discussions on the mandated issues naturally lend themselves to consideration of at least some of the international elements suggested in document WIPO/GRTKF/IC/6/6, which may serve as a useful reference tool. The Delegation underscored the need to approach the document with an open mind, realizing that not all its elements would be relevant to its work. The Delegation was skeptical as to the usefulness of discussing the use of mechanisms such as existing IP agreements and alternative dispute resolution to protect TK, folklore and GR. Other elements identified by the Secretariat may be very relevant. The Delegation believed there was a strong case for setting binding international norms on GR and patent disclosure requirements, and agreed with the need for a formal link between the patent system and the international instruments that compose it, and the principles of prior informed consent and benefit sharing as enshrined in the CBD, as a means of combating biopiracy. The Delegation noted the relevance of this to other agenda items.

196. The Delegation of Egypt considered the altered mandate which had been entrusted to the Committee to be a qualitative change. It summarized the Committee’s work to date as a very useful brainstorming exercise and now considered it time to move on to the preparation of a draft international instrument or instruments. It requested that experts and international institutions with expertise in IP should be convened since in its current form the Committee working in plenary could not develop a number of provisions for an international instrument because the provisions needed to be developed by a small number of legal experts and then further development should then be taken up by other experts to discuss the provisions. This was why it suggested that the Committee should establish a drafting group to produce a number of provisions that could be discussed at a further meeting. It suggested that if the Committee continued to work as it presently did it would never get anywhere. Drafting of an international instrument would open the door to national legislators. The draft instrument would be an important reference point for such legislators. As regards the relation to other instruments such as CBD, UPOV, and the OAU Model Law, in the Delegation’s view all these legal texts constituted instruments to which reference could be made, as was done, for example, in the reference in the TRIPS Agreement to the Washington Treaty. As regarded the protection of plants, animals and microorganisms, Egypt, as a developing country, did not

have a mercantile view on such protection, but rather its view which was rooted in a moral perspective. It should be examined very carefully. The proposed instrument would be a *sui generis* regime, without excluding other conventional IP mechanisms. These effective *sui generis* systems made up a system that had already been adopted in Article 27 of TRIPS. The Delegation recalled that some countries had expressed suspicions about this question because the elements of the system would open the way to highhandedness among legislators. It reminded that the elements of the system would be used based on the principles of prior informed consent and benefit-sharing without forgetting that these benefits meant material benefits. Even in the area of conventional IP mechanisms, such as patents for inventions, the use of such tools could only succeed by using the system of disclosure in patent applications. Otherwise biopiracy would subsist. If the Committee confined itself to the defensive aspect it was not sufficient because defensive and positive protection were complementary. Defensive protection had raised doubts about documentation on two bases: documentation might facilitate the use of the documented elements by other parties. In order to deal with these doubts an international instrument would need to cover all the requirements of TK protection and guarantee that TK would not need to be catalogued, nor documented in order to benefit from protection. This way the international instrument would not exclude any elements concerning protection. It restated that the international instrument, like other international instruments, provided for a minimum level of protection and the principle of national treatment was a fundamental principle. It stated that it was too early at present to examine the system of international registers as contained in the PCT, because the Committee first needed to guarantee success in national protection and could then move to an international classification system. Any international system for the settlement of disputes should be part of such a system. The WTO Dispute Settlement Body was an effective system and in that respect the Committee could examine its features in order to use its positive features while eliminating its negative ones. In conclusion the Delegation stressed that it would be useful to establish a working group or working groups and if that was done it would provide further details.

197. The Delegation of India stated that the Committee had been given a new lease of life and a fresh time-bound mandate by the WIPO Assembly. It was hoped that the Committee's work would develop an acceptable and legally binding international framework. The Delegation supported the views of the African Group and the Delegation of Brazil. Fresh international standards were needed, and their absence caused serious concerns for the protection of GR, TK and folklore. The three themes of the Committee were interlinked and there was a need to ensure that a consensual and holistic approach was adopted. The international dimension needed to address the issue of equity which was enshrined in the principle of prior and informed consent. Conservation of GR should use tools such as registries, databases and recognition of rights of indigenous peoples. TK needed to be protected against misappropriation. Genetic resources, TK and folklore should enjoy the same level of protection as science and technology-based innovations. While documentation could accord defensive protection, positive protection would need a wider and more complex consensus evolving process. There was now an urgency to work towards an acceptable and agreed legally binding international framework. The Delegation also reported on a recent South Asian Association for Regional Cooperation (SAARC) Expert Workshop on Intellectual Property, Traditional Knowledge and Genetic Resources, held in New Delhi in November 2003. The workshop had placed specific focus on mechanisms of access to TK. The Government of India had requested that the recommendations of the workshop be placed before the Committee for discussion. The Delegation was pleased that WIPO had been invited to cooperate with the CBD in the development of an international regime on access and benefit sharing relating to GR and associated TK, and advised that India had enacted a

Biodiversity Act in 2002. In concluding, the Delegation emphasized the need for broad and holistic approaches to GR, TK and folklore, not leaving out oral forms of TK; emphasized the need for both positive and defensive protection mechanisms; stressed the inclusion of provisions relating to prior and informed consent and disclosure of origin with regard to any use of knowledge or biological resources; urged the development of standard and international databases for GR, TK and folklore; and, urged the Committee to adopt a legally binding international framework within a specific time frame.

198. The Delegation of the Islamic Republic of Iran supported the statement of the Asian Group, as well as the decision of the WIPO General Assembly to design an international legal framework. The Committee's activities had led to a compilation of data and expert views. Taking into account the decision of the General Assembly to accelerate the work, the Delegation suggested establishing an ad hoc committee to advance work on the international dimension.

199. The Delegation of Kenya associated itself with the statement made by on behalf of the African Group. The session of the 39th WIPO Assembly held in September 2003 extended the mandate of the Committee and urged the Committee to accelerate its work with focus on the international dimension. The renewed mandate also stated that no outcome of the Committee's work was excluded, including the development of an international instrument. The continued misappropriation of GR, TK and TCEs did not augur well. The Delegation had always focused on the need for a comprehensive approach as regards the protection of these resources. The documents produced by the WIPO Secretariat laid a strong foundation for the way forward. Due to the need and urgency for a legal instrument, the Delegation was prepared to participate and support any session geared towards creating a consensus in this regard.

200. The Delegation of Myanmar subscribed to the statement made on behalf of the Asian Group. Developing countries were rich in GR, TK and TCEs, and their protection was vital for these countries. However, unauthorized piracy and misuse were continuing unabated. Undoubtedly, there was a crying need for protection at the international level. In this context, it was imperative to conclude urgently an international instrument(s) for the protection of TK and TCEs. The Delegation was, therefore, in favor of authorizing the Committee to commence negotiation of such an instrument(s). Generally speaking, IP rights were exclusive rights owned by individuals, companies and research institutions. Under the Berne Convention, the minimum duration of copyright protection was 50 years from the date of the author's death. However, in the case of TK and TCEs, the nature, ownership and duration of protection are different from those of the traditional IP. Unlike conventional IP, ownership of TK and TCEs might belong to a group of people, to a national race or even to the entire people of a country. In addition, the duration of ownership for TK and TCEs would have to be much longer than that of the existing types of IP. Furthermore, TK and TCEs might even form part of cultural heritage of the people concerned. Therefore in elaborating such an international legal instrument(s), one should adopt a *sui generis* approach. At the same time, one should also be flexible and should not rule out the inclusion of some conventional legal norms that might prove to be useful and effective in the management of TK and TCE protection. Although new legal norms might be *sui generis*, a combination of *sui generis* and conventional norms should be considered, wherever appropriate. The Delegation stressed here that, in establishing such an international legal instrument(s), a balance must be struck between the proper access to TK and TCEs and the protection of IP. While there should be proper access to TK and TCEs, effective and comprehensive protection in the interests of the peoples who own them should also be in place. Previous sessions of the Committee had

already laid a solid ground-work in terms of substantive policy discussions on legal options for protection of TK and TCEs, and the enriching exchange of information and views on national and regional experiences regarding access to GR and benefit-sharing. Now it was time for starting substantive work on the elaboration of an adequate system of protection of TK and TCEs at the global level. The Delegation was of the view that the work of Committee should be result-oriented and it should make preparations for substantive negotiations on legally-binding international instrument(s) as soon as possible. The Delegation, therefore, joined other countries in calling upon the Member States to authorize and confer an adequate and clearly defined mandate to the Committee for negotiation of such an instrument(s).

201. The Delegation of Thailand associated itself with the statement made on behalf of the Asian Group, and also supported the statements made by the African Group and Brazil. As TK had continued to play a vital role in the daily life of the vast majority of its people, Thailand attached great importance to the protection of TK. In every forum, WIPO, WTO, FAO or CBD, Thailand had consistently asserted that a *sui generis* system, in addition to the existing IP regime, which provided recognition of the full range of protection, was essential. This Committee's work had for the first time drawn the attention of developing countries to IP, assisting WIPO in having its mandate fulfilled. For the very first time in history, developing countries could now join their developed partners to engage actively in rules-setting and establishing international norms and standards. The Delegation was of the view that the past five meetings had laid a solid ground in providing sufficient knowledge on national experiences of each country. It was high time, however, that the work moved forward in developing best practice for an international regime, especially binding mechanisms on benefit-sharing scheme, that would be implemented in such a manner that brought fair and tangible benefits to all. The international aspect of TK, GR and TCEs should not be seen as separate but should be considered as a part and parcel in each topic. Not only would delay or failure in the WIPO process lose an opportunity to benefit from the establishment of appropriate TK and TCE protection mechanisms, but an incorrect message would also be signaled to the international community. Accordingly, Thailand urged all parties to expedite the process by setting priority of the issues, the benefits of which would occur not only to developing countries, but to everyone involved.

202. The Delegation of Kyrgyzstan attached great importance to the protection GR, TK and TCEs. A Bill on GR and TK was being discussed nationally and WIPO's comments would be sought. International standards were also needed.

203. The Delegation of Syria supported the statement of the Delegation of Switzerland regarding PCT modification. It stated that the Committee needed to recognize that the international dimension was very important for developing countries and indigenous and local communities. It added that when addressing international agreements there was a need for a binding agreement to prevent GR and folklore from being lost within developing countries in particular the indigenous communities living within these countries. It supported the request put forward by the African group in this regard. The Delegation stated that it wanted an international agreement that supports the protection of the use of GR and folklore in developing countries. This was needed as it was an important subject matter for all.

204. The Delegation of Algeria stated that the question of the international dimension was a very important one, and that the broader terms of reference given to the Committee afforded the possibility of working towards an international legal instrument for the recognition and protection of IP rights in GR, TK and TCEs (folklore). In order to avoid a situation where the present process, the momentum of which should be kept up, gave precedence to the purely

commercial perception and aspect of the protection of those rights, the right to development should be included in the deliberations. To that end, the Delegation proposed the appointment of a monitoring committee, simply run, which would work between sessions of the Committee and would be responsible on the one hand for collecting and collating the results of the work of other organizations in the area concerned (coordination), and on the other hand for hearing and considering the concerns and proposals of countries members of WIPO.

205. The Delegation of Canada expressed its support for the Group B statement. It thanked the Secretariat for the comprehensive analysis it had prepared on the international dimensions of the work of the Committee. This wide-ranging review of the issues would be of continuing use as the Committee continued its work, in both the norm-building aspects, as well as the construction of the many practical elements of a comprehensive regime to deal with TK, TCEs and the IP aspects of GR. It thanked in particular the African Group for the document it had submitted, outlining objectives, principles and elements of the issues considered under the Committee's mandate. It considered this to be a very constructive contribution to the work of the Committee, and found it a useful identification of some of the issues requiring further consideration. Turning to document WIPO/GRTKF/IC/6/6, it noted in particular the choice outlined in paragraph 67 of the document, regarding approaches to proceeding with the Committee's focus on the international dimension: the first was to deal with the substantive policy and legal aspects of the issues as part of the existing agenda items, and in this consideration to identify the national, regional and international elements, rather than dealing with the international dimension in isolation; the second was to identify those aspects of these issues that were international in character and then treat these in isolation from the substantive agenda items. Canada agreed with those delegations that had stated that the Committee should treat the international dimension of each substantive agenda item as part of a general discussion of that specific issue. It preferred that option for several reasons: the IP system was essentially protected through national law. The starting point therefore, as part of a consideration of the international dimension, was to identify the legal tools and mechanisms required at the national level to accomplish specific objectives related to the issues in the mandate of this Committee. There was no doubt that the international dimension could contribute operationally to the protection at the national level – as it did currently in most other forms of IP rights; and there was no doubt that at a point when new norms had sufficiently converged between the practices of a wide range of states, it would be in interests of all of those states to codify these new norms at the international level. However, the identification of this operational contribution and emergence of new norms needed to start with the identification of the core elements and substantive principles of a national protection regime; not the other way around. As a result of the considerable analysis conducted under the first mandate, and supplemented by the various presentations made by members on their national experiences, it could acknowledge that there was already a certain amount of national practice relating to the protection of various forms of TK and TCEs. And it was fair for those countries who did have national systems to approach the international community to seek international recognition and support for the rights that they granted in their national laws, just as it had been fair for inventors in the late 1800s to seek protection in other jurisdictions, leading eventually to emergence of the Paris Convention. But knowing of examples of existing domestic protection was only the first step. The Committee now needed to move to stage II in this long term process of building internationally-accepted norms, that of identifying common principles among existing practices and of elaborating these into a menu of policy and legal options for a broader number of states to implement nationally. Consideration of the individual substantive agenda items was the only place to do this effectively. The most important factor underlying its preference that the Committee begin with the individual agenda items was that the contribution that international mechanisms may

differ from issue to issue. For example, the development of databases and registries of TK might one day lead to the creation of international notification and registration systems for rights over certain forms of TK; competing claims between different communities across national boundaries to ownership over forms of TCEs might need to be resolved through an international dispute settlement mechanism between states or between private parties; the development of guidelines and recommendations on how to interpret existing international IP laws in a manner that was supportive of the interests of TK holders would be a useful component of the Committee's work; when considering new practices for national patent applications dealing with disclosure of origin of GR the Committee would need to assess the interaction of international IP law with other elements of international law, such as a country's obligation under the CBD; and the mere existence of the Committee, where countries shared national experiences, developed best practices, promoted capacity building and debated the issues generally was an extremely valuable exercise in international policy co-ordination, capable of one day leading to the emergence of new binding norms. These were all examples of the international dimension of the work of the Committee, and there were many others like them. But they were all different in kind from one another; so it would make little sense to pursue them together as a single package. Each would be difficult to pursue in isolation of work on the underlying issues. Once again, this could only be done as part of the assessment of individual substantive agenda items. The Delegation therefore supported the Secretariat's recommendation for how to deal with this agenda item, to use this document to simply identify those aspects of the Committee's work that were international in character, and then rely upon that list of issues in the Committee's consideration of the legal and policy options identified in the Committee's discussions of substantive agenda items. Practically speaking, this meant that for future versions of documents to be prepared under agenda items, there would need to be sections dealing with those elements of that agenda item that covered the various aspects of the international dimension. Elements identified in the African Group paper could usefully form a starting point in those options papers generated under each agenda item.

206. The Delegation of Switzerland supported the comments made by Canada on behalf of Group B. It shared and supported the objectives mentioned in the document and was of the view that they should guide the work of the Committee and other international fora. It considered the clarification of the use of terms to be a crucial preliminary task to be carried out at the outset of their work. It welcomed the issue of definitions mentioned in the document as one of the general elements. In this context it considered it to be crucial that the Committee did not pre-empt its discussions on GR, TK and folklore by defining the outcomes of the work already at the outset. It added that this applied particularly to the work on policy objectives and core principles as well as policy options and legal elements agreed upon at the Committee. The work to be carried out at future sessions would influence the outcomes of the Committee's efforts. Regarding document WIPO/GRTKF/IC/6/6, it considered the measures and policies defined were important tasks in this context. It added that Committee had an international framework, which already produced certain structures with an international dimension. It was difficult to distinguish clearly among national and international aspects and which fell under the international dimension. It supported, with regards to paragraph 67, the first proposal namely, to take material and legal aspects in turn. This approach would help the Committee to find adequate, practical and comprehensive solutions. In case the international dimension of an issue can be clearly and easily identified, Switzerland would be ready to address this issue as a priority.

207. The Delegation of Australia supported the statement that has been made by the Delegation of Canada on behalf of Group B. It supported the recommendations set out in

paragraph 69 of document WIPO/GRTKF/IC/6/6. It added that numerous delegations had pointed out that one of the elements in this Committee's new mandate required that it focus in particular on the international dimensions of IP and GR, TK and folklore. However, the new mandate also required that this Committee accelerate its work. It believed that the most effective way to achieve both of these elements would be to identify those aspects of the Committee's mandate that were international in character and then to consider these aspects during substantive debates of each of the separate existing agenda items rather than to deal with the international dimension in isolation. It stated that this would be once the Committee had identified those aspects of the mandate that were international in character. It preferred that the Committee adopt the approach outlined in paragraph 67(i) of document WIPO/GRTKF/IC/6/6. It stated that although some of the aspects identified under paragraph 67(ii) might be relevant to more than one of the items on which the Committee would have substantive debate, the impact of those international elements on the substantive discussions may be different for the different agenda items. It believed that even if some of the international aspects need to be considered separately under all three of the substantive issues that this Committee was mandated to address the protection of TK, the protection of folklore or the IP aspects of GR and that this approach would be more efficient than considering the international elements in isolation. It also believed that this approach would thereby address two of the requirements in the Committee's new mandate.

208. The Delegation of New Zealand supported the support the approach taken in document WIPO/GRTKF/IC/6/6 to address the international dimension of the Committee's work, and considered the expropriation of TK across national borders to be an important issue deserving of the Committee's attention. With regards to paragraph 25 of the document it encouraged further work and discussion of these issues in the context of each of the Committee's substantive work areas. For example, it added, the international dimension could be considered as part of the menu of policy and legal options for the protection of TK referred to in document WIPO/GRTKF/IC/6/4. It agreed, therefore, that the international dimension should not be considered in isolation. It stated that paragraph 34 referred to a number of options or potential outcomes for international standard setting. It suggested that, at this stage, it was not necessary for the Committee to decide which of these options might be an appropriate outcome and that all options should remain on the table for the following reasons. Firstly, it agreed that further work was required to develop comprehensive menus of policy and legal options for both TCEs and TK more generally. The results of this work would have a direct bearing on how to address the international dimension. Secondly, the results of the Secretariat's further consideration of the international issues identified in paragraph 25 would inform the choice of outcome. Thirdly, it noted that national approaches to TK protection were still developing and policy processes were at different stages of development. There was still much scope to learn from these national experiences. It added that it would also be counter-productive to begin negotiations on a treaty, declaration or set of recommendations without a clear understanding of the most appropriate and successful protection mechanisms and without a significant level of commitment to be bound by the results. The Delegation stated also it would be useful to continue with the development of guiding principles, as foreshadowed in documents WIPO/GRTKF/IC/6/3, WIPO/GRTKF/IC/6/4 and WIPO/GRTKF/IC/6/5, and work towards the clarification of the scope for international coordination. It added that further development of capacity building tools would also be useful. The Delegation concluded by noting that the approach suggested would not preclude the eventual adoption of international standards in the TK area.

209. The Delegation of South Africa stated that it supported the submission of the African Group. It also supported the contents of document WIPO/GRTKF/IC/6/6, and recommended

that paragraphs 69 and 66(i) be carried forward as proposed. The Secretariat should extract issues which were international in nature, be they from conventional IP or from customary laws. Customary laws might not know certain colonial or imposed boundaries. This might assist in benefit-sharing arrangements. It was hoped that one was not looking for a 'one size fits all'. International agreements were not static in nature. It was hoped that the Committee would recommend to the September 2004 Assemblies some tangible issues. The Delegation emphasized that its intervention was not limited to the law of patents but to IP and all the issues before the Committee.

210. The Delegation of the Islamic Republic of Iran expressed its appreciation to the Secretariat for the preparation of the useful documents and stated that there was no clarification of terms in document WIPO/GRTKF/IC/6/6. For example, in the beginning of the document it stated that the terms TCEs and folklore were regarded as the same, but noted that the term TCEs was used 77 times throughout the document while the term folklore was used only 8 times, and therefore there was no clarity on these terms. Also in other documents, it is stated that the Committee had still not achieved consensus on this area. There should be a distinction between principles and subsidiary issues, for example paragraph 18: addressing practical impediments to foreign right holders could be a subsidiary of the Principle of Recognition of foreign right holders. In paragraph 22, in its view, IP was related to other aspects of international law but in the next version should pay attention to those laws that have a closer relation with the specific work of the Committee. In the case of existing IP standards in paragraph 29, views on *sui generis* systems should be taken into account. Regarding paragraph 32, in preparing the principles of drafts, more attention was needed concerning diversity of the subject matter and customary and *sui generis* systems. On paragraph 35, there was a need for having a binding international instrument(s). No country opposed the creation of an international instrument; the diversity of views was more on the content. The Delegation did not agree with the arguments mentioned in paragraph 37. The Delegation supported the statement of the Delegation of Canada regarding the need for flexibility among countries and also supports some parts of the submission of document WIPO/GRTKF/IC/6/12 by the African Group.

211. The Delegation of Syria was convinced that the work of the Committee had to lead to a treaty on the protection of TK, TCEs and GR. The Secretariat should prepare a draft instrument or instruments based on documents WIPO/GRTKF/IC/6/3 and WIPO/GRTKF/IC/6/4. The Swiss proposal on the disclosure requirement in the PCT (document PCT/R/WG/5/11) was supported.

212. The Delegation of Algeria stated that the elaboration of a single international instrument was necessary and it should take into account what had taken place in other bodies such as UNESCO and the ILO. Ethical issues also had to be taken into account. This would be more useful than splitting up the international dimension. Paragraph 25 of document WIPO/GRTKF/IC/6/6 was accepted.

213. The Delegation of Fiji stated that there was a need for an international regime and referred to document WIPO/GRTKF/IC/6/6, in particular to paragraph 6. Fiji had embarked on a project to protect TK and expressions of culture, which would be valueless without international protection.

214. The Delegation of the Dominican Republic thanked the Secretariat for the document. It did not agree with paragraph 28 in the way that it referred to GR and this problem was also in the other documents presented by the Secretariat on the subject of GR. Regarding paragraph

29, the Delegation wanted other agreements to be included, such as Patent Law Treaty. It could not identify only aspects of the mandate of the Committee which were international, because the Committee's entire mandate was the international dimension.

215. The Delegation of Botswana thanked the Secretariat for the high quality of the documents prepared for the session. The Delegation supported the statements of the African Group, Brazil, Nigeria, Senegal and others. The aim of the Committee was to prevent biopiracy and the misappropriation of TK and folklore, which was a 'lose-lose' for all countries. Thus, international solutions were needed. The new mandate of the Committee was a wake up call to identify priorities, goals and objectives, and then to deliver concrete measures and solutions, as the African Group had attempted to do. As regards document WIPO/GRTKF/IC/6/6, the Delegation agreed with its contents and was inclined to accept its conclusions. The view of the African Group that the international dimension was not a separate issue was also supported.

216. The Delegation of Norway supported the Group B statement. The Delegation stated that Member States had common objectives and there were many ways of achieving these objectives. The African Group was thanked for its proposal. It was not seen as necessarily leading to a single instrument, but it could be seen as a framework listing relevant elements to be dealt with. The Delegation wished to see further clarification of several of the elements in the proposal from the African Group. An annotated menu of options should be created. It was too soon to make any concrete decision on whether there was a need for new legal instruments in this field. With reference to the Swiss proposal on a disclosure requirement, the Delegation proposed that the Committee recommend to the Member States to conduct a change to the PCT that allowed for a disclosure of origin requirement in PCT applications. The opportunity to make disclosure should be without prejudice to the processing of patent applications or the validity of granted patents. The new arrangement would not give WIPO any administrative obligations in terms of following up on wrongdoings. Sanctions would be outside of the patent system.

217. The Delegation of Pakistan stated that document WIPO/GRTKF/IC/6/6 was informative and useful. There was a need for an international and legally binding instrument on TK and folklore. National systems by themselves could not provide protection beyond national borders. Work was needed at both national and international levels. The argument that national laws were necessary first was not convincing and the Delegation cited the example of the TRIPS agreement. There was no need to endlessly discuss whether there should be international norms. Focused discussion was now needed on the norms and principles that would underpin them, which could include the principles of prior and informed consent, equity and benefit sharing, repression of unfair competition, including of the appropriation and misuse of distinctive traditional characteristics, and effective remedies. It was hoped the Committee would develop concrete measures. The African Group statement was supported and it should be used as a framework. The useful work done by the South Asian Association for Regional Cooperation (SAARC) should be taken into account. The Secretariat should be asked to develop a legal text. The Delegation advised that there was extensive experience in Pakistan on the three issues. National laws showed lacunae, which demonstrated the need for international action. An internationally binding instrument was needed.

218. The Delegation of the United States of America thanked the Secretariat for the presentation in document WIPO/GRTKF/IC/6/6 of the existing IP system and its historical evolution, which showed that at first the international IP framework had had little effect on substantive elements of national laws. It also showed that IP laws had been enacted in the

laws of a number of countries for over a century before the international dimensions were developed. These experiences were instructive. As had been said by many, no one size would fit all, and the Committee's work needed to reflect the diversity of opinions that existed. The document also usefully surveyed the range of options for norm-setting in this area. The Delegation fully supported the examination of the international dimension. It was first necessary to identify objectives. The next steps were to ask the hard questions, such as what exactly was one seeking to protect? How to define TK and TCEs? What are the boundaries for when the subject matter qualifies as TK or TCEs? Who is entitled to claim ownership of TK or TCEs? Regarding objectives, they could include cultural protection, monetary or non-monetary benefits, and preservation of knowledge or secrets. The African Group was thanked for a thought-provoking submission. The United States of America shared many of the objectives set out in the submission and supported discussion of the objectives and principles identified in it. The Delegation did not however agree with all the elements, such as the banning of patents on life forms. It was recalled that under the Committee's mandate, no outcome was excluded. One should not prejudice what legal approach was most appropriate, therefore. A tailored mix of approaches was the most feasible way forward. The Delegation believed that Members should discuss the international dimension as a separate element under each of the substantive topics of the Committee's agenda. Through this process, many of the objectives in the African proposal could be addressed. Regarding Norway's proposal for the Committee to undertake work related to a disclosure requirement, the United States was supportive of substantively discussing disclosure requirements in the Committee. Through substantive discussions, the Committee would then be able to decide how to proceed.

219. The Delegation of Mexico hoped that the work of the Committee might eventually culminate in an international instrument. It mentioned that the protection of the Committee's issues should consider both intellectual property rights in the conventional sense and also *sui generis* rights. The Delegation was in favor of analyzing other international instruments such as the CBD and the UNESCO Convention on the safeguarding of the immaterial cultural heritage, and of working together with those bodies. It emphasized the importance of analyzing national requirements when the international dimension was investigated. It stressed the importance of reaching consensus among countries if the most effective results were to be achieved in the international arena. It maintained that it was still premature to start working on an international instrument.

220. The Delegation of the Russian Federation considered that document WIPO/GRTKF/IC/6/6 was a good basis for a future work of the Committee. It supported the proposals appearing in paragraph 69 and conclusions contained in paragraphs 65 to 68 of the document. At the same time it indicated its preference to proposals contained in paragraph 67(ii) since the Committee did not yet agree on the basic issues which were equally important both for national and international legislation, i.e. protected subject matter, beneficiaries and purposes of protection.

221. The Delegation of India stated that the Committee had provided a useful forum for sharing national experiences. Yet, absent the Committee, Member States would not have been at a loss on the protection of TK at the national level. The Committee should focus on the international level. If one examined the history of international treaties, a vast majority emerged before the corresponding national legal and policy options were in place. The Committee should engage in preparing a draft document for providing a legally binding international legal framework for the protection of IP associated with GR, TK and folklore.

222. The Delegation of Egypt, on behalf of the African Group, expressed the Group's deep appreciation for the comments made on its submission and the support it had received. The African Group wished to play a constructive role in the work of the Committee. The African Group had considered before the session what the international dimension meant. It had felt it was necessary to move beyond analysis to develop the building blocks and to focus on substance. The main goal was the prevention of misappropriation, prior and informed consent and equitable benefit-sharing, and the banning of patenting of life forms. The Secretariat was encouraged to take into account the African Group's submission and to advance work towards an international instrument.

223. The representative of the Secretariat of the CBD briefed the Committee on recent developments within the framework of the CBD, notably the seventh meeting of the Conference of the Parties (COP) held in Kuala Lumpur Malaysia, from 9 to 20 February 2004. The decisions adopted by the Conference of the Parties of greatest relevance to the Committee were those related to: access to GR and benefit-sharing (ABS); TK, innovations and practices of indigenous and local communities relevant for the conservation and sustainable of biological diversity; and technology transfer and cooperation. Regarding ABS, it was recalled that, at the World Summit on Sustainable Development, Governments had called for action to negotiate an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of GR. Following up on the WSSD's request, the COP had decided to mandate the existing Working Group on ABS to negotiate such an international regime with the aim of adopting (an) instrument(s) to effectively implement the provisions of Article 15 (on ABS) and Article 8(j) of the Convention (regarding the protection of TK, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biological diversity). The COP had also requested that the Working Group be convened twice before COP 8 and to report on progress at this meeting. COP 8 would be held in the first half of 2006 in Brazil. The COP had specifically invited WIPO - among other organizations - to cooperate with the Working Group on ABS in elaborating the international regime. One of the elements to be considered by the Working Group was the issue of disclosure of origin/source/legal provenance of GR and associated TK in applications for IP. WIPO conventions and treaties were also identified as existing instruments and processes, which need to be examined in the development of the international regime. A number of additional elements were also relevant to the work of the Committee, in particular COP decision VII/19 (available at www.biodiv.org and reported upon in documents WIPO/GRTKF/IC/6/11 and WIPO/GRTKF/IC/6/13). Collaboration had been ongoing between WIPO and the CBD Secretariat including on the issue of disclosure requirements related to GR and TK in IP applications. In response to the invitation by the sixth meeting of the Conference of the Parties (decision VI/24C, paragraph 4), the technical study prepared by WIPO (document WIPO/GRTKF/IC/5/10) had been tabled at the seventh meeting of the COP. In decision VII/19, the COP noted with appreciation the technical study and considered its contents to be helpful in the consideration of IP-related aspects of user measures. Building on this work, the COP had requested "the Ad Hoc Open-ended Working Group on ABS to identify issues related to the disclosure of origin of GR and associated TK in applications for IP rights, including those raised by a proposed international certificate of origin/source/legal provenance, and transmit the results of this examination to WIPO and other relevant forums". The COP had further invited WIPO "to examine, and where appropriate address, taking into account the need to ensure that this work is supportive of and does not run counter to the objectives of the Convention, issues regarding the interrelation of access to GR and disclosure requirements in IP rights applications, including, *inter alia*: (a) Options for model provisions

on proposed disclosure requirements; (b) Practical options for IP rights application procedures with regard to the triggers of disclosure requirements; (c) Options for incentive measures for applicants; (d) Identification of the implications for the functioning of disclosure requirements in various WIPO-administered treaties; (e) Intellectual property-related issues raised by proposed international certificate of origin/source/legal provenance; and regularly provide report to the CBD on its work, in particular on actions or steps proposed to address the above issues, in order for the CBD to provide additional information to the WIPO for its consideration in the spirit of mutual supportiveness.” Finally, the COP had also invited UNCTAD and “other relevant international organizations to examine the issues in, and related to, these matters in a manner supportive of the objectives of the CBD prepare a report for submission to the ongoing process of the work of the CBD on access and benefit-sharing.” With respect to the issue of TK, the main issues considered by the COP included: the composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biodiversity; the *Akwe: Kon* voluntary guidelines for the conduct of cultural, environmental and social impact assessment regarding developments proposed for to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities, endorsed by the COP; participatory mechanisms for indigenous and local communities; and development of *sui generis* systems for the protection of TK, innovations and practices. The represented noted that in decision VII/16 on Article 8(j) and related provisions, when addressing the development of *sui generis* systems for the protection of TK, innovations and practices, the COP had recognized the need for continued collaboration with other relevant organizations working on issues related to the protection of TK of indigenous and local communities, such as WIPO, to ensure mutual supportiveness and avoid duplication of efforts. The COP had requested the Working Group on Article 8(j) to explore the potential of and conditions under which the use of existing as well as new forms of IP could contribute to achieving the objectives of Article 8(j) and related provisions of the Convention, taking into account the work of WIPO and the United Nations Permanent Forum on Indigenous Issues. In addition, the COP had invited WIPO to make available to the Working Group on Article 8(j) the results of its work on issues relevant to the implementation of Article 8(j), in particular in relation to the protection of TK and its recognition as prior art. Regarding technology transfer and cooperation, the COP had adopted a program of work on technology transfer and cooperation in order to develop meaningful and effective action to enhance the implementation of Articles 16 and 19 of the Convention, which related to access to and transfer of technologies relevant for the conservation and sustainable use of biological diversity or which make use of GR. The work program included four program elements: technology assessments, information systems, creating enabling environments, and capacity-building and enhancement. Activities of most relevance to WIPO were planned under program elements 2 and 3. Program element 2 addressed the development or strengthening of national, regional and international systems for the gathering and dissemination of relevant information on technology transfer and cooperation and technical and scientific cooperation, including the establishment of effective networks of electronic databases of relevant technology. At the international level, these systems, using the CBD Clearing House Mechanism, would provide, *inter alia*, information on the availability of relevant technologies, data on patents, models of contracts and associated legislation, identified technology needs of Parties, as well as case studies and best practices on measures and mechanisms to create enabling environments for technology transfer and technology cooperation. Activities established in this context of particular relevance to WIPO included: the development of advice and guidance on the use of new information exchange formats, protocols and standards to enable interoperability among relevant existing systems of national and international information exchange, including

technology and patent databases (Activity 2.1.3); implementation of proposals for enhancing the clearing-house mechanism as a central mechanism for exchange of information on technologies, as a core element in its role to promote and facilitate scientific and technical cooperation, for facilitating and promoting technology transfer and for the promotion of technical and scientific cooperation as adopted by the COP, in full synergy with similar initiatives and mechanisms of other Conventions and international organizations (Activity 2.1.4). Creating enabling environments, under program element 3, involved identifying and putting in place institutional, administrative, legislative and policy frameworks conducive to private and public sector technology transfer and cooperation, taking also into account existing work of relevant international organizations and initiatives. Activity 3.1.1 provided for the preparation of technical studies that further explored and analyzed the role of IP in technology transfer in the context of the CBD and identified potential options to increase synergy and overcome barriers to technology transfer and cooperation, consistent with paragraph 44 of the Johannesburg Plan of Implementation. The benefits as well as the cost of IP rights should be fully taken into account. The main actors identified to carry out this activity were the SCBD, WIPO, UNCTAD and other relevant organizations, prior to the eighth meeting of the COP. The various elements of the most recent decisions of the COP, particularly as regards ABS and TK, called for a continued close cooperation between the SCBD and WIPO. The Memorandum of Understanding signed between the SCBD and WIPO in June 2002 provided a good basis for this collaboration.

224. The representative of the Commonwealth Secretariat said it had a mandate from its 53 Member Countries to keep them informed on developments in IP globally and had a special duty in relation to ongoing international developments in TK. The Commonwealth, with a constituency of some 1.7 billion people, provided a truly diverse membership base to a group of nations comprising developed, developing and vulnerable states. One of its strengths was its ability to provide a forum where the concerns of small and marginalized jurisdictions can be heard at international fora. Most of these small states were situated in the Caribbean and the Pacific, and had a vital concern to ensure that the TK upon which their lifestyle is based is not completely lost and even more alarming, exploited to their disadvantage. TK is their *raison d'être* and so, as already heard from the Pacific Forum representative and representatives of other indigenous peoples, there was still an overwhelming need for an international normative framework to enable them effectively protect their rights. The representative had taken into account the concerns of some Member Countries, especially the essential mismatch and misfit of TK protection under the IP system and the necessity to follow the *sui generis* option, and the growing recognition for disclosure requirements in patent documents. For this reason, the Commonwealth Secretariat was doubling its efforts to closely collaborate with other international and regional agencies. Its Member Countries recognized that collaborative efforts lead to a deepening synthesis and harmonization of national, regional and multilateral norms in this area of the law. The representative of UNCTAD had outlined the latest joint activity of the two organizations, a workshop held in Geneva in February 2004 which brought together some 90 experts to further the global search for options in formulating an international framework to promote, protect and preserve TK. The representative fully supported closer working relations with other multilateral agencies hoped to explore such avenues further, and welcomed the initiatives and options so ably crafted by the WIPO, outlined and elaborated in document WIPO/GRTKF/IC/6/6 in respect of the international dimensions of TK, TCEs and Folklore. The representative took account of concerns expressed by Member Countries of the adverse impact on the lack of a comprehensive international normative framework on the protection of TK, and was mindful of the alarming rate of biopiracy in vulnerable gene-rich countries. She thus supported the option under paragraph 36 of the document and urged the IGC towards developing a specific

draft international legal instrument for TK as the one clear option for the complete elaboration of the international dimension of the Committee's work. Sufficient national experiences had been garnered over the decade by the WIPO and other international organizations. This documentation and best minimum national practices should now be put to effective use at the multilateral level.

225. The representative of ARIPO considered the international dimension to be the key issue of the Committee. ARIPO endorsed the submission of the African Group. ARIPO's Council of Ministers had acknowledged the diverse and rich endowments of its Member States and consequently mandated the Organization to take initiatives on these questions. ARIPO and its Member States had taken a number of actions leading to the promotion of TK as well as encouraging the States to develop appropriate measures to protect these resources. ARIPO had from the beginning of the Committee's work called for an international instrument to curtail the continued economic exploitation of these resources.

226. The representative of UNCTAD stated the need to flesh out common objectives, principles and elements. She asked how indigenous and local communities could help the Secretariat between sessions, and noted that everyone seemed agreed that no one size fits all. She drew attention to the mention of a mutual recognition principle in the African Group submission and in document WIPO/GRTKF/IC/6/6. This could benefit from further analysis.

227. The representative of the Union of National Broadcasting and Television Organizations of Africa (URTNA) commended the African Group for its collective energy and subscribed to the proposals submitted by it in document WIPO/GRTKF/IC/6/12. She stated that URTNA's interest in the work of the Committee was explained by the fact that the primary vocation of its member organizations consisted in information, education and entertainment and in publicizing all forms of cultural expression of the ethnic components of the various African nations. Being at once users and producers of works that largely contained cultural elements, TK and expressions of folklore, the member organizations of URTNA, gathered together within their Union, were paying attention to everything that was being done in this area at both the national and the international level. She concluded that URTNA would follow any future developments in the Committee's work with interest.

228. The representative of the Kaska Dena Council (KDC) made a statement on behalf of the following Indigenous Peoples organizations: Aboriginal and Torres Strait Islander Commission, Aboriginal and Torres Strait Islander Commission (ATSIC), Foundation for Aboriginal and Islander Research Action (FAIRA), Assembly of First Nations (AFN), Call of the Earth (COE), Canadian Indigenous Biodiversity Network (CIBN), Coordinating Body of Indigenous Organizations of the Amazon Basin (COICA), Indigenous Peoples Caucus of the Creators Rights Alliance, Hoketehi Moriori Trust, Rekohu, Aotearoa (New Zealand), International Indian Treaty Council (IITC), the Kaska Dena Council (KDC) and the Saami Council. The representative thanked the Secretariat for document WIPO/GRTKF/IC/6/6 and the African Group for its thoughtful preparation of document WIPO/GRTKF/IC/6/12. The organizations were supportive of the development of an international regime on the precondition that the following fundamental principles were included therein: Indigenous peoples were recognized as custodians and owners of their knowledge, TCEs and natural resources and had the exclusive right to control and manage their knowledge, expressions and resources; States should affirm that the land and territorial rights of Indigenous Peoples were fundamental to the retention of Indigenous Knowledge and cultural practices pursuant to the implementation of relevant international obligations; an international regime should expressly affirm the right of Indigenous Peoples to restrict and/or exclude access to their

knowledge, TCEs and natural resources; an international regime must ensure that the right to prior informed consent of Indigenous peoples was guaranteed and protected, as a fundamental principle in the exercise of self-determination and sovereignty of Indigenous Peoples; the right of prior informed consent must be maintained throughout any access and benefit sharing arrangements where there was potential change of permitted use or third party involvement; an international regime must enable the effective implementation, application and enforcement of Indigenous customary laws and cultural practices; and in circumstances where there was a conflict, Indigenous customary laws and cultural practices should prevail over domestic law or an international regime. The representative stated that the organizations had studied document WIPO/GRTKF/IC/6/12 with great interest. Even though it had been received only on the first day of the meeting, they had developed preliminary comments in the form of the following draft amendments and additions: “Objectives: ensure the rights and responsibilities of the owners, holders and custodians of natural resources, TK and TCEs are recognized and protected; prevent the misappropriation of GR, TK and TCEs; ensure the application of the principle of prior informed consent be applied as a precondition of any use of GR, TK and TCEs; ensure the full and effective involvement of indigenous peoples in the development and implementation of any international regime regarding GR, TK and TCEs; ensure the conservation and sustainable use of bio-diversity; protect and reward legitimately obtained innovations and creative works derived from TK and TCEs. Principles: recognition that indigenous peoples have the right to development of their cultural and natural resources; recognize the rights and responsibilities of TK- holders and custodians, including their inalienable moral rights against the misappropriation of their TK and expressions of folklore; recognize that states have a role in the preservation and protection of TK; recognize applicable international law, including human rights law; recognize the role of customary law and protocols in the protection and the sustainable use of GR, TK and expressions of folklore; recognize the complementary nature of defensive and positive measures relating to the protection and sustainable use of GR, TK and expressions of folklore. General elements: National treatment/mutual recognition of Indigenous customary laws and national legislation; definitions. Genetic Resources: recognition of rights and responsibilities to take measures to ban the patenting of life forms; ensure implementation of prior informed consent; introducing a disclosure requirement in patent laws as well as evidence of compliance with national law, applicable customary legal systems and international law relating to GR (disclosure of the source of origin of the GR in claimed inventions and of the associated TK used in the invention); contractual arrangements. Traditional Knowledge, developing a *sui generis* system of protection and sustainable use: establish scope of protected subject matter; establish nature of rights and responsibilities; address ownership of rights, moral and economic rights, acquisition, exercise, expiry and enforcement of rights; establish registration mechanism, subject to the prior and informed consent of the holders of TK; Expressions of Folklore, developing a *sui generis* system of protection and sustainable use: establish scope of protected subject matter; establish nature of rights and responsibilities; establish ownership of rights, moral and economic rights of performers, acquisition, exercise, expiry and enforcement of rights; establish registration and administration mechanisms, subject to the prior and informed consent of the holders of the expression of folklore. Institutional Mechanism: capacity building and technical assistance; cultural sensitization and awareness building; networking and exchanging of information; promotion of documentation and codification of TK and expressions of folklore, subject to the prior and informed consent of the holders of TK and expressions of folklore; institutional mechanism for fostering the transfer of technology; establishment of national focal points of implementation; establishment of a follow-up body. Enforcement. Dispute Settlement.” The representative emphasized that these amendments and additions were based upon a preliminary analysis, and

the organizations reserved their rights to revisit this framework document should it become evolutionary in nature.

Conclusions

229. The Chair stated that the discussion had showed a positive approach to the issue and that there had been a broad support for the contents of document WIPO/GRTKF/IC/6/6, and there had been a constructive debate on the issue of the international aspects, including the elements included in the African proposal (document WIPO/GRTKF/IC/6/12), although some Delegations said that they needed more time to consider it and others said, for instance, that it was a valuable framework that needed to be more elaborated on.

230. The Chair then proposed that the Committee should take note of document WIPO/GRTKF/IC/6/6 and of the proposal by the African Group in document WIPO/GRTKF/IC/6/12 as well as of the interventions made and, on that basis, approved the contents of the decision paragraph 69 of document WIPO/GRTKF/IC/6/6.

231. The Delegation of Egypt pointed out that many delegations had argued for the integration of the international dimension question in each of the substantive topics. The Chair confirmed that this would be taken into account.

ITEM 9: REPORT TO THE ASSEMBLIES

232. The Chair stated that, in the case of Committees reporting to the Assembly, normally the Secretariat, on its responsibility, prepared a factual report which was then the subject of discussion in the Assembly and suggested that this procedure to be followed also in this case. The Committee decided accordingly.

ITEM 10: ADOPTION OF THE REPORT

233. The Committee reviewed the draft report (circulated as document WIPO/GRTKF/IC/6/14 Prov.) and adopted it as the final report of the session, including the summaries and conclusions of the Chair in English, French and Spanish, subject only to any notification by participants of the Committee to the Secretariat of amendments or corrections required to the summary of their own interventions as recorded in WIPO/GRTKF/IC/6/14 Prov. The Chair noted that such amendments or corrections should be provided by March 29, 2004, to ensure timely conclusion and availability of the report in the Committee's three working languages.

ITEM 11: CLOSING OF THE SESSION

234. The Committee was advised that the period November 1 to 5, 2004, had been tentatively identified for the convening of its seventh session. The Chair closed the Sixth Session of the Committee on March 19, 2004.

[Annex follows]

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. ÉTATS/STATES

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

AFRIQUE DU SUD/SOUTH AFRICA

MacDonald NETSHITENZHE, Director, Commercial Law and Policy, Department of Trade and Industry, Pretoria

Mogege MOSIMEGE, Director, Indigenous Knowledge Systems and Tertiary Initiatives, Council for Scientific and Industrial Research (CSIR), Pretoria

Gawula NEVILLE, Head, Legal Services, Department of Sciences and Technology, Pretoria

ALGÉRIE/ALGERIA

Boualem SEDKI, Ministre plénipotentiaire, Mission permanente, Genève

ALLEMAGNE/GERMANY

Tammo ROHLACK, Senior Advisor, Federal Ministry of Justice, Berlin

Anja BON HAHN (Ms.), Counsellor, Federal Ministry for Consumer Protection, Food and Agriculture, Berlin

Almuth OSTERMEYER-SCHLÖDER (Ms.), Deputy Head of Division, Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, Berlin

Rupprecht PODSZUN, Legal Assistant, Permanent Mission, Geneva

ARABIE SAOUDITE/SAUDI ARABIA

Waleed Bin Mohammed AL-GHAMDI, Patent Specialist, King Abdul Aziz City for Science and Technology, Riyadh

ARGENTINE/ARGENTINA

Marta GABRIELONI (Sra.), Consejera de Embajada, Misión Permanente, Ginebra

ARMÉNIE/ARMENIA

Andranik KHACHIKYAN, Deputy Head, Intellectual Property Agency, Yerevan

AUSTRALIE/AUSTRALIA

Jessica WYERS (Ms.), Acting Director, Legislation and Policy Development, Intellectual Property Office, Canberra

Jyoti LARKE, Second Secretary, Permanent Mission, Geneva

AUTRICHE/AUSTRIA

Gunter AUER, Chief Public Prosecutor, Federal Ministry of Justice, Vienna

Regine ZAWODSKY (Mrs.), Patent Office, Vienna

BARBADE/BARBADOS

Trevor CLARKE, Ambassador, Permanent Representative, Permanent Mission, Geneva

Nicole CLARKE (Ms.), Counsellor, Permanent Mission, Geneva

BELGIQUE/BELGIUM

Michel DE PUYDT, conseiller adjoint, Ministère des affaires économiques, Office de la propriété intellectuelle, Bruxelles

BÉNIN/BENIN

Bienvenu E. ACCROMBESSI, deuxième secrétaire, Mission permanente, Genève

BOLIVIE/BOLIVIA

Angelica Navarro LLANOS (Sra.), Segundo Secretario, Misión Permanente, Ginebra

BOTSWANA

Hilda Sponile SIBISIBI (Ms.), Deputy Director of Culture and Youth, Department of Culture and Youth, Ministry of Labour and Home Affairs, Gaborone

BRÉSIL/BRAZIL

Maria Alice CAMARGO CALLIARI (Mrs.), Patent Director, Brazilian Patent Office, Brasilia

Otávio Afonso DOS SANTOS, Coordinator, Copyright and Related Rights, Copyright Coordination, Ministry of Culture, Brasilia

Leonardo CLEAVER DE ATHAYDE, Second Secretary, Permanent Mission, Geneva

Vanessa DOLCE DE FARIA (Miss), Third Secretary, Permanent Mission, Geneva

BULGARIE/BULGARIA

Maya STANKOVA (Mrs.), State Examiner, Chemistry, Biotechnology, Plant Varieties and Animal Breeds Department, Patent Office, Sofia

CAMBODGE/CAMBODIA

Sovicheat PENN, Deputy Director, Intellectual Property Department, Ministry of Commerce, Phnom Penh

Rhipol TITH, First Secretary, Permanent Mission, Geneva

CAMEROUN/CAMEROON

Julienne NGO SOM (Mme), chef de la division de la valorisation et du développement technologique, Ministère de la recherche scientifique et technique, Yaoundé

Charles BELINGA B'ENO, chargé de cours, chef de service de la communication traditionnelle, direction de la communication publique, Ministère de la communication, Yaoundé

Thomas OUATEDEM, conseiller technique, Ministère de la communication, Yaoundé

CANADA

Robert MCDOUGALL, Senior Policy Analyst, Information and Technology Trade Policy Division, Department of Foreign Affairs and International Trade, Ottawa

Lynn FORTIN (Ms.), Senior Policy Analyst, Intellectual Property Directorate, Marketplace Framework Policy Branch, Ottawa

Wayne SHINYA, Senior Policy Analyst, Canadian Heritage, Copyright Policy Branch, Ottawa

Timothy HODGES, Associate Director, Access and Benefit Sharing, Environment Canada, Quebec

Cameron MACKAY, First Secretary, Permanent Mission, Geneva

CHINE/CHINA

TIAN Lipu, Deputy Commissioner, State Intellectual Property Office of China, Beijing

GAO Si (Ms.), Division Director, National Copyright Administration of China (NCAC), Beijing

SONG Jianhua (Ms.), Division Director, Legal Affairs Department, State Intellectual Property Office of China, Beijing

ZENG Yanni (Miss), Project Administrator, International Cooperation Department, State Intellectual Property Office of China, Beijing

WANG Heyun (Ms.), Project Manager, Department of Policy, Laws and Regulations, Ministry of Culture, Beijing

ZHANG Xuechao, Project Manager, Department of Policy, Laws and Regulations, Ministry of Culture, Beijing

ZHAO Yangling, First Secretary, Permanent Mission, Geneva

COLOMBIE/COLOMBIA

Jairo RUBIO ESCOBAR, Superintendente de Industria y Comercio, Superintendencia de Industria y Comercio, Bogota

Ricardo VELEZ BENEDETTI, Ministro Consejero, Misión Permanente, Ginebra

COMORES/COMOROS

Daoud ATTOUMANE, point focal de l'OMPI, Ministère des relations extérieures, Moroni

CONGO

Samuel KIDIBA, directeur du patrimoine et développement culturel, Ministère de la culture et des arts, Brazzaville

Fidèle SAMBASSI, ministre conseiller, chargé des affaires économiques,
Mission permanente, Genève

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

COSTA RICA

Alejandro SOLANO ORTIZ, Ministro Consejero, Misión Permanente, Ginebra

CÔTE D'IVOIRE

Claude BEKE DASSYS, ambassadeur, représentant permanent, Mission permanente, Genève

Kouassi Michel ALLA, chargé des questions de propriété intellectuelle et chef du Service autonome de la coopération et de la réglementation au Ministère de la culture et de la francophonie, Abidjan

Désiré-Bosson ASSAMOI, conseiller, Mission permanente, Genève

CROATIE /CROATIA

Tajana TOMIĆ (Mrs.), Head, Copyright Department, State Intellectual Property Office,
Zagreb

Zvezdana JUNAŠEVIĆ (Mrs.), Legal Associate, Department of Intellectual Property Rights,
State Intellectual Property Office, Zagreb

Josip PERVAN, First Secretary, Permanent Mission, Geneva

DANEMARK/DENMARK

Peter SCHØNNING, Head of Division, Ministry of Culture, Copenhagen

Naja LUND (Mrs.), Head of Section, Department of Foreign Affairs of Greenland Home Rule Government, Copenhagen

Niels Holm SVENDSEN, Senior Legal Counsellor, Danish Patent and Trademark Office, Copenhagen

Erik HERMANSEN, Senior Technical Advisor, Danish Patent and Trademark Office, Copenhagen

ÉGYPTE/EGYPT

Hassan EL BADRAWI, Vice President, Supreme Court, Ministry of Justice, Member of the Legislative Committee, Cairo

Ahmed Ali MORSI, Chairman of the Board, National Library and Archives, Cairo

Abdel Rahman NEGMELDIN, Diplomatic Attaché, Ministry of Foreign Affairs, Cairo

Gamal Abd El Rahman ALI, Legal Consultant, Academy of Scientific Research and Technology (ASRT), Cairo

Ahmed Abdel LATIF, Second Secretary, Permanent Mission, Geneva

EL SALVADOR

Juan Carlos FERNANDEZ QUEJADA, Ministro Consejero, Misión Permanente, Ginebra

ÉMIRATS ARABES UNIS/UNITED ARAB EMIRATES

Fawzi AL JABERI, Official Administrator, Ministry of Information and Culture, Abu Dhabi

EQUATEUR/ECUADOR

Rafael PAREDES PROAÑO, Ministro, Representante Permanente, Misión Permanente, Ginebra

ÉRYTHRÉE/ERITREA

Bereket WOLDEYOHANNES, chargé d'affaires, Mission permanente, Genève

ESPAGNE/SPAIN

Asha SUKHWANI (Sra.), Técnico Superior Examinador, Departamento de Patentes e Información Tecnológica, Oficina Española de Patentes y Marcas, Ministerio de Ciencia y Tecnología, Madrid

Marcos GÓMEZ MARTÍNEZ, Consejero, Misión Permanente, Ginebra

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Jon SANTAMAURO, Intellectual Property Attaché, Permanent Mission, Geneva

Doug GRIFFITHS, Economic Officer, Permanent Mission, Geneva

Peggy A. BULGER (Ms.), Director, American Folklore Centre, Library of Congress, Washington, D.C.

Mary E. RASENBERGER (Ms.), Policy Planning Advisor, Copyright Office, Office of Policy and International Affairs, Washington, D.C.

Dominic KEATING, Patent Attorney, United States Patent and Trademark Office (USPTO), Washington, D.C.

ÉTHIOPIE/ETHIOPIA

Getachew Alemu MENGISTIE, Acting Director General, Ethiopian Intellectual Property Office, Addis Ababa

Esayas GOTTA SEIFU, First Secretary, Permanent Mission, Geneva

EX-RÉPUBLIQUE YOUGOSLAVE DE MACÉDOINE/THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Biljana LEKIK (Ms.), Deputy Head of Department, Industrial Property Protection Office (IPPO), Skopje

Vesna ILIESKA (Miss), Head, Department of Normative and Administrative Matters, Ministry of Culture, Skopje

Slavica SPIROVSKA-GORGIEVSKA (Ms.), Staff Associate, Division on Copyright and Related Rights, Ministry of Culture, Skopje

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Larisa SIMONOVA (Mrs.), Deputy Head of Department, International Cooperation Department, Russian Agency for Patents and Trademarks (ROSPATENT), Moscow

Yuriy SMIRNOV, Head of Division, Federal Institute of Industrial Property, Russian Agency for Patents and Trademarks (ROSPATENT), Moscow

FIDJI/FIJI

Nainendra NAND, Solicitor General, Office of the Attorney General, Suva

Alipate QETAKI, Chairman, Fiji Law Reform Council, Suva

Joseva RAIKADROKA, Senior Legal Officer, Office of the Attorney General, Suva

FINLANDE/FINLAND

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

Marjo AALTO-SETÄLÄ, Coordinator, International Affairs, National Board of Patents and Registration, Helsinki

FRANCE

Pascal DUMAS DE RAULY, chef du Service du droit international et communautaire, Institut national de la propriété industrielle (INPI), Paris

Marianne CANTET (Mme), chargée de mission au Service du droit international et communautaire, Institut national de la propriété industrielle (INPI), Paris

Isabelle CHAUVET (Mlle), chargée de mission, Service du droit international et communautaire, Institut national de la propriété industrielle (INPI), Paris

Sélim LOUAFI, Institut de développement et des relations durables internationales (IDDRI), Paris

Michèle WEIL-GUTHMANN (Mme), conseiller juridique, Mission permanente, Genève

GHANA

Kodjo Agbanyoh MAWUTOR, Minister Counsellor, Permanent Mission, Geneva

GRÈCE/GREECE

Andreas CAMBITSIS, Minister Counsellor, Permanent Mission, Geneva

Daphne ZOGRAFOS (Mrs.), Advisor, Permanent Mission, Geneva

GUATEMALA

Gabriel ORELLANA, Primera Secretaria, Misión Permanente, Misión Permanente, Ginebra

Marco Tulio MOLINA, Consejero, Misión Permanente, Ginebra

GUINÉE/GUINEA

Thierno Ahmadou BAH, ingénieur chimiste, chargé d'études au Bureau des signes distinctifs et du contrôle des contrats de licences, chargé des questions de la propriété intellectuelle relatives aux ressources génétiques, Conakry

Ousmane BARRY, chercheur, membre de l'Association guinéenne pour la promotion de l'invention et de l'innovation technologique (AGUIPI), Conakry

Ibrahima KEITA, chercheur indépendant, Conakry

HAÏTI/HAITI

Jean Claudy PIERRE, premier secrétaire, Mission permanente, Genève

HONGRIE/HUNGARY

Szilvia BAJTAY-TÓTH (Mrs.), Deputy Head, Legal and International Department, Hungarian Patent Office, Budapest

Krisztina KOVÁCS (Ms.), Deputy Head, Legal Section, Legal and International Department, Hungarian Patent Office, Budapest

Veronika CSERBA (Miss.), First Secretary, Permanent Mission, Geneva

INDE/INDIA

Kumud BANSAL (Mrs.), Additional Secretary, Ministry of Human Resource Development, Government of India, New Delhi

Anwar EHSAN AHMAD, Joint Secretary, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, New Delhi

Debabrata SAHA, Deputy Permanent Representative, Permanent Mission, Geneva

Desh Deepak VERMA, Joint Secretary, Ministry of Environment and Forests, New Delhi

V.K GUPTA, Director, National Institute of Science Communication and Information Resources (CSIR), New Delhi

Anurag SRIVASTAVA, Second Secretary, Permanent Mission, Geneva

INDONÉSIE/INDONESIA

Meutia SWASONO, Deputy Minister, Ministry of Culture and Tourism, Jakarta

MDJAMALUDDIN, Secretary, Food and Drug Control Agency, Jakarta

Arry Ardanta SIGIT, Director for Cooperation and Development, Directorate General of Intellectual Property Rights, Ministry of Justice and Human Rights, Tangerang

Basuki ANTARIKSA, Official, Ministry of Culture and Tourism, Jakarta

Dewi KARTONEGORO, Second Secretary, Permanent Mission, Geneva

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

Mohammad Reza ALIZADEH, Deputy Head of the Judiciary, Head, State Organization for Registration of Deeds and Properties of the Islamic Republic of Iran, Tehran

Ali Ashraf MOJTEHED SHABESTARI, Ambassador, Deputy Permanent Representative, Permanent Mission, Geneva

Seyed Hassan MIRHOSSEINI, Deputy Head, State Organization for the Registration of Deeds and Properties of the Islamic Republic of Iran, Tehran

Mohammad Ali MORDI-NABI, Director General, Legal Department, Ministry of Agricultural Jihad, Tehran

Younes SAMADI RENDI, Director General, Legal Department, Organization for Cultural Heritage, Tehran

Hodjat KHADEMI, Chief of Contracts Department, Ministry of Agriculture, Tehran

Mohammad Ali MORADI BENI, Chief, Legal Office, Ministry of Agriculture, Tehran

Behrooz VEJDANI, Head, Ethnographical Studies, Cultural Heritage Organization, Tehran

Zoreh TAHERI (Mrs.), Head of Research, Development and Technology Group, Ministry of Industries and Mines, Tehran

Shahnaz EIVAZI (Mrs.), Expert, International Relations, Ministry of Health and Medical Education, Tehran

Amir Hooshang FATHIZADEH, Expert and Researcher, Ministry of Commerce, Tehran

Mohammad Mehdi MORADI, Legal Expert, Ministry of Foreign Affairs, Tehran

Hekmatollah GHORBANI, Legal Counsellor, Permanent Mission, Geneva

IRLANDE/IRELAND

Tony McGRATH, Principal Officer, Intellectual Property Unit, Department of Enterprise, Trade and Employment, Dublin

ITALIE/ITALY

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

Mario MARINO, fonctionnaire, Ministère de politique agricole, Rome

Sara CARRER (Miss), stagiaire, Mission permanente, Genève

JAMAHIRIYA ARABE LIBYENNE/LIBYAN ARAB JAMAHIRIYA

Abdulghader Khiri ELMAGEREHI, Copyright Right and Related Rights Section Manager, Libyan Central Intellectual Property Office, National Board for Scientific Research, Tripoli

Amean Moktar MAZEN, Member of Local Libyan Committee of Developing Intellectual Property Laws, Libyan Central Intellectual Property Office, National Board for Scientific Research, Tripoli

Nasser ALZAROUG, First Secretary, Permanent Mission, Geneva

JAPON/JAPAN

Hitoshi WATANABE, Director, Multilateral Negotiations, International Cooperation, General International Affairs Division, Patent Office, Tokyo

Nobuhiro TAKAHASHI, Deputy Director, International Affairs Division, Patent Office, Tokyo

Yukifusa OYAMA, Professor, Teikyo Kagaku University, Tokyo

Shinichi ISA, Chief, Policy Planning Unit, International Affairs Division, Japan Copyright Office, Tokyo

Takao NIINO, Research Leader, National Institute of Agrobiological Sciences, Tokyo

Shintaro TAKAHARA, First Secretary, Permanent Mission, Geneva

Shigechika TERAKADO, First Secretary, Permanent Mission, Geneva

JORDANIE/JORDAN

Khaled ARABEYYAT, Acting Director, Industrial Property Protection Directorate, Ministry of Industry and Trade, Amman

KENYA

Amina Chawahir MOHAMED (Mrs.), Ambassador, Permanent Representative, Permanent Mission, Geneva

Dorothy N. ANGOTE (Ms.), Registrar General, Department of the Registrar General, Attorney General's Chambers, Nairobi

Joseph Mutuku MBEVA, Patent Examiner in charge of Issues Relating to Access and Benefit Sharing, Traditional Knowledge, Innovations and Practices, Kenya Industrial Property Institute, Nairobi

Anthony M. MUCHIRI, Counsellor, Permanent Mission, Geneva

KIRGHIZISTAN/KYRGYZSTAN

Roman OMOROV, Director, State Agency of Intellectual Property under the Government of the Kyrgyz Republic (Kyrgyzpatent), Bishkek

Ulan DANIAROV, Attaché, Permanent Mission, Geneva

KIRIBATI

Kabure TEMARITI, Senior Assistant Secretary, Ministry of Commerce, Industry and Cooperatives, Tarawa

Takabea BARANTARAWA, Senior Commerce Officer, Ministry of Commerce, Industry and Cooperatives, Tarawa

LETTONIE/LATVIA

Mara ROZENBLATE (Mrs.), Patent Office, Riga

LIBÉRIA/LIBERIA

Brimah M. DAWON, Deputy Director, Bureau of Archives, Patents and Trademarks, Ministry of Foreign Affairs, Monrovia

Robert Y. MEZZEH, Trademark Examiner, Bureau of Archives, Patents and Trademarks, Ministry of Foreign Affairs, Monrovia

LITUANIE/LITHUANIA

Rosita PETRAUSKIENE (Ms.), Deputy Director, State Patent Bureau, Vilnius

LUXEMBOURG

Christiane DALEIDEN DISTEFANO (Mme), représentant permanent adjoint, Mission permanente, Genève

MADAGASCAR

Alfred RAMBELOSON, ambassadeur, représentant permanent, Mission permanente, Genève

Olgatte ABDOU (Mme), conseiller, Mission permanente, Genève

MALAISIE/MALAYSIA

Rajmah HUSSAIN (Mrs.), Ambassador, Permanent Representative, Permanent Mission, Geneva

Wan Aznainizam Yusri WAN ABDUL RASHID, Second Secretary, Permanent Mission, Geneva

MALI

Drissa DIALLO, chef du Département de médecine traditionnelle, INRS/DMT, Ministère de la santé, Bamako

MALTE/MALTA

Saviour F. BORG, Ambassador, Permanent Representative, Permanent Mission, Geneva

Raymond SARSERO, Counselor, Permanent Mission, Geneva

John BUSUTTIL, First Secretary, Permanent Mission, Geneva

Tony BONNICI, Second Secretary, Permanent Mission, Geneva

MAROC/MOROCCO

Abdellah OUADRHIRI, directeur général du Bureau marocain du droit d'auteur, Rabat

Khalid SEBTI, premier secrétaire, Mission permanente, Genève

MEXIQUE/MEXICO

Alejandra ÁLVAREZ TAMAYO (Sra.), Directora Divisional de Asuntos Jurídicos, Instituto Mexicano de la Propiedad Industrial (IMPI), México, D.F.

Emelia HERNÁNDEZ PRIEGO (Sra.), Subdirectora de Examen de Fondo de Patentes, Instituto Mexicano de la Propiedad Industrial (IMPI), México, D.F.

Christian LOPEZ-SILVA, Legal Advisor, National Commission for Biodiversity, Sheffield

Mauricio GARCIA VELASCO, Consejero, Misión Permanente, Ginebra

Karla ORNELAS LOERA (Sra.), Tercera Secretaria, Misión Permanente, Ginebra

MONGOLIE/MONGOLIA

Suren BADRAL, Deputy Permanent Representative, Permanent Mission, Geneva

MYANMAR

Mya THAN, Ambassador, Permanent Representative, Permanent Mission, Geneva

Tha Aung NYUN, Counsellor, Permanent Mission, Geneva

Kyaw Thu NYEIN, Second Secretary, Permanent Mission, Geneva

NAMIBIE/NAMIBIA

Tileinge S. ANDIMA, Registrar, Internal Trade Division, Registration of Companies, Close Corporations, Patents, Trade Marks and Designs, Ministry of Trade and Industry, Windhoek

NIGER

Habibou ABARCHI, conseiller technique auprès du Ministre des enseignements secondaires et supérieurs, de la recherche et de la technologie, enseignant chercheur en chirurgie à la Faculté de médecine, l'Université Abdou Moumouni de Niamey, Niamey

NIGÉRIA/NIGERIA

John Ohireime ASEIN, Assistant Director, Head, Legal Department, Nigerian Copyright Commission, Abuja

Yemi DIPEOLU, Minister, Permanent Mission, Geneva

Usman SARKI, Senior Counsellor, Permanent Mission, Geneva

Aliyu Muhammad ABUBAKAR, Counsellor, Permanent Mission, Geneva

NORVÈGE/NORWAY

Jan Petter BORRING, Senior Adviser, Ministry of Environment, Oslo

Magnus GREAKER, Adviser, Ministry of Justice, Oslo

Gry Karen WAAGE (Mrs.), Legal Adviser, Ministry of Foreign Affairs, Oslo

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

Vegar JOHNSRUD, Legal Advisor, Norwegian Patent Office, Oslo

Morten Walløe TVEDT, Research Fellow, Fritjof Nansens Institutt, Lysaker

NOUVELLE-ZÉLANDE/NEW ZEALAND

Kim CONNOLLY-STONE (Ms.), Senior Advisor, Intellectual Property Policy Group, Ministry of Economic Development, Wellington

Precious CLARK (Ms.), Analyst, Regulatory and Competition Policy Branch, Intellectual Property Policy Group, Ministry of Economic Development, Wellington

Maui SOLOMON, Indigenous Rights Lawyer, Wellington

OMAN

Abdulaziz Ben Nasser AL BALUSHI, Director, Department of Popular Folklore, Ministry of National Heritage and Culture, Muscat

Fatma AL-GHAZALI (Mrs.), Counsellor, Economic Section, Permanent Mission, Geneva

OUGANDA/UGANDA

A. Denis MANANA, First Secretary, Permanent Mission, Geneva

PAKISTAN

Khalilullah QAZI, Counsellor, Permanent Mission, Geneva

PANAMA

Carlos EMILIO ROSAS, Embajador, Representante Permanente, Misión Permanente de Panamá ante la Organización Mundial del Comercio (OMC), Ginebra

Luz Celeste RÍOS DE DAVIS (Sra.), Directora General, Registro de la Propiedad Industrial, Panamá

Lilia H. CARRERA (Sra.), Analista de Comercio Exterior de Propiedad Intelectual, Misión Permanente de Panamá ante la Organización Mundial del Comercio (OMC), Ginebra

PAYS-BAS/NETHERLANDS

Paul J. SCIARONE, Minister Plenipotentiary, Permanent Mission, Geneva

Sabina VOOGD (Ms.), Senior Policy Advisor on Coherence, Ministry of Foreign Affairs, The Hague

Barbara SLEE (Mrs.), Researcher, Environmental Anthropology, International Law, Centre for Environment and Sciences, Leiden

PÉROU/PERU

Begoña VENERO-AGUIRRE (Sra.), Vice Presidenta, Sala de Propiedad Intelectual, Tribunal del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI), Lima

Alejandro NEYRA, Segundo Secretario, Misión Permanente, Ginebra

PHILIPPINES

Robert Nereo SAMSON, Attorney III, Intellectual Property Office, Makati City

Raly TEJADA, Second Secretary, Permanent Mission, Geneva

PORTUGAL

Nuno Manuel DA SILVA GONÇALVES, directeur, Cabinet du droit d'auteur, Ministère de la culture, Lisbonne

José Sérgio DE CALHEIROS DA GAMA, conseiller juridique, Mission permanente, Genève

RÉPUBLIQUE ARABE SYRIENNE/SYRIAN ARAB REPUBLIC

Rabie KHASHANEH, Director, Copyright and Related Rights, Ministry of Culture, Damascus

Ghiath IBRAHIM, Attaché, Permanent Mission, Geneva

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

Yong-ju PARK, Deputy Director, International Cooperation Division, Korean Intellectual Property Office (KIPO), Daejeon

Ho-sup YEO, Patent Examiner, Pharmaceuticals Patent Examination Division, Korean Intellectual Property office (KIPO), Daejeon

Ki-seok OH, Research Associate, Korean Commission on Copyright Deliberation and Conciliation, Daejeon

Joo-ik PARK, Intellectual Property Attaché, Permanent Mission, Geneva

RÉPUBLIQUE DOMINICAINE/DOMINICAN REPUBLIC

Wendy MATOS (Sra.), Asesora Legal, Instituto Dominicano de las Telecomunicaciones, Santo Domingo

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Lenka JIRSOVÁ (Mrs.), Lawyer, Copyright Department, Ministry of Culture, Prague

Kateřina KADEŘÁBKOVÁ (Mrs.), Patent Examiner, Industrial Property Office, Prague

ROUMANIE/ROMANIA

Rodica PARVU (Mrs.), Director General, Romanian Copyright Office, Bucharest

Gheorghe BUCȘĂ, Head, Industrial Design Division, Bucharest

Alina POPESCU (Ms.), Third Secretary, International Law and Treaties Division, Ministry of Foreign Affairs of Romania, Bucharest

Alice Mihaela POSTAVARU (Ms.), Legal Adviser, State Office for Inventions and Trademarks, Bucharest

Raluca TIGĂU (Ms.), Advisor, Romanian Copyright Office, Bucharest

ROYAUME-UNI/UNITED KINGDOM

Nick THORNE, Ambassador, Permanent Representative, Permanent Mission, Geneva

Brian SIMPSON, Deputy Director, Intellectual Property and Innovation Directorate, Patent Office, Newport

Ben MICKLEWRIGHT, Policy Advisor, Intellectual Property and Innovation Directorate, Patent Office, Newport

Andrew JENNER, Policy Advisor, Intellectual Property and Innovation Directorate, Patent Office, Newport

Susan McCROY, First Secretary, Permanent Mission, Geneva

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

Sean MOIR, Attaché, Permanent Mission, Geneva

RWANDA

Edouard BIZUMUREMYI, expert, Mission permanente, Genève

SAINT-SIÈGE/HOLY SEE

Anne-Marie COLANDREA (Mme), conseiller juridique, Mission permanente, Genève

SÉNÉGAL/SENEGAL

André BASSE, premier secrétaire, Mission permanente, Genève

SERBIE-ET-MONTÉNÉGRO/SERBIA AND MONTENEGRO

Vesna LAZIĆ (Mrs.), Legal Advisor, Counsellor, Copyright and Related Rights Department,
Intellectual Property Office, Belgrade

SINGAPOUR/SINGAPORE

Dennis LOW, Senior Assistant Director, Intellectual Property Office (IPOS), Singapore

SLOVAQUIE/SLOVAKIA

Daniela LESICKA (Ms.), Counsellor, Permanent Mission, Geneva

Fedor ROSOCHA, First Secretary, Permanent Mission, Geneva

SOUDAN/SUDAN

Christopher JADA, Second Secretary, Permanent Mission, Geneva

SRI LANKA

Janaprith Salinda FERNANDO, Advisor to the Minister for Commerce and Consumer
Affairs, Ministry of Commerce and Consumer Affairs, Colombo

Dayarathna SILVA, Minister (Economic and Commercial), Permanent Mission, Geneva

Senerath DISSANAYAKE, Second Secretary, Permanent Mission, Geneva

SUÈDE/SWEDEN

Carl JOSEFSSON, Deputy Director, Ministry of Justice, Stockholm

Henry OLSSON, Special Government Adviser, Ministry of Justice, Stockholm

Per WRAMNER, Chairman, National Scientific Council on Biodiversity, Stockholm

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

Johan BÄVERBRANT, Legal Adviser, Ministry of Foreign Affairs, Stockholm

Frantzeska PAPADOPOULOU-ZAVALIS (Ms.), Doctorate Candidate, Stockholm University, Stockholm

Agnes Marie Noelle COURADES ALLEBECK (Mrs.), National Board of Trade, Stockholm

Frida COLLSTE (Ms.), Second Secretary, Permanent Mission, Geneva

SUISSE/SWITZERLAND

Martin A. GIRSBERGER, co-chef du Service juridique brevets et designs, Division droit et affaires internationales, Institut fédéral de la propriété intellectuelle (IFPI), Berne

Marie WOLLHEIM (Mme), conseillère juridique, Service juridique brevets et designs, Division droit et affaires internationales, Institut fédéral de la propriété intellectuelle (IFPI), Berne

François PYTHOUD, adjoint scientifique de la Section biotechnologie et flux de substances, Office fédéral de l'environnement, des forêts et du paysage, Berne

Alwin R. KOPSE, juriste, Office fédéral de l'agriculture, Département fédéral de l'économie (DFE), Berne

Anne-Laure MAGNARD (Mlle), Office fédéral de l'agriculture, Département fédéral de l'économie (DFE), Berne

SWAZILAND

Beatrice Siphwe SHONGWE (Mrs.), Registrar-General, Registrar-General's Office, Ministry of Justice, Mbabane

TADJIKISTAN/TAJIKISTAN

Nemon MUKUMOV, Director, Copyright Agency, Ministry of Culture, Dushanbe

TCHAD/CHAD

Mahamat ABDEL-HAKIM, directeur du Bureau tchadien du droit d'auteur, N'Djaména

Brigette BANGOU ASSOUMTA (Mme), chef du Service juridique, N'Djaména

THAÏLANDE/THAILAND

Phattarrasak VANNASAENG, Chief Judge, Central Intellectual Property and International Trade Court, Bangkok

Ruangsit TANKARNJANANURAK, Secretary of the Court, Central Intellectual Property and International Trade Court, Bangkok

Prapoj PETRAKARD, Head, Public Sector Development Group, Department for Development of Thai Traditional Medicine and Alternative Medicine, Ministry of Public Health, Bangkok

Urawee NGOWROONGRUENG (Miss), Director, Copyright Office, Department of Intellectual Property, Ministry of Commerce, Bangkok

Vaowdao DAMRONGPHOL (Miss), Legal Officer, Department of Intellectual Property, Ministry of Commerce, Bangkok

Sopida HAEMAKOM, Senior Legal Officer, Ministry of Agriculture and Cooperatives, Bangkok

Dusadee RUNGSIPALASAWASDI (Miss), Senior Policy and Plan Analyst, Ministry of Agriculture and Cooperatives, Bangkok

Bundit LIMSCOON, Counsellor, Department of Economic Affairs, Ministry of Foreign Affairs, Bangkok

TOGO

Tchao SOTOU BERE, ambassadeur, représentant permanent, Mission permanente, Genève

TRINITÉ-ET-TOBAGO/TRINIDAD AND TOBAGO

Reita Gabrielle TOUSSAINT (Ms.), Counsellor, Permanent Mission, Geneva

TUNISIE/TUNISIA

Mounir BEN RJIBA, conseiller, Mission permanente, Genève

TURQUIE/TURKEY

Muzaffer SUREK, Technical Staff, Ministry of Agriculture and Rural Affairs of Turkey,
Ankara

Mesut KOC, Third Secretary, Permanent Mission, Geneva

URUGUAY

Gustavo BLANCO, Asesor Ministerio de Ganadería, Agricultura y Pesca, Montevideo

Elbio AMOROSO, Second Secretary, Permanent Mission, Geneva

VENEZUELA

Virginia PÉREZ PÉREZ (Srta.), Consejero, Misión Permanente, Ginebra

VIET NAM

Huy Tan VU, Counsellor, Permanent Mission, Geneva

ZAMBIE/ZAMBIA

Anessie BANDA-BOBO (Mrs.), Acting Registrar, Patents and Companies Registration
Office, Lusaka

Simasiku MUBIANA, Assistant Registrar (Copyright Administration), Copyright Office,
Ministry of Information and Broadcasting Services, Lusaka

II. DÉLÉGATION SPÉCIALE/SPECIAL DELEGATION

COMMISSION EUROPÉENNE (CE)/EUROPEAN COMMISSION (EC)

Patrick RAVILLARD, Counsellor, Permanent Delegation, Geneva

Barbara NORCROSS-AMILHAT (Mrs.), Copyright and Neighbouring Rights Unit, Brussels

Harrie TEMMINK, Administrator, Industrial Property, Internal Market Directorate-General, Brussels

III. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/ INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

ORGANISATION DES NATIONS UNIES (ONU)/UNITED NATIONS (UN)

Economic Commission for Africa (ECA)/Commission économique pour l'Afrique (CEA)

Cornelius MWALWANDA, Head, ECA Geneva Interregional Advisory Services, Geneva

Virginia RODRIGUEZ (Miss), Associate Economic Officer, ECA Geneva Interregional Advisory Services, Geneva

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

Mina MASHAYEKHI (Ms.), Chief, Systemic Issues, Trade Negotiations and Commercial Diplomacy Branch, Division on International Trade in Goods and Services and Commodities, Geneva

Taehyun CHOI, Economics Affairs Officer, Division on International Trade in Goods and Services and Commodities, Geneva

Sophia TWAROG (Ms.), Economic Affairs Officer, Division on International Trade in Goods and Services, Geneva

UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES

Ida NICOLAISEN (Ms.), Senior Research Fellow, Nordic Institute of Asian Studies, Denmark

PROGRAMME DES NATIONS UNIES POUR LE DÉVELOPPEMENT (PNUD)/UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)

Terence HAY-EDIE, Biodiversity Programme Officer, New York

Tzen Chew Chin WONG, Researcher, New York

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

Margaret M. ODUK (Ms.), Programme Officer, Biodiversity and Biosafety Unit, Division of Environmental Conventions, Nairobi

SECRETARIAT OF THE CONVENTION ON BIOLOGICAL DIVERSITY (SCBD)

Valérie NORMAND (Ms.), Program Officer, Montreal

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

Guido CARDUCCI, Chief, International Standards Section, Cultural Heritage Division, Paris

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

Clive STANNARD, Senior Liaison Officer, Secretariat of the Commission on Genetic Resources for Food and Agriculture, Rome

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

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

Xiaoping WU, Legal Affairs Officer, Intellectual Property Division, Geneva

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

Makoto TABATA, Senior Counsellor, Geneva

Rolf JÖRDENS, Vice Secretary-General, Geneva

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

Bart CLAES, Patent Examiner, Munich

Johan AMAND, Deputy Director, Munich

ORANISATION ARABE POUR L'ÉDUCATION, LA CULTURE ET LA SCIENCE
(ALESCO)/ARAB EDUCATIONAL, CULTURAL AND SCIENTIFIC ORGANIZATION
(ALECSO)

Rita AWAD (Ms.), Director, Department of Culture and Communication, Tunis

COMMONWEALTH SECRETARIAT

Betty MOULD-IDDRISU (Ms.), Director, Legal and Constitutional Affairs Division, London

Cheryl THOMPSON-BARROW (Ms.), Deputy Director and Head, Law Development
Section, Legal and Constitutional Affairs Division, London

ORGANISATION RÉGIONALE AFRICAINE DE LA PROPRIÉTÉ INDUSTRIELLE
(ARIPO)/AFRICAN REGIONAL INDUSTRIAL PROPERTY ORGANIZATION (ARIPO)

Mzondi Haviland CHIRAMBO, Director General, Harare

Emmanuel SACKEY, Patent Examiner (Bio -Chemistry), Technical Department, Harare

LIGUE DES ÉTATS ARABES (LAS)/LEAGUE OF ARAB STATES (LAS)

Saad ALFARARGI, Ambassador, Permanent Representative, Permanent Delegation, Geneva

Mohamed Lamine MOUAKI BENANI, Counsellor, Permanent Delegation, Geneva

UNION AFRICAINE (UA)/AFRICAN UNION (AU)

Sophie Asimenye KALINDE (Ms.), Ambassador, Permanent Observer, Permanent Delegation, Geneva

Venant WEGE NZOMWITA, Counsellor, Geneva

ORGANISATION CONSULTATIF JURIDIQUE AFRO-ASIATIQUE (AALCO)/
ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION(AALCO)

Wafik KAMIL, Secretary General, New Delhi

SECRÉTARIAT GÉNÉRAL DU GROUPE DES ÉTATS D'AFRIQUE DES CARAÏBES ET
DU PACIFIQUE (GROUPE ACP)/GENERAL SECRETARIAT OF THE AFRICAN,
CARIBBEAN AND PACIFIC GROUP OF STATES (ACP GROUP)

Marwa J. KISIRI (Ms.), Ambassador, Head of Geneva Office, Geneva

SOUTH CENTRE

Sisule Fredrick MUSUNGU, Project Officer, Intellectual Property, Geneva

Narayanaswamy PRABHU RAM, Associate, Geneva

SECRÉTARIAT DU FORUM DES ÎLES DU PACIFIQUE/PACIFIC ISLANDS FORUM
SECRETARIAT

Ana KESSIE (Ms.), Permanent Representative, Head of Delegation, Geneva

Gail OLSSON (Ms.), Research Officer, Suva

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

American Folklore Society:

Timothy LLOYD (Executive Director, Ohio); Burt FEINTUCH (Director, Professor of Folklore and English, Center for the Humanities, University of New Hampshire, Ohio)

Assembly of First Nations:

Brian MacDONALD (Legal Counsel, Ottawa)

Association internationale pour la protection de la propriété industrielle (AIPPI)/
International Association for the Protection of Industrial Property (AIPPI):
Maria Thereza WOLFF (Mrs.) (Zurich)

Association TAMAYNUT:
Hassan IDBALKASSM (President, Rabat); Mohamed AIDOUCH (Vice President, Rabat);
Bouyaakoubi HOCINE (Former member, National Council, Rabat)

Brazilian Association of Intellectual Property (ABPI):
Clarisse ESCOREL (Mrs.) (Attorney-at-Law, Rio de Janeiro)

Bureau Benelux des marques (BBM)/Benelux Designs Office (BBDM):
Edmond SIMON (Directeur Adjoint, La Haye)

Bureau des Ressources génétiques (BRG):
Andrée SONTOT (chargée de mission, Paris)

Call of the Earth (COE):
Rodrigo DE LA CRUZ (Miembro del Comité de Dirección, Quito); Kent NNADOZIE
(Miembro, Nairobi)

Canadian Indigenous Biodiversity Network (CIBN):
Paul OLDHAM (Researcher, Lancaster)

Central and Eastern European Copyright Alliance (CEECA):
Mihály FICSOR (Chairman, Budapest)

Centre de documentation, de recherche et d'information des peuples autochtones (DoCIP):
Pierrette BIRRAUX-ZIEGLER (Mme) (directrice scientifique, Genève)

Centre d'études internationales de la propriété industrielle (CEIPI)/Centre for International
Industrial Property Studies (CEIPI)
François CURCHOD (professeur associé à l'Université Robert Schuman de Strasbourg,
Genolier); Hsiao-Fen HSU (Mlle) (Strasbourg)

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

Ricardo MELENDEZ-ORTIZ (Executive Director, Geneva); Christophe BELLMANN (Program Director, Geneva); David VIVAS (Program Manager, Intellectual Property Rights, Technology and Services, Geneva); Heike BAUMULLER (Ms.) (Managing Editor, Bridges Trade BioRes, Geneva); Manianne JACOBSEN (Ms.) (Editor, Bridges Trade BioRes, Geneva); Marie CHAMAY (Ms.) (Program Associate, Intellectual Property, Geneva); Ruth OKEDIJI (Ms.) (Geneva)

Centre international Unisféra/Unisféra International Centre:

Jean-Frédéric MORIN (chercheur, Quebec)

Center for International Environmental Law (CIEL):

Julia OLIVA (Mrs.) (Staff Attorney, Geneva); Maximiliano CHAB (Law Fellow, Geneva)

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

Timothy ROBERTS (Rapporteur, Intellectual Property Commission, Strasbourg); Maria Thereza WOLFF (Mrs.) (Partner, Dannemann, Siemsen, Bigler and Ipanema Moreira, Rio de Janeiro); Werner BASTIAN (Head, Global IP Seeds, Head, Patents, Syngenta Crop Protection AG, Basel); Axel BRAUN (Patent Attorney Director, F. Hoffmann-La Roche AG, Basel)

Comité consultatif mondial de la Société des Amis (QUAKERS) et de son bureau auprès de l'Office des Nations Unies (FWCC)/Friends World Committee for Consultation and Quaker United Nations Office (FWCC):

Brewster GRACE (Programme Director, Geneva); Martin WATSON (Representative, Geneva); Tasmin RAJOTTE (Ms.) (Representative, Toronto)

Commission des aborigènes et des insulaires du détroit de Torres (ATSIC)/Aboriginal and Torres Strait Islander Commission (ATSIC):

Cliff FOLEY (Commissioner, Canberra); Terry JANKE (Ms.) (Legal Advisor, Sydney)

Confédération internationale des éditeurs de musique (CIEM)/International Confederation of Music Publishers (ICMP):

Jenny VACHER (Mrs.) (Chief Executive, Paris)

Conférence circumpolaire inuit (ICC)/Inuit Circumpolar Conference (ICC):

VioletFORD (Ms.) (Vice-President, Ottawa)

Conseil SAME/SAAMI Council:

Mattias ÅHREÑ (Head, Human Rights Unit, Utsjoki)

Consumer Project on Technology:

James LOVE (Director, Washington, D.C.); Thirukumaran BALASUBRAMANIAM (Research Analyst, Washington, D.C.); Manon RESS (Research Associate, Washington, D.C.); Adeline ONG (Ms.) (Media and Publications Officer, Washington, D.C.); Madeleine NGO LOUGA (Ms.) (Coordinator); Nancy KREMERS (Ms.) (Attorney-Fellow, Houston)

Coordinadora de las Organizaciones Indígenas de la Cuenca Amazónica (COICA):

Sebastião Haji MANCHINERI (Coordinador General, Quito); Edwin VÁSQUEZ CAMPOS (Coordinador del Área Territorial, Ambiente y Biodiversidad, Quito)

CropLife International:

Patricia POSTIGO (Ms.) (Manager, Global Political Affairs and Society Issues, Brussels)

Déclaration de Berne/Berne Declaration:

François MEIENBERG (Zurich); Corinna HEINEKE (Ms.) (Consultant, Zurich)

Foundation for Aboriginal and Islander Research Action (FAIRA):

Leslie MALEZER (Chairperson, Queensland)

Fédération ibéro-latino-américaine des artistes interprètes ou exécutants (FILAIE)/

Ibero-Latin-American Federation of Performers (FILAIE)

Luis COBOS (Presidente, Madrid); José Luis SEVILLANO (Presidente, Madrid); Miguel PÉREZ SOLÍS (Asesor Jurídico, Madrid); Carlos LÓPEZ (Asesor, Madrid); Javier Diaz DE OLARTE (Asesor, Madrid); Paloma LÓPEZ (Ms.) (Asesor, Madrid)

Fédération internationale des conseils en propriété industrielle (FICPI)/International

Federation of Industrial Property Attorneys (FICPI):

Bastiaan KOSTER (Chairman, Group 8, Studying and Working Commission, Cape Town)

Fédération internationale de l'industrie du médicament (FIIM)/International Federation of

Pharmaceutical Manufacturers Associations (IFPMA):

Anne-Leonore BOFFI (Miss) (Research Assistant, Geneva)

Fédération internationale des musiciens (FIM)/International Federation of Musicians (FIM):

Benoît MACHUEL (secrétaire général, Paris)

Fédération internationale des organismes gérant les droits de reproduction (IFRRO)/International Federation of Reproduction Rights Organizations (IFRRO):
Tarja KOSKINEN-OLSSON (Mrs.) (Honorary President, Helsinki); Veronica WILLIAMS (Mrs.) (Secretary General, Brussels)

Fundación Nuestro Ambiente (FUNA):
Luis Abraham VOTROBA (Equipo, Relaciones Internacionales, Posadas); Yamila GENIER de SAND (Sra.) (Coordinador Internacional, Ginebra)

Genetic Resources Action International (GRAIN):
Renée VELLVÉ (Ms.) (Coordinator, Los Baños Office, Laguna); Peter EINARSSON (Consultant, Urshult)

Global Education and Environment Development (GEED-Foundation):
Joseph Azeh MUMA (Delegate General, Board of Directors, Bamenda)

Groupement européen des sociétés de gestion des droits des artistes interprètes (ARTIS GEIE):
Jean VINCENT (Secretary General, Brussels)

Indian Council of South America (CISA):
Tomas CONDORI (Representative, Geneva)

Indian Movement “Tupaj Amaru” Bolivia and Peru:
Lázaro PARY (General Coordinator, Geneva)

Indigenous Peoples Program:
Priscilla SETTEE (Ms.) (Saskatoon)

Industrie mondiale de l'automédication responsable (WSMI)/World Self Medication Industry (WSMI):
Yves BARBIN (Ferney-Voltaire)

Institut des mandataires agréés près l'Office européen des brevets (EPI)/Institute of Professional Representatives Before the European Patent Office (EPI):
Bo HAMMER JENSEN (Munich)

Institute of Social and Cultural Anthropology:
Monica CASTELO (Ms.) (Oxford)

International Environmental Law Research Centre (IELRC):
Philippe CULLET (Research Programme Director, Geneva)

International Indian Treaty Council (IITC):
Antonio GONZALES (UN Liaison, Geneva)

International Institute for Environment and Development (IIED):
Krystyna SWIDERSKA (Ms.) (Research Associate, Biodiversity and Livelihoods Group,
London)

International Plant Genetic Resources Institute (IPGRI):
Emile FRISON (Director General, Rome)

International Seed Federation (ISF):
Bernard LE BUANEC (Secretary General, Nyon); Radha RANGANATHAN (Technical
Director, Nyon); Walter SMOLDERS (Nyon)

Kaska Dena Council (KDC):
Merle C. ALEXANDER (Representative, Vancouver); Shawn BURNS (Advisor, Vancouver)

L'Alliance pour les droits des créateurs (ADC)/Creators' Rights Alliance (CRA):
Grey YOUNG-ING (Chair, Indigenous Peoples' Caucus, Penticton)

Ligue internationale du droit de la concurrence (LIDC)/International League of Competition
Law (ILCL):
François BESSE (représentant, Lausanne)

Max-Planck-Institute for Intellectual Property, Competition and Tax Law:
Silke VON LEWINSKI (Ms.) (Head, Department of International Law, Munich);
Thomas RAMSAUER (assistant, Université de Lausanne, Centre de droit comparé et
européen, Lausanne); Sibylle SCHLATTER (Ms.) (Head of Unit, Department of Intellectual
Property and Competition Law, Munich)

Mejlis of the Crimean Tatar People
Nadir BEKIROV (Head of Department on Political and Legal Issues, Simferopol)

National Aboriginal Health Organization (NAHO):
Tracy O'HEARN (Ms.) (Director, Ajunnginiq Center, Ottawa)

Programme de santé et d'environnement/Health and Environment Program:

Madeleine NGO LOUGA (Ms.) (Economist and Executive President, Yaoundé);
Juliette MBA (Ms.); Madeleine NGO BISSOU (Ms.) (Yaoundé);
Mbousnoum DORCAS (Mrs.)

Promotion des médecines traditionnelles (PROMETRA International):

Prosper HOUETO (environnementaliste et trésorier général, Dakar)

The Rockefeller Foundation:

Joan SHIGEKAWA (Mrs.) (Associate Director, Creativity and Culture, New York);
Jacob WERKSMAN (Associate Director, Creativity and Culture, New York)

Third World Network (TWN):

Martin KHOR (Geneva)

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

Carlo SCOLLO LAVIZZARI (Legal Counsel, Geneva); Nathalie PIASKOWSKI (Ms.)
(Lawyer, Geneva)

Union mondiale pour la nature (IUCN)/World Conservation Union (IUCN):

Gonzalo OVIEDO (Senior Advisor for Social Policy, IUCN Headquarters, Gland);
María-Fernanda ESPINOSA (Ms.) (Advisor, Indigenous Peoples and Biodiversity, Policy,
Biodiversity and International Agreements Unit, Quito); Sebastian WINKLER (Senior Policy
Officer, Biodiversity and International Agreements, Gland);
Elizabeth REICHEL (Ms.) (Social Policy Consultant, Ethnologue, Department of
Anthropology, Universidad de los Andes, Colombia); Johanna VON BRAUN (Ms.) (Gland)

Union des radiodiffusions et télévisions nationales d'Afrique (URTNA)/Union of National
Radio and Television Organizations of Africa (URTNA):

Madjiguene-Mbengue MBAYE (Mme.) (conseiller juridique, Dakar)

World Federation of Culture Collections (WFCC):

Philippe DESMETH (Brussels)

World Trade Institute:

Jonathan CURCI STAFFLER (Geneva)

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

Francis GURRY, Vice-directeur général/Deputy Director General

Antony TAUBMAN, directeur par interim et chef, Division des savoirs traditionnels/Acting Director and Head, Traditional Knowledge Division

Richard KJELDGAARD, conseiller principal, Division des savoirs traditionnels/Senior Counsellor, Traditional Knowledge Division

Wend WENDLAND, chef de la Section de la créativité et des expressions culturelles et traditionnelles, Division des savoirs traditionnels/Head, Traditional Creativity and Cultural Expressions Section, Traditional Knowledge Division

Shakeel BHATTI, administrateur principal de programme, Section des ressources génétiques, de la biotechnologie et des savoirs traditionnels connexes, Division des savoirs traditionnels/Senior Program Officer, Genetic Resources, Biotechnology and Associated Traditional Knowledge Section, Traditional Knowledge Division

Donna GHELFI (Mrs.), administrateur de programme, Section de la créativité et des expressions culturelles et traditionnelles, Division des savoirs traditionnels/Program Officer, Traditional Creativity and Cultural Expressions Section, Traditional Knowledge Division

Susanna CHUNG (Miss), consultante, Division des savoirs traditionnels/Consultant, Traditional Knowledge Division

[Fin de l'annexe et du document/
End of Annex and of document]