

# WIPO



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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

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## **WIPO GENERAL ASSEMBLY**

### **Thirty-Second (17<sup>th</sup> Ordinary) Session Geneva, September 26 to October 5, 2005**

#### **REPORT**

*adopted by the General Assembly*

1. The General Assembly was concerned with the following items of the Consolidated Agenda (document A/41/1): 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 22, 23, 26, 28 and 29.
2. The reports on the said items, with the exception of items 7, 8, 9, 10, 11, 13, 14, 15, 16, 17 and 22, are contained in the General Report (document A/41/17).
3. The reports on items 7, 8, 9, 10, 11, 13, 14, 15, 16, 17 and 22, are contained in the present document.
4. Mr. Enrique Manalo (Philippines), was elected Chair of the General Assembly, and presided over the meeting of the General Assembly. Mr. Zigrīds Aumeisters (Latvia) and Mr. Usman Sarki (Nigeria) were elected Vice-Chairs.

ITEM 7 OF THE CONSOLIDATED AGENDA:

COMPOSITION OF THE PROGRAM  
AND BUDGET COMMITTEE

5. Discussions were based on document WO/GA/32/1.
6. Following informal consultations among the Group Coordinators, the following proposal on the composition of the Program and Budget Committee was made to the WIPO General Assembly: Algeria, Argentina, Brazil, Bulgaria, Canada, Chile, China, Colombia, Czech Republic, Ecuador, Egypt, France, Germany, Hungary, India, Iran (Islamic Republic of), Italy, Honduras, Japan, Kazakhstan, Kenya, Mexico, Morocco, Netherlands, Nigeria, Pakistan, Philippines, Republic of Korea, Romania, Russian Federation, Senegal, Slovakia, South Africa, Spain, Sri Lanka, Switzerland (*ex officio*), Thailand, Ukraine, United Kingdom, United States of America, Zambia (41).
7. The General Assembly approved the composition of the Program and Budget Committee, as described in paragraph 6 above, for the period September 2005 to September 2007.

ITEM 8 OF THE CONSOLIDATED AGENDA:

MATTERS CONCERNING THE ADVISORY COMMITTEE  
ON ENFORCEMENT (ACE)

8. Discussions were based on document WO/GA/32/10.
9. The Secretariat introduced the document and recalled that the Advisory Committee on Enforcement (ACE) would deal, in its next session in April 2006, with education and awareness building including training on all factors relating to enforcement.
10. The Delegation of the Islamic Republic of Iran, speaking on behalf of the Asian Group, expressed its appreciation of the choice of the topic. The diversity of judicial systems in different countries and the different levels of IP infrastructures in developing countries made it necessary to consider different initiatives on enforcement, education and training rather than to focus on a "one size fits all" approach. The discussion should not, therefore, be limited to existing experiences. The Group recalled the decision of the General Assembly at its 37<sup>th</sup> session to exclude any kind of norm-setting activity in the future work of the ACE.
11. The Delegation of the Czech Republic, on behalf of the Group of Central European and Baltic States, underlined the Group's attachment to the protection of IPRs and their enforcement as basic prerequisite for an effective development of the IPR system. The importance of the ACE for the Group was emphasized. The Group was of the opinion that the growing counterfeiting and piracy damaged business and was convinced that the negative impact it had on the economy, including employment and security, could be limited by training, education and awareness. Therefore the Group reiterated its support for the activities which were proposed to be discussed at the third session of the ACE.

12. The Delegation of the United Kingdom, on behalf of the European Community, its Member States and the Acceding States, Bulgaria and Romania, welcomed the announcement of the Secretariat to hold a third session of the ACE in April 2006. The Delegation stated that the EU wished to underline the importance it attached to effective measures in order to combat violation of IP rights. Despite the sincere efforts in many countries to take adequate measures, counterfeiting and piracy was still a growing international phenomenon posing several problems worldwide, ranging from loss of confidence in markets; threats to innovation and creativity; endangering consumer health and safety, to loss of tax revenues and legitimate jobs. The issue of education and awareness building, including training, was an important element in the fight against counterfeiting and piracy. Education and technical assistance of, for example, law enforcement authorities could boost the effectiveness of the legal framework and promote best practices. Awareness building played a major role in prevention and in informing the public of the negative consequences of counterfeiting and piracy, particularly as regards the protection of consumers and the danger to public health and safety. The Delegation concluded that the EU was looking forward to a fruitful session of the ACE.

13. The Delegation of Romania emphasized that the position of Romania on the ACE was in line with the statement of the European Union, presented by the Delegation of the United Kingdom, and with the position of the Group of Central European and Baltic States, expressed by the Delegation of the Czech Republic. The Delegation of Romania recalled that its opening statement of the previous day had highlighted the prominent role of the topic of enforcement in Romania's national IP related policies. The Delegation was pleased to announce that, to match words with deeds, the Romanian authorities were positively considering the participation of a high-level representative in the next session of the ACE.

14. The Delegation of the United States of America fully supported the work of WIPO in reinforcing cooperation among enforcement authorities and relevant organizations in this field, and applauded and supported efforts by WIPO to coordinate and enhance the enforcement aspects of its technical assistance work. The United States of America intended to continue working closely with WIPO in its efforts to assist developing and least-developed countries to improve their enforcement of intellectual property rights. The ACE provided a valuable forum for an exchange of information on members' efforts to enforce intellectual property rights. The Delegation also supported WIPO's technical assistance efforts promoting effective enforcement with particular emphasis on problem solving and training modules and stated that it encouraged greater coordination between the regional bureaux and the ACE to identify and address technical assistance needs of its members.

15. The Delegation of Kenya welcomed the decision of the Secretariat to open the Information Exchange of the Electronic Forum to a large audience of stakeholders without restriction of registration as a precondition to submitting or accessing information. However, many stakeholders in Kenya were still without access to the Internet and the means to communicate with, or access the information gathered by, the ACE. Kenya therefore appreciated the efforts of the Secretariat to consider appropriate ways of providing dialogue with this group of stakeholders. The Delegation believed that among the issues related to education, awareness and training to be discussed in future meetings, the training of officers from national IP institutions on counterfeiting of trademarks and infringement of patents had not yet been sufficiently addressed. Most persons did not realize the real dangers linked to the illegal trade in counterfeit goods. Officers taking part in anti-counterfeiting activities also needed training on how to draft IP charges, present evidence and convince the courts of the seriousness of counterfeiting crimes which required deterrent penalties and seizure and/or

destruction orders. Kenya appreciated the assistance received so far from WIPO which led to the training for judges of the High Court of Kenya and took note of further forthcoming activities. The Delegation recalled that the Secretariat had been requested to assist member States in developing effective and enforceable IP laws and improving existing ones. The Delegation hoped that the ACE would continue to address this issue to implementation. Kenya would also like to make a presentation on its experience in the field of education, awareness and training related to enforcement of IPRs during the next meeting of the ACE and contact the Secretariat. Finally, the Delegation reiterated that Kenya was committed to making sure that besides the protection of IPRs, there was appropriate enforcement.

16. The Delegation of the Russian Federation expressed its support for the efforts being made by WIPO and also for the activities of the ACE and stated that the Russian Federation would continue to participate actively in this work and in the meeting scheduled for next year. The activities undertaken by the ACE should even be more effective than they were at present and deal with a wider range of issues. Notwithstanding the importance of training and information issues, the tools available at present were not sufficient to ensure that the increase in counterfeiting and piracy in the world today could be effectively countered. The Delegation emphasized the need to unite efforts of all member States in this regard because it was not possible to take a piecemeal approach to this issue. No country would alone be able to put an end to piracy even if it wished to do so within its own territory. The problem was global and required a global response and a global effort. The key to resolving this problem was to recognize the growth in counterfeiting and the way to counter this fact would be to ensure that IP rights were properly respected and protected, making it impossible for counterfeiters to enjoy the benefits of counterfeiting. Rightholders should thus have the necessary authority allowing them to participate fully and strongly. In the Russian Federation, serious attention was being devoted to this problem. The Delegation, looking at ways of studying the problem in terms of legislation that existed in different countries, felt that some analytical work could be usefully done in this Committee in order to produce some kind of recommendation that might lead towards an international agreement. Bringing these issues together with proper protection would mean a significant step forward because in essence the problem faced in the very near future was the continuing problem of illegal trade causing enormous economic damage and serious danger to the life and health of consumers. The need to solve this problem was urgent. The Delegation noted further that the Russian Federation had also signed a Memorandum of Understanding with WIPO in July this year. The purpose thereof was to implement some practical steps intended not only to improve the Russian Federation's protection system but also its enforcement system for IPRs. However, only the coordinating of efforts of member States with rightholders could ultimately put an end to piracy and counterfeiting throughout the world.

17. The Delegation of South Africa took note of the Report of the ACE on enforcement and supported the contents as a whole. More emphasis should, however, be put on the interests and information of consumers. Therefore the Delegation encouraged the ACE to develop mechanisms of educating and empowering the consumer and emphasized the need for education and awareness of the consumer of the real burden of its (IP) system. Counterfeiting was a global phenomenon and could not be taken on by one state only. Therefore regional arrangements in combating counterfeiting may be set up. However, it was also necessary to address the issue of the costs and benefits of compliance. The Delegation suggested that empirical studies on its benefits could encourage people to comply.

18. The Delegation of Sudan stated that Sudan had a certain amount of experience in the area of enforcement policy and was aware of the public awareness work undertaken by

WIPO. Piracy had recently become a phenomenon of quite considerable significance in Sudan but the country had begun to take the steps required. The country had managed to seize a number of pirated cassettes and videos, worth 14 million dollars, recently and had also initiated legal action against counterfeiters. The Delegation was aware of what was involved in the work in this area and expressed its wholehearted support for all of WIPO's efforts.

19. The Delegation of Morocco put particular emphasis on the importance of enforcement of IPRs. Morocco has been unstinting in its efforts to improve its legislative basis related to taking the measures required. Being aware of the growth of counterfeiting at the international level, the Delegation believed that the steps taken also made a contribution to the protection of consumers. Further, Morocco emphasized the important role played by WIPO with regard to information, public awareness and training linked to IPRs.

20. The Delegation of the Islamic Republic of Iran stated that enforcement was an integral part of IP law in its nature and that, taking into account the diversity of judicial systems, lack of IP structure in many developing countries and its economic and legal implications necessitated continuing focusing on education and awareness building, as appropriately decided in the last session of the ACE. Moreover, enhancing technical assistance and training for developing countries and LDCs, and any other alternative, should be taken into account in this process. Human resources education and training for judiciaries and other administrative IP bodies in developing countries was a gradual process and more time was required. The Delegation believed that the ACE should continue its work with a broad approach and not limit it merely to what was indicated in paragraph 5 of this document. As far as the continuation of the work of the Committee was concerned, the Delegation recalled the decision of the WIPO General Assembly in 2002 on the mandate of the ACE, which excluded norm setting.

21. The Delegation of the United Republic of Tanzania supported the views expressed by South Africa that in many countries not enough had been done to educate the general public to appreciate the dangers of trade in counterfeit goods and piracy. A properly educated public could be an effective ally in the whole issue of enforcement of IPRs. To this effect, the Delegation urged IP offices and WIPO to intensify public awareness programs so that the general public could assist in IP enforcement arrangements.

22. The Delegation of Rwanda expressed its support for the statement made by the Delegation of South Africa. Rwanda was of the view that enforcement of IPRs was one the major challenges that the world faced today. Piracy and counterfeiting increased everywhere in the world. This was not only against the interests of right holders but also very much against the interests of consumers. The Delegation supported the initiative taken by the Secretariat to provide education, training and awareness raising for competent authorities in this area. On the point raised by South Africa, the Delegation suggested that civil society and the media be included in the efforts undertaken by WIPO related to education. Since information was received by the general public through the media, targeting some of WIPO's campaigns at the media would also ultimately benefit consumers.

23. On the basis of the discussions, the General Assembly took note of the contents of document WO/GA/32/10 and encouraged the Advisory Committee on Enforcement to continue its work.

## ITEM 9 OF THE CONSOLIDATED AGENDA:

## THE PROTECTION OF AUDIOVISUAL PERFORMANCES

24. Discussions were based on document WO/GA/32/4.
25. The Delegation of the United Kingdom, speaking on behalf of the European Community, its Member States, and the Acceding States, Bulgaria and Romania, expressed commitment to updating the Rome Convention (1961), and welcomed continuing work at WIPO on this issue. In view of the value of audiovisual performances, it expressed a commitment to actively contributing to reaching solutions to outstanding issues. The Delegation supported this Item remaining on the Agenda of the General Assembly in 2006.
26. The Delegation of the United States of America expressed support for continuing efforts to find solutions to issues raised during the Diplomatic Conference in 2000, and supported retaining the Item on the Agenda of the General Assembly in 2006, with a view to a possible future diplomatic conference on the protection of audiovisual performances.
27. The Delegation of Mexico emphasized that the protection of audiovisual performances was of the utmost importance in the field of intellectual property, and there was a need to recognize the contribution of performers. Therefore, the Item should remain on the Agenda of the General Assembly in 2006.
28. The Delegation of Kenya noted developments that had taken place since the Assemblies in 2004, aimed at identifying ways to advance work towards conclusion of the proposed treaty on protection of audiovisual performances, and expressed belief that informal consultations would result in finding a solution. Audiovisual performances were an important medium for cultural expressions and, in this respect, the Kenyan Copyright Act (2001) afforded protection to audiovisual performances. Support was expressed for retaining the Item on the Agenda of the General Assembly in 2006.
29. The Delegation of Jamaica supported the statement of the Delegation of Kenya, noted the importance of protection of audiovisual performances, and supported retaining the Item on the Agenda of the General Assembly in 2006.
30. The Delegation of South Africa called upon the General Assembly to address issues relating to intellectual property in an holistic manner, and noted that discussions in the Intergovernmental Committee on Intellectual Property and Traditional Knowledge, Genetic Resources and Folklore (IGC) also touched upon issues raised in the proposed treaty on the protection of audiovisual performances. The Delegation stated that relevant discussions in the IGC should be taken into account in future discussions of the issue of audiovisual performances in the General Assembly.
31. The Delegation of Morocco noted that the protection of audiovisual performances was an important issue in the field of related rights, and that consensus had been reached on many issues related to audiovisual performances over several years of discussions in the Standing Committee on Copyright and Related Rights (SCCR), and at the Diplomatic Conference in 2000. Following the adoption of the WIPO Performances and Phonograms Treaty in 1996, high level discussions on the rights of audiovisual performers had led to agreement on many issues, and those efforts should not be to no avail. The work should be resumed in order to

achieve a complete intellectual property protection, covering both phonograms and the audiovisual sector.

32. The Delegation of China commended the work of the Standing Committee on Copyright and Related Rights (SCCR) in relation to the important issue of protection of audiovisual performances, and called for the provision of further information that would assist Member States in the continuation of this work. It supported the efforts of the International Bureau to find solutions and to cut through the problems as soon as possible.

33. The Delegation of Chile noted the relevance of the issue of protection of audiovisual performances, and expressed the view that the Secretariat should carry out studies to assess the impact of the proposed alternatives for protection to assist in determining the appropriate levels of protection for audiovisual performances.

34. The WIPO General Assembly noted the information contained in document WO/GA/32/4 and decided that the issue of Protection of Audiovisual Performances should remain on the Agenda of its session in September 2006.

#### ITEM 10 OF THE CONSOLIDATED AGENDA:

##### PROTECTION OF THE RIGHTS OF BROADCASTING ORGANIZATIONS

35. Discussions were based on documents WO/GA/32/5 and 5 Corr.

36. The Secretariat introduced document WO/GA/32/5 and recalled that the WIPO General Assembly in 2004 had requested the Standing Committee on Copyright and Related Rights (SCCR) to accelerate its work with a view to approving the organization of a diplomatic conference on the protection of broadcasting organizations at the present session of the Assembly. A Revised Consolidated Text for a Treaty on the Protection of Broadcasting Organizations had been prepared and discussed during the twelfth session of the SCCR. Also, seven regional consultations had been organized during 2005, where a Second Revised Consolidated Text had been submitted for the consideration of Member States. Other informal consultations had also been held in order to move forward to convene a diplomatic conference in 2006. A total of 16 proposals in treaty language had been presented by Member States so far. The reports of the above mentioned regional consultations, as well as the draft text on the organizational and procedural matters for the Diplomatic Conference on the Protection of Broadcasting Organizations are annexed to document WO/GA/32/5. A thirteenth session of the SCCR would be organized in November 2005, to gather feedback from Member States for the preparation of a Basic Proposal.

37. The Delegation of Ecuador stated that its Government had actively participated in the Regional Consultation on the Protection of Broadcasting Organizations for the Countries of Latin America and the Caribbean, held in Cartagena, Colombia from July 4 to 6, 2005. It endorsed the convening of a diplomatic conference in 2006.

38. The Delegation of the Islamic Republic of Iran, on behalf of the Asian Group, said that the issue of protection of broadcasting organization was of the most important and crosscutting nature. In that regard, countries of the Group had expressed serious concerns regarding the implications of a possible new treaty. The Second Consolidated Text needed to

be considered by Member States in the SCCR session to be held in November 2005. Contrary to the decision of the SCCR/12, the Second Consolidated Text had been made subject to regional consultations before the holding of the next SCCR session. Regardless of the legal status, and in contradiction to the reports included in document WO/GA/32/5, different parts of the subjects had been discussed without consensus within and between different regions. Transparency and informative measures were necessary in the current process so as to allow Member States to evaluate appropriately the advancement of the work. According to the norms on the conclusion of treaties, specific bodies, in the present context, the SCCR, were competent to evaluate the process and recommend further steps to the General Assembly. The Group was of the view that at least two additional SCCR sessions in 2006 were needed in order to permit Member States to properly address the Second Consolidated Text in depth, and then report to the General Assembly. The issue of webcasting was an evolving and unknown issue, and its implications for Member States were not yet clear. Therefore, webcasting should be excluded from future discussions at any diplomatic conference. Moreover, there was a clear distinction between the process of negotiation of the Consolidated Text and any possible article of the treaty in the SCCR and the preparation of the basic proposal for a diplomatic conference at any time. As to the latter, Member States would decide separately in a timely manner. Against that background, the holding of a diplomatic conference would be premature.

39. The Delegation of the Czech Republic, on behalf of the Group of Central European and Baltic States, stressed the importance of the regional consultation organized for the Central European and Baltic States on the Rights of Broadcasting Organizations in Bucharest as it was a useful exercise to inform and update Member States, as well as to exchange experiences, on the issue of the protection of broadcasting organizations. The present situation indicated that Member States could move forward regarding the organization of a diplomatic conference. The Group supported the convening of the Conference as soon as possible.

40. The Delegation of Switzerland stated that Members of Group B would consider the convening of a diplomatic conference on the protection of broadcasting organizations for 2006.

41. The Delegation of Morocco recalled that its country had hosted the Regional Consultation for Arab Countries on the Protection of Broadcasting Organizations from May 11 to 13, 2005. The meeting had been attended by representatives of Jordan, United Arab Emirates, Bahrain, Tunisia, Algeria, Saudi Arabia, Sudan, Syrian Arab Republic, Oman, Libyan Arab Jamahiriya, Yemen and Morocco. It highlighted the efforts made by those countries to analyze the various proposals and documents prepared for that meeting. Discussions had been based on the Second Revised Consolidated text, and participants had recognized that the current international instruments did not provide sufficient protection of broadcasting organizations. A future diplomatic conference in that respect, that also took into account the cultural, social and economic progress of developing countries, was therefore necessary.

42. The Delegation of the Republic of Moldova, on behalf of the Central Asian, Caucasus and Eastern European Group, referred to the importance of having organized a regional consultation on the protection of broadcasting organizations in June, and expressed its support for the convening of a diplomatic conference. It indicated that the Delegation of the Russian Federation would make some more precise comments about that meeting which its Government had hosted.

43. The Delegation of the Russian Federation referred to the Regional Consultation for the Countries of Central Asia, Caucasus and Eastern Europe held in Moscow from June 8 to 10, 2005, and noted that during the past few years broadcasting had developed very rapidly and its structure had taken on different forms. It was necessary to continue to work on the protection of broadcasting organizations, and that protection should be balanced in relation to other right owners. A decision concerning the holding of a diplomatic conference should be taken by the Assembly at the present session, and such a Conference could be held in the first half of 2006.

44. The Delegation of Thailand, on behalf of the Association of South East Asian Nations (ASEAN) thanked the Government of the Philippines for hosting the Regional Consultation on the Protection of Broadcasting Organizations for the Asia Pacific Countries from July 27 to 29, 2005. The report of the observations and recommendations contained in document WO/GA/32/5 served as a good basis for discussions, however, more work on the substance needed to be done in the SCCR.

45. The Delegation of the United Kingdom, on behalf of the European Community, its Member States and the Acceding States Bulgaria and Romania noted that substantial progress had been made toward a new treaty on the protection of broadcasting organizations. It welcomed the wide-ranging consultations on the substantive issues and on the question of the convening of a diplomatic conference. After many debates, it was now time to proceed to a Diplomatic Conference in 2006. The remaining outstanding questions could be resolved in the proposed meeting of the SCRR, consultation meetings and in the diplomatic conference itself. The European Community supported the statements made on behalf of Group B and the Central European and Baltic States.

46. The Delegation of El Salvador stated that the rights of broadcasting organizations needed to be updated and progress had to be made on the issue in order to enable the convening of a diplomatic conference in Geneva in 2006. It supported the Draft Rules of Procedure proposed for the diplomatic conference and was pleased with the proposed funding of participants.

47. The Delegation of Antigua and Barbuda, on behalf of the Caribbean Delegations, supported the convening of a diplomatic conference to take place in Geneva during the second quarter of 2006, provided that the Secretariat had not received an advantageous offer by a Member State to host the conference. It approved the organizational and procedural matters and the financial arrangements proposed for the diplomatic conference. The Caribbean countries recognized the importance of development in the protection of the rights of broadcasting organizations and favored balanced protection that would take into account the interests of all stakeholders.

48. The Delegation of Trinidad and Tobago recalled that the rights of broadcasting organizations had been discussed in the SCCR for many years and in regional consultations. There was a need to draw up a balanced instrument that took into account the rights and interest of the rightholders and the general public, and the consolidated text provided the necessary articles for a new treaty. The Delegation supported the statement made by Antigua and Barbuda. The next step should be the convening of a diplomatic conference in 2006.

49. The Delegation of Kenya, on behalf of the fourteen African States that met in Nairobi from May 17 to 19, 2005, noted that the current international legal framework was inadequate

for protecting broadcasting organizations. The participants requested the WIPO General Assemblies to acknowledge the results of the consultations and to recommend the convening of a Diplomatic Conference on the Rights of Broadcasting Organizations no later than mid-2006. The role played by broadcasting organizations in fostering the funding, creation and dissemination of local content was important. The participants in the Consultation had recognized the importance of development in the protection of the rights of broadcasting organizations, and favored balanced protection taking into account the interests of all stakeholders. They had welcomed the proposed options on webcasting presented by the Chairman of the SCCR in document SCCR/12/5 and had called for more time to consider and discuss the document before making a decision. They had recognized the urgent need to immediately update broadcasting organizations' rights and had called on the General Assemblies at the present session to schedule a diplomatic conference for 2006.

50. The Delegation of Kenya, speaking on its own behalf, stressed that broadcasting played a significant role in fostering cultural, social and economic development of African countries. The work done by the SCCR from 1998 to 2004 and the consultative regional meetings organized by WIPO to clarify issues and to build consensus were appreciated. It called on the General Assembly to schedule a Diplomatic Conference on the Protection of Broadcasting Organizations in 2006.

51. The Delegation of Romania referred to the results of the Regional Consultation for the Central European, Baltic States and Other Countries that took place in Bucharest from July 18 to 20, 2005. On that occasion participants from 13 countries from the region had stressed the need for a balanced system of protection of broadcasting organizations and had considered that the present preparatory documents took due account of all relevant interests. It had also been noted that the international discussions on the issue had already extended over a long period of time, and had progressed in a significant way and left open only a few substantive issues. The Delegation of Romania supported the results of the Regional Consultation and stressed the necessity that an international treaty be adopted urgently. To that effect, a diplomatic conference should take place in early 2006, and a last meeting on pending issues should take place during the current year. The Delegation expressed its support for the Chairman of the Standing Committee, Mr. Jukka Liedes.

52. The Delegation of Benin, speaking on behalf of the least-developed countries (LDCs), agreed on holding a diplomatic conference in 2006 while stressing the need to support the participation from the least-developed countries (LDCs).

53. The Delegation of Mexico emphasized the tremendous progress made in the discussions on the protection of broadcasting organizations and expressed its support to convening a diplomatic conference on the issue as soon as possible.

54. The Delegation of Nicaragua supported the convening, without further delay, of a diplomatic conference in the second quarter of 2006.

55. The Delegation of Colombia expressed its support for convening a diplomatic conference, which would allow substantial harmonization on the protection of broadcasting organizations to be achieved.

56. The Delegation of Jamaica strongly supported the statements made by the Delegations of Antigua and Barbuda and Trinidad and Tobago in the sense that protection of broadcasters should be updated as a matter of urgency. The documents made available by the WIPO

Secretariat were already sufficient to find solutions to pending issues. A diplomatic conference should be convened for the second quarter of 2006.

57. The Delegation of Norway referred to the informal consultation meeting for representatives of certain WIPO Member States not represented in the regional consultation meetings. The meeting took place, under the initiative of its Government and in cooperation with the Secretariat of WIPO, in Brussels on September 13 and 14, 2005. The Delegation supported the statement of Group B and advocated the convening of a Diplomatic Conference in 2006.

58. The Delegation of New Zealand aligned itself with the statement made by Group B. It endorsed the proposal contained in paragraph 14 of document WO/GA/32/5 which requested the convening of a Diplomatic Conference on the Protection of Broadcasting Organizations, to take place in the second quarter of 2006. Its national legislation already provided protection to broadcasting organizations and followed TRIPS obligations in that respect, but it was necessary to reinforce rights in the modern digital environment.

59. The Delegation of Japan highly appreciated WIPO and related parties' efforts to stage the Twelfth session of the Standing Committee on Copyright and Related Rights (SCCR), the six regional consultative meetings, and prepare document WO/GA/32/5 in the time since the last Assemblies session in September 2004. It strongly supported the convening of a Diplomatic Conference on the Protection of Broadcasting Organizations in 2006, the convening of the Thirteenth session of the SCCR, and the preparation of the basic proposals for the Diplomatic Conference by Chairman Liedes. The Delegation was of the opinion that a decision on the convening of the Diplomatic Conference in 2006 should be taken in order to maintain the momentum of negotiations. It also hoped that the relevant parties would share the desire to adopt this significant Treaty, and looked forward to interesting discussions in the Diplomatic Conference in 2006. The Delegation said that it wished to remain actively involved in the process leading to the realization of the Treaty.

60. The Delegation of St. Vincent and the Grenadines supported the statements made by the Delegations of Antigua and Barbuda, Trinidad and Tobago and Jamaica in favor of convening a diplomatic conference in 2006. The Delegation considered that there was sufficient consensus on the substantive matters to move to the convening of a diplomatic conference. In that context, the Delegation supported the retention of the proposal contained in document WO/GA/32/5, to finance the participation of 50 developing countries and countries in transition, with a view to having a balanced representation of the interests of the various stakeholders.

61. The Delegation of Egypt stated that, despite the fact that it was in favor of the protection of broadcasters, the negotiation process suggested that there was a vital work to do prior to the convening of a Diplomatic Conference.

62. The Delegation of Brazil, said "I take the floor on the behalf of the Delegations of Argentina, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Iran, Peru, Sierra Leone, South Africa, Tanzania and Venezuela, to address agenda item 10, on the protection of the rights of broadcasting organizations. In describing developments that have taken place since the last General Assembly, the document does not fully reflect the decision taken by Member States in respect of this issue a year ago, in particular the request put forth to the SCCR to accelerate its work on the protection of broadcasting organizations 'with a view to considering the possibility of convening a diplomatic conference in 2005'. The expectation was that the

SCCR would afford WIPO members an opportunity to engage in an in-depth consideration of the complex legal and technical issues involved in the proposed new broadcasting treaty. It was our understanding that only by this means could the General Assembly be in a position today to take a fully informed decision on whether it would be appropriate at this juncture to convene a diplomatic conference to conclude negotiations on the treaty. Notwithstanding the decision to accelerate the work of the SCCR, only one meeting of the SCCR was organized between the last General Assembly and the current one, and that did not provide a number of developing countries an opportunity to grasp the difficult and multifaceted issues involved in a treaty-making exercise applicable to the rights of broadcasting organizations. The meeting of the SCCR, held in November 2004, was a short three-day event, which did not allow for proper examination of the various provisions contained in the consolidated text of the Chairman. Very little space and time was allowed for interventions by the NGOs. The call made by some developing countries for an inter-sessional meeting of the SCCR, to allow for a narrowing of differences, though supported by several delegations, went unheeded. More significantly, however, action was taken to convene a round of regional meetings on the issue of a broadcasting treaty, despite the fact that few regional groups had actually agreed on the need and convenience of holding such consultations during the 12<sup>th</sup> session of the SCCR. In fact, several Member States held the view that regional meetings would be uncalled for under the circumstances, because they believed the issue as a whole needed further clarification and debate in an appropriate formal multilateral setting, with the presence of the official government representatives assigned to represent their countries' interests in WIPO in Geneva. As a result there was a clear lack of consensus on whether regional meetings should be convened. We note that not all countries belonging to their respective regional groups attended the regional meetings. In the African consultation, for example, only 13 of the 53 members of the African Group were present. In the case of GRULAC, only 15 of the 33 nations that are members of the Group actually participated. Furthermore, in several cases invitations were issued directly to capital officials in their personal capacity without going through the normal diplomatic channels. Obviously, the outcomes of these regional consultations are not binding. Under the circumstances, in fact, they cannot even be invoked as a basis upon which Member States should make their decision. Discussions on the protection of the rights of broadcasting organizations in the SCCR have not progressed to the point where a consensus on a diplomatic conference can be achieved. The debate at the 12<sup>th</sup> session of the SCCR, general though it may have been, showed that significant differences persist among the members on several crucial substantive issues and proposed clauses, including the scope of the treaty, duration of protection, the nature of the rights conferred, technological protection measures, digital rights management, and 'webcasting' as a subject matter of negotiations. It is clear, Mr. Chairman, more work is needed, before we can agree to proceed with the convening of a Diplomatic Conference. We need, in particular, more in-depth substantive discussions on the several complex and difficult provisions that have been proposed for the treaty, including with a view to assessing the potential development impact of such a major new international treaty. This is particularly important for developing countries and LDCs. We are of the opinion that at least two other meetings of the SCCR should be organized in the coming year for proper consideration of all provisions contained in the second consolidated text of the Chair, which has not yet been considered by the Committee. The meetings of the SCCR should also devote some more time to the issues of exceptions and limitations. Additionally, we would like to point out that the 'Basic Proposal' of the Diplomatic Conference would have to be discussed and approved by the SCCR. It cannot be elaborated under the sole responsibility of the Chair and the Secretariat."

63. The Delegation of South Africa associated itself with the statement made by Brazil on behalf of the "Friends of Development". The importance of the proposed treaty was not in

dispute; however, it could have been too optimistic to call for the convening of a diplomatic conference in the second quarter of 2006. The Delegation expressed dissatisfaction with the manner in which regional consultations had been conducted, a process that was not member-driven, and raised serious concerns in terms of lack of balance and transparency. Concerns were expressed that invitations were in several cases issued to officials in their personal capacity and not through diplomatic channels. More work needed to be done before there could be agreement on proceeding to a diplomatic conference. For instance, there was no agreement among Member States on issues such as duration of protection, technological protection measures, content of protection and webcasting. The rights of other stakeholders such as traditional rightsholders, and folkloric issues, were still under discussion in appropriate fora, and therefore to reach conclusions on such unresolved issues in the context of the proposed treaty would be counterproductive. It was critical to undertake development impact assessments before international treaties could be adopted, whereas no empirical studies had been conducted to assess the potential economic impact of the proposed instrument. The General Assembly should adopt the position of principle that development impact assessments supported by empirical studies should be conducted before the formulation of new treaties. The Delegation therefore did not support the convening of a diplomatic conference in 2006, but proposed that a report should be tabled before the Assembly in 2006.

64. The Delegation of Chile shared the concerns expressed by other delegations that the time was not ripe for the convening of a diplomatic conference, as there was no consensus on the content of the proposed treaty and further analysis was required on its scope. Independent studies were needed on its impact on users, other stakeholders and the broadcasters themselves, and those issues should be addressed in the SCCR before a Diplomatic Conference could be convened.

65. The Delegation of Cameroon expressed its support for the statement made by the Delegation of Kenya, stated that it had participated in the regional consultation for the African Region and regretted the low participation of countries in the region at that consultation. While broadcasting fostered economic and social development, there was a consensus among participants at the regional consultation on the urgent need for an international legal instrument for the protection of broadcasting organizations. While recognizing that certain technical issues needed to be addressed before a diplomatic conference could be held, support was expressed for the convening of a diplomatic conference in 2006. The Delegation noted paragraph 11 of WO/GA/32/5, which afforded the SCCR a further opportunity to address outstanding issues, and demonstrated WIPO's commitment to ensuring the wide participation of Member States in the process.

66. The Delegation of India stated that it had consistently been of the view that the draft consolidated text on the protection of the rights of broadcasting organizations had not been formulated taking into account the concerns of the rights of content creators. The draft text as it stood would result in the creation of a new layer of rights, far beyond obligations under the TRIPS Agreement, which would have a negative impact on the rights of content creators and would likely have an adverse impact on access to knowledge and the right to information of listeners and viewers of broadcasts, consisting of the public at large. The Delegation opposed the granting of exclusive rights to broadcasting organizations that related to the content carried through broadcast signals. The current version of the draft consolidated text granted protection to broadcasters not only over signals, prior to and during broadcast, but also retransmission, distribution and reproduction of fixations after the broadcast, which could impact upon rights of owners of content as well as the public right to access information in

the public domain. In line with the common position, objection was expressed to the inclusion of webcasting in any form in the proposed treaty and, further, opposition was expressed to inclusion of webcasting in an optional protocol to the treaty. In common with a large number of developing countries, the Delegation felt that the time was not yet ripe to introduce norms of protection over a mode of communication the implications of which had not yet been fully understood. The ability to access information was crucial in promoting dissemination of knowledge and stimulating creativity, including new technological innovations. Any regulation that impacted on dissemination of knowledge to the public at large needed careful consideration, and therefore its country had raised the matter at UNESCO, which had a mandate dealing with communication, information, culture and education. The issues under consideration went beyond intellectual property rights, and it had therefore requested UNESCO to become actively involved in discussions on the proposed treaty for the protection of rights of broadcasting organizations, in view of UNESCO's wide mandate and efforts to create an environment conducive to building a knowledge society, bridging the digital divide, promoting freedom of expression and access to information in the public domain. In particular, UNESCO had been requested to ensure that the objectives of promotion of freedom of expression and universal access to information and knowledge were not hindered by the proposed treaty provisions. The Delegation urged the General Assembly to take all perspectives on the issue into account, and not rush to convene a diplomatic conference without resolving and addressing issues to the full satisfaction of all Members. Although the Indian broadcasting industry had reached a level of maturity and sophistication, and also felt threatened by signal piracy, it was felt that the approach in the proposed consolidated text granted an inordinately large range of rights to broadcasting organizations in the framework of intellectual property. The need of broadcasting organizations was essentially to protect their economic investment in the transmission and broadcast of content, and not in the creation of an additional layer of rights in the content, which could also result in denying rights of the public to access information and knowledge in the public domain. The Delegation endorsed the statements made by the Asian Group and by Brazil on behalf of twelve countries belonging to the "Friends of Development", Egypt, South Africa and Chile, who all noted the many substantive and procedural lacunae in the process of consultations on this issue, and called for a meeting of the SCCR to consider the many unresolved issues. Consideration of the procedural aspects for holding a Diplomatic Conference was, therefore, premature.

67. The Delegation of United States of America expressed its appreciation of the work of the Secretariat and the Chair of the SCCR. It was pleased to associate itself with the countries that advocated the prompt convening of a diplomatic conference, as stated in document WO/GA/32/5.

68. The Delegation of China attached particular importance regarding WIPO's current work on the protection of broadcasting organizations. It supported the continuation of efforts to resolve the pending issues concerning the protection of broadcasting organizations within WIPO's framework. It noted the SCCR's constructive work in this area and agreed to the convening of a diplomatic conference at an appropriate time.

69. The Delegation of Ghana highlighted the good work achieved during the Regional Consultation on the Protection of Broadcasting Organizations for African Countries, held in Nairobi from May 17 to 19, 2005. It associated itself with the statements of the Delegations of Kenya and Cameroon to support the convening of a diplomatic conference in 2006.

70. The Delegation of Kazakhstan highlighted the positive impact of the visit of Dr. Kamil Idris to its country for the current work on the protection of intellectual property. Although its country had not taken part in the Regional Consultation organized in Moscow, it supported the statement to be made subsequently by the Delegation of the Russian Federation regarding the convening of a Diplomatic Conference in 2006. It hoped that the present General Assembly would complete the work in that respect.

71. The Delegation of the Russian Federation referred to the current discussion on whether or not to organize a diplomatic conference. Its impression was that many countries were in favor of convening that conference. It recalled that there was a problem of balance between the rights of broadcasting organizations and other stakeholders' rights that had not been solved since the 1996 adoption of the WCT and the WPPT. Therefore, it urged other delegations to produce a constructive proposal and supported the convening of a Diplomatic Conference on the Protection of Broadcasting Organization in 2006.

72. The Delegation of Venezuela referred to the unbalanced agenda of the Regional Consultation for the Countries of Latin America and the Caribbean, held in Cartagena from July 4 to 6, 2005. It appeared that the majority of participants in that meeting had been representing the telecommunications sector, and no non-governmental organization that could be against a new treaty had been invited. The delegation of its country had decided to withdraw from the meeting in protest against those irregularities in the organization. In addition, the Delegation observed that a possible new treaty could affect a recent initiative to launch a television channel called "Telesur" which was sponsored by Argentina, Cuba, Uruguay and Venezuela. It associated itself with the statement made by the "Friends of Development" regarding the untimely nature of a diplomatic conference in 2006.

73. The Delegation of Ukraine mentioned that it had been actively involved in the regional consultations held in Moscow from June 8 to 10, 2005. It stressed the importance of protecting the rights of broadcasting organizations and supported the convening of a diplomatic conference in 2006.

74. The Delegation of Croatia supported the proposals contained in paragraphs 13 and 14 of document WO/GA/32/5.

75. The Delegation of Morocco, in addition to its statement made on behalf of the Arab countries, noted that the efforts deployed during the regional consultations should be crowned. A diplomatic conference should be convened to examine the possibility of adopting an international treaty in the last quarter of 2006. The time until then seemed to be sufficient to analyze the pending questions.

76. The Delegation of Peru asked the Chairman to give sufficient time to examine the proposal in order to be properly informed since there was not sufficient information to enable a decision yet.

77. The Chairman thanked the Delegations for their statements and expressed his understanding that there had been no statement opposing the convening of a diplomatic conference. Considerable support for convening a diplomatic conference along the lines proposed had been expressed, despite the fact that other Delegations had expressed their desire to have more time to study the implications of a diplomatic conference.

78. The Delegation of the Islamic Republic of Iran stated that the Asia and Pacific Group was opposed to the convening of a Diplomatic Conference in 2006, since more time was needed to address the new Consolidated Text of the proposed treaty.
79. The Delegation of India noted that several delegations have mentioned that the proposed timeframe for convening a Diplomatic Conference was not appropriate and asked the Chairman to clarify that aspect of his summary.
80. The Chairman stated that he had not mentioned the timing of the conference. He had not detected any difficulty with the diplomatic conference as such. Considerable support for having a diplomatic conference in 2006 had been expressed, although a number of delegations had suggested that it could be premature to convene it in 2006.
81. The Delegation of Brazil stressed that the principle of convening a Diplomatic Conference, as enunciated by the Chairman in the summary of discussions, did not capture the position of delegations requesting more time to assess whether a Diplomatic Conference was needed. The Delegation did not support a formulation that entailed a pre-approval of the decision of holding a diplomatic conference.
82. The Chair clarified that the main element in his summary of discussions was that the decision by the General Assembly should not be based on the proposal contained in document WO/GA/32/5. He announced informal consultations to achieve a viable solution for all delegations.
83. After a suspension of the discussions on the agenda item, the Chair reported on the result of informal consultations, stating that although a rich exchange on item 10 had taken place, further consultations were needed. The Delegations of Argentina and the United Kingdom had been designated as facilitators of the Chair to consult on a possible solution to pending differences. The Chair proposed to defer action on the issue until the consultations progressed in order to ensure that any text submitted to the Assemblies would be finally adopted.
84. Following further informal consultations conducted by the Chair, the General Assembly decided that:
85. Two additional meetings of the Standing Committee on Copyright and Related Rights (SCCR) will be scheduled to accelerate discussions on the second revised consolidated text (SCCR/12/2 Rev.2) and the Working Paper (SCCR/12/5 Prov.). These meetings shall aim to agree and finalize a Basic Proposal for a treaty on the protection of the rights of broadcasting organizations in order to enable the 2006 WIPO General Assembly to recommend the convening of a Diplomatic Conference in December 2006, or at an appropriate date in 2007.
86. The Delegation of India reiterated that discussion of the Second Revised Consolidated Text and the Working Paper in two meetings of the SCCR would not preclude the possibility of discussing other proposals. While its concerns on the inclusion of webcasting rights in the proposed treaty remained as it was, it was hopeful that the SCCR meetings would go a long way in resolving its concerns in that regard.
87. The Delegation of Chile agreed with the statement of the Delegation of India.

## ITEM 11 OF THE CONSOLIDATED AGENDA:

MATTERS CONCERNING THE DIPLOMATIC CONFERENCE FOR THE ADOPTION  
OF A REVISED TRADEMARK LAW TREATY (TLT)

88. Discussions were based on document WO/GA/32/12.

89. The Delegation of Singapore declared that the Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty in March 2006 would be an important milestone for WIPO and for the intellectual property system. It explained that the offer made by the Government of Singapore to host the Diplomatic Conference was a signal of Singapore's support and commitment to WIPO and the international trademark agenda. The Delegation noted that a WIPO Diplomatic Conference had been held only once in a developing country, in 1981, in Nairobi. It expressed the hope that Singapore, as an Asian country, would have the privilege of hosting the 2006 Diplomatic Conference. The Delegation said that, in making its offer, the Government of Singapore had been guided by two key considerations. The first consideration was that the change of venue would have no extra budgetary implications for WIPO. The Delegation stated that the Government of Singapore would assume all conference and secretariat costs needed to hold the Diplomatic Conference in Singapore. The second consideration was the need to ensure the widest possible participation in the Diplomatic Conference. The Delegation believed that the active participation of developing countries, least-developed countries (LDCs) and countries in transition was central to the success of the Diplomatic Conference. It declared that Singapore had decided to finance the participation of delegates from developing countries, least developed countries and countries in transition. It believed that such an extensive financial package from a host country for a WIPO Diplomatic Conference was unprecedented in the history of the Organization. The Delegation announced that Singapore had decided to provide additional funding for the participation of least-developed countries. It said that this additional funding would be over and above of what was already reflected in document WO/GA/32/12. As a gesture of friendship and solidarity, the Government of Singapore had decided to finance the participation of one extra delegate from each least-developed country Member of WIPO which was based in Geneva. A total of 29 countries would benefit from this additional funding. The Delegation clarified that the additional funding was an exceptional one-time measure aiming to help least-developed countries. It believed that their participation would contribute to the success of the Diplomatic Conference. The Delegation thanked those delegations, which had expressed their support during the course of the general debate earlier in the week for holding the Diplomatic Conference in Singapore.

90. The Delegation of Thailand, speaking on behalf of the Association of South East Asian Nations (ASEAN), expressed support for the offer by the Government of Singapore. It emphasized that the offer would bear no financial implications on the budget of WIPO. The Delegation was pleased that the Government of Singapore would provide financial support to developing countries and least-developed countries to participate in the Diplomatic Conference. It believed that it was timely for WIPO to hold a Diplomatic Conference in Asia. The Delegation pointed out that the Revised Trademark Law Treaty was an important issue for Asian countries. It said that ASEAN countries were looking forward to an active participation in the Diplomatic Conference in Singapore.

91. The Delegation of Australia said that, at the Preparatory Meeting for the Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty in April 2005, that Delegation had been among those which suggested that a recommendation to hold the Diplomatic Conference in Singapore be conveyed to the General Assembly for discussion and approval. The Delegation expressed its support for the proposal by the Delegation of Singapore to host the Diplomatic Conference in March 2006, especially given the assurance by the Government of Singapore that there would be no additional cost for WIPO in moving the venue of the Conference away from Geneva. The Delegation also noted that a precedent had been set by the holding of other diplomatic conferences outside of Geneva and added that it was appropriate to hold a Diplomatic Conference in the Asian region. Under the assumption that the General Assembly would approve this proposal, the Delegation further noted that it supported the proposal that WIPO finance the costs of participation of delegations from developing countries and countries in transition, as proposed in paragraph 7 of document WO/GA/32/12. The Delegation believed that holding such a conference in Singapore would help to promote intellectual property awareness in the region. The proposal would also be useful in enabling Member States of the Asia and Pacific region, in particular, to participate in negotiations on a treaty that highlighted the advantage of harmonizing intellectual property systems.

92. The Delegation of Colombia expressed support for the offer made by the Government of Singapore, as it constituted a very important initiative which represented the commitment of a developing country to the legal harmonization processes undertaken by WIPO Member States. The Delegation welcomed the proposal, which represented a very important effort for a developing country that committed itself to provide financial support to other developing countries and thus enable them to participate in the Diplomatic Conference.

93. The Delegation of Benin, speaking on behalf of the LDCs supported the offer made by the Government of Singapore to host the Diplomatic Conference and also thanked that Government for its offer to support the participation of all developing countries and countries in transition, as well as the additional financial assistance for the participation of least-developed countries.

94. The Delegation of the Islamic Republic of Iran, speaking on behalf of the Asian Group, welcomed the offer by Singapore. It declared that the Asian group endorsed the proposal made by the Government of Singapore to host the Diplomatic Conference. The Delegation stressed that the offer to provide financial support for one delegate from each developing or least-developed country would greatly enhance the ability of Asian countries to fully and effectively participate in the Diplomatic Conference. This would enable Asian countries to make a meaningful contribution to shaping the international intellectual property agenda. The Delegation pointed out that Asian countries were pleased that the offer bore no financial implications on the budget of WIPO. It recalled that WIPO had never held a diplomatic conference in Asia. The Delegation stated that, with an increasing number of stakeholders and users of the intellectual property system found in developing countries, the Asian group felt that it was timely for WIPO to bring more of its activities to the developing world, including diplomatic conferences.

95. The Delegation of the Republic of Moldova, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European countries, thanked the Government of Singapore for the generous offer to host the Diplomatic Conference and expressed support for such offer. The Delegation stated that, even if the holding of the Diplomatic Conference in Singapore would increase the participation costs of Central Asian, Caucasus and Eastern European

countries, the group noted the fact that no additional costs were foreseen for WIPO. The Delegation pointed out that the group appreciated the assistance offered by the Government of Singapore to countries in transition to a market economy for their participation in the Diplomatic Conference. The Delegation said that the group considered a diplomatic conference in Asia conducive to the promotion and development of trademark law and intellectual property in the region. It would present a clear sign of the openness of WIPO to the developing world in general.

96. The Delegation of France expressed its support to the very generous offer by the Government of Singapore to host the Diplomatic Conference. It found that this was an excellent opportunity to highlight the importance of intellectual property in this region of the world. However, the Delegation considered that, in view of the progress already made on the draft text to be submitted to the conference, the estimated duration of three weeks seemed too long in relation to the work that remained to be done. For the purposes of good management, the Delegation said that it would be in favor of reducing the duration of the conference by half.

97. The Delegation of the United States of America said that it supported the generous offer made by the Government of Singapore and looked forward to a successful Diplomatic Conference in 2006.

98. The Delegation of Germany noted that the General Assembly had only been requested to decide on the issues listed in paragraph 10 of document WO/GA/32/12. Therefore, the Delegation did not wish to comment on any proposal concerning the duration of the conference. The Delegation expressed gratitude to the Government of Singapore for the generous offer to host the Diplomatic Conference and for the efforts invested in achieving a successful conference. The Delegation referred to key considerations in the statement made by the Delegation of Singapore, which indicated very valuable reasons to hold the conference in that part of the world. The Delegation shared the views expressed by the Delegation of Australia, which emphasized that holding the conference in Asia, in a developing country, would show the commitment of the region to intellectual property and its protection, and would raise the level of awareness on this matter. In conclusion, the Delegation supported the proposals contained in paragraph 10 of document WO/GA/32/12.

99. The Delegation of Niger said that it wished to congratulate the Secretariat for the considerable progress achieved on this issue, which had made it possible to convene a Diplomatic Conference for March 2006. Having considered the proposals contained in paragraphs 5 and 7 of document WO/GA/32/12, the Delegation strongly supported the offer made by the Government of Singapore to host the Diplomatic Conference, since this offer would allow a very large participation by developing countries. In addition, the change of venue of the conference would not imply any additional costs for WIPO. The Delegation added that the Government of Singapore had already organized a number of important events, such as a World Trade Organization Ministerial Conference, and this was an indication of its capability to succeed in the organization of the upcoming Diplomatic Conference.

100. The Delegation of Morocco, speaking on behalf of the African Group, expressed support for the generous offer by the Government of Singapore to host the Diplomatic Conference. The African Group was convinced that the determination of the Government of Singapore, together with its expertise in organizing important international conferences, constituted a guarantee for the success of the Diplomatic Conference. The Delegation further noted its support for the financial arrangements proposed by the Government of Singapore

and by WIPO to cover the costs of participation of developing, least-developed countries, and countries in transition. This would allow them to effectively participate in the work of the conference, to which the African Group attached great importance.

101. The Delegation of China stated that China had been paying attention to and participating actively in the negotiations of the Revised Trademark Law Treaty. The Delegation was pleased to note that the Diplomatic Conference for the adoption of this Treaty would be held in Singapore. The Delegation believed that the careful organization of the Diplomatic Conference would ensure a broad participation and expressed the hope that the Conference would be a success, yielding a result acceptable to all parties.

102. The Delegation of Switzerland said that it had taken note of the generous offer by the Government of Singapore to host the Diplomatic Conference and also of the broad support expressed in relation to this offer by the General Assembly. The Delegation wondered, however, in view of the technical nature of the proposed amendments to the Trademark Law Treaty, which had been agreed in the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), whether the length of the Diplomatic Conference could be reduced to two weeks. This approach would reduce the costs for the participants in the conference, for the organizers and also for WIPO. Apart from the specific case of holding this Diplomatic Conference in Singapore, the Delegation wondered in general terms whether the fact that diplomatic conferences were organized outside Geneva would lead to an artificial increase in the length and the overall costs of such conferences. In the view of the Delegation, the principle of holding conferences in the host city of the Organization should be given precedence in the future, so that participants may benefit from the infrastructure of the Organization and from the support of the Permanent Missions.

103. The Delegation of the Democratic People's Republic of Korea thanked the Government of Singapore for its generous offer to host the Diplomatic Conference and expressed support for the offer. The Delegation explained that its support was based on the conviction that the offer would enable many countries and specialists to be represented at the Diplomatic Conference. The Delegation further noted that the offer would cover, not only all additional expenses necessary for convening the Diplomatic Conference but also the participation costs of one delegate from 111 developing countries and countries in transition Members of WIPO. The Delegation recalled that, in addition, the WIPO Program and Budget for the 2006-2007 biennium provided for the financing of the participation costs of one delegate from 30 countries to be selected among the developing countries and countries in transition Members of WIPO (document WO/PBC/8/3, pages 56 and 127). It highlighted that the combination of financial assistance from Singapore and from WIPO would contribute to allowing all 141 developing countries and countries in transition Members of WIPO to participate in the Diplomatic Conference.

104. The Delegation of Austria welcomed the generous offer by the Government of Singapore to host this important Diplomatic Conference and reiterated its gratitude to Singapore for making this offer. The Delegation shared the views expressed by the Delegations of Australia and Germany and gave its wholehearted support to the adoption of a decision by the General Assembly to accept the offer made by Singapore. The Delegation said that it looked forward to actively participating in the conference in Singapore, in March 2006. The Delegation also noted that at the time of the Diplomatic Conference, Austria would be entrusted with the Presidency of the European Union.

105. The Delegation of Chile congratulated the Government of Singapore for its initiative to host the Diplomatic Conference and for the financial support offered for the participation of all developing countries. However, the Delegation requested a technical clarification from the Secretariat as to whether the treaty to be adopted at the Diplomatic Conference would be a different and independent legal instrument from the current Trademark Law Treaty.

106. In reply to the request by the Delegation of Chile, the Secretariat confirmed that indeed, the existing Trademark Law Treaty and the Revised Trademark Law Treaty were two separate and independent treaties on the same subject matter, open to participation by all Member States of WIPO. In the same manner, all Members of the Organization were invited to participate in the Diplomatic Conference for the adoption of the new treaty.

107. Referring to the interventions of the Delegations of France and Switzerland regarding the duration of the Diplomatic Conference, the Director General recalled that the General Assembly had already decided the issue of the duration of the Conference at its previous session in 2004. The General Assembly could now decide otherwise. However, he suggested that, in order not to take any risks, the decision of the General Assembly taken in 2004 be maintained and if, on the basis of an assessment made by the Secretariat on the status of progress on matters of substance, logistics and other related issues it is determined that there is any room to shorten the Diplomatic Conference, the Secretariat would advise accordingly.

108. The Chair, having taken note of the interventions made by the Delegations on this agenda item, and noting that more delegations might wish to take the floor, surmised that a broad consensus had emerged to accept the offer of the Government of Singapore to host the Diplomatic Conference as well as on the proposed arrangements for financial support to be provided by WIPO to a number of certain Member States as described in paragraph 10, item (ii) of document WO/GA/32/12.

109. The General Assembly decided (i) to accept the offer of the Government of Singapore to host the Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty, and (ii) to approve that WIPO should finance the cost of participation in the Diplomatic Conference of delegates from developing countries and countries in transition members of WIPO, in accordance with the arrangements proposed in document WO/GA/32/12.

#### ITEM 13 OF THE CONSOLIDATED AGENDA:

##### MATTERS CONCERNING A DEVELOPMENT AGENDA FOR WIPO

110. Discussions were based on document WO/GA/32/2.

111. The Secretariat stated that the General Assembly, in its session held from September 27 to October 5, 2004, had decided to convene Intersessional Intergovernmental Meetings to examine the proposals made by Argentina and Brazil for the establishment of a Development Agenda for WIPO, as well as additional proposals received from Member States. It was also decided that the meetings would prepare a report for the consideration of the following General Assembly and that the issue would be included in its September 2005 session. It further informed that another decision taken was that the International Bureau would organize, with other relevant multilateral organizations including the United Nations

Conference on Trade and Development (UNCTAD), the World Health Organization (WHO), the United Nations Industrial Development Organization (UNIDO) and the World Trade Organization (WTO), a Joint International Seminar on Intellectual Property and Development, open to all stakeholders including non-governmental organizations (NGOs), civil society and academia. At the International Seminar on Intellectual Property and Development which was organized by WIPO, and jointly held with the above-mentioned organizations on May 2 and 3, 2005, a wide spectrum of issues, including public policy issues and issues of concern to the international intellectual property community were discussed. Three sessions of the Intersessional Intergovernmental Meeting (IIM) on a Development Agenda for WIPO were organized earlier that year where a total number of eight proposals were presented by Member States. The Secretariat informed the Assembly that the sessions were held from April 11 to 13, June 20 to 22, and July 20 to 22, 2005 and that discussions covered substantive and procedural questions relating to the Development Agenda. The reports adopted by the first, second and third sessions of the IIM were contained in documents IIM/1/6, IIM/2/10 and IIM/3/3, respectively. It further stated that the report to the General Assembly (document WO/GA/32/2) was adopted at the resumed session of the third IIM, which was held on September 16, 2005.

112. The Delegation of Argentina, speaking on behalf of Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Egypt, the Islamic Republic of Iran, Kenya, Peru, Sierra Leone, South Africa, United Republic of Tanzania and Venezuela, stated that at the last General Assembly, the Member States of WIPO had agreed on the need for the Organization to enhance its contribution to the international development goals and recognized that as a specialized agency of the United Nations system, WIPO had to be guided in all its policies and practices by the broader development related commitments and resolutions of the United Nations system. The Delegation said that on that occasion, Member States had agreed to address without delay the proposal from the “Friends of Development”, for the establishment of a Development Agenda for WIPO. Intersessional Intergovernmental meetings were provided to find solutions to the concerns and problems faced by developing and least-developed countries, and to ensure that the intellectual property system effectively operated in a manner, supportive of their national development goals. It explained that the proposal sought a balance in intellectual property systems so that it worked for the benefit of all, that is, not only in favor of IP exporting nations, but also for the benefit of developing and least-developed countries. The Delegation stressed that the proposal sought to enhance WIPO’s contribution towards attaining the UN Millennium Development Goals and to strengthen the contribution of intellectual property rights to the development process. It added that such a debate, and consequent decisions would contribute to the legitimacy and credibility of WIPO. The Delegation said that the vision that promoted the absolute benefits of intellectual property protection, without acknowledging public policy concerns, undermined the credibility of the IP system. It added that integrating the development dimension into the IP system and also in WIPO’s activities would strengthen the credibility of the IP system and encourage its wider acceptance as a tool for the promotion of innovation, creativity and development. The Delegation further stressed that the integration of the development dimension would contribute towards ensuring that intellectual property norms were fully supportive of public policy objectives, such as the protection of public health, biodiversity, the dissemination of information and access to knowledge. Further, it would also ensure that the concerns and interest of developing countries, consumers and civil society would be fully taken into account, while formulating new global intellectual property rules. The Delegation reminded the General Assembly that under the 1974 Agreement between WIPO and the United Nations, WIPO had to promote creative intellectual activity and facilitate the transfer of technology related to industrial property to developing countries. It

stressed that the Group's broad support to the proposal and the favorable reactions and expression of support received from different sectors all around the world, confirmed the spirit of convergence that inspired the proposal of the "Friends of Development". The Delegation stated that, as mandated by the 2004 General Assembly during the last semester of that year, three intersessional sessions of the Intersessional Intergovernmental Meetings (IIMs) were held and that during that process, members significantly engaged in the debate and a number of new proposals were presented. Further, a number of delegations had announced their intention and interest in presenting additional proposals in the future to enrich the debate. The Delegation said that that was an evident and unequivocal sign of the high interest and the timely opportunity for the presentation of the proposal for a Development Agenda for WIPO. It added that the "Friends of Development" appreciated the contribution of the other Member States and in particular, that of the African Group that had recognized that the proposal of the "Friends of Development" also reflected the concerns and interests of Africa. It regretted that in the last IIM they did not have the opportunity to address that proposal in-depth, but was confident that they could do so in the forthcoming IIM. The Delegation said that notwithstanding the level of engagement and commitment in the debate on intellectual property and development in those meetings, and the emerging consensus in a number of specific proposals tabled by the "Friends of Development", the third session of the IIM had not been able to agree on recommendations for a way forward. The Delegation further stated that due to the position taken by the delegations, the third session was not only unable to agree on substantive matters, but was also incapable of agreeing on the continuation of the IIM process till the 2006 General Assembly. It stressed that the "Friends of Development" understood that the continuation of the discussions in the IIM process was essential to fulfil the commitment adopted by the Assembly in 2004. It added that the IIM had to continue with the in-depth consideration, not only of the proposals already tabled, but also of any additional proposals that might be submitted in the future. The Delegation pointed out that those proposals had to be given the opportunity to be discussed on an equal footing, as had been already expressed by developing and least-developed countries in the third IIM. It added that the future meetings should not be limited to the exchange of views, but to advance forward the Development Agenda, with concrete recommendations for action and decisions that the General Assembly should adopt. The Delegation believed that the process they had started at the previous General Assembly should not be indefinite in time, but should be a continuous one and that they should have to incorporate and implement progressively, step by step, concrete measures in all the activities of WIPO. It stated that one of the main components of the Development Agenda was related to norm-setting activities. The Delegation stated that the "Friends of Development" understood that the Development Agenda could not be addressed as a rhetorical exercise or restrained to a permanent subsidiary body. It added that the Agenda was not limited to technical assistance or cooperation matters and that among the substantive main components of the Agenda, they attributed the utmost importance to the one related to norm-setting activities in the Organization. It explained that it was because of the range of elements that the proposal addressed, and its horizontal or crosscutting nature that they considered that, as was proposed in the IIM, the PCIPD was inadequate to address the proposals raised in the WIPO Development Agenda process. The Delegation further clarified that the presentation of the proposal for a Development Agenda for WIPO represented a starting point for wider debate and a platform of action. It added that, consequently, it was appropriate and natural to further build on an IIM process, integrating the development dimension in WIPO, through a fully institutional framework, with a bearing on all of WIPO's activities and policies and by ensuring that development be addressed and implemented in a systematic and holistic way. The Delegation said that it was convinced that the collective responsibility of WIPO Member States was to ensure that the Development Agenda moved forward, and that in that context the "Friends for Development" expected that

the General Assembly would decide to renew the IIM process providing for at least three meetings during 2006 that would prepare a report with recommendations to the following General Assembly.

113. Speaking on behalf of Group B, the Delegation of Switzerland observed that the previous WIPO Assemblies and the three meetings of the IIM had enabled WIPO Member States to have a first discussion on several issues related to IP and development. It noted that new proposals were added to the first proposal presented by Argentina, Brazil and the other co-sponsors during the previous Assembly. The Delegation stated that Group B was willing to continue discussions on development issues in the forthcoming year and believed that that could be best done in the context of the existing WIPO framework, as suitable expertise already existed. It urged that consensus on taking that work forward should not be jeopardized by disagreements on the process. The Delegation underlined that they were willing to engage in a constructive dialogue on that subject and that they were looking forward to making progress in the debate on the substance of the issues.

114. The Delegation of the Czech Republic, speaking on behalf of the Central European and Baltic States, said that the discussion on the Development Agenda should continue the following year, so that progress could be made on refining and defining the most important issues clearly. The Group believed that it could be done in the existing WIPO framework and that the on-going discussion on development issues should not negatively influence progress on substance in other WIPO activities. The Group was ready to take part in the forthcoming constructive discussion.

115. The Delegation of Mexico, on behalf of GRULAC, stated that given the importance of that issue and the interest of Latin America and the Caribbean countries on the issue, it believed that the Assembly should prolong the mandate of the IIM so that it could deal with these issues. It added that GRULAC proposed a mandate with a pre-established term and possible future extensions.

116. The Delegation of the Islamic Republic of Iran, speaking on behalf of the Asian Group, thanked the Secretariat for providing the documents and stated that development was a primary concern of developing countries, and had always been one of the major challenges for the United Nations system. It explained that their concerns had been reflected in many related international instruments, ranging from the Millennium Development Goals to the World Summit on Information Society. WIPO, as a specialized United Nations Agency, was also committed and responsible for contributing to those Millennium Development Goals. Accordingly, the Member States had submitted a proposal during the last General Assembly for the establishment of a Development Agenda for WIPO. The primary aim of the Development Agenda was to seek solutions to the concerns of developing countries and LDCs, with a view to ensuring that the international IP regime was supportive of their individual development goals. The Delegation stated that given the importance of public policy objectives such as public health, access to knowledge, dissemination of information and biodiversity, the developing countries believed that the integration of development dimension in all WIPO activities was absolutely essential, so as to ensure that the norm-setting and other activities of WIPO were supportive and in line with the public interest objectives of developing countries. It explained that following the positive response of Member States to the above proposal and its objectives and keeping in view their intentions to submit additional proposals on its agenda, the last General Assembly had mandated IIM to examine the different proposals of Member States. The Delegation said that the group was happy to note that the IIMs had begun this task in earnest. Different suggestions and

proposals were now before the IIM. The Asian Group strongly supported the extension of the IIM for 2006, as it found that the tasks before it were not yet complete, and it needed more time to achieve a tangible outcome and to evolve a concrete framework of action. The Delegation concluded that by focusing on development impact assessment of all programs and activities, including norm-setting, it would help the Assembly take informed decisions and in mainstreaming the Development Agenda in all processes and efforts of WIPO.

117. The Delegation of the United Kingdom, on behalf of the European Community, its Member States and the Acceding States of Bulgaria and Romania, stated that they remained committed to taking forward the debate on the various proposals which had been made under the auspices of establishing a Development Agenda for WIPO. It pointed out that WIPO had a specific mandate to promote development as an integral part of the United Nations family. WIPO had to continue to play its role, together with other UN bodies, putting its mandate into action and making a concrete difference to the goals and aspirations of all Member States and their citizens. It said that WIPO had been making great efforts in that respect for many years, and had to now decide how to continue and enhance that valuable work. The Delegation stated that it was the view of the EC and its Member States, that priority should be given on moving forward on the substance of the issues. The Delegation had always felt that that could best be done in the context of the existing WIPO framework, where suitable expertise already existed. It added that though others had different views, there was consensus on taking the discussions forward and that it should not be jeopardized by disagreements over the process. It added that the EC had demonstrated its flexibility in that respect and looked forward to making progress on the debate on the substance of the issues. The Delegation concluded by stating that it supported the statements of Group B, and the Group of Central European and Baltic States.

118. The Delegation of Brazil fully associated itself with the intervention made by the Ambassador of Argentina, on behalf of the "Friends of Development". It explained that development was not just the concern of developing countries, but of developed countries also, both from their own point of view and from a global perspective. The Delegation pointed out that today's main industrialized countries had used IP in their development processes. But they had done so in a parsimonious and measured way under a thoroughly flexible framework, which had now, to a large extent, been taken away, therefore depriving developing countries of the same successful path undertaken by them. The Delegation added that there was a growing concern that intellectual property regimes had disassociated themselves from their original purpose, and had increasingly led to a culture of legal litigation, generating problems and side-effects that were neither anticipated nor intended, when they were originally set up. The Delegation said that in proposing the Development Agenda the previous year, together with other developing countries, it had always intended to ensure that those issues were considered, in an encompassing way, in WIPO's deliberations. It had not intended to diminish the importance of WIPO and the role it could play in that area, nor to cancel obligations they had all undertaken. Therefore, the Delegation continued to attach the utmost importance to the proposals tabled at the previous year's Assembly on the establishment of a Development Agenda. The Delegation was sure that they were responding to increasingly wide-spread concerns that had been voiced in many quarters, in both developed and developing countries, regarding the current and future evolution of the international intellectual property system. The Delegation explained that since the proposal was made a year ago, numerous civil society groups and academics, including Nobel Prize winners from the developed world as well as developing countries, had expressed their support for it. It was therefore clear that what was being dealt with, was not just a north-south issue. The Delegation explained that the proposal on the Development Agenda addressed

issues that were of concern to the international community as a whole. It referred to a recent seminar on IP and Development, held at the Institute for New Technologies (INTECH) of the United Nations University in Maastricht, The Netherlands, which brought together several distinguished experts and academics from France, India, Italy, The Netherlands, United States of America and Brazil, as well as officials from different government agencies in the south. The Delegation explained that there was a consensus at the seminar that a more public oriented and balanced intellectual property system would benefit developing countries and developed countries alike, and that a short document prepared by the group, summarizing its findings and proposals was available for interested parties at that meeting. The document included a ten point summary, which could become a dictum for their consideration. The Delegation read out the first four points that were relevant to the meeting. One, intellectual property rights were economic rights and were granted not as an end in themselves, but only as a means to specific goals like promotion of creativity, innovation, culture and science. However, intellectual property rights could have a negative effect, not only on economic and social welfare, but also on innovation itself. Two, attribution of intellectual property rights should be allowed only in so far as it did not undermine the basic principle of the open science system. Free and universal access to scientific knowledge was at the same time a fundamental engine of innovation. Three, the task of constructing better and more balanced IPR regimes, which facilitated their role as instruments of innovation incentives, was an issue for both developing and developed countries. Four, any extension of IPRs, whether in terms of subject matter, length, type, or jurisdiction of protection, had to be based on clear evidence of their net benefits. The Delegation added that the seminar had also led to a number of other conclusions, such as the development of an international network of researchers, from both developing and developed countries, to act as a locus for the three Intersessional Intergovernmental meetings on the Development Agenda held from April to July of that year. Further, the proposals tabled by several delegations, demonstrated there was broad support for the process initiated by them to establish a Development Agenda for WIPO. The Delegation said that though the three IIMs had not allowed for an initial discussion on some of the proposals tabled, it was clear that even the proposals that were discussed required greater in-depth consideration by Member States. Several of those proposals covered various broader diverse issues, and it had become evident, therefore, that more work had to be done. The Delegation added that in the third IIM held last July, there was overwhelming support for the continuation of the IIM process. Like the overwhelming majority of WIPO members, the Delegation would like to insist that the IIM process should continue for another year. The Delegation hoped that the coming IIMs would engage in an in-depth consideration of all proposals tabled, and would be in a position to prepare a report to the next General Assembly, with recommendations on how to address the various issues raised in the proposals. Its ambitions, therefore, were realistic. Because of the complexity of the issue, it understood there was need for further intergovernmental consideration and the IIM in their perception was the best process for doing so. Finally, the Delegation reiterated that the Development Agenda was a broad and horizontal proposal, which was meant to address WIPO's work in all its dimensions. Discussions on the Development Agenda, therefore, could not be referred to a single subsidiary body within WIPO, such as the PCIPD.

119. The Delegation of the United States of America stated that it had noted at the 2004 General Assemblies, and continued to believe that development was not only one of the most important challenges facing the international community, but also the most daunting. The Delegation emphasized that it had stated on many occasions that it did not believe that WIPO had ignored development concerns or that intellectual property hindered development. The Delegation indicated that it believed that the opposite was true, that WIPO had integrated development concerns into its mission since joining the UN system in 1974, and that

intellectual property could and did serve as a powerful tool for development. It stated that the experience of numerous developing countries in the room clearly attested to that fact and added that while the IIMs had provided a process for useful preliminary exchange of views, they had not provided a forum for an in-depth examination of all proposals. In fact, no consensus had emerged on any of the numerous proposals that were made by Member States, including those that seemed non-controversial, such as those working on improving technical assistance. The Delegation said that it continued to support a frank exchange of views and work towards improving WIPO's response to developing country needs, especially in the area of technical assistance and remained open to other ideas. However, the Delegation did not support having additional IIMs, and explained that the IIM process was established by the General Assembly the previous year as a compromise for a limited time, and that it had reached the end of its mandate at the end of July that year. The Delegation believed that it was time to have a permanent forum to continue the discussions on IP and development, so as to examine the numerous proposals made by WIPO Member States and offered its support for reinvigorating the Permanent Committee on Cooperation for Development related to Intellectual Property, so as to give not only equal treatment to proposals that had not yet been fully discussed, but also better treatment to all proposals that had been made by WIPO Member States. It stated that the PCIPD, a permanent WIPO body, provided an excellent forum for in-depth examination of issues raised. It had been provided for in WIPO's permanent budget, and had a dedicated secretariat staff to support it. The Delegation added that like other permanent bodies in WIPO, PCIPD sessions lasted a full week, which allowed more time for a robust and healthy debate on specific proposals. If there were any doubts about the mandate of the PCIPD, the Member States could give it a very clear mandate to fully examine all proposals relating to IP and development. The Delegation suggested that consideration be given to the renaming of the PCIPD, for example, the Permanent Committee on Development and Intellectual Property or the PDIP, so as to make it clear that its mandate was not limited solely to technical assistance or development co-operation. It believed that a reinvigorated PCIPD or PDIP, would provide a permanent forum in WIPO for discussions related to intellectual property and development, that the proponents of a development agenda had originally sought, but in a manner that would avoid duplication of resources and provide for orderly and focussed discussion. The Delegation indicated that it fully supported the goals of economic, social and cultural development and believed that intellectual property and WIPO had an important role to play in spurring that development. More importantly, it stated that WIPO already included the development dimension in all of its work and Member States were free to pursue their objectives in existing WIPO bodies. Despite the belief of the Delegation that WIPO was not, or should not, become a core development body, it fully supported the proposal for WIPO to improve its efforts within its core competencies, to bring the benefits of intellectual property to all its Member States. The Delegation further supported the addition of that dimension to PCIPD's mandate as well, so that the overarching issue would have a permanent forum in the Organization. The Delegation strongly believed that a reinvigorated PCIPD, and not additional IIMs, was the way forward and that the benefits were not only structural, but also policy related. It added that as an existing committee, any necessary organizational and budgetary issues could be addressed with minimal complications. Furthermore, it stated that the PCIPD would provide a permanent forum to effectively shepherd Member States to consensus on key WIPO related issues, on which they all agreed, needed to be addressed. The Delegation agreed that focused discussions, in a reinvigorated PCIPD, would provide the best opportunity for reaching concrete and practical results, for the benefit of developing and least-developed countries, in the most effective manner.

120. The Delegation of China reiterated its hope made at the previous Assembly, that a Development Agenda could be adopted, especially in norm-setting activities, where greater attention could be given to the interests and concerns of different parties. The Delegation stated that at the three sessions of the IIM, different proposals were made, lists prepared and discussions held. Therefore, after one-year's efforts, it was its hope that concrete results could be achieved. The Delegation urged participants to concentrate their efforts and make preparations for discussions, rather than reopen areas, where consensus had already been reached. The Delegation explained that one need not abandon the consensus reached at the previous years' Assembly and that greater consideration should be given to how the mandate could be fulfilled, on the basis of the success that had already been achieved. The Delegation thanked all countries for the proposals they had made at the IIM. It indicated that it had carefully studied them, and thought that all those proposals would be conducive to their understanding and consideration of the positions of other parties, especially those of countries whose positions were further from theirs. The Delegation added that it had been inspired by those proposals and although China's IP system has only been in operation for a short time of 20 years, it believed that the creativity and innovation of their people had improved, and that they had used advanced technologies from abroad, thus realizing the role that the IP system could play in promoting economic development. The Delegation stated that as they continued to improve the IP system and firmly protect the rights of rightholders, they had witnessed a continuation of creative activities and the speeding up of knowledge dissemination, which also showed that not only was there a need to make further efforts to improve the IP system in order for it to be more balanced, but also to consider limitations and exceptions. The Delegation expressed the hope that through active participation in the various activities of the Organization, and with the experience and wisdom of other countries, they too could benefit and search for an effective IP system for the promotion of economic development. The Delegation believed that their efforts could allow them to get a better understanding of the substantive measures needed for such improvement and benefit from the proposals presented by others to the IIM. The Delegation reiterated that the Development Agenda was a very important issue for developing countries. However, because its scope was rather broad, it not only raised serious issues for developing countries, but also had implications for developed countries, developing countries played an important role in the global market place. The Delegation, therefore, felt that Member States need not be afraid of a situation, where discussions with respect to norm-setting would take place. It also felt that a forum for the discussion of development issues should be such that it could make a contribution to the development of laws of IP rights and to their harmonization. It added that another requisite for the forum should be that any resolutions, in particular, those concerning norm-setting, made at the forum should have a binding effect on other standing committees. The Delegation commended the Secretariat for the organization of the three IIM sessions, in particular the 300 page document provided on Development Cooperation Activities, and for the opportunity to openly discuss and gain a better understanding of the positions of different Member States. The Delegation concluded by pointing out the achievements, increased participation and meaningfulness of the IIM, and expressed its sincere hope that all parties could actively promote the discussions on the Development Agenda.

121. The Delegation of Morocco, speaking on behalf of the African Group, said that the development dimension was the main priority for African countries and it had seen that concern reflected in various international events and statements. The Delegation made references to the Plan of Action of the Summit held in Doha in 2005, which had placed particular emphasis on the need to integrate the development dimension into the future activities of WIPO, including access to knowledge, technical assistance and technology transfer, and the promotion of development in general. In that context, the African group

reiterated the particular significance that it attached to pursuing the consultations that were underway within WIPO, as part of the intergovernmental intersessional process. The Delegation stated that renewing the mandate of the IIM would make it possible for them to ensure equitable treatment for all the proposals that had been submitted, and specified in that regard that the African proposal had not yet been discussed. Holding further meetings would also provide an opportunity to highlight the value of all the proposals that were made and commended all who had submitted proposals so far. The proposals undeniably represented a sound basis for them to have a discussion within WIPO on that topic, and the Delegation expressed its happiness in not only being able to participate in that kind of discussion, but also in seeing that many other organizations had been involved, which had allowed for a wide-ranging debate. The Delegation concluded by reiterating its belief that the holding of further meetings on the Plan of Action for Development was important for all.

122. The Delegation of Chile thanked the Secretariat for the documents, expressed its support for Mexico's statement, on behalf of GRULAC, as well as the great importance it attached to the Development Agenda. The Delegation expressed satisfaction with the interest that the three IIM meetings had generated on issues of importance to both developed and developing countries, stating that it was happy to be a part of the discussion, with such important organizations and delegations. It added that all Member States present agreed that the mandate of the IIM should be renewed. It explained that while most of the proposals were discussed superficially, some had not been discussed and a few countries were still preparing proposals, in particular, with regard to the promotion of the public domain. The Delegation underscored the African Group's statement made at the IIM meetings and during that Assembly, which said that the African Group's proposal, as well as future proposals, should be given equal treatment in the same fora. The Delegation concluded that none of the existing fora had a sufficiently broad mandate to take on those proposals, and therefore proposed that the mandate of the IIM be extended for WIPO's Development Agenda.

123. The Delegation of Malaysia expressed its appreciation to WIPO for the commendable work accomplished in conducting three Intersessional Intergovernmental Meetings (IIM) on the Development Agenda, and to the Member States that had tabled proposals for deliberations. The Delegation viewed the IIM as a venue for constructive discussions for all Member States, and strongly believed that it could contribute to productive outcomes on the Development Agenda. Since the proposal from the African Group had not been discussed at the third session of the IIM, it was of the view that in order to uphold a fair and balanced deliberation, the proposal from the African Group as well as any other new proposals should be tabled and discussed at the same venue. Therefore, the Delegation supported the idea that the IIM should be given a mandate to continue its work for another three sessions, if necessary, and to submit a report to the 2006 General Assembly, for further deliberation and decision.

124. The Delegation of Japan stated that the discussion on the Development Agenda and related additional proposals in WIPO was very important and it was happy to continue discussing them in WIPO. The Delegation recalled that the IIM process started the previous year was a compromise. The IIM was an *ad hoc* meeting and not a permanent body. The Delegation referred to the explanation provided by the International Bureau at the previous PCIPD, which made it understand that the mandate of the PCIPD was flexible enough to cover the Development Agenda and related issues, and said that the discussion on the Development Agenda and related issues should therefore continue in the PCIPD. The Delegation noted that some delegations had pointed out the necessity of equal treatment of the African proposal and other additional proposals and stated that it was of the view that, even if

the proposal was discussed in the PCIPD rather than the IIM, equal treatment could be achieved because where the discussion on the Development Agenda took place was not related to the content or quality of the discussion. It added that the Development Agenda would be dealt with by the expertise of PCIPD so that body might provide better treatment to the proposals.

125. The Delegation of Kenya said that it was widely acknowledged in many international fora that development was one of the most intimidating challenges facing the international community today. Great efforts were being made at the national, regional and international levels to address the crucial aspect of development. The Delegation emphasized that a couple of days ago, the leaders had converged in New York to address the progress the world was making towards attaining the millennium development goals. It stressed that WIPO too had a great contribution to offer to these international efforts, including the achievements of the MDGs. It noted that everyone had witnessed the important role played by intellectual property in the technological, industrial, cultural, social and economic development of many nations of the world, but many countries had stagnated in their development, because of lack of recognition and acknowledgement of the role that IP could play in their development. The Delegation underlined the need to take forward IP development in such a manner that it was not mixed up with the traditional technical assistance that had not created much impact in the development of developing countries. Intellectual property was a cornerstone of modern economic policy of nations, a catalyst for development and an acknowledged major development tool. The Delegation added that that was the reason why Kenya was committed to working with all delegations attending that Assembly to expand activities related to development, with a view to enhancing the utilization of IP for social and economic welfare. It was in that respect that Kenya supported the establishment of the WIPO Development Agenda, with clear mandates and implementation monitoring system. The Delegation believed that the proposals by the African Group and the "Friends of Development" were a good basis for the way forward in establishing the WIPO Development Agenda. It added that while Kenya appreciated the expansion of activities of the PCIPD for development related to intellectual property, the Delegation felt that matters relating to the WIPO Development Agenda should be handled by the IIM, and not by the PCIPD. The Delegation believed that that was the best way for development to receive due consideration and for speedy implementation to ensure that IPRs played their crucial role in development. In conclusion, the Delegation stated that the WIPO Development Agenda was not just about expanding the scope of the traditional technical assistance, but was about human rights, which was of concern to developing countries.

126. The Delegation of Benin said the subject was of great concern for many reasons. It referred to the general statement it had made on the first day when speaking on behalf of the LDCs, it had stated that the WIPO Development Agenda was of crucial importance to the LDCs group. The Delegation maintained that the IIM process needed to continue in 2006 to enable Member States to deal with the proposal tabled by the African Group and also other proposals. The Delegation supported the statement made the previous day by the Kingdom of Morocco on behalf of the African Group. The LDCs had submitted certain specific proposals for the Development Agenda and so were keen to ensure that they were achieved. The Delegation mentioned poverty alleviation was an issue that had to be dealt with for which specific steps had to be taken by the industrialized countries, developing countries and Member States of the Organization as well.

127. The Delegation of Bahrain thanked the Director General and his staff for the support they had been providing for intellectual property development programs. The Delegation

suggested that development programs needed to continue as technology was continuing. It added that Bahrain had just about managed to develop intellectual property development programs and strategies but realized that there were still very specific economic and social needs in the country, which had to be met. The Delegation felt that if its country was to improve the overall living standards, the aid and assistance programs offered by WIPO were extremely important and should continue to be supported. Because of the population growth and the increasingly important role of intellectual property in general, the Delegation thought that there was need to increase advocacy and awareness-building programs and to include them into the academic programs. That would help to improve living standards and strengthen the economies in general and that was the reason why Bahrain hoped that the Chair would be able to find appropriate ways of helping to keep up with the pace of technological development. Intellectual property was important, the Delegation stated. That importance should be used to find the mechanisms, which would help to achieve the objectives as rapidly as possible. Turning to the proposals, which had already been tabled, the Delegation believed that it was important to take them into consideration and to find a way of largely benefiting from those proposals, thereby improving the living standards across the board in the countries.

128. The Delegation of Pakistan recalled that a year had passed since the need for a Development Agenda for WIPO had been first discussed at the previous Assemblies of WIPO Member States. It noted that it was not to say that the developmental implications of intellectual property had not been previously under consideration in the Organization. There had been sustained efforts in the Organization, particularly in the International Bureau, to explore approaches that could effectively address a variety of complex issues pertaining to intellectual property and development. The Delegation added that it should, however, be acknowledged that the last WIPO Assembly had authorized a coherent and more focused discussion on a Development Agenda for the Organization, based on a proposal made by Brazil, Argentina and other "Friends of Development". As mandated by the Assembly, the matter had been taken up by the three intersessional intergovernmental meetings, from April to July of that year. The Delegation noted that they had not only traveled some distance on that road, but had also gathered valuable proposals, that could help to chart out a road map for further movement in that important direction. The Delegation underlined the need to acknowledge that globalization and the associated fast pace of economic and technological transformation had enhanced the importance of development orientation of the IP system. Referring to the intervention of a preceding speaker, it added that the UN Summit of World Leaders had renewed commitment to the shared developmental objectives known as the MDGs. As a member of the UN family, the Delegation believed that WIPO had an unambiguous mandate and responsibility to fully integrate the development dimension in its work. The Delegation said that what it had been pointing out was that it was not the mandate, but the mind-set that had to be tuned to the need for a development quotient in the whole range of WIPO activities. It had repeatedly drawn attention to three clusters of developing countries' concerns, relating to the impact of the intellectual property system on developmental objectives. These concerns pertained to, firstly, the impact of IP on affordability and availability of essential products like pharmaceuticals, textbooks and educational software; secondly, the misappropriation of traditional knowledge and biological resources; and thirdly, the increasing restrictive effects of IP on access to technology and developing countries ability to innovate. It was these concerns, the Delegation stressed, which led to what the Director General pointed out in his opening remarks, namely the issue of public policy space or flexibilities in the IP system. The Delegation underscored the importance of identifying and operationalizing these flexibilities in the system where they existed, and to create them where they did not. It expressed its willingness to engage

constructively in a process to evolve an action and result-oriented Development Agenda for WIPO, that would meaningfully address these genuine concerns and that would entail a focused and preferably structured discussion in the Organization, on a system that struck a balance between IP rights and developmental objectives. The Delegation observed that it, of course, could not continue to lay layers of norm-setting without filtering their possible effects on development objectives into the whole exercise. There was a real need to examine how the IP system affected countries at different levels of development and with varying exposure to the system, that the Delegation believed, could be accomplished by commissioning and institutionalizing a standing mechanism that would engage in what had been termed as development impact assessments of existing and future activities of the Organization. It would provide the essential information and evidence-based analysis on the extent of interface between IP and development at the national, regional and global levels. The Delegation was of the view that it could commence even while Member States were trying to establish a common understanding of the Development Agenda, since the results would definitely help to take informed decisions in the matter. As regards the IIM process, the Delegation pointed out that the IIM was mandated to examine the proposal of the “Friends of Development” and other proposals in detail, with a view to making the necessary recommendations to the General Assembly. The Delegation said that it was unfortunate that most of the time in the three intersessional intergovernmental meetings had been spent on discussions on procedure, rather than in-depth examination of the substantive proposals. Consequently, the IIM process could not even accomplish a first reading of the proposals in their entirety, though it was encouraging to note that the proposals continued to be tabled even in the previous IIM, and one had not read or heard any objection to the need for a Development Agenda in WIPO. The Delegation said that there was a need to continue building on that positive foundation as there obviously were differences in perception, but such differences had always been there and constructive attempts to find solutions under those circumstances formed the essence of multilateralism. The Delegation was confident that WIPO and the Member States present had the necessary intellectual reserves to meet the challenge. The delegation reiterated that the most important issue before the Assembly under Agenda item 13 was how to proceed with the discussion on a Development Agenda for WIPO, in terms of the two approaches being advocated. The various proposals could be further examined, through either a renewal of the IIM process, or within the confines of the PCIPD. The Delegation believed that the current Assembly should renew the mandate of the IIM process for the following reasons: firstly, the previous Assembly had charged the IIM with a mandate, that had not yet been fully discharged and should as such be renewed, in order to afford the opportunity for all the proposals relating to the Development Agenda to be fully examined, with a view to making recommendations accordingly, for consideration by the Assembly. Secondly, it was evident that the issues raised in the different proposals would cut across the whole range of WIPO’s activities and so Member States’ right to thoroughly examine each proposal should not be constricted by the limited physical and financial infrastructure of the PCIPD. Thirdly, despite a slow start, the IIM process acquired a momentum of substantive discussion in the latter half, which should not be lost to the possibility of yet another procedural debate in the PCIPD, which would undermine the importance of the Development Agenda; and fourthly, the IIM process had evolved into a setting where the different aspects of the Development Agenda could be discussed in an integrated framework. The Delegation stated that it should only be after reaching a consensus in the IIM process, that the various elements of consensus might be passed on to the PCIPD and other relevant mechanisms in WIPO, for implementation within their respective mandates. The Delegation concluded by stating that the discussion on a Development Agenda for WIPO constituted a milestone in the history of WIPO and that it was their collective responsibility to ensure that high standards of transparency, equity and

fair play were maintained in dealing with both the substantive and procedural aspects of that historic discussion.

129. The Delegation of South Africa expressed its appreciation and agreement with the statements made by the Director General of WIPO. The Delegation stated that South Africa attached equal importance to the proposals tabled so far, including those of the African Group and the “Friends of Development” for the extension of the IIM mandate. The Delegation highlighted the following issues: (i) that in their understanding, development covered issues related to public health and the patent system and in that regard mentioned the work of the WHO, through the Commission on Intellectual Property Rights, Innovation and Public Health; (ii) that South Africa had identified the problems and were confronting the problems of parallel importation and compulsory licensing of patents; (iii) that their understanding of the Development Agenda included the work of the Convention on Biodiversity (CBD) (i.e. genetic resources, biological resources and benefit sharing and IP, as well as intellectual property, and technologies related thereto); (iv) that in their understanding development also included the area of science and technologies, including ICT and research; (v) that educational issues such as access to learning materials and information, and maybe the Berne appendix should be incorporated into national legislation; and (vi) that the work of the Food and Agricultural Organization (FAO), UNCTAD, and UNESCO, in agricultural, economic and cultural education, development issues, respectively, were also areas that entailed IP issues. The Delegation was of the view that intellectual property was crosscutting in nature and, therefore, could no longer be a domain of one national department or one international organization. The Delegation added that IP needed to be approached in a collective manner and that all the United Nations agencies were also concerned directly or indirectly with the Development Agenda. They stated that other bodies outside the UN family, like the WTO had identified that there was a problem of development in the context of IP and that the Doha Declarations and related decisions were good examples of such a problem. The Delegation explained that the foregoing issues did not form part of the PCIPD’s work and that they doubted whether that body had the necessary expertise to deal with those issues. The Delegation, therefore, added that WIPO should respond to the concern on development issues and that it would be just a matter of time before WIPO would have to work with other UN agencies in addressing the identified problem, relating to development. The Delegation believed that if there was resistance in this regard in the near future, the UN would have to pronounce on it. The Delegation expressed the hope that bilateral trade negotiations should not undermine some of the policy space provided for in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). It was not asking the impossible from WIPO and underscored its preparedness to work with WIPO and take the Millennium Development Goals of the UN forward, in the context of IP and development. The Delegation concluded by requesting an extension of the mandate of the IIM.

130. The Delegation of Antigua and Barbuda took the floor on behalf of the Caribbean delegates representing Antigua and Barbuda, Belize, Grenada, the Commonwealth of Dominica, Jamaica, St. Vincent and the Grenadines and the Republic of Trinidad and Tobago. The Delegation was of the view that a Development Agenda for WIPO would contribute to the strengthening of the Organization’s already significant contribution to development. It stressed on the word “significant” because it believed that the Organization was contributing to their development efforts at both national and regional levels. The Delegation added that the cooperation agreement was evidence of that. The Delegation further added that at the previous General Assembly, a specific decision had been taken for intersessional intergovernmental meetings to be convened and for a report to be submitted to the General Assembly for consideration. It stated that regrettably, the IIM had not completed its mandate

and so it should be extended to the following Assembly to allow additional time for further discussions among delegations on the various proposals on the table including those, which had not yet been discussed. The Delegation concluded by stating that, it would be premature to end the IIM at that juncture, given the plethora of issues on the table for further discussions and it indicated its support for the recommendation that further meetings of the IIM be convened, reports of which would be submitted to the following General Assembly.

131. The Delegation of Cuba fully supported the statement made by the Delegation of Argentina, on behalf of the “Friends of Development”. The Delegation also stated its support for continuing work on the proposals on the Development Agenda, through the organization of intersessional intergovernmental meetings, with a view to achieving concrete results, in order to implement the development dimension in all the various aspects of the Organization’s work. It added that there was a need to focus the efforts of Member States of the Organization on analyzing the proposals submitted in a very proactive way, so that conclusions could be reached, based on its initial aim. The objective was to include a development dimension in the Organization’s normative activities, through the transfer of technology, technical assistance and other aspects included in the initial proposal. The Delegation concluded by stating that there was a need for an intellectual property system, which would take into account the needs of developing countries and least-developed countries, so as to help to reduce poverty and incorporate intellectual property issues into public health and food policies in a truly effective manner.

132. The Delegation of Cameroon identified themselves with the statement made by the Delegation of Morocco. The Delegation stated that the development dimension of intellectual property was of immense importance to all countries that had also been emphasized by other delegations. The Delegation further added that no concrete conclusions had emerged from the few meetings of the IIM, and, therefore, if the mandate was to be concluded with those few meetings, the *raison d’être* of initiating its mandate would be called to question. The Delegation explained that the IIM had already built a focus on that agenda item and that such a focus should be sustained. The Delegation said that another advantage of using the IIM was that it had the character of an *ad hoc* structure and as such, could be more expeditious with its work compared to a permanent body like the PCIPD. The Delegation reiterated some of the questions, as observed by the Delegation of South Africa and joined the other delegations in advocating the extension of the mandate of the IIM.

133. The Delegation of Egypt associated itself with the statements made under this agenda item by Morocco, on behalf of the African Group, and Argentina, on behalf of the “Friends of Development”. It explained that due to their strong belief that the international IP system should be conducted in a manner supportive of development, it had joined the call for their Organization to play a more innovative development-oriented role. In that respect, the Delegation co-sponsored the Argentina-Brazil proposal for establishing a Development Agenda for WIPO, which had initiated a vital process, aimed at stimulating, enriching and integrating the developmental aspect of IP in all activities of WIPO. The Delegation added that it had actively participated in the formulation of the African Group proposal on the Development Agenda, which clearly reflected the state which the Group had, in such a crucial endeavor and further emphasized its determination to translate that debate into concrete and wide-ranging results. The Delegation stated that it viewed the outcome of the IIM, as a positive step towards deepening its understanding of the need to effectively integrate development in WIPO. However, it believed that the three IIMs had been unable in the available time, to fully examine and address the substantive elements in all the proposals submitted by Member States. It added that there had been a clear consensus at the previous

meeting of the IIM of the necessity to continue those discussions and that similar to a wide majority of the Member States, it was calling for the renewal of the mandate of the IIM. The Delegation underscored its conviction that continuing those discussions in the IIM was the right way forward. At the same time, it saw it important to underscore that its objective was not to convert the IIM into a permanent body, since that would simply undermine the objectives of the IIM in establishing a Development Agenda for WIPO to be integrated and implemented through all the bodies and committees of WIPO. The Delegation reminded the Member States of what had been voiced by the leaders of the Group of 77 on the need for the Development Agenda to be fully integrated in WIPO activities and indicated that such a call confirmed that the reform of the international IP system had evidently become an increasingly important issue on the international agenda. The Delegation concluded by stating that if the IIM process were renewed and approached in a more focused and productive manner, with a view to reaching concrete achievements, WIPO would be sending a much needed message to the majority of the international community, that their concerns and ambitions were being appropriately and constructively addressed.

134. The Delegation of Paraguay emphasized the importance it attached to the Development Agenda, as one of the more sensitive issues. The Delegation stated that future developments were connected to analyzing those issues and assessing what measures could be taken to help developing countries ensure that intellectual property became an increasingly genuine tool for their prosperity and economic development. The Delegation expressed its pleasure in having the opportunity to chair the intergovernmental intersessional meetings that were set up by the previous General Assembly to address the issue of the Development Agenda and, commended the sense of genuine interest and commitment of delegations in moving forward on substantive issues, in spite of the time that was required for procedural matters. The Delegation believed that besides the importance of that issue, the mechanism chosen by the previous year's Assembly was appropriate and the aim was to address the debate in the terms set up by that General Assembly. It added that the number of proposals that were submitted also backed that judgement and, therefore, the most logical, appropriate and simple thing to do was to request a similar number of meetings from the General Assembly. The Delegation concluded by urging Member States of the need to: (i) consider the appropriateness of moving forward on all of those issues already tabled; (ii) address the various proposals that had not yet been addressed; and (iii) hold further intergovernmental intersectional meetings so as to be able to move forward on those issues, and propose tangible solutions for the following General Assembly.

135. The Delegation of Algeria supported the statement made on behalf of the African Group. It stated that the United Nations system was in the process of comprehensive reforms and that that was going on in various bodies. The Delegation recalled that world leaders had accepted that development had to be addressed holistically and that, as a specialized agency of the United Nations, WIPO had to be involved in that so as to achieve the Millennium Development Goals. It stressed that intellectual property was a key aspect of the Development Agenda. The Delegation recalled that the day before the Delegation of China had pointed out the benefits of intellectual property for development, and concluded that what was true in China could also be true in any of their countries. The Delegation underlined that at that stage of the debate the question that they had to ask was not whether a function led to the creation of a particular body or vice versa, but first of all to identify objectives which would be included in a WIPO action plan for development. It thought that there was an agreement on that and reminded the delegations that a number of proposals were already on the table and that they needed to think about implementing that plan and to follow it up. The Delegation believed that, at that stage, they needed to study all the proposals, including the

African proposal which Algeria had itself initiated. In the opinion of the Delegation, as the Intergovernmental Intersessional Meetings, the IIM, set up by the General Assembly, had not yet completed their mission, they should not be stopped in the middle of their mandate.

136. The Delegation of Jordan thanked the International Bureau and the Director General of the WIPO, Dr. Kamil Idris, for organizing those meetings and for the role undertaken by WIPO, in following up the various activities of that Organization. It conveyed a special word of thanks to the Arab Bureau for the efforts and program established for that region. In continuation, the Delegation informed that Jordan had joined the group of countries sponsoring the proposal submitted by Bahrain, which stressed the development dimension in the activities of the Organization. It underlined that in their view, the proposal represented a balanced program of action and it reaffirmed the importance of other proposals submitted as worthy of attention and interest. Finally, the Delegation expressed sincere hope that they should be able to reach a consensus regarding the important elements in those proposals and an agreement as to the appropriate forum to follow up those discussions. It stressed that the main point for them was to follow up those points objectively and concretely.

137. The Delegation of India stated that it supported the mechanism of IIM created by the 2004 General Assembly to discuss and deliberate on development related issues. The three IIM meetings, held so far, had provided a useful forum to both developing countries and developed countries, to voice their concerns on issues of development; the different approaches and options available to turn IPRs into instruments of development; and to emphasize the need to make WIPO's role and activities more development focused. It added that the tasks to be completed included analyzing the merits of the various options available and finalizing a concrete plan of action to achieve a set of defined objectives of development. Therefore, it reiterated that the opportunity for a dialog on development, offered by the previous General Assembly, should not be discontinued by that Assembly. The Delegation stated that the suggestion to move the Development Agenda to one forum, that was the Permanent Committee on Cooperation for Development Related to Intellectual Property (PCIPD) would make the scope of that interaction restrictive. It was of the opinion that enlarging the scope of that body to include development issues would not serve the purpose satisfactorily, as that forum was primarily concerned with technical cooperation and development assistance. The Delegation proposed that they should continue with the IIMs, clarifying that it did not in any sense of the term, suggest that they should micromanage the affairs of WIPO or in any way hamper the process of reforms or any other goal pursued by WIPO. It emphasized that there was a need to give a development orientation to the intentions and objectives before them, including norm-setting activities. The Delegation said that the IIM process should be continued without linking it to seeking any other commitment from each other. It added that it was imperative to do so as otherwise, they might end up sending wrong signals to the world community at large, that they were more interested in affording protection to individual efforts and creations, rather than promoting public interest and growth for all, as was also underscored by the Heads of States and Governments who had met in Doha, in June 2005, and was included in the eight UN Millennium Development Goals that required the international community to squarely meet the challenges of development, by 2015.

138. The Delegation of Thailand wished to echo the view of many other delegations and to also express its own view that the mainstreaming of development dimension into all activities of WIPO was a key priority for the Organization. It hoped to see an international IP system that was well balanced and sensitive to the needs of developing countries. It stressed that in that regard, Thailand associated itself with the statement made by Iran on behalf of the Asian

Group, and that there was a need for further in-depth discussion of the different proposals on Development Agenda in the IIM process. The Delegation underlined that Thailand supported the proposal to extend the mandate of the IIM for 2006.

139. The Delegation of Colombia conveyed its thanks to the distinguished Ambassador of Paraguay for all his efforts and dedication over a year in the Meetings of the IIM. It stated that the process of the IIM had been a useful intergovernmental exercise, a space for thought and exchange, so as to strengthen WIPO's role and that of intellectual property in the development of its Member States. It said that the interesting discussions on development and IP during that forum had affirmed the commitment of Member States, a compromise which had led to more than 27 constructive proposals from different regions and countries. It noted that at the same time, during that process, there had been a growing interest from all sectors – civil society, the private sector and others were interested in strengthening WIPO's role in IP. It also reminded that several countries had said that they were going to submit new proposals. The Delegation informed that in the case of Colombia, they were in a process of drafting a new proposal, which to its opinion would contribute actively to the discussions. It said that in the context of the IIM, there had been a partial discussion of a group of proposals and that other proposals of equal importance had not been discussed due to lack of time. It concluded that due to the foregoing, it was quite clear that they needed to continue. The Delegation explained that in other words, they needed to set up a mechanism that would make it possible to conclude the discussions and cover all the proposals. The Delegation noted that, due to the foregoing, it was quite clear that there was a need to continue. In other words, there was need to set up a mechanism that would make it possible to conclude the discussions and cover all the proposals. In that regard, a new mandate from the Assembly should have two main and clear objectives. Firstly, to continue discussing and analyzing the proposals submitted and all the new ones that would come along, with a view to building consensus and agreement on each of the proposals. Secondly, drafting recommendations and submitting them to the 2006 Assemblies for consideration and decisions on each of the recommendations. In that respect, the process would be completed and would enable various actions and programs to be undertaken to complement WIPO's role in development.

140. The Delegation of Afghanistan said that intellectual property was an essential part of the economic development process, and the development dimension was part and parcel of the intellectual property system. It acknowledged that promotion of technology, innovation and creativity itself, had been underlying the development process of many developed countries in the past, and the industrial policy of many countries. There existed a stock of knowledge on those issues. The Delegation emphasized the need to identify issues that were already conceptualized and possible implications that had been analyzed. In that connection, the Delegation supported the work on the Development Agenda in the Organization. However, it felt that the work should not be an addition or a burden to the current work, but should transcend all categories of IP, be it patents, copyrights, designs, etc. In other words, the development dimension was underlying all the intellectual property categories. The Delegation was of the view that IP could address the development issue taking into account development technological stages of countries. It believed that WIPO was the place where these discussions should take place and was happy to see that there were already mechanisms such as the IIM, so that the discussions could achieve certain results. The Delegation felt that the work of IIM should continue and IIM should fix certain targets and results to be reached to see how IP could better and concretely address developing issues, in order to be in tune with the current discussion on development issues in the UN system, like the General Assembly. Finally, the Delegation referred to statements made earlier by some of its colleagues and expressed its support to the statement made by Argentina.

141. The Delegation of Peru indicated that it supported what Argentina had said on behalf of the “Friends of Development”, and Mexico on behalf of GRULAC. It observed that the difference between developed and developing countries on IP was immense. Exports from the developed countries had a high IP component value and therefore their economies and citizens benefited significantly when the protection of those rights was broadened. The Delegation stressed that the reverse happened with the developing countries, and added that the countries that were less developed technologically, were trying to find differential treatment, that would enable them to better develop their innovations. The Delegation further pointed out that developing countries required recognition of intellectual property in areas where there were resources, or where there was production of things, such as bio-diversity, genetic resources, folklore and handicrafts. It pointed out that dozens of other industries needed the consideration and preferential action by the Assemblies, and not in just areas like broadcasting, webcasting, software, where developed countries led that was why Peru was in favor of the Development Agenda set out the year before and on which so many developing countries had agreed. As regards the appropriate forum in which to seek consensus, Peru believed that the IIM, established in 2004 should continue its work. The Delegation said there were other working groups that the Assemblies had extended. It argued that the gap between developed and developing countries was so great that the impatience that some people might show at the lack of concrete results meant that it should not be withdrawn or given to other committees to deal with. The IIM was doing good work and would complete very well the mandate given to it by the Assemblies.

142. The Delegation of Sudan said that the sessions of the IIM that had taken place the previous year had aimed precisely at discussing WIPO’s development agenda; proposals had been put forward by Argentina and countries among the “Friends of Development”. It was clear, the Delegation added, that the growing number of “Friends of Development” was demonstrated by the interest shown in participating in the development process. According to the Delegation this was a great challenge facing the international community at the present and in the future. On its part, the United Nations had included development among its goals for the present millennium and the one to come and the international community had taken up that challenge. As regards intellectual property, it was clear that research and technology contributed to the well being of humanity. However, there was a great difference between countries of the North and countries of the South in technological progress, despite efforts to bridge that divide. The Delegation expressed support for the proposals to extend the mandate of the IIM and those made by the Delegation of Morocco on behalf of the African Group so that all the proposals that had not been discussed be considered.

143. The Delegation of Uruguay supported the points made by the Ambassador of Argentina, on behalf of the “Friends of Development.” It considered that the protection of intellectual property carried out important functions in scientific and technological development, and also development of trade and the competition strategy of businesses. However, that protection should not be to the detriment of a balance between the interests of the producers of knowledge and the interests of the users of knowledge. The Delegation thought that, to achieve that balance, it was necessary to have a development dimension in all WIPO’s activities, especially in norm-setting. These should be translated into a true transfer of technology in the trade of goods and services so that the economic growth and the subsequent reduction of poverty did happen in Member States. Referring to the intervention of the Delegation of Chile the day before, the Delegation said that Uruguay considered it necessary to promote among other mechanisms the defense of the public domain and other areas as commitments, undertaken by countries under the MDGs. It believed that it was appropriate to

renew the mandate of the IIM for the next year, 2006 so that the IIM made concrete recommendations to the next Assemblies. The Delegation considered that the development dimension was of sufficient priority to all members and was cross cutting throughout the Organization, and should therefore be considered as a self-standing or dedicated meeting.

144. The Delegation of the Islamic Republic of Iran associated itself with the statements of the “Friends of Development” and the Asian Group. It focused its intervention on the key fundamental questions which set the agenda for national positions: firstly, the reason why it supported the IP Development Agenda; secondly, what it meant by IP Development Agenda; and, thirdly, what should be done. The Delegation underscored that development was an integral part of all United Nations activities for the achievement of international peace and security. Without development, there would be no prosperity, tranquillity and stability and that explained the global consensus on the millennium development goals. When one spoke about development, the specific circumstances of developing countries that constituted the majority of UN membership ought to be brought into the picture. The Delegation said that that necessitated the consideration of policy and space in addressing the specific conditions of those countries in crafting all international economic agendas, including intellectual property. Bringing the development spirit in IP related issues went beyond technical assistance and related to areas of norm-setting and the allocation of resources and planning at all levels. Development was a cross cutting phenomenon and it encompassed all areas of international governance. In order to fulfill the aspiration of Member States on IP, the Delegation said that there was a need to be more friendly to the concept of development and to create a better environment in that regard. In that respect, the Delegation appreciated Dr. Kamil Idris’s opening remarks made the previous day, which were positive to the concept of development. Furthermore, specific attention should be paid to the elimination and elaboration of the keen relationship between development and intellectual property through a process of healthy debates and interaction in the Organization. For that reason, the Delegation strongly supported the extension of the IIM to 2006.

145. The Chair thanked all the Delegations that had spoken, for their contribution on that important item and for their very clear views and positions. He then made a short summary on where the discussions stood on that particular issue. The Chair noted that it was very clear that every Delegation that had spoken had emphasized the importance of the development issue, the importance of continuing the discussion of development and all its aspects in WIPO. He added that there was also a very clear consensus that there was a need to discuss and continue discussing the proposals which had been made in the IIM. There was also a consensus that some proposals had not even been discussed, and at least two should be discussed, and in fact the objective of the meeting should be to try and reach some kind of outcome on some of these proposals. The Chair noted that there was the issue of where to proceed. There was no doubt that it should be in WIPO, but the difference was in terms of institution or body, which should consider the matter in WIPO. On that particular point, a wide majority of delegations believed that the IIM should be extended in order to complete its work of considering the various proposals. Of course, the Chair noted that there was, at the same time, an alternative proposal to put it into the PCIPD, and that was the only place where the Chair detected at least at that stage some difference of opinion.

146. Considering the need to make progress in integrating the development dimension in WIPO broadly so that concrete and practical results can be achieved in the most timely and efficient manner, the General Assembly hereby decides:

- To constitute a Provisional Committee to take forward the IIM process to accelerate and complete the discussions on proposals relating to a WIPO Development Agenda and report with any recommendations to the General Assembly at its September 2006 session.
- In the interim, and without prejudice to the provision of technical assistance, the PCIPD will cease to exist.
- The work of the Provisional Committee shall not prejudice the activities of the other WIPO bodies in discussing all matters relevant to development.
- The Provisional Committee shall have two one-week sessions, and the deadline for submission of new proposals shall be the first day of the first session of the Committee.

ITEM 14 OF THE CONSOLIDATED AGENDA:

MATTERS CONCERNING THE ESTABLISHMENT OF A NEW  
WORK PLAN FOR THE STANDING COMMITTEE ON THE  
LAW OF PATENTS IN RESPECT OF THE DRAFT  
SUBSTANTIVE PATENT LAW TREATY (SPLT)

147. Discussions were based on document WO/GA/32/9.

148. The Delegation of Switzerland, speaking on behalf of Group B, stated that it was in the common interest of WIPO Member States and their nationals, to improve patent quality, to simplify the procedures, to reduce the costs for users, and to reduce duplication of work by patent offices. In order to reach those objectives, the Delegation said that it was necessary to establish more consistent and common examination standards among WIPO Members. In that light, Group B strongly urged the General Assembly to bring patent discussions back on track by approving a limited workplan for the Standing Committee on the Law of Patents (SCP) that supported the common interest of all Members.

149. The Delegation of Argentina, speaking on behalf of Bolivia, Brazil, Cuba, the Dominican Republic, Ecuador, Egypt, the Islamic Republic of Iran, Kenya, Peru, Sierra Leone, South Africa, the United Republic of Tanzania, Venezuela and its own country, referred to document WO/GA/32/9 which drew the Assembly's attention to the Summary of the Chair of the last session of the SCP. The Delegation said that the last meeting of the SCP had considered the proposals supported by some participants at informal consultations, which the WIPO Secretariat had organized in Casablanca in February 2005, to narrowly focus the discussions on the Substantive Patent Law Treaty (SPLT) in the SCP on only four patent law provisions of interest for some members (prior art, grace period, novelty and inventive step), whilst leaving aside or deferring to other fora the issues of interest to developing and least-developed countries (LDCs), such as public interest, flexibilities, transfer of technology,

the curbing of anti-competitive practices and the disclosure of origin of genetic resources in patent applications. It expressed the view that the discussions at the eleventh session of the SCP had made it very clear that there had been no consensus to continue the work in the Committee on the basis of that proposal to fragment the discussion on the SPLT, as foreseen in the final statement issued by the Casablanca consultations. Although the proposal had been supported by developed countries, the Delegation said that a significant number of developing countries had not agreed with that approach and had reaffirmed their position that the discussions in the SCP should cover the broader range of issues of interest also to developing countries. The Delegation noted that the eleventh session of the SCP had marked the third time WIPO Members States had considered and rejected the proposal to concentrate the SPLT negotiations exclusively on the four above-mentioned provisions, as the tenth session of the SCP in May 2004 and the last General Assembly had also considered the proposal which had originally been tabled by the Delegations of Japan and the United States of America. The Delegation recalled that, on both occasions, the proposal to concentrate the discussions of the SPLT on the four provisions of interest to the developed countries had not been accepted by a large number of WIPO Member States. Having failed to obtain the acceptance of the WIPO membership on three separate occasions, it was clear for the Delegation that the proposal could not form an appropriate basis for the future work of the SCP. The Delegation said that it took discussions on the workplan of the SCP and the SPLT negotiations very seriously, since patent law was a very sensitive area of intellectual property law which had significant cross-cutting implications for many different areas of public policy. In its view, new norms seeking to establish more stringent international standards of patent protection, as some would like to see the SPLT do, might have a serious impact in fields as diverse as public health, environment and nutrition. The public health implications of patent law, in particular, were brought to the attention of the international community through the adoption of the Doha Declaration on the TRIPS Agreement and Public Health at the fourth Ministerial Conference of the World Trade Organization (WTO). The Delegation recalled that that crucial declaration acknowledged that international norms on patent protection should not stand in the way of the pursuit of public health goals by developing countries and LDCs. The Doha Declaration, therefore, encouraged all countries to make use, to the full, of the flexibilities of the TRIPS Agreement. The Delegation further recalled that, more recently, developing countries and civil society had made an urgent call for the establishment of a Development Agenda for WIPO. It stressed that, in the light of such call, all WIPO subsidiary bodies, particularly those engaged in norm-setting, must properly take into account the “development dimension” in the pursuit of their work. In this regard, the Delegation said that the central concern of the Development Agenda was the need to ensure that norm-setting in WIPO was respectful of, and did not run counter to, the policy space of developing countries and LDCs, i.e., current norm-setting should safeguard the public interest flexibilities that existed in current international treaties, for the pursuit of crucial public policy goals. According to the Delegation, in the field of patent law, this meant that both pre-grant and post-grant flexibilities should be safeguarded, all of which might have serious public interest implications. The Delegation believed that the proposal to narrowly focus the discussions on the SPLT on only four provisions, while leaving aside or deferring to other fora the issues and proposals of interest to developing countries and LDCs, was not consistent with the “development dimension”. The Delegation further noted that, although developing and least-developed countries had not been “*demandeurs*” of negotiations on the substantive harmonization of the law of patents, they had shown flexibility and had participated constructively in the process of negotiation by tabling suggestions and concrete proposals in past sessions of the SCP. The Delegation was of the view that the SPLT that limited itself to the four provisions set out in the Casablanca statement and supported by the developed countries would effectively entail considerable loss of the flexibility that developing countries

enjoyed for the pursuit of broader national policy goals. The Delegation stated that the determination of the elements of a work program for the SCP on this matter could not be approached as a merely procedural exercise, since the four provisions singled out by the Casablanca statement, as well as the proposal tabled by the Delegations of Japan and the United States of America at the last General Assembly, as issues that should be dealt with in an accelerated manner in the SCP, involved core aspects of the patent regime relating to the conditions of patentability. Currently, under Article 27 of the TRIPS Agreement, countries enjoyed flexibility to establish, at the national level, the substantive aspects of those patentability conditions in their domestic legislation. The Delegation therefore considered that the negotiation of a treaty as important as the SPLT could not leave aside aspects of fundamental importance for developing countries. The Delegation stated that the fragmented approach to negotiations, as suggested in the Casablanca statement and the proposal of the Delegations of Japan and the United States of America, would in fact not allow all Member States to make proposals in negotiations on issues that they considered being relevant, which would be a most undesirable departure from the best practices of multilateral diplomacy. In order to strike a balance between the rigidities that would be created in the international intellectual property system by demands on upward harmonization of national patent laws, on the one hand, and the safeguarding of existing flexibilities and national policy space, on the other, the Delegation considered that negotiations on the SPLT should take on board issues of concern to all Members as a "single undertaking". The Delegation expressed, once again, its concern about the manner in which the informal consultations requested by the last General Assembly were conducted. In its view, in Casablanca, the group of participants was not balanced and not representative of the full range of positions on the subjects addressed, organizations that did not enjoy full WIPO Membership were included and individuals not officially representing Member States were invited to express views in their own personal capacity, which ultimately led several Member States to clarify that they did not associate themselves with the outcome of those consultations. The Delegation stressed the importance of not repeating such situations in the future. The Delegation clarified that what developing countries had sought in the SCP was essentially a balanced and inclusive approach to negotiations, whereby the interests, concerns and proposals by all parties to the negotiations were duly considered. In that regard, the Delegation stated that a new treaty on patent law that added new obligations without taking into account their potential development impact, and without appropriate provisions to safeguard flexibilities for the pursuit of public policy goals, would be at odds with the development objectives that the international community had enshrined in international fora, all of which were relevant to the realm of intellectual property. Given the results of the eleventh session of the SCP, the Delegation was of the view that the proposal contained in the Casablanca statement, which had also been tabled by the two developed countries in the last General Assembly, should be left behind. Since the proposal had been rejected by the Membership of WIPO on the three previous occasions on which it had been discussed, including the last General Assembly, the Delegation considered that there was no reason why it should be taken up once again and that the Assembly should make better use of its time in discussing the future workplan of the SCP. The Delegation remained prepared to cooperate and open to discuss a balanced and inclusive work program for the SCP based on a systematic and inclusive discussion of the elements or items relevant to all delegations. The Delegation believed that the SCP should address all issues on an equal footing and with the same level of priority. It reaffirmed its commitment to ensuring that the negotiations on the SPLT would be able to proceed in a balanced and inclusive manner.

150. The Delegation of Morocco stressed the importance of having a multilateral framework within the organization which represented the appropriate forum within which to discuss issues related to intellectual property, particularly patents, traditional knowledge and genetic

resources. The Delegation stressed its specific interest in the harmonization of the substantive patent law with a view to improving the quality of patents, reducing the workload of patent offices and drafting a more accessible and less expensive system. It expressed its belief in the use of the patent system in the most favorable and fair conditions which were best suited to all users, particularly the least-developed and developing countries. The Delegation felt that harmonization of patent laws should promote the economic and social development of all countries so that people worldwide could see living conditions improve. It believed that if those objectives were kept in mind, all obstacles could be overcome and that Member States should continue to work relentlessly in order to find balanced responses which would represent an acceptable compromise for all involved. The Delegation was convinced that multilateral work, very specific, targeted and dynamic work, in that area should be undertaken in the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), focusing particularly on the international dimension of the issue. It recalled that the IGC had made a lot of progress in the area of the protection of folklore and traditional knowledge. The Delegation highlighted the importance of drawing up a WIPO Development Agenda, as had been discussed at the last meeting, which would translate the importance of the development dimension, which was something absolutely vital for the international community and should be a priority for developing countries. This was something which would contribute further to promoting the intellectual property system as a tool for economic, cultural and social development. The Delegation hoped for a very constructive approach from other delegations, to enable the meeting to reach a work program which met the expectations of all the stakeholders in that general context of using intellectual property as a tool for economic, social and cultural development for all involved.

151. The Delegation of the United Kingdom, speaking on behalf of the European Community (EC), its 25 Member States and the Acceding States of Bulgaria and Romania, expressed its concern about the outcome of the last meeting of the SCP. The EC remained committed to continuing the development of a viable international patent system for the benefit of all stakeholders. The Delegation expressed its firm belief that full participation of all WIPO Member States in the elaboration of that system could only serve to enhance the process and ensure that all could reap the greatest benefit from the resulting system. The EC still believed that the best way forward to make progress in that area was to concentrate efforts on a first set of issues and it was keen to move forward on the basis of a mutually agreeable, focused and defined work program. The Delegation said that it noted the various proposals made so far, some of which could meet those requirements. In that light, the EC remained optimistic that agreement could be reached and emphasized its commitment to working constructively towards a positive outcome. The Delegation also expressed its support for the statement made by Group B.

152. The Delegation of China, referring to the future work of the SCP and the question of the scope of the SPLT, stated that in recent years the international harmonization of substantive patent law has been given great importance by countries and developing countries in particular. In order to maintain their own interest and to promote their development, many developing countries advocated to include those issues into the framework of the SPLT which were of concern to developing countries. Those issues included dissemination and application of new technologies and prevention of abusing patent rights, the disclosure of origin of genetic resources and of relevant traditional knowledge, as well as safeguarding the public interest. The Delegation stated that China as a developing country understood and therefore supported what developing countries proposed. It recalled that the SCP had started to draft the SPLT at its fifth session in May 2001, and that there had been six sessions of that

Committee thus far. It said that in the last four years the SCP's Secretariat and all participating countries and organizations had accomplished tremendously hard work for the proposed treaty and that China wished to express its appreciation for that. It noted that, due to the big differences and the lack of substantive progress made in the drafting work, some countries had suggested to narrow down the scope of the application of the treaty in order to obtain progress in the drafting work, and that China could understand such a proposal. The Delegation believed that, in order to advance the SPLT, there were two crucial issues that needed to be resolved. First, clarification was needed on what the scope of the SPLT should be. The Delegation believed that in addition to the four issues that were suggested by some countries, i.e., the definition of prior art, novelty, grace period and inventive step, the SPLT should also contain other issues that were of concern to developing countries. Among those issues, the Delegation paid particular attention to the question of disclosure of the origin of genetic resources in patent applications. The Delegation stated that in the draft SPLT, at least this issue should be included. A clear provision in the SPLT on the disclosure of origin of genetic resources would help to better realize the well-known three principles of the Convention on Biological Diversity (CBD). To do so was not only in the interest of developing countries, but also in the interest of developed countries as well. At present, some countries and regions already had individual legislative systems, but the differences found in various national standards would not be conducive to the harmonization of patent laws. Therefore, the Delegation thought that it was necessary to have international rules on this issue as soon as possible. The next question that needed to be clarified was in which way the issues included in the SPLT should be adopted. The Delegation believed that, once the framework and the scope of the SPLT were identified, all the issues should be considered and discussed within the SCP, formulating a preliminary text that was generally accepted by all parties. This text would then be submitted as a package to a Diplomatic Conference for adoption. The Delegation did not support a scenario where the SCP's work would focus merely on one part of issues. The Delegation recalled that it had stated its position repeatedly at the tenth and eleventh sessions of the SCP and during the consultations, and it gave assurances of an active and cooperative attitude and of its full support to the work of the Standing Committee and the Chairman's work with a view to obtaining substantive progress in drafting the SPLT in the near future.

153. The Delegation of the Czech Republic, speaking on behalf of the Group of Central European and Baltic States, expressed great interest in continuing the work of the SCP. The delegations it represented were convinced that the results of that work would be to the benefit of patent protection systems both in developed and developing countries. From that point of view, the Delegation stated its readiness to support any initiative, approaches and constructive ideas, which could lead to substantial progress in the near future. In that respect, the Delegation supported the statements made by Group B and the Delegation of the United Kingdom on behalf of the European Community, its Member States and the Acceding States, Bulgaria and Romania.

154. The Delegation of the United States of America expressed its support for the statement made on behalf of Group B. It observed that the continuing disagreement on the issue of the SCP workplan reinforced in its mind the urgent need for the adoption of a sensible plan for consideration of the SPLT. It stated that limiting the scope of the SPLT to discussions regarding the definition of prior art, grace period, novelty and inventive step provided the best opportunity for achieving near-term agreement of core prior art related principles of patent law and thereby provided the best opportunity for meaningful results. Agreement on those issues would promote higher patent quality, facilitate work sharing and, more importantly, would allow innovators, in particular individuals and small and medium sized enterprises, to

benefit from their own innovation in a way that was not possible due to existing differences in laws throughout the world. The Delegation expressed its firm belief that continuing with the previous model of discussion, as reflected in the statements of some delegations, of discussing the previous entire draft treaty documents as well as further additional issues was unmanageable, inefficient and unworkable and did not provide a viable manner in which to proceed. The Delegation recalled that there was a successful precedent at WIPO for breaking larger negotiations into smaller, more manageable talks. Such a process had been used to break off more controversial issues from the negotiations on formalities of patent applications. That had resulted in the successful conclusion of the Patent Law Treaty in 2000 which had just entered into force and which was a major achievement of WIPO members. The Delegation strongly urged the General Assembly to consider its comments to limit the discussions in the SCP to a sensible workplan consistent with the comments made.

155. The Delegation of Japan recalled that, although the SCP had been discussing the SPLT since the year 2000, it was far from reaching an agreement. The Delegation therefore considered that focusing on the harmonization of the first package would permit to achieve earlier harmonization of patent law. The Delegation explained that, as the first package, it had chosen four items related to prior art, which were most fundamental components of the patent system, irrespective of the technical field or of a country's stage of development. In its view, those items were fundamental to the patent system, and their harmonization was significant and would bring benefits to all patent offices. The Delegation emphasized that it did not regard those four items as the only or the last items that should be harmonized. Rather, the Delegation considered those four items to be the first items to be harmonized. The Delegation was of the view that, if partial harmonization could be achieved, easier discussions on harmonization of the other items in the context of patent law could be expected. Therefore, the Delegation was of the view that the SCP should consider the first package of four issues.

156. The Delegation of Egypt, supporting the statement made by the Delegation of Argentina on behalf of the "Friends of Development", recalled that, since the beginning of the SPLT negotiations, it had advocated the necessity of carrying out the negotiations in a balanced and inclusive manner. The Delegation stated that placing the SPLT negotiation in a wider context was imperative, as its outcome would have a profound impact on pursuing public policy objectives, such as the protection of public health, biodiversity and nutrition. No consensus being achieved at the last session of the SCP on the statement adopted at the end of informal consultations held among a group of participants in Casablanca in which a new work program had been suggested for the SCP, the Delegation stated that the Member States must therefore redouble their efforts with the utmost transparency and inclusiveness to overcome the current impasse. The importance that the Delegation attached to the work undertaken by WIPO in general, and the SPLT negotiations in particular, necessitated that all Member States worked constructively towards building confidence in the intellectual property system. The Delegation considered that negotiations should strive to include the interest and concerns of all stakeholders in order to maintain a balanced outcome of all intellectual property norm-setting activities and to enable the intellectual property system to be adequately responsive to public policy concerns. The Delegation reiterated its hope that any proposed work program would focus on issues of common interest to all delegations and stakeholders so as to address the legitimate concerns of the overwhelming majority of members.

157. The Delegation of Algeria stated that, with regard to its importance, negotiations on a treaty relating to the harmonization of the law of patents needed to be carried out in a balanced way. This meant that the interests of all users, and in particular those of the

developing countries, needed to be taken into account. The Delegation considered that the proposals in the Casablanca statement did not show any progress compared to the discussions at the last meeting of the WIPO Assemblies. The Delegation reiterated its position by expressing its conviction that the negotiations should cover all issues.

158. The Delegation of South Africa, supporting the statement made by the Delegation of Argentina stated that, being a member of the CBD, its approach was informed by the Decision of the Conference of Parties at its seventh meeting (COP 7). In the Delegation's view, if one adopted the approach following the discussion of the IGC and its work, one was forced to come to the conclusion that the patent system could no longer continue to ignore issues related to genetic, biological and biotechnological resources. The Delegation said that all United Nations Agencies and members of the CBD should automatically follow that approach. Noting that WIPO was a UN Agency and all treaties relating to the registration of patents belonged to WIPO, the Delegation considered that adoption of such an approach would at least be supporting the development agenda that should permeate all WIPO treaties or work. The Delegation believed that all Member States should recognize and appreciate that fact. According to the Delegation, WIPO should, as an organization of a diverse community, start to produce instruments that were for the benefit and development of all Member States and produce harmonized instruments that would be catering for the interest of all its members. The Delegation stated that developing countries would support the harmonization of patent laws in the SPLT if it aimed to protect genetic, biological, biotechnological and associated knowledge, and if punitive measures applied to any act of bio-piracy and patenting of indigenous knowledge. As South Africa was just on the verge of passing a legislation to deal with those issues, the Delegation encouraged other countries to follow suit and to start incorporating into national legislation the elements which might lead to the development of regional and international binding instruments or guidelines.

159. The Delegation of Trinidad and Tobago commended WIPO on the work of the SCP and also the tenacity and flexibility of the participants. The Delegation stated that it had followed the progress with interest and wished to offer the encouragement that the active debate indicated the importance of achieving an equitable outcome to all parties in all and not just some of the areas under debate. The Delegation considered that the discussions in the SCP represented the type of debate and advancement in intellectual property that Trinidad and Tobago was very interested in, as its Government and its entrepreneurs recognized the increasing importance of a unified patent system specially to those seeking patent protection in multiple foreign markets. The Delegation was convinced that those realizations were shared by many delegates. Recognizing that the PCT could facilitate filing abroad, the Delegation said that what it was looking for was that the SPLT would facilitate the prosecution of those patents in foreign markets. The Delegation believed that this could be achieved while preserving the TRIPS flexibilities that Member States became accustomed to, and that harmonization must not necessarily be accompanied by an erosion of those flexibilities that Member States were enjoying already. According to the Delegation, the threats to high patent quality came from beyond the core areas and, increasingly, they involved areas of traditional knowledge and folklore. The Delegation urged work to be continued, but not in a limited sense, as all had particular industrial and creative areas that presently were important to them. The Delegation also stated that areas of development that could become significant in the future should not be overlooked.

160. The Delegation of Venezuela, supporting the group of "Friends of Development", believed that it was not appropriate to press on with the negotiations with a view to harmonization of patent law. The Delegation felt that a treaty of that nature was a risk to

sovereignty and that to pursue with this type of treaties could provoke an unnecessary conflict based on the existing cultural, religious, historical differences. The Delegation stated that it did not believe that that was appropriate for the institutional health of the Organization.

161. The Delegation of Brazil fully supported the statement made by Argentina on behalf of the group of "Friends of Development". It said that agenda item 14 contained both a matter of substance and of procedure. Procedure had not been adequate in setting up suggestions to help finding a solution to the impasse that had been reached in the negotiating process. The Delegation recalled that it had been party to the meeting in Casablanca and that it had dissociated itself from the process because it felt it completely outside the normal procedures of a multilateral intergovernmental procedure of taking decisions and helping to find a solution to the problems. The Delegation said that Brazil had been supporting the idea of the harmonization process in spite of a number of shortcomings, and that it was afraid that harmonization was essentially a euphemism that would give ground to a different type of standardization to levels that were not fully accepted. The Delegation stated that it also believed that harmonization was to a certain extent in opposition to the idea that it fully shared, namely, that intellectual property systems had to be very much aligned with the national development goals and national development strategies and to the stage of technical and industrial capacity of each country. The Delegation noted that it nevertheless pursued with the idea of harmonization because it did believe that there were some important achievements to be made at the harmonization level. It stated its understanding that that had to be a very complete operation not limited to a number of items where harmonization would be a euphemism for something else.

162. The Delegation of the Islamic Republic of Iran associated itself with the statement of the Group of "Friends of Development". It stated that from the very beginning, developing countries had started negotiations on SPLT with an inclusive approach to examine the concerns of all members. The Delegation recalled that, at the tenth session of the SCP, developing countries had urged the continuation of the existing process and the review of all Articles of the draft text. According to the Delegation, the co-sponsors of the proposal on "four patent law provisions" had emphasized the lack of consensus and had refused to note the concerns of all, and a proposal had been submitted to the last General Assembly in another fashion with the same subject. The Delegation noted that with the flexibility and cooperative approach of developing countries, while clearly recognizing the lack of consensus, it had been decided that the dates of the next SCP should be determined by the Director General following informal consultations that he would undertake. In its view, document WO/GA/32/9 clearly indicated that there had been no consensus on the same proposal that had been previously discussed and rejected in the tenth session of the SCP. The Delegation stated that concerns of developing countries, such as the cross-cutting nature and the significant implication of this process on public policy objectives of developing countries and LDCs, together with the importance of subjects such as public interests, flexibility on existing intellectual property law, the transfer of technology and disclosure of origin of genetic resources in patent applications for developing countries and LDCs, needed to be duly considered. In that context, according to the Delegation, the Doha Declaration on the TRIPS Agreement on Public Health at the Fourth Ministerial Conference of WTO had drawn the attention of the international community to the implications of patent law on public health. The Delegation noted that the demand of all Member States could not be adequately met by the fragmented and selective approach in the process neglecting the concerns of developing countries and LDCs, and that lack of consensus had been reflected in the deliberations three times during the last years.

163. The Delegation of India, with a view to putting the issue of harmonizing patent laws in the right perspective, quoted the following excerpts from an address made by the Honorable Prime Minister of India at the National Science Congress held in New Delhi in January this year: “Indeed, an ideal regime of intellectual property rights has to strike a balance between the private incentives for innovators and the public interest of maximizing access to the fruits of innovations. I do believe that the new regime that we will have will balance the interest of the innovator and that of the society in an optimum way.” According to the Delegation, this would be possible only when all the substantive issues concerning patent law were deliberated upon simultaneously and on an equal footing. In the Delegation’s view, the international norms on patent protection ought to be geared to the overall and ultimate objective of development of all. The impact of harmonization of patent laws in terms of economic growth, employment, investment in research and development, access to technology, domestic innovation process, public health, nutrition and environment were some of the Delegation’s key concerns. Therefore, any effort at harmonizing patent laws at a global level would be incomplete without adequately addressing these issues of concern to all. The Delegation stated that the country it represented was against prioritizing various substantive issues for deliberations and identifying some issues for selective fast-tracking. The Delegation was in favor of taking on board the concerns of the entire WIPO membership in a holistic way, including the important issues of the CBD, such as disclosure of genetic resources, access and benefit-sharing, prior and informed consent, and also traditional knowledge, public interest flexibilities and national policy space, in the proposed SPLT. The modalities for deliberations on these issues may need to be worked out in greater detail, but the dialogue had to move forward in a manner that was acceptable to all Member States, on the basis of consensus and mutual agreement. The Delegation concluded by assuring the Chair of its full support and cooperation in this endeavor.

164. The Delegation of Chile stated that, as it had already said on earlier occasions, it was of the view that the only way of reaching a balanced agreement was to include all aspects relating to patents.

165. Following the informal consultations conducted by the Chair, the General Assembly adopted the following statement:

- (i) An informal open forum would be held in Geneva in the first quarter of 2006 on all issues that have been raised in the draft of the SPLT or that Member States wish to include in the draft SPLT. The forum will be of a duration of three days. The various issues will be discussed with contributions from speakers reflecting a balance of geographical representation and perspectives, and technical expertise. Member States may submit proposals for issues and speakers for the forum until November 15, 2005. The Chair of the WIPO General Assembly will conduct consultations on the draft program with all interested Member States. The Director General will publish the final program in January 2006.
- (ii) A three-day informal session of the SCP will be held soon after in Geneva to agree on a work program for the SCP, taking into account the discussions of the open forum. WIPO will, in the measure possible, provide financial assistance to facilitate the participation of developing countries.

- (iii) An ordinary session of the SCP will be held for a duration of five days to commence work on the work program of the SCP agreed at the informal session of the SCP.
- (iv) The WIPO General Assembly in September 2006 will consider the progress made with a view to determining a work plan for the following year.

ITEM 15 OF THE CONSOLIDATED AGENDA:

MATTERS CONCERNING THE INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE (IGC)

166. Discussions were based on documents WO/GA/32/6 and 7.

167. At the invitation of the Chair, the Secretariat introduced WO/GA/32/6 concerning the recommendation developed by the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ('IGC') for the establishment of a WIPO Voluntary Fund for Accredited Indigenous and Local Communities ('Voluntary Fund') that would assist representatives of such communities to participate in the IGC and related activities. The Secretariat also introduced WO/GA/32/7 concerning the work of the IGC, noting that the decision paragraph invited the General Assembly (i) to take note of the contents of the document and (ii) to consider the recommendation of the IGC that its mandate be extended to the next budgetary biennium to continue its work on traditional knowledge (TK), traditional cultural expressions (TCEs)/folklore and genetic resources. It noted that the standard formula used in subparagraph 33(iii) had been considered by several delegations to be an unnecessary addition to the decision paragraph. Since the essence of the decision requested of the Assembly was in any case contained in subparagraph (ii) of paragraph 33, and if subparagraph (iii) was considered redundant and inappropriate, it was proposed that subparagraph 33(iii) not be considered by the General Assembly.

168. The General Assembly considered and adopted the revised draft proposal for a Voluntary Contribution Fund contained in the Annex of document WO/GA/32/6 as proposed in paragraph 10 of that document.

169. The Delegation of Argentina, speaking on behalf of Argentina, Bolivia, Brazil, Cuba, the Dominican Republic, Ecuador, Egypt, the Islamic Republic of Iran, Kenya, Peru, Sierra Leone, South Africa, Tanzania and Venezuela, recalled that the eighth session of the IGC in June 2005 had agreed to recommend to the General Assembly the renewal of the mandate of the IGC for another two years. It recalled that discussions on the renewal of the mandate of the IGC had not been easy. It stated that many developing countries had been disappointed with the progress of work of the IGC since its establishment. Many developing countries had pointed out in the eighth session that the negotiations of the IGC should be more focused and result-orientated, if its mandate were to be renewed. It had been of concern in particular that a minority of developed countries had voiced opposition to any truly substantive outcome to the IGC's work. At the end of the day, however, all delegations had been able to agree to renew the mandate of the IGC for the next biennium. With such a decision the existing mandate of the IGC would be rolled over for another two years. This mandate stated that the work of the IGC would focus in particular on a consideration of the international dimension and would be

without prejudice to work pursued in other fora. It stressed that this agreed mandate stated that no outcome of the work was excluded, including the possible development of an international instrument or instruments. The mandate for the renewal which had been recommended by the eighth IGC provided proper directions for the work of the IGC in the coming biennium. Regarding the operative suggestion contained in paragraph 33 of WO/GA/32/7, it had heard a just clarification from the Secretariat on that point and wished to point out that it had not considered that paragraph offensive. However, it found that this invitation to provide direction in this regard was unnecessary since the language of the existing mandate of the IGC was deemed to provide sufficient direction to the Committee when it had been adopted in 2003. The Delegation summed up that Argentina, Bolivia, Brazil, Cuba, the Dominican Republic, Ecuador, Egypt, the Islamic Republic of Iran, Kenya, Peru, Sierra Leone, South Africa, Tanzania and Venezuela endorsed the recommendation agreed by the IGC to renew the mandate of the Committee for another two years. It hoped that all other Delegations were in a position to do the same so that the Assembly could move to other items of its agenda.

170. The Delegation of Switzerland, speaking on behalf of Group B, emphasized that the Group welcomed and supported the work undertaken by the IGC. The Group considered that the Committee was making good progress under its current mandate. Group B supported continuation of the work of the IGC under its current mandate. It looked forward to playing an active and constructive part in future discussions in this regard. The Group welcomed the principle of the creation of the Voluntary Fund that would facilitate and encourage the participation of indigenous and local communities and other customary holders or custodians of TK or TCEs in the work of WIPO concerning IP and TK, genetic resources and folklore.

171. The Delegation of the United Kingdom, speaking on behalf of the European Community, its Member States and the Acceding States Bulgaria and Romania, noted the progress which the IGC had made. It believed that further discussions could bring important benefits, particularly through increased participation which would contribute to the Committee's work. The European Community supported calls for wider stakeholder consultations in the area of TCEs and further development of internationally agreed *sui generis* models for the protection of TK. Such future work could further refine draft objectives and principles and bring clarity and legal certainty to proposed definitions and provisions. In the area of genetic resources, the EC had submitted a proposal to the IGC for requirements to disclose the source/origin of genetic resources and associated TK in patent applications. It continued to believe that consideration of this issue should be an important task for the IGC and that such a serious proposal, falling clearly within the existing mandate, was entitled to proper discussion in the body where the proposal had been made. Any renewal should therefore continue to cover all these three issues. It also supported the statement of Group B.

172. The Delegation of Morocco, speaking on behalf of the African Group, expressed the Group's attachment to the ongoing discussions within the IGC and called for the consolidation of the progress made with a view to completion of the process, i.e., to achieve the desired aim of introducing a binding international instrument. It believed that this was the only instrument that could guarantee effective protection against illicit use and misappropriation of TK and expressions of folklore. The Committee had spent a great deal of time and effort on examining the documents on general policy objectives and core principles, and the African Group had made a great contribution. The Group thought that it was wise to take an inclusive and participatory approach so as to further the process and that would necessarily require a renewal of the IGC mandate. It also expressed support for the

participation of local and indigenous communities in the IGC's work and their contribution would certainly consolidate the progress made as well as making the Committee's work more visible and adding to its value. Such participation should take place in coordination with Member States and should take account of the technical nature of the work of the Committee without altering its intergovernmental nature. The African Group thus supported the creation of a voluntary contribution fund to finance the participation of the representatives of local and indigenous communities.

173. The Delegation of the Islamic Republic of Iran, speaking on behalf of the Asian Group, noted the concerns of developing countries in the light of their high expectations of tangible outcomes in the IGC. Despite the great efforts of the Secretariat to prepare documents for concrete discussion and following a long discussion among the Member States, many developing countries were disappointed with the progress because of the opposition of a few countries to move towards tangible results. Against this background, developing countries had showed flexibility during the last session of the IGC and agreed to an extension, even though their repeated concerns for tangible results had been ignored. The Asian Group was of the opinion that all Member States had agreed to an extension of the mandate for the next biennium. With the agreement of the extension of the IGC for the next biennium, the focus on the international dimension should be continued without prejudice the work of other fora. Regarding paragraph 33 of WO/GA/82/7, the Asian Group assumed that the General Assembly would take a decision to endorse the recommendation of the IGC for the renewal of its mandate. The reopening of the decision taken in the eight session of the IGC would set a negative precedent for the work of WIPO. The Group therefore had high expectations that the Assembly would endorse the decision of the IGC.

174. The Delegation of China felt that the IGC was in charge of difficult and important work and wanted to continue in a constructive spirit to participate in its future discussions of the IGC. It hoped that on the basis of preliminary results already achieved, the IGC would further discuss genetic resources, TK and folklore and at an early date put forward an operable and reasonable solution. According to realistic facts and already existing treaties, the IGC could put forward reasonable solutions to these issues.

175. The Delegation of South Africa noted that it had some difficulties concerning the effect of the decision paragraph 33 of WO/GA/32/7. It requested the Secretariat to assist by explaining what exactly had been asked in the relevant subparagraph. The Delegation recalled that it had participated during the debates of the previous two biennia but it understood that when the IGC had wanted to go into its real mandate of norm-setting certain Committee participants did not want to go towards the tangible outcomes which were the mandate of this Committee, according to the General Assembly decision of 2003. The Delegation stated its understanding that the mandate of the IGC was to the effect that: (i) it would conduct an exploration of the issues; (ii) it would examine the international dimension with the involvement of lots of stakeholders; (iii) since enough information had already been collected, the Secretariat should come up with texts which might lead to internationally binding instruments or international guidelines. It requested the Secretariat to indicate whether the understanding of the Delegation was correct.

176. The Secretariat pointed out that the existing mandate of the IGC was set out in paragraph 1 of document WIPO/WO/GA/32/7 and that was a mandate which had been established by the General Assembly two years ago after extensive negotiations. In paragraph 32, the document recorded the decision of the Intergovernmental Committee at its last meeting to recommend to this Assembly that that mandate be extended to the next

biennium. In paragraph 33 of the document, the Assembly was simply invited, firstly, to note all the work that had been accomplished and, secondly, to consider that recommendation of the Committee for the extension of the mandate, as set out in paragraph 1. That was all the Assembly was being asked to do at the present stage, namely to extend the existing mandate as set out in paragraph 1 of the present document.

177. The Chairman confirmed the understanding set out by the Secretariat.

178. The Director General clarified that, if the question was whether the extension of the work of the Committee implied also an extension of its mandate, then the answer was “yes”. Unless and until the General Assembly decided otherwise, the mandate of the IGC was the same as that incorporated in paragraph 1 of the present document. What was required now was to extend that mandate for two more years, but the substantive discussion based on the mandate would take place in the next, forthcoming session of the IGC.

179. The Delegation of South Africa thanked the Director General and the Secretariat for their explanations and confirmed that it too was speaking about document WO/GA/32/7. Referring to paragraph 1 of that document, subparagraphs (i) to (iii), it noted that the mandate related in particular to subparagraphs (ii) and (iii). It felt that when the Member States were at present assembled in the General Assembly they wanted to focus on subparagraphs (ii) and (iii), because, if the IGC was not clearly instructed, it might come up with a lot of debates and when the Committee developed text to achieve the practicality of subparagraphs (ii) and (iii), the Committee might find that subparagraph (iii) was not being followed and was therefore not adding value. Therefore, the Delegation requested that the mandate be very clearly spelled out as saying to go ahead with issues which the IGC members wished to include under subparagraphs (ii) and (iii) of the mandate and to come up with texts on which the General Assembly would have to decide upon.

180. The Director General noted that the statement of the Delegation of South Africa was very clear and that the statement and the mandate would be reflected in full in the report of the present meeting and whenever a meeting of the IGC was convened.

181. The Delegation of India stated that India, with its ancient civilization and mega-biodiversity, possessed a unique treasure house of biological and genetic resources, TK and folklore. Proper regard and recognition to the holders of these rich resources should be given so as to avoid any possibility of their misappropriation. Towards this end, the development of appropriate and innovative protection systems was required for creating a legally binding international instrument for protection of TK, including codified knowledge which was available in public domain and genetic resources. The Delegation was happy to associate itself with various proposals made by other delegations in support of the recommendation of the eighth session of the IGC to extend its tenure for another two years. This, however, would not preclude delegations from continuing their discussions and deliberations on this important subject in other international fora.

182. The Delegation of the United States of America thanked the International Bureau for the preparation of WO/GA/32/6 and WO/GA/32/7. It supported the continuation of the existing IGC mandate for the next budgetary biennium. It also welcomed the proposal for a Voluntary Fund, but stressed the importance of a selection process that maintains the geographical balance and diversity and that would not be skewed toward any particularly group of countries. It encouraged measures to ensure that those receiving financial support are not

self-selected representatives but truly reflect the views of a broad spectrum of indigenous and local communities.

183. The Delegation of Chile stated that it supported the renewal of the mandate of the IGC.

184. The Delegation of Kenya endorsed the position of the African Group as articulated by the Delegation of Morocco, stressing that the IGC process should culminate in a legally binding international instrument to protect TK, genetic resources and folklore and that the mandate of the IGC should be renewed. The Delegation recognized the good work done by the IGC since its inception and appreciated the progress made so far especially in the development of the draft provisions and principles for the protection of TK and folklore as part of the international dimension of the work of the IGC and acknowledged the complexity of the matter. It was aware that the matters before the IGC had to be finalized and that there was a need for good will and support so that the IGC could be in a position to continue with its work. The work of the IGC would only progress if its mandate was extended. The Delegation therefore supported this extension. It looked forward to a situation whereby benefits accruing from intellectual property rights through the use of TK, genetic resources and folklore by third parties are shared with the appropriate custodians. Kenya was committed to the protection of TK, genetic resources and TCEs/ folklore. In January 2005, the Office of the Attorney General had set up a Committee comprising key stakeholders from governmental institutions and non-governmental organizations to develop policies and legislation on TK, genetic resources and TCEs/folklore for Kenya. This national Committee was expected to develop draft policies and legislation by the end of 2005 for discussion by Kenyans. In addition, Kenya's new Constitution empowered the state to support and protect indigenous knowledge, genetic resources and cultural heritage. It had set up a national commission to promote and protect culture. Accordingly, the Delegation called upon the General Assembly to renew the mandate of the IGC.

185. The Delegation of Egypt acknowledged with appreciation the efforts undertaken by the International Bureau for the quality of documentation and assistance provided to Member States in the context of the IGC meetings. The Delegation had understood that there was a clear consensus at the last session of the IGC on the necessity to renew the mandate of the IGC for the next budgetary biennium. It strongly viewed this renewal as vital in order to enable this important process to fulfil its mandate in developing an effective international and legally binding instrument for the protection of genetic resources, TK and folklore. Protection against biopiracy and misappropriation in this area was of great importance to Egypt. The Delegation believed that the discussion in the IGC had facilitated a much deeper exchange of views among the stakeholders and tangibly contributed towards strengthening its understanding of this important issue. However the level of progress achieved was still limited in its view. If the IGC was to succeed, the renewal of its mandate should be prolonged by increasing the pace of its work in a more efficient, focused and productive manner. It reaffirmed its well known position that the work of the IGC should by no means divert attention from similar important endeavors taking place in other WIPO bodies or other international bodies, particularly the WIPO Standing Committee on the Law of Patents and the TRIPS Council of the WTO.

186. The Delegation of Morocco expressed thanks for the excellent documents that had been prepared and its support for the statement it had made on behalf of the African Group. It expressed its satisfaction with regard to the progress achieved by the IGC. Morocco had participated actively in the IGC throughout its work and therefore believed that the work should continue. It believed that the aim should be to regulate the exploitation of genetic

resources and TK at the international level and believed that this could only be done through an international legally binding instrument that would check the abuse and illegal exploitation of such resources. It also welcomed the approval of the Voluntary Fund because it believed that such contribution from member states would be highly valuable for the work of the IGC but it also stressed that it would be very important to coordinate the functioning of the Fund with Member States. The Delegation renewed its support for the extension of the mandate of the IGC, as it believed that its work was growing toward a successful conclusion.

187. The Delegation of Turkey expressed thanks for the excellent job done by the Secretariat on this item and on others, and referred to the excellent documents provided for consideration by the General Assembly. It also welcomed the establishment of a Voluntary Fund for the participation of indigenous and local communities, which was certainly a step to be applauded. Furthermore it endorsed the statement made by the Delegation of Morocco on behalf of the African Group. It recalled its position on this topic and questioned whether that position had been fully taken into account. At the last IGC meeting and by written submission, the Delegation of Turkey had specified that the selection of representatives of indigenous and local communities should be made in close cooperation with Member States, and it had questioned why donors could remain anonymous, although it had not received an answer. It was of the view that Article 6(f)(ii) in the Annex to document WO/GA/32/6 should be deleted, as it had been retained even though there had been discussion of it during the most recent session of the IGC. Unfortunately, the Delegation had not been able to draw this to the attention of the Chair before, but stated that it could not accept this decision as it stood, because the point which it had put forward earlier had not been taken into account.

188. The Chair took note of the comments of the Delegation of Turkey on that point.

189. The Delegation of Oman expressed satisfaction with the progress of the IGC and thanks for all the efforts made in preparing such excellent documents. The Delegation said that it attached a tremendous importance to this issue, because of its close relevance to the people of its country. It agreed with the proposed decision and expressed the hope that the IGC would bring about a legally binding instrument for the protection of genetic resources, TK and folklore. It added that its country had already enacted a number of legislation for this purpose with the cooperation of WIPO. Its country considers them of paramount importance to its cultural heritage, a principle that its Constitution stresses. The Delegation of Oman welcomed the establishment of the Voluntary Fund.

190. The Delegation of Peru, speaking on behalf of the Group of Latin American and Caribbean Countries, said that it was of great importance to that region that the mandate of the IGC be extended for a further two years. In renewing the mandate it was necessary to respect the agreement reached by the IGC itself, reflected in paragraph 32 of WO/GA/32/7. For that reason, the Group considered that it was not necessary for the Assembly to debate the nature of the work of the IGC but that only the recommendation for renewal of the IGC's mandate should be approved.

191. The Delegation of Peru endorsed the statement made by the Delegation of Argentina on behalf of the Friends of Development and also the statement it had made on behalf of the Group of Latin American and Caribbean Countries. It said that it took part actively in the work of the IGC and believed that this work was of capital importance to its country which had a rich biological diversity, wealth of culture and TK. For this reason it also welcomed the creation of the Voluntary Fund for the participation of representatives of local and indigenous communities. The Delegation was of the view that the work of the IGC had been very

productive to date, especially with regard to TK. Unfortunately, with regard to disclosure of origin of genetic resources, the IGC had not made significant progress and it wondered if further discussions on this matter in the IGC was of use. The issue of disclosure of origin should be dealt with in connection with the Doha Development Agenda agreed upon at the launching of the WTO Doha Round. If discussions on that matter were to take place in WIPO, it would be more appropriate in the framework of the SCP, because origin and prior informed consent and fair and equitable sharing of benefits are closely linked to the patent system and patenting requirements. For the sake of the consensus, the Delegation agreed that the work of the IGC should continue for two more years in line with the present mandate, but it reiterated that the IGC should strive to achieve tangible results as was the case with TK, where the IGC already had a possible international instrument which could be legally binding in the short term.

192. The Delegation of Kyrgyzstan considered that matters relating to genetic resources, TK and folklore were extremely important and that this was true both nationally and internationally. Taking into account the experience in the country, this was an area in which people were paying increasing interest. Two bills were going before its parliament, relating to the protection of TK and genetic resources and the protection of national folklore. There was a need for fuller international regulation in this area. The Delegation therefore recognized the importance of providing protection for traditional knowledge and genetic resources as one of the levers of sustainable development and, bearing in mind current discussions and the problems encountered in the establishment of mechanisms to protect subject matter created using TK and genetic resources, three things were essential. Firstly, traditional knowledge should be included in prior art in order to avoid the unlawful patenting of subject matter created on such a basis. For that purpose, the relevant provisions should be included in legally binding international industrial property agreements, in particular the PCT and the TRIPS Agreement. Secondly, in order to create mechanisms for the protection of traditional knowledge and also promote innovative activity involving new uses of existing genetic resources, it was necessary to strengthen legislation that could freely regulate the relevant issues at the national level. Finally, the Delegation recommended that WIPO should pursue its work in this area *inter alia* by extending the IGC's mandate for the forthcoming biennium. It also supported the idea concerning the participation of representatives of indigenous and local communities in the work of the IGC and the setting-up of an appropriate WIPO Voluntary Fund.

193. The Delegation of Canada considered that the continuation of the mandate of the IGC was important and thus supported its renewal.

194. The Delegation of Sudan stated that it was favorable towards the work done by the IGC and thanked the Secretariat for the work it had done in support of the IGC. The Delegation underlined the importance of the questions before the IGC, namely genetic resources, TK and folklore, especially for developing countries. Sudan had put in place a new law addressing genetic resources and TK issues. The Delegation expressed its support for the statement made on behalf of the African Group and for the extension of the IGC's mandate.

195. The Delegation of Trinidad and Tobago thanked the Secretariat for the comprehensive review of the IGC's work contained in WO/GA/32/7. The Delegation was impressed by the valuable work done by the IGC so far and applauded its accomplishments which had clearly been arrived at after much debate. The issues before the IGC, namely genetic resources, TK and TCEs, and the continuing work of the IGC on these issues, were vastly important for developing countries such as Trinidad and Tobago and those of the wider Caribbean region.

TK and TCEs were not fully divorced from contemporary lore and modern knowledge systems. Traditional music, drama, oral poetry and other literature, and arts and crafts were major items of trade around the world, turning a profit in and of themselves and as part of re-designed products in today's rapidly growing markets for cultural goods and services. The Delegation was sure that other developing countries would acknowledge that the work of the IGC, while important, could not be rushed. It supported the renewal of the mandate as well as the establishment of the Voluntary Fund.

196. The Delegation of New Zealand supported the statement made on behalf of Group B. New Zealand had been a strong supporter of the IGC and appreciated the work done by its very able Secretariat. The IGC had undertaken some extremely important and useful work. In highlighting some of the achievements so far, the Delegation stated that the IGC had helped to raise the profile of TK issues around the world, in domestic, regional and international contexts. It had encouraged policy makers and the holders of TK to focus on some very complex questions, and to start to move from general or theoretical positions about whether the intellectual property system was compatible with the objectives of TK holders. The IGC had started to delve into the complexities of the underlying questions related to definitions, policy objectives, principles and broad options on the potential forms of protection that might ultimately be adopted at the domestic, regional or international levels. Discussions in the IGC had also recognized that TK questions arose in many policy spaces, not just intellectual property, and that it was necessary to look through a broader lens to find answers to difficult issues. The resources produced or under development by the IGC and the Secretariat were invaluable to domestic policy makers and other stakeholders, regardless of where the IGC's work might ultimately lead. The ongoing work on policy objectives and principles, for example, provided a head start for policy makers developing frameworks in which to engage domestic stakeholders, and to know what might be possible in terms of adapting the IP system or developing new sorts of IP-based solutions. Many domestic policy processes were only beginning, and such resources as well as the practical guides and databases would be invaluable. The Delegation stated that it was important to acknowledge that TK issues were complex, with many country-specific variables and a range of indigenous peoples and local communities with different aspirations. It was no surprise, therefore, that the IGC was still exploring and clarifying underlying issues and concepts. For these reasons, the Delegation supported the continuation of the IGC and considered that its mandate as established in 2003 should continue, as referred to in paragraph 33 of WO/GA/32/7. With a renewed mandate, it was expected that the IGC would carry on with existing projects, including the ongoing refinement of the papers on policy objectives and principles, including through the provision of contributions from Member States and observers. The Delegation also strongly supported the establishment of the Voluntary Fund.

197. The Delegation of Nigeria expressed satisfaction with the unanimous adoption of the proposal to establish the Voluntary Fund. It also noted with satisfaction WIPO's joint endeavor with the United Nations Environment Programme (UNEP) in relation to TK and genetic resources. The Delegation was, however, concerned with the rate of progress in the IGC. There had been much documentation but little substantive work. There were still no consolidated text that could form the basis of an internationally binding legal instrument for the protection of genetic resources, TK and folklore. There had to be real progress and there was no desire to extend the IGC's mandate for its own sake. There was not only a need to protect, preserve and promote TK, genetic resources and folklore, but also to prevent their misappropriation and to put in place a disclosure requirement and benefit-sharing in respect of genetic resources. The Delegation was concerned that substantive issues could be mired in a

gridlock of interminable debates and trade-offs on other issues. In conclusion, the Delegation stated that it sought an international binding instrument.

198. The Delegation of Malaysia expressed its deep appreciation for a recent WIPO expert mission and convening of a national workshop in its country, which helped Malaysia to strengthen its domestic policies and legislation on these issues. The Delegation supported an extension of the IGC's mandate as this would provide continuity, be in the public interest and also facilitate harmonization of issues, particularly in respect to legally binding instruments for the protection of TK, folklore and genetic resources. The Delegation also welcomed the establishment of the Voluntary Fund.

199. The Delegation of Ethiopia stated that the issues under discussion in the IGC were assets of least-developed countries in which these countries had a comparative advantage. There was a great enthusiasm for the work of the IGC and high hopes for its outcomes. The results of the IGC's work so far had been of great help in deepening insights and in the preparation of national laws and policies. A successful outcome within the IGC would be a milestone in the history of WIPO, as it would symbolize a process in which the full participation of developing countries had been ensured in the development of key instruments to be administered by WIPO. The Delegation fully supported the continuation of the work of the IGC and also welcomed the establishment of the Voluntary Fund.

200. The Delegation of the Islamic Republic of Iran stated that the Islamic Republic of Iran was a culturally rich country and that the issues under discussion in the IGC had far-reaching effects on the livelihoods of many people. The Delegation stated that the decision of the IGC at its eighth session to renew its mandate should be approved by the General Assembly.

201. The Delegation of Antigua and Barbuda supported the statement made on behalf of GRULAC and the statement of Trinidad and Tobago, and agreed with the extension of the mandate of the IGC. The Delegation also supported the establishment of the Voluntary Fund.

202. The General Assembly noted the contents of document WO/GA/32/7, having agreed to delete subparagraph 33 (iii) of document WO/GA/32/7, and extended the mandate of the Intergovernmental Committee to the next budgetary biennium to continue its work on traditional knowledge, traditional cultural expressions/folklore and genetic resources.

#### ITEM 16 OF THE CONSOLIDATED AGENDA:

##### INVITATION TO WIPO FROM THE CONFERENCE OF PARTIES OF THE CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

203. Discussions were based on document WO/GA/32/8.

204. The Secretariat introduced document WO/GA/32/8, and described the consultative process that had been followed to prepare it, including the convening of an *Ad hoc* Intergovernmental Meeting on Genetic Resources and Disclosure Requirements ('*Ad hoc* Intergovernmental Meeting') on June 3, 2005, in accordance with the decision of the General Assembly at its thirty-first session. The Annex to WO/GA/32/8 contained the text of the proposed examination of issues prepared in response to the invitation of the Conference of

Parties (COP) of the Convention on Biological Diversity (CBD) that was proposed for transmission to the CBD COP. The document was subject to a number of clarifications concerning its status, which were set out in paragraph 17 of the document and paragraph 224 of its Annex.

205. The Delegation of Brazil expressed thanks for third draft of the “examination of issues regarding the interrelation of access to genetic resources and disclosure requirements in intellectual property rights applications”, which it recalled had been elaborated in response to an invitation by the CBD COP. The Delegation indicated the document was in general a very good one and that it would not have difficulties in agreeing to forward it to the CBD. The International Bureau had made a fair attempt to take on board and reflect issues and concerns raised by Member States, including during the *Ad Hoc* Intergovernmental Meeting. The Delegation nonetheless put on record its reservations with respect to some of the final paragraphs of the document, in particular paragraphs 225 to 228 of the Annex to WO/GA/32/8. It pointed out, in particular, that the list of issues contained in paragraph 225 of the Annex, though appearing in the previous draft of the document, was neither discussed nor approved at the *Ad Hoc* Intergovernmental Meeting, aside from the proposal by one delegation to delete the references to the feedback mechanism with the CBD. The Delegation also noted that the contributions of Canada, the United States of America and France, which were quoted in paragraphs 226 to 228 of the Annex, had been, as the document itself pointed out, sent to the Secretariat after the *Ad hoc* Intergovernmental Meeting. They were never, therefore, considered by other Member States. At this advanced stage, the Delegation preferred not ask for any further modifications to the document but nevertheless underscored the understanding contained in paragraph 226 of the Annex that there was clearly no agreement among WIPO Member States on issues and on a specific feedback mechanism with the CBD. Paragraphs 225 to 228 of the Annex, therefore, did not provide a mandate for WIPO to interact with the CBD on the basis of the issues listed in those paragraphs.

206. The Delegation of the United Kingdom, on behalf of the European Community, its Member States and the Acceding States Bulgaria and Romania, advised that it had taken careful note of the invitation of the CBD COP. Many of the issues mentioned in the invitation were central to WIPO's competence. Work on these issues did and should continue in WIPO. The initial examination of the issues drafted over the course of the last year should be transmitted to the COP without delay. The Delegation urged the Assemblies to consider undertaking to keep the CBD COP informed as to progress being made on these issues in its committees. No additional bodies or meetings would be required to fulfil such an undertaking since the work of WIPO's existing bodies covered all the issues raised in the invitation.

207. The Delegation of Thailand welcomed the draft examination of issues concerning the relationship between intellectual property disclosure requirements and genetic resources and associated traditional knowledge that had been prepared so carefully and admirably. It supported the transmission of the document to the CBD COP and emphasized the importance of the discussion of the issues of disclosure requirements, prior informed consent, and access and benefit sharing mechanisms, especially in the forum provided by the IGC. This discussion should be integral to all international discussion regarding the issues of intellectual property and genetic resources, traditional knowledge and folklore. Thailand's view was that discussion of the issues of disclosure requirements, prior informed consent, and access and benefit sharing mechanisms in the IGC or other fora within WIPO should not in any way undermine, but in fact support, the ongoing negotiations in the WTO TRIPS Council.

208. The Delegation of Switzerland indicated that it had studied the document with great interest and considered that it was most important that WIPO should transmit a comprehensive response to the CBD as soon as possible. The Member States had had considerable opportunity to participate actively in the elaboration of the study, but Switzerland had regretted that the participation in this process had been relatively modest among the membership of WIPO. The Delegation underlined that even if the study would only be considered a technical contribution aimed at facilitating general policy debate, WIPO held the technical and legal competence to deal with very complex questions concerning disclosure requirements in applications for intellectual property. It was therefore essential that WIPO should report once or twice per year to the CBD on the current activities of WIPO. Switzerland had participated actively in the elaboration of the draft response to the CBD invitation, making comments twice in the commentary procedure.

209. The Delegation of Canada expressed appreciation for the preparation of the response to the CBD COP contained in the Annex to WO/GA/32/8. It reiterated its position that the exploration of the issues contained in this document did not have a legal or political character and did not represent a formal position, with the principal goal of exploring certain questions relating to intellectual property, genetic resources and traditional knowledge. In the spirit of mutual support between the work of WIPO and the CBD, the Delegation encouraged the General Assembly to transmit the document for consideration at the eighth CBD COP.

210. The Delegation of the United States of America expressed its thanks to the International Bureau for its work in preparing a comprehensive draft on these issues, and supported the transmittal of the examination to the CBD subject to the clarifications of its status set out in paragraph 224 of the Annex (and paragraph 17 of WO/GA/32/8).

211. The General Assembly considered the draft examination of issues contained in the Annex to document WO/GA/32/8, and decided to transmit it to the Conference of Parties of the Convention on Biological Diversity, taking note of the clarification of the status of the examination that is set out in paragraph 17 of WO/GA/32/8.

#### ITEM 17 OF THE CONSOLIDATED AGENDA:

##### MATTERS CONCERNING THE PATENT LAW TREATY (PLT)

212. Discussions were based on document WO/GA/32/11.

213. The General Assembly took note of the information contained in document WO/GA/32/11.

#### ITEM 22 OF THE CONSOLIDATED AGENDA:

##### MATTERS CONCERNING INTERNET DOMAIN NAMES

214. Discussions were based on document WO/GA/32/3.

215. The Secretariat recalled that WIPO conducted two Internet Domain Name Processes. The First Process, which concerned the relationship between domain names and trademarks, resulted in the adoption of the Uniform Domain Name Dispute Resolution Policy (UDRP). Since December 1999, the WIPO Arbitration and Mediation Center has administered 8,000 UDRP cases. The Second Internet Domain Name Process examined the relationship between domain names and certain identifiers other than trademarks. Based on the findings of this Process, the WIPO General Assembly recommended in September 2002 that the UDRP be amended to provide protection also for (1) the names and acronyms of international intergovernmental organizations and (2) country names against their abusive registration as domain names. These recommendations were transmitted to the Board of the Internet Corporation for Assigned Names and Numbers (ICANN) where they have since been under consideration. The Secretariat noted that no action has yet been taken by ICANN on the recommendations made by the WIPO General Assembly.

216. The Delegation of Colombia expressed its concern that the recommendations had not yet been taken into account by ICANN. The Delegation emphasized that the recommendations concerned a matter to which States attached great importance, since they covered essential subjects relating to public policies and the sovereignty of States. The Delegation observed that the topic had not been addressed at the most recent ICANN meeting and urged the Secretariat to insist, in its contacts with ICANN, that a decision be taken that took due account of the recommendations.

217. The Delegation of Germany stated that it shared the concerns expressed by the Delegation of Colombia and asked whether any progress was to be expected at ICANN.

218. The Secretariat informed the Assembly that it was in contact with the staff of ICANN and it would continue to work towards the implementation by ICANN of the recommendations made by the WIPO General Assembly.

219. The Delegation of Chile expressed its support for the statement made by the Delegation of Colombia. The Delegation said that it wished to receive clarification from ICANN for the lack of progress, and requested that the WIPO General Assembly be informed of ICANN's response.

220. The General Assembly took note of the contents of document WO/GA/32/3 and, in particular, of the status of the recommendations of the Member States of WIPO before ICANN.

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